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Jurisdiction--Situs of the Crime

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characterized the action of the attorney in *Schurmer v. Nethercutt* as falling in the latter class.

The law, in fixing liability on attorneys, must recognize that human judgment is fallible. Courts, as well as lawyers, disagree concerning the many matters about which each may have a fairly fixed opinion. The law is truly a science, but an imperfect one, because it depends for exemplification and application upon the imperfect judgments and consciences of men. Therefore when a attorney has used ordinary care in acquainting himself with the law his misjudgment as to the application thereof should not render him liable. But where he has carelessly failed to acquaint himself with those elementary legal principles that are well established and clearly defined in the elementary books, or which have been declared in adjudged cases that have been duly reported and published a sufficient length of time to have become known to those who exercise reasonable diligence in keeping pace with the literature of the profession, then the law must say that he is liable to those for whom he has engaged to exercise his knowledge and skill in a professional capacity.

It is extremely difficult, if not utterly impossible, to lay down any general rule which should control the measure of liability in all cases. Each case must be decided in the light of its own peculiar circumstances. The rule in England seems to have been that an attorney is liable to his client only in cases of gross neglect or gross incompetence. From an examination of the malpractice cases in this country, a juster rule seems to exist, that the attorney is liable for the want of such skill, care and diligence as men of the legal profession commonly possess and exercise in matters of professional employment. The general rules governing the execution of testamentary instruments have been fairly well established by a line of cases running back past the passage of the Statute of Wills in 1540. There seems to be no reasonable excuse for exempting from liability an attorney who has failed to follow those fundamental rules, with which it seems imperative that every lawyer should, to a certain extent, become familiar.

The legal profession cannot reasonably find fault with the rules which are generally accepted concerning liability for malpractice. These rules are necessary, as well for the protection of the legal profession as for the client for whom the attorney seeks to act.

WALTER D. VEST.

JURISDICTION—SITUS OF THE CRIME.—A recent newspaper clipping contained an account of the murder of A in Kentucky by B who was standing in West Virginia when he fired the fatal shot.

The man was apprehended in West Virginia and brought up for trial in the West Virginia court on the charge of murder. The judge released the prisoner because the courts in West Virginia did not have jurisdiction to try the prisoner for the murder committed in another state.

The murderer will go unpunished unless he is brought to trial in a court of Kentucky where the murder occurred. Kentucky cannot

ask for a rendition of the prisoner. The prisoner is in no legal sense a fugitive from justice for he is not guilty of any crime in West Virginia and cannot be a fugitive from Kentucky courts until he has once been in Kentucky after the commission of the crime. *State v. Hall*, 115 N. C. 311, 44 Am. St. Rep. 501 (1894), *In re Mohr*, 73 Ala. 503 (1884).

Was the court's ruling correct? This paper will try to show that the court could not have done other than it did.

Public sentiment and the layman's sense of common justice demand that the murderer should be punished and that wherever he might be apprehended should be returned. But the rules of law must be complied with. The court does not make the law but only applies the law as laid down in the books.

It is a general principle of law that one state or sovereignty cannot enforce the penal or criminal laws of another, or punish crimes or offenses committed in and against another state or sovereignty. Story *Conflicts of Law* 620-623. But among the exceptions to this rule are the cases where one being at the time in one state does a criminal act which takes effect in another state as, inter alia, where one, from a standpoint beyond the line of a state, fires a gun or set in motion any force which inflicts an injury within the state, he is punishable, though absent, the same as if he were present. 1 Bishop, *Criminal Law* 109.

Murder is intentionally striking a fatal blow and the consequent death. The question of intent will not be discussed in this paper; only the stroke and the consequent death will be considered. At common law the concurrence of both were necessary to consummation of the crime, and it was incomplete in either if the blow was struck and subsequent death took place in different parts. 8 Rob. (La.) 545, 41 Am. Dec. 301. The rule was evaded by bringing the body of the deceased back to the place where the blow was struck. The jury could then inquire both of the stroke and death. Later according to Lord Hale (P. C. 426), an indictment was allowed "where the stroke was given"

The question then is, where was the blow struck, in West Virginia or Kentucky? If struck in West Virginia then the court held wrongly but if struck in Kentucky the court did not have jurisdiction and rightly released the prisoner.

The principle of the common law *qui facit per alium facit per se* is of universal application both in criminal and civil cases, and he who does an act by his agent is considered as if he had done it in his own proper person. *Barkhamsted v. Parsons* (1819), 3 Conn. 1. Therefore, where one puts in force an agency for the commission of crime, he, in legal contemplation, accompanies the same to the point where it becomes effectual. *Simpson v. State*, 92 Ga. 41 (1893). This was a case where a man standing in South Carolina fired a shot at another in a boat on the river near the Georgia side. The bullet missed the man in the boat but the Georgia court held that the crime of

"shooting at another" was committed in the state of Georgia. The bullet did not take effect but "the law regards him as accompanying the ball, and he is represented by it up to the point where it strikes."

In the case of *State v. Carter*, 27 N. J. L. 409 (1859), a man in New York fired across the border into New Jersey. The court said "the question whether the sword, the ball or any other missile passes over the boundary in the act of striking, being a matter of no consequence, the act is where it strikes, as much where the party who strikes stands out of the state, as where he stands in it" And in the same case the court held that where the indictment charged the defendant with striking the mortal blow in New York, that no act was done in that state by the defendant in as much as he sent no missile or letter or message that operated as an act within the state. The leading case on this point is *State v. Hall & Dockey* (1894), 114 N. C. 909. The deceased was wounded and died in the state of Tennessee and the fatal wounds were inflicted by the defendants by shooting at the deceased while they were standing in North Carolina. The court held that North Carolina did not have jurisdiction for the offense of murder at common law was committed within the jurisdiction of Tennessee.

Our own Kentucky courts have held the same doctrine to be true. In *Hatfield v. Commonwealth* (1869), 11 Ky. L. Rep. 468, 12 S. W. 309, the defendants were indicted, tried and convicted for murder on or near the Virginia line. One defendant remained on the Virginia side with a rifle ready to give aid while the others went over the line into Kentucky and committed the murder. It was contended that the defendant on the Virginia side being two hundred or three hundred yards distant in another state could not in contemplation of law have aided or abetted the murder in Kentucky, and, therefore, was not a principal. However, the Kentucky courts held that he was rightly convicted, stating that while it was not pretended that the courts of one state could enforce its laws beyond the state boundary, yet that "where one puts in operation the force or power that causes injury he is responsible where the wrong is perpetrated, although he may not be actually present" The court quotes from the case of *King v. Coombes* (1785), 1 East 367, a case where a man was shot one hundred yards out at sea by another standing on the shore held that the admiralty court only had jurisdiction, "the offense being committed where the death happens and not at the place from whence the cause of death proceeded"

Another interesting case in Kentucky was where a girl was given cocaine in Ohio and after the defendants thought her dead brought the body to Kentucky and cut her head off. The evidence proved she was not dead at the time she was brought into Kentucky and the court took jurisdiction because the mortal blow of severing the head from the body was delivered in Kentucky. *Jackson v. Commonwealth*, 100 Ky. 239, 33 S. W. 1091 (1896). However, in a later case, *Commonwealth v. Arkins*, 148 Ky. 207, 146 S. W. 431, 39 L. R. A. (N. S.) 822

(1912), the deceased was poisoned in Ohio and brought to Kentucky where she died of the poison. The court held it had no jurisdiction because the mortal blow was not struck, or rather the poison was not administered in Kentucky and that Ohio had jurisdiction.

Some states have passed statutes dealing with this particular problem and in all cases they have been uniformly held to be constitutional. A fair example is that of Texas, by Section 1700, Article 211 of Wilson's Texas Criminal Statutes, it is provided "if a person being at the time within this state shall inflict upon another out of this state an injury by reason of which the injured person dies without the limits of the state, he may be prosecuted in the county where he was when the injury was inflicted"

The people of Kentucky or the people of West Virginia cannot blame the court for ruling as it was bound to do. The people can only blame themselves for not seeing that the men they have selected to represent them pass a statute remedying such a deplorable situation. In the interest of society, law and order, every one should take it upon himself to be a committee of one to see that the next legislature passes a statute such as the one set out above.

FRANCIS H. HANKES.