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Admissibility of Evidence of Intoxication as a Defense to Crime

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ADMISSIBILITY OF EVIDENCE OF INTOXICATION AS A DEFENSE TO CRIME.

In the discussion of this question it will first be necessary to consider the elements which must be proved in order that criminal liability may be fixed on any person. To constitute a crime, there must be (1) an act, and (2) a criminal intent, or (3) criminal negligence, (4) which must concur in point of time.

A criminal intention is the state of mind of a person when he consciously violates the law, without legal justification or excuse. The aim of the law in all criminal cases, is, not the redress of a private wrong, but the punishment of the individual committing the crime. This being the case it would be a great injustice to punish a person for a wrongful act unless he intended evil or was careless in what he did. This doctrine has been laid down in many adjudicated cases as well as in the old maxims of the common law.

The only exceptions to this general statement are to be found in acts made criminal by statute, and in such cases no proof of intention need be offered. Illustra-

tions of such laws are found in the statutes prohibiting the sale of intoxicating liquors to minors and also in the sales of adulterated food. In such cases a violation of the statute may render a person criminally liable even though he be wholly free from moral blame. It is suggested however, that in each of these cases there is ordinarily negligence, or an intention to infringe on another's civil rights, or to do some moral wrong, any of which might supply a criminal intent.

Criminal intent is divided into General and Specific intent. The general intent is the intent to do the act done. When one does an unlawful act, he is by law presumed to have intended to do it, and to have intended its natural and ordinary consequences. This is so because he must have foreseen the consequences which would result from the commission of the unlawful act.

When, however, the act is not criminal in itself but becomes so only if done with a particular intent, then this intent must be proved. This is called the Specific intent. For example, where the crime charged is assault with intent to kill, or assault with intent to commit rape, the crime is not committed unless the specific intent charged is proved. In these cases the gist of

the crime is the intent itself : but so long as the crime remains a mere intention, it is not punishable ; an attempt to carry out the intention, which falls short of its consummation, is necessary. From this brief discussion it is at once apparent that evidence of intoxication can never be admitted to disprove the general criminal intent. However, if a specific intent be a necessary element in a particular crime, evidence of intoxication is admissible, to show that such an intent could not have been entertained, and thus to change the nature or grade of the offence for which the prisoner may be commited. This is a statement of the law as it stands at the present time in a majority of the states.

The Roman law made great allowances for this vice and admitted evidence of it as defence in a criminal action. In Greece, by a law of Pittacus, it was enacted "that he who committed a crime when drunk, should receive a double punishment," one for the crime itself, and the other for the drunkenness which caused him to commit it.

According to Blackstone, the English law looked upon intoxication as an aggravation of the offense, rather than any excuse. Lord Coke says,--"He who be-

comes voluntarily intoxicated, hath no privilege thereby ; but what hurt or ill soever he doth, his drunkenness doth aggravate it." The case of Renigre vs. Zogossa, (Plowd.19) declares "that if a person that is drunk kills another, this shall be felony, and he shall be hanged for it ; and yet he did it through ignorance, for when he was drunk he had no understanding or memory ; but inasmuch as that ignorance was occasioned by his own act and folly, and he might have avoided it, he shall not be privileged thereby."

While this was the rule of the English law, the courts established this exception. If a man became involuntarily reduced to madness by intoxication, then he had the same defence as in any other case of insanity. It was also held that evidence of intoxication was admissible where it was material to inquire whether the crime was done after deliberation or in hot blood. The cases of Joseph Hume, decided in 1732 and Patrick Kinninmount,decided in 1697 are among the oldest and fully substantiate the above propositions. Having thus briefly passed over the introductory part of our subject, it will be admissible to investigate the law as found in New York State,this being the generally adopted

rule of this country. Afterwards it will be interesting to note any variance found in any of the other States of the Union.

New York.

The law in New York State, as regards the admissibility of evidence of intoxication in criminal cases, is practically the law of a majority of the states of the Union.

One of the first cases to be found in New York is that of People vs. Robinson, 1 Parker's Criminal Reports, 649. The defendant was on trial for the murder of one Lanagan by poison. It was proved that she administered the poison while she was in a state of intoxication. In the charge to the jury the judge said,--"If the accused mingled poison in the beer that was drank by Lanagan, the law charges her with a design to kill him ; and although she may have been excited by drink at the time, even to such an extent as not to know what she was doing, she must answer for the consequences. Her self-inflicted insanity must not be allowed to avail her for defence. The law imputes to her still a murderous intent. A man may reasonably be presumed to intend to

do what he in fact does. If it appears that the faculties of his mind had become so disordered that he was no longer capable of discriminating between right and wrong in respect to the act he has committed, then the law, in its justice, pronounces him innocent of the crime. But, if his derangement is voluntary ; if his madness be self-invited ; the law will not hear him when he makes his intoxication his plea to excuse him from punishment." The court farther appears to suggest that if the defendant in this case, instead of drinking enough to render her merely unconscious of what she was doing had continued drinking and thereby brought on delirium tremens or insanity, that then she would not be accountable for her crime. The court considers the first condition a voluntary one and the second brought about by the visitation of God. At the time of this case there was but one degree of murder in New York State. The prisoner was found guilty but it is certain that a verdict of murder in the first degree could not be rendered under a similar state of facts at the present time.

The case of People vs. Fuller, decided in 1823, is

an extreme one. The court in this case holds that intoxication is a voluntary deprivation of reason, and that if a person under the influence of liquor does an act which would be a crime if he were sober, the intoxication is an aggravation of the offense, and cannot be given in evidence in mitigation of the guilt of the prisoner.

Outside of a very few exceptional cases of this class, the law in New York had always been quite settled.

It is provided by Section 22 of the Penal Code that: "No act committed by a person while in a state of intoxication shall be deemed less criminal by reason of his having been in such condition. But whenever the actual existence of any particular purpose, motive or intent, is a necessary element to constitute a particular species or degree of crime, the jury may take into the consideration the fact that the accused was intoxicated at the time, in determining the purpose, motive or intent, with which he committed the act."

It is held in the case of People vs. Batting, (49 Howard Pr. Rep. 392), that proof of voluntary intoxication may reduce the crime of murder to the second degree.

A deliberate intention to kill is the essential feature of murder in the first degree. When the mind, from intoxication is deprived of its power to form a design with deliberation, then the offense is lowered to the second degree. But intoxication cannot be introduced to excuse the crime or make it less than murder in the second degree.

In a similar manner, evidence of intoxication, may reduce a charge of assault with intent to kill to simple assault.

DEGREE OF INTOXICATION NECESSARY TO SHOW ABSENCE OF PREMEDITATION.

It is stated in section 22, Code Criminal Procedure that the jury may take into consideration the fact that the accused was intoxicated at the time, in determining the purpose, motive or intent with which he committed the act. The question which arises is, does intoxication always tend to show an absence of deliberation or premeditation. Upon consideration it is apparent that in some instances it might prevent a person from forming an intent or motive, while in other cases it would not. The degree of intoxication, the condition of the mind of

the person intoxicated, and other circumstances must be considered. A man may be intoxicated and yet be able to form a deliberate intent.

In the case of People vs. Fish, (125 N. Y. 136) the rule is laid down that if the accused person be sober enough to form an intent and so deliberate upon and premediate the crime, then he is responsible the same as if he had been perfectly sober, and that he is guilty even though intoxicated.

Perhaps the best statement of the rule as it now stands is found in the case of People vs. Leonardi, (143 N. Y. 360) and I may be pardoned from quoting from the opinion rendered by Judge Peckham. He says,-- "We do not think that under this statute the intoxication need be to such an extent as to necessarily and actually preclude the defendant from forming an intent or from being actuated by a motive before the jury would have the right to regard it as having any legal effect upon the character of defendant's act. Any intoxication, the statute says, may be considered by the jury and the decision as to its effect rests with them. That a man may be even grossly intoxicated and yet be capable of forming an intent to kill or do some other criminal act

is indisputable, and if, while intoxicated, he forms an intent to kill and carries it out with premeditation, and deliberation, he is without doubt guilty of murder in the first degree. If his intoxication made him more excitable and led him the more readily and easily to commit the crime, to form the intent and to reach a conclusion, as the result of deliberation upon it, then his intoxication would not help him. He must be so completely intoxicated in order to be excused as to be destitute of the capacity to realize the wrongful nature of his act ; that his acts are wholly aimless and without purpose.

The jury should not allow intoxication to alter the character or grade of the criminal act unless they have a fair and reasonable doubt of the existence of the necessary criminal purpose or intent after a consideration of such evidence of intoxication.

THE CHANGE EFFECTED BY THE PASSAGE OF SECTION 22, PENAL CODE.

The passage of section twenty-two of the Penal Code completely changed the rule which had been laid down in

New York and followed up to 1881. This fact must be borne in mind in the study of cases which arose prior to the passage of this law.

In the case of People vs. Batting, which arose in 1874, it was held that no degree of intoxication will be a defense to murder. It was said that the law in such cases does not seek to ascertain the actual state of the perpetrator's mind. The fact from which this state is implied having been proved, the law presumes the existence of malice and intent. Proof in opposition to this presumption was considered inadmissible. Therefore a party could not show that he was so drunk as not to be capable of entertaining a malicious feeling or intent.

The court in the case of Flannigan vs. People, (86 N. Y., 554) says, "The rule is well settled that voluntary intoxication of one who, without provocation, commits a homicide, although amounting to frenzy, does not exempt him from the same legal influences upon the question of intent, as affecting the grade of his crime, which are applicable to a person entirely sober."

This ruling was universally sustained prior to the year 1881 but of course would not be followed now. It

is merely a matter of historic interest. A great majority of the states have adopted the same general rule as that which is found in New York at the present time.

The laws of a number of states which differ from the general rule will be noted below.

A L A B A M A.

A most exceptional case is found in this State in the case of State v. Bullock, (13 Ala.413). The defendant was on trial for assault with intent to kill. The Court held that although drunkenness reduces a man to a state of temporary insanity it does not excuse his offense committed in a fit of intoxication, and that malice was inferred from the character of the weapon used, which legal presumption could not be rebutted by evidence of intoxication. The Court charged the jury that the drunkenness of the prisoner should have no effect upon their consideration. This case was cited with approval in the case of Beasley v.State,(50 Ala.149). However, in the case of Ford v. State in 71 Ala. 385, it was held that voluntary intoxication may sometimes operate to rebut the existence of malice so as to reduce the grade of homicide, or other crime of which malice is a necessary ingredient.

The court in this case, apparently disregarding the case in 13 Ala. 413 cited above, lays down the same general rule as is found in a majority of the states.

G E O R G I A.

The rule laid down in Georgia is that if a man, when unexcited by liquor is capable of distinguishing between right and wrong, and he voluntarily deprives himself of reason by intoxication, then he is responsible for his acts while in that condition.

A statute in this state provides that voluntary drunkenness is no excuse to crime, and a late case in the application of this statute holds that if evidence of intoxication be allowed to lower the grade of the crime, or to lessen it in any case whatever, it is thereby made some excuse, and consequently contrary to the spirit of the statute.

M I S S O U R I.

It has been held in the State of Missouri in the case of State v. Sneed (88 Mo. 138), that evidence of intoxication is inadmissible, either to show that no crime was committed or to reduce its grade from murder in the first degree to murder in the second. The Court says, "However differently the question may have been decided elsewhere, we are not disposed to overthrow the rule thus established in this State, believing it to rest upon reason and authority, and that any departure from it would neither be in the interest of a higher civilization, nor promotive of the best interests of soci-

ety, nor conducive to the ends of justice."

P E N N S Y L V A N I A.

It has been held in one of the earlier cases in Pennsylvania that intoxication is rather an aggravation than a defense of crime. One of the later cases holds that when a man has not the power to distinguish between right and wrong, he is not accountable for his crimes and accordingly when intoxication is so great as to render it impossible for a man to form any complete intention, that the law allows it to reduce the grade of homicide from murder in the first to murder in the second degree.

T E N N E S S E E.

In this state it was held in 1827 that if the person accused of murder was insane, then this would be a defense to the crime. But it was held that if this insanity arose from drunkenness, then it would be no defense to the crime. "Insanity which is the immediate effect of intoxication is no excuse ; he is equally responsible for all his acts."

In 1829, a statute was passed by which murder was divided into the first and second degrees. Deliberation and premeditation was necessary to convict of murder in the first degree.

The passage of this act seems to have changed the law in

Tennessee completely for some years later it was held that upon a trial for murder in the first degree, drunkenness to any extent was relevant, although the drunkenness was not so excessive as to render the accused incapable of deliberating. Yet if it might have excited him and produced a state of mind unfavorable to premeditation and deliberation it was admissible. This remains the law at the present time in that state.

INSANITY PRODUCED BY ~~INTRODUCTION~~ Intoxication.

It is laid down in the case of Nevada v.Thompson (12 Nev. 140) that temporary insanity, produced immediately by intoxication, does not destroy responsibility when the patient, when sane and responsible, made himself voluntarily intoxicated.

This proposition seems to be a settled rule of law. On the other hand, if the habit of drinking has created a fixed frenzy or insanity, as delirum tremens, it is the same as if produced by any other cause, it excuses the act which otherwise would be criminal.

Supported by Lanergan v. People, 50 Barb. 266; W.Va. v. Robinson, 20 W.Va. 713.

L A R C E N Y.

While the rule as to the admission of evidence of intoxication as a defense to the crime of larceny, cannot be regarded as an entirely settled one, still the great majority of the courts have followed the rule which is herein stated. To prove the crime of larceny it is necessary to prove a specific intent to commit the act charged. If a man becomes so drunk that he is incapable of entertaining this intent, and in this condition, he takes another persons property, and relinquishes them before the intent could come upon him or returns them when he regains his right mind, then there is no larceny. From the very nature of the offence, there must be the criminal intent, and this cannot exist in the mind of one who is too drunk to entertain a specific intent of any kind.

This proposition is supported by the following authorities :

Woods v. State, 34 Ark. 341.

Ingalls v. State, 48 Wis. 647.

People v. Walker, 38 Mich. 156.

Bishop on Crim. Law, Vol. I, Sec. 412.

In the case of Chatham v. State (92 Ala.47) decided in 1890, defendant was prosecuted for larceny. There being some evidence that he was drunk when he committed the alleged crime. The court held that he had a right to have the jury

pass on the evidence showing the extent and degree of his intoxication, as affecting his mental capacity to form the specific intent which is of the essence of the offence ; but the jury should be instructed that his intoxication is no excuse, unless os excessive as to render him incapable of consciousness that he is committing the crime-- incapable of distinguishing between right and wrong ; stupefaction of the reasoning faculty."

The latest case to be found in New York is that of People v. Burns (33 Hun. 296). The defendant was on trial for larceny and the judge charged the jury that they must be satisfied beyond a reasonable doubt that the defendant intended to commit a crime, and that the jury must take into consideration the intoxication of the defendant in determining the intent with which the defendant entered the building in question. This decision was sustained in the upper court in New York and is according to the general rule as laid down in a majority of the States.

PERJURY.

The law as to the admissibility of evidence of intoxication as a defense to the crime of perjury is settled in New York by the case of People v. Willey, (Park. Crim. Rep. 19.) In this case it was held that intoxcation could not be offered in defense to an indictment for perjury. In this case the accused was intoxicated when he came before the magistrate, and obtained the warrant, at which time he made the false statements.

In the case of Lytle v. State, (31 Ohio St. Rep. 196) perjury was charged upon the testimony given in reference to a past transaction at the time of which the accused was intoxicated. It was held that the question as to whether the accused was too drunk to form an intent to commit the crime of perjury should have been left to the jury. If he was too drunk to know what he was saying, or to form an intent, he could not be guilty of violating his oath.

PASSING COUNTERFEIT MONEY.

The crime of passing counterfeit money consists of knowingly passing it and it often requires much skill to detect a counterfeit. To rebut the presumption of knowledge it is competent for the accused to show that he was too drunk at the time he passed the money in question to be able to know that it was counterfeit. However if the prosecution shows that the accused procured the money for the purpose of passing it, the evidence of intoxication will not be allowed weight. In the case of U. S. v. Rowdenburse, (1 Bald. 514) the court charged that if the accused was in such a state of intoxication when he received the counterfeit bills as not to know what he was receiving, then you may say that he did not receive them as known counterfeits ; and before you can find him guilty you will require, besides proof of his passing them as true, proof that he knew they were false.

F O R G E R Y.

Intent is a necessary element in the crime of forgery, an intent to defraud is made an element by statute in a majority of the states. If, through intoxication, the person accused was unable or incapable of forming such intent, he cannot be held guilty.

See-- People v. Blake, 5 Crim. Law Mag. 722.

B I B L I O G R A P H Y.

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Bishop, on Criminal Law : Vol.I. p. 399.

Lawson's Criminal Defenses : Vol.II. pp. 533-768.

American and English Encyclopaedia of Law : Vol.IV. pp.208-715 ; pp.802-809.

Cook's Penal Code : Sec.22 and note.

May's Criminal Law : pp.5-9

May's Criminal Law : pp. 21-22.

Blackstone's Commentaries : Vol.IV. p.26

Clark's Criminal Law : pp. 60-65.

People vs. Leonardi : 143 N. Y. 360.

Reniger vs. Zogossa : Plowd. 19.

People vs. Robinson : 1 Park. Cr. Rep. 649.

People vs. Batting : 49 Howard Pr. Rep. 392.

People vs. Fish : 125 N. Y. 136.

Flannigan vs. People : 86 N. Y. 554.

State vs. Bullock : 13 Ala. 413.

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