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# Criminal Procedure--Authority of a Trial Commissioner to Try Criminal Cases in Quarterly Court

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CRIMINAL PROCEDURE—AUTHORITY OF A TRIAL COMMISSIONER TO TRY CRIMINAL CASES IN QUARTERLY COURT—Appellant was driving a car involved in a collision in which four women were killed. Four charges of manslaughter were placed against him along with three drunkenness charges and a charge of negligent homicide by automobile. He was tried before Jefferson County Quarterly Court with a trial commissioner presiding. After hearing witnesses, the trial commissioner stated his opinion that appellant was drunk while driving and had caused the accident. Referring directly to the negligent homicide statute, the commissioner sentenced appellant to a year in jail on each of the four charges and fined him \$500 on the drunken driving charges. The county judge approved the sentences. Appellant subsequently filed a petition for writ of habeas corpus in the circuit court attacking collaterally the quarterly court judgments as void because (1) "they were rendered by a person who had no legal judicial authority or power" (2) he was tried on only one charge but was convicted on five and (3) was deprived of the right of trial by jury, and in the absence of a jury trial, should have been sentenced only for the minimum term or to pay the minimum fine instead of having the maximum penalty imposed in each case. The trial court denied habeas corpus. *Held*: Affirmed. A majority of the Court held: (1) that the trial commissioner in presiding over the quarterly court was acting with legal judicial authority in performing one of the duties assigned to him by the county judge in accordance with KRS 25.280; (2) that error in consolidating several charges or warrants for trial is not reviewable on habeas corpus; (3) that failure to demand a jury trial waives the right to it; and (4) that there was no error in imposing the maximum penalty in absence of jury trial where defendant had counsel. Sims, J. and Hogg, J. dissented. *Brown v. Hoblitzel*, —S.W. 2d— (Ky. 1956).

The scope of this comment is limited to a discussion of two questions raised by appellant's first contention: (1) under existing Kentucky constitutional and statutory provisions does the appointment of a trial commissioner by the county judge to perform such judicial duties as may be assigned to him by the judge include the authority to preside over the quarterly court and enter judgment subject to the county judge's approval in criminal cases; (2) and is "due process" thus achieved?

The first question involves interpretation of KRS 25.280, which provides in part as follows:

Trial Commissioner for County Court. The Judge of the County Court, in each county of this commonwealth wherein the fiscal court may authorize, is hereby authorized to appoint a trial

commissioner or commissioners who shall . . . discharge such judicial duties as may be assigned to him by the judge. The commissioner shall report his actions to the judge for the approval or disapproval of the judge.

Specifically, the problem is, Can the wording of KRS 25.280 be construed to give the county judge authority to assign judicial duties in quarterly court to a trial commissioner? If so, would the statute be in conflict with other statutory provisions which authorize the county judge, a county judge pro tem, or a special judge to preside over the quarterly court?<sup>1</sup>

The majority of the court believed that the words "such judicial duties" is to be interpreted broadly to allow a county judge to assign *any* judicial duty which that county judge might himself have, including the duty of presiding in quarterly court. Further, the majority saw no conflict between KRS 25.280 and the statutes providing for a county judge, a county judge pro tem, or a special judge for the quarterly court. These officers are authorized to act as judge when the regular county judge is absent or unable to perform his duties,<sup>2</sup> and they are classified as substitute judges who act in lieu of the regular county judge with full power of that office. Trial commissioners, on the other hand, are appointed to work alongside the county judge and assist him in his duties. Thus the majority felt that the legislature, in its enactment of the provision for trial commissioners, took cognizance of the existing court officers, but saw a need for additional personnel to those already provided for.

Judge Sims and Judge Hogg disagreed with the majority's broad interpretation of KRS 25.280. In dissenting they argued, in essence, as follows: The county court and the quarterly court were established as separate tribunals by the Constitution.<sup>3</sup> The statutory provisions relating to each tribunal are grouped under separate chapters in the Kentucky Revised Statutes. KRS 25.280 is found under the chapter

<sup>1</sup> Ky. Rev. Stat. 25.450 (hereinafter referred to as KRS) provides that:

"The quarterly court shall be presided over by the county judge or by the person designated by the county judge as county judge pro tem, as provided by law, to act in the absence of the county judge or when the county judge is unable, for some reason to perform the duties imposed upon him as judge of the quarterly court."

KRS 25.460 provides that:

"If the regular judge of the quarterly court is not present, or is present but cannot properly preside, or if either party files with the clerk of the quarterly court his affidavit that the judge will not give him a fair and impartial trial . . . the parties may select by agreement a person to act as special judge for the trial of the action. . . ."

<sup>2</sup> *Ibid.*

<sup>3</sup> Constitution of Kentucky sec. 139 (1891) provides for the establishment of a quarterly court. Sec. 140 provides for the establishment of a county court.

headed "County Courts" and is subtitled "Trial Commissioners for County Court." These headings were enacted by the legislature, and are not merely clerical headings.<sup>4</sup> Thus the intent of the legislature should be followed and KRS 25.280 should be interpreted, in light of the relative position and title<sup>5</sup> given it, to authorize appointment of trial commissioners in county court only. In support of this position the dissent cites cases<sup>6</sup> which hold that an officer of one constitutional tribunal cannot function in a like capacity in a separate constitutional tribunal.

The majority view recognizes the practical advantage that results from the use of trial commissioners in all of the inferior courts since a restrictive interpretation of KRS 25.280 might severely hamper the functioning of quarterly courts in light of the Court of Appeals' recent decision<sup>7</sup> that justices of the peace who receive compensation only in cases of conviction have no jurisdiction to try criminal cases. Therefore, although the argument of the dissent is logical and persuasive, and may even result in a sounder, technical interpretation of the statute, the majority decision appears to better serve the needs of the quarterly court.

The second question posed by appellant's first contention is whether due process is achieved when a quarterly court trial commissioner decides on an accused's guilt? That is, even if the legislature did intend KRS 25.280 to allow a trial commissioner to preside in quarterly court, has the appellant been thereby denied a fair trial?

From the facts of the principal case there arise two grounds for contending that appellant was denied due process when a trial commissioner was allowed to try his case. The dissent presented these two grounds in reaching its conclusion that appellant *had* been denied a fair and authorized hearing, as follows:

<sup>4</sup> Dissent in principal case.

<sup>5</sup> 50 Am. Jur., 306 states:

"The doctrine laid down by the Supreme Court of the United States and other American courts with regard to the subtitles of a lengthy act, as an aid in the interpretation of the statute, is that, while such subtitle is not conclusive, it is properly considered, where an ambiguity exists. . . ."

and 37 ALR 1042 states:

It is doubtless true that a caption may be used as a guide and circumstance showing the legislative intent.

<sup>6</sup> *Martin v. Stumbo*, 282 Ky. 793, 140 S.W. 2d 405 (1940), was a case decided before the legislature enacted a provision for a county judge pro tem of quarterly court which *held* that a county judge pro tem of a county court (who was duly authorized in that capacity) could not act as a quarterly court judge pro tem. *Jefferson County Fiscal Court v. Grauman*, 286 Ky. 608, 136 S.W. 2d 1102 (1940), held that a pro tem judge may not take county judge's place on fiscal court in county judge's absence.

<sup>7</sup> *Roberts v. Noel*, 296 S.W. 2d 745 (Ky. 1956).

The decision approves a trial and condemnation of a citizen (a) by a person acting without legal, judicial authority as a judge who finds the facts, applies the law, fixes the penalty, and commits the defendant to prison, or (b) by a duly authorized court acting by proxy through such unauthorized person.<sup>8</sup>

In other words, if the commissioner in the principal case presided over appellant's trial, saw the defendant and the witnesses and heard the evidence and sentenced the appellant, thereby exercising all the judicial power which the county judge could have under like circumstances, then the acts of the commissioner were a denial of due process because there was an attempted delegation of the judicial function in a criminal prosecution.<sup>9</sup> On the other hand, if the commissioner presided at the trial, gathered the evidence, and submitted his action of sentencing appellant as a recommendation to the judge, and the judge made the decision by his approving signature, there has been a trial by proxy which is not permissible in a criminal case. It has been recognized in civil cases that commissioners may be appointed to assist the court by taking evidence and submitting a transcript thereof, with their opinion and recommendations as to the proper disposition of the case, with the court making the actual decision on the basis of these transcripts.<sup>10</sup> But such procedure in criminal cases has not

<sup>8</sup> Dissent in principal case.

<sup>9</sup> Constitution of Kentucky, sec. 109, vests the judicial power in the courts named by the Constitution. 11 Am. Jur., 903 states:

"It is a general rule that judicial offices must be exercised in person and that a judge cannot delegate his authority to another."

State of Indiana ex. re. Hovey, v. Noble, 118 Ind. 350, 21 N.E. 244, 4 L.R.A. 109, 10 Am. Rep. 143 (1889) provides that:

"[A] deputy judge is a thing unheard of in jurisprudence as the constitution, of its own vigor, and as the sole source of the judicial power, vests that power in designated tribunals, the Legislature can neither vest it elsewhere nor create new judicial offices, nor divide the duties of the judicial offices designated by the Constitution."

In *People v. Albertson*, 55 N.Y. 57, the court said,

"The Constitution cannot be evaded by a change in the name of an officer, nor can an office be divided and the duties assigned to two or more under different names."

In other cases this doctrine has been asserted; *Warner v. People*, 2 Denio 272 (N.Y. 1845); *People v. Draper*, 15 N.Y. 552 (1857); *People v. Keeler*, 29 Hun 175 (N.Y. 1883); *State v. Brunst*, 26 Wis. 412 (1870); *King v. Hunter*, 65 N.C. 535, 6 Am. Rep. 754 (1871).

<sup>10</sup> 11 Am. Jur. 908, says:

"Commissioners to assist a court do not usurp judicial functions or exercise any judicial power by taking such transcripts and briefs as the court shall assign to them and reporting the result of their examination thereof, with opinion and suggestions merely for the consideration of the court as to the proper disposition of the cases."

*People ex. rel. Morgan v. Hayne*, 83 Cal. 111, 23 P. 1, 7 L.R.A. 348, 17 Am. St. Rep. 211 (1890); *Jackson v. State*, 103 Tex. Crim. Rep. 318, 280 S.W. 207 (1925) are cases upholding the use of commissioners in appellate courts to perform the above function.

been condoned, so far as this writer can discover.<sup>11</sup> Even if it was competent to adjudge a defendant in a criminal case guilty upon a written transcript, which is doubtful, the action taken in the principal case would not have come within such procedure because the county judge in this case did not decide on the basis of a transcript of the evidence, but rather, merely rubber stamped the commissioner's actions by a perfunctionary signing of the orders of the day.<sup>12</sup>

The majority's only direct consideration of this point was a statement in its opinion that the appellant raised the argument. There appears to have been a tacit assumption that if KRS 25.280 could be interpreted to authorize a trial commissioner to try cases in quarterly court, and if this particular commissioner acted in accordance with the provisions of the statute in submitting his action to the county judge for approval, then the case was properly tried by a person with legal judicial authority and the due process issue was settled.

One is left with the impression that the argument that the hearing and deciding function were divided in the principal case is too nicely technical to carry much weight. For from the facts of the case it is apparent that the commissioner did, in fact, both hear and decide appellant's case, and the signature of the judge was merely a formality. But if this is true, it would seem to follow that one not having legal judicial authority improperly exercised a judicial function by trying the case.

In light of the foregoing discussion it is concluded that even if KRS 25.280 is construed to allow a trial commissioner to try cases in quarterly court, he would be competent to gather evidence and submit his action with recommendations to the judge *only* in non-criminal cases. Therefore the appellant in the principal case was improperly tried and thereby denied due process.

*Arthur L. Brooks, Jr.*

FUTURE INTERESTS—THE RULE AGAINST PERPETUITIES—CONTINGENT REMAINDER—CLASS GIFTS—Mary Estelle Sands devised a tract of land to her son, Howard J. Sands, during the term of his natural life with remainder to his child or children living at the time of his death for their lives. Upon the death of the last surviving child of Howard J.

<sup>11</sup> Apparently the use of trial commissioners to try cases in inferior court is a situation peculiar to Kentucky. There are no Kentucky decisions on the separation of the hearing and deciding function in criminal litigation, and this writer has found nothing directly in point on the subject elsewhere.

<sup>12</sup> From facts of the principal case as mentioned in the dissent.