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Crimes--The Third Degree--Carroll's Kentucky Statutes (1930)

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is a clear exception to the historical rule; but, unfortunately, it has not been followed in New Jersey. The plaintiff bought a small tract of land for fifty-five dollars ($55.00) and failed to show that the land had any peculiar value to him. Equity failed to take jurisdiction because the costs in equity would exceed the value of the land, and the court ruled that the plaintiff's remedy at law was adequate. With the exception of this case, the other cases cited are of little if any authority for the principle that one coming into equity must show that he has no adequate remedy at law where land contracts are concerned.

As has been pointed out, a few cases have denied specific performance of contracts concerning land. In these cases, however, the plaintiff's remedy at law was obviously adequate, and to grant relief would have been a flagrant violation of equitable jurisdiction. Why courts of equity have refused to require a plaintiff to show the inadequacy of the remedy at law is inexplicable. Because the remedy at law is inadequate in the great majority of cases is no reason for the courts to cling blindly to an historical dogma which is becoming less desirable and more absurd. True “One parcel of land may vary from, be more commodious, pleasant and convenient than another parcel.” *Cud v. Rutter*, 24 Eng. R. 521 (1719), but should not the failure of these reasons in the individual instance defeat equity’s jurisdiction? Property in this country which is bought and sold for no motive other than speculation should not have the magic word “unique” affixed to it merely because the courts fear to break away from a rule which they defend by saying that it is as old as our civilization itself. Land may have been and might be of a peculiar and unique nature in England but our courts have no jurisdiction over England’s land. What is there to cause one to presume that a quarter section in our midwest is unique? It might be but let it be proved and not assumed. Were a jury to sit in the chancellor’s place and the correct rule of equity’s jurisdiction given them, their verdict would destroy that glorious old maxim “All land is unique.” Just how long courts of equity will continue this blind devotion to an historical absurdity is impossible of determination. All in all, equity’s jurisdiction in respect to contracts concerning land may be said to be “Unique.”

**James W. Hume**

**CRIMES—THE THIRD DEGREE—CARROLL'S KENTUCKY STATUTES (1930).—Sec. 1649b-1. “Sweating act;”** Conessions.—That what is commonly known as “sweating” is hereby defined to be the questioning of a person in custody charged with crime in an attempt to obtain information from him concerning his connection with crime or knowledge thereof, after he has been arrested and in custody, as stated, by plying him with questions or by threats or other wrongful means, extorting from him information to be used against him as testimony upon his trial for such alleged crime.

Sec. 1649b-2. It shall be unlawful for any sheriff, jailer, marshal,
constable, policeman or other officer, or any person having in his custody any person charged with crime, to sweat such person or permit any other person so to do while such prisoner is in charge of such officer or in the custody of the law, charged with an offense.

Sec. 1649b-3. That no confession obtained by means of sweating as defined herein shall be permitted as evidence in any court of law in this state, but shall be deemed to have been obtained by duress if it be shown that such confession was made after the arrest of the party charged with crime, and while he was in custody of the law.

Sec. 1649b-4. Penalty.—Any person violating the provisions of this act shall upon conviction be fined in an amount not less than one hundred dollars ($100.00) nor more than five hundred dollars ($500.00) or confined to county jail not less than ten nor more than sixty days, or both such fine and imprisonment in the discretion of the court or jury trying the case. (Enacted in 1912.)

This statute defines sweating, prohibits the use of sweating, makes evidence so procured inadmissible, and provides a penalty against those violating the statute.

The phrases “third degree and sweating” are used in this note to mean “the employment of methods which inflict suffering, physical or mental, upon a person in order to obtain information about a crime.” The person so subjected would usually be suspected of having committed the crime, but he may sometimes have been only a witness thereof.

The third degree is a secret and illegal practice, generally administered during the interval between the arrival of the suspect at the police court and his appearance in court for the preliminary hearing. It conflicts with two fundamental principles recognized in the United States—the rules that confessions obtained by duress are not admissible in evidence and that one shall not be compelled to furnish evidence against himself. The rule against self-incrimination is a part of the English common law, and has been embodied in the United States Constitution, Amendment V, by the words “no person shall be compelled in any criminal case to be a witness against himself.”


Many states, including Kentucky, recognize this privilege and also the existence and evils of the practice of the third degree by the enactment of statutes. The practice of the third degree also involves the rights of (1) protection from assault and battery, (2) right to counsel and bail, (3) presumption of innocence until found guilty by law. The rule excluding involuntary confessions was directed specifically against improper methods of obtaining evidence of guilt from a suspect before the trial. Such methods are their own condemnation. They result in evidence of much weaker character than would otherwise be obtained and contribute nothing to the repression of lawlessness. Confessions made under improper pressure are often untrue, as the accused says what is desired of him, whether true or false in order to avoid or end suffering which he may otherwise be forced to continue to endure.
A striking number of cases where the third degree was used by enforcement officers and private individuals in an effort to extort confessions from suspected criminals were reported in the report of the National Commission on Law Observance and Enforcement in its eleventh volume of June 25, 1931. These cases represent all sections of the United States. One is forced to the conclusion that the third degree is employed in most states. The reviewing tribunals report that from 1920 to 1930 inclusive, there were sixty-seven cases in which the appellate courts found that the third degree was used to extort confessions from suspected criminals. There was evidence of the use of such practice in thirty-nine other cases. These figures from the appellate courts represent a very small proportion of the instances in which the third degree has been employed, as numerous cases for various reasons never reach the appellate courts.

Whipping was resorted to in the following cases: Bell v. State, 180 Ark. 79, 20 S. W. (2d) 618 (1929), State v. Bing, 115 S. C. 506, 106 S. E. 573 (1921), White v. State, 93 Texas Cr. Rep. 87, 225 S. W 177 (1920).

In all of these cases the defendants were negroes and the appellate court reversed the convictions upon the ground that evidence procured by third degree is inadmissible.

In the case of Dickson v. Commonwealth, 210 Ky 350, 275 S. W 805 (1925), negro boys accused of stealing clothing were taken to a deputy sheriff and questioned. They repeatedly denied their guilt and were then beaten with a blackjack until they confessed. Convictions were reversed as no other material evidence was given other than the involuntary confessions of the defendants.

Protracted questioning, inflicting loss of sleep, severe fatigue, and other severe discomforts is a method frequently used. In the case of Bennett v. Commonwealth, 226 Ky. 529, 115 S. W (2d) 437 (1928), the defendant was suspected of having committed murder. He was handcuffed and taken to the detective headquarters at 9 a. m. From that time until he confessed at 4:00 p. m. he remained handcuffed, was denied food, was beaten with a blackjack, and plied with questions. The conviction was reversed due to the evidence admittedly gained by plying the defendant with questions as prohibited by the "Sweating Act" (1912), Kentucky Statutes 1649b-2-3.

The conviction in the murder of Perrygo v. U S., 55 App. D. C. 80, 2F (2d) 181 (1924), was reversed due to the admission of evidence obtained by plying the defendant, a subnormal seventeen year old boy, with questions.

In the following cases a beating was administered with whatever was most convenient, in order to extort a confession from the accused: Baughman v. Commonwealth, 206 Ky. 441, 267 S. W 231 (1924), State v. Murphy, 154 Ia. 190, 97 So. 397 (1923), Jones v. State, 184 Wis. 750, 198 N. W 598 (1924), State v. Myers, 312 Mo. 91, 278 S. W 715 (1925).

The conviction was reversed in the case of Thomas v. State, 169 Ga. 182, 149 S. E. 87 (1929). In this case, the defendant was arrested
on the charge of murder and taken the same night from the custody of the sheriff by a mob and carried to a swamp where he was held for a time and then returned to the sheriff. The next day he made a confession to the sheriff.

The arguments in favor of third degree methods deserve consideration. Those most frequently given are: (1) That the third degree is used only against the guilty. Some suspects are cruel, desperate criminals with shrewd minds, and able to hire the best lawyers and their conviction could only be brought about through the third degree before they have had time to consult attorneys and think up defenses. (2) The police feel that through intimidation, bribery and various means criminals are often set free. These obstacles in the way of the police make it almost impossible to obtain convictions except by the use of the third degree methods. (3) The officers' brutality is an excusable reaction to the brutality of the criminals. (4) It is the opinion of a number of officials that the Constitution ties the enforcement officers' hands and prevents full public safety. (5) That the existence of organized gangs render insufficient the legal limitations as to evidence and confessions. That the racketeers create an unprecedented situation, and the legal guarantees of personal liberty are now no longer applicable.

The evils of the practice of the third degree are innumerable. To defend such a practice is to advocate lawlessness to be committed by persons who are charged with the enforcement of the law. It is the adovcation of a practice which involves the danger of false confessions; which impairs the efficient administration of criminal justice in the courts, as the jurors are likely to have their minds deflected from the issue of the defendant's guilt to the issue of maltreatment; and which hardens the prisoner against society and the law and thereby lowers the esteem in which the court of justice is held by the public.

There must be a method by which such violations of the law may be remedied. A statute should be enacted whereby the accused must be arraigned immediately after arrest before a judge or magistrate, represented by counsel if he desires such, and at this time the only questioning prior to the trial made. Enforcement officers should not be permitted to question the accused. Other than for such a provision, the law is sufficient as it now stands. Enforcement of the present laws is what is now needed, as they either are deliberately disobeyed or merely not enforced. Kentucky Statutes, Sec. 1649b-4, provides for a penalty for the violation of the "Sweating Act." Although there are a number of cases where it has been proved that this statute has been violated there are no cases of conviction.

Statutes will remain mere words until there is a public will to obey and enforce them. The public must insist upon the highest standards in judges, prosecutors, and enforcement officers. Then officers should be made to pay the penalty for all of their violations of the law. When this happens the practice of the third degree will cease. Those in a position to know actual conditions should make every
effort to put them under public observation. In every community there should be some civic organization to which citizens could report abuses with the knowledge that such complaints will be thoroughly investigated. Every effort should be made to bring about the cessation of the practice of the third degree, which is a violation of some of the most fundamental principles of the law.

MARTHA MANNING.

TORTS—NEGLIGENCE—INFERENCE OF NEGLIGENCE FROM PROVEN FACTS. —The defendant railroad company was the owner of a bridge in Frankfort, Kentucky. It permitted the city and county to build a foot-path along the side for public use, but reserved the right to stop the public use at any time by paying for all the expense of constructing said path. The public used this for many years. Sometime before the accident the defendant closed the bridge for repairs. When the bridge was again opened to the public one of the guard rails between the path and the railroad track was left exposed. The deceased was killed while crossing this bridge at night, and the first evidence of blood was found near the exposed rail. There were no witnesses except the deceased's small son who was not permitted to testify. While there are other facts in the case, these are all that are necessary for the point we will discuss, namely, "Inference of negligence from proven facts." In handing down the decision in this case the court said that while negligence cannot be presumed, it can be inferred from proven facts; and in this case the facts are sufficient to justify such an inference.


It appears that the Kentucky court has held consistently to the rule laid down in the principal case. Louisville Trust Co. v. Morgan, 180 Ky. 609, 203 S. W. 555; John R. Coffin Co. v. Richards, 191 Ky. 720, 231 S. W. 228. It is likewise the rule in practically every other jurisdiction. Penn. Sash Door Co., 273 F. 993; Burke v. City of Baltimore, 127 Md. 554, 6 A. 693; O'Donnell v. Lange, 163 Mich. 654, 127 N. W. 691.

However, there seems to be some dispute as to how strong the inference must be. The better view seems to be that the facts need not tend to exclude the inference of the accident happening in any other way, but need only raise the inference of its being caused by the wrongful act, and this must be shown by a preponderance of the evidence. Austin v. Penn. R. Co., 82 N. J. Law 416, 81 A. 733; Hurcher v. N. Y. & Queens Elec., Etc., Co., 143 N. Y. S. 638, 158 App. Div. 422. Yet at least one jurisdiction holds that the evidence must not only affirmatively show negligence but must also tend to exclude any other cause. Wallace v. Chicago M. & P. S. Ry. Co., 48 Mont. 427, 138 P. 499. We have been unable to find where the Kentucky court has considered this point, but it can be fairly deduced from the cases that it would not follow the Montana court.

Inference of negligence from proven facts is not to be confused with res ipsa loquitur. Res ipsa loquitur is a rule of evidence by which