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SWEAT BOX CONDEMNED

Supreme Court Roasts Peculiar Police Practice.

A unanimous decision of the Supreme Court in the case of Matsumoto Moritara, under sentence of death for murder, unqualifiedly condemns the exapination of suspected persons by the "sweat box" method and strongly censures the conduct of Chester A. Doyle, a detective, in assaulting the defendant, Moritara, while under arrest.

"A confession by a person accused of murder made in the presence of the sheriff, his deputy, a detective and an interpreter not in the employ of the prosecution held admissible in evidence, notwithstanding the fact that the sheriff charged the defendant to tell the truth, and did this because other witnesses had implicated defendant.

Justice Hatch writes the opinion of the court. M. F. Prosser, Deputy Attorney General, appeared for the prosecution, and A. G. Correa for the defendant. Matsumoto Moritara was convicted and sentenced to death at the March term of the Fifth Circuit Court, Kauai, for the murder of one Albion H. Glennan by exploding seven or eight sticks of giant powder under his bed.

Moritara was arrested in Honolulu and sent to Kauai and while in jail there was interviewed by Detective Chester A. Doyle for the purpose of obtaining a confession from him, if possible.

Of this matter the opinion of the court gives the following account: "Doyle testified to the court, on a hearing had in the absence of a jury, as to the admissibility of the confession, that he started in to ask the defendant everything he could possibly think of leading up to the time he came to the islands and as to his connection with the plantations, Doyle says that the defendant told so many conflicting stories and lied so that when we called his attention to his conflicting statements and asked him if he wasn't lying he would remain silent.

"Court—More than once? "A. I think more than once. "Q. So as to inflict any bodily injury? "A. There were no marks on him. I struck him with my open hand over his ears. "Q. You struck him in consequence of his using insulting language to you? "A. Yes, sir. "Q. After you had shook him and boxed his ears, as you say, did you have any further conversation with him? "A. None, we left him."

Two or three days after the incident thus related the defendant, after having been seen privately by one Kawahara at his house he took refuge the morning after the murder, made a confession in the courthouse in presence of Sheriff Coney, Deputy Sheriff Rice, Mr. Doyle, Mr. Prosser and Mr. Sheba, the last-named being the Japanese editor of the Gardiner Island newspaper. Before the defendant made his statement he was charged by the sheriff to "tell the truth," because other witnesses had implicated him; Mr. Sheba testified that the defendant was warned before making any statement that everything he might say would be used against him. It was on cross-examination that the sheriff said he told the defendant to tell the truth "because other witnesses had implicated him." The Supreme Court says:

"It is not clear that this fact of the implication by other witnesses was communicated to the defendant by the sheriff. If, however, he had stated this to the defendant, though it was an improper statement to make to him, we do not think that under the circumstances this alone should render the confession inadmissible."

The court considers the case of Bram vs. United States, where a confession was rejected for a similar statement but as one of a number of circumstances taken together, concluding that the other facts in the Bram case were not all analogous to this case. In the Bram case the defendant was subjected to great personal indignity and browbeating. It is found that the admission of the confession in evidence by the trial court in this case was a correct ruling. Also, it is found that "the misconduct of Doyle on the occasion two days previous" did not have any influence in causing the defendant to make the confession. "The assault, though inexcusable, was in fact trivial in its nature."

All of the circumstances showed that it made a very slight impression, if any, upon the defendant. "Notwithstanding this," the court says, "the action of Doyle on that occasion calls for severe condemnation. To lay his hands at all on one held under arrest was a cowardly thing to do and a gross violation of the rights of the prisoner. A confession made at that time and under those circumstances could not have been received in evidence, for the law cannot measure the force of the influence used, or decide upon its effect upon the mind of a prisoner, and therefore excludes the dec-

PUBLIC VS. MOTORMAN

Rights of the Public Street Judicially Set Forth.

In overruling the exceptions of plaintiff in the damage suit of Dong Chong vs. Honolulu Rapid Transit & Land Co. to judgment of nonsuit by the First Circuit Court, the Supreme Court says:

"Notwithstanding this conclusion we may add that we deem the case a close one and that it is with considerable reluctance that we sustain the action of the trial court in taking it from the jury and we would even emphasize the need of attentiveness on the part of motormen of electric cars to exercise due care under all circumstances to avoid injury to the persons or property of others."

It was an action for \$123.75 damages caused to plaintiff's mule, wagon and harness by a collision with one of defendant's electric street cars. The district magistrate, who first tried the case, ordered a nonsuit, and at the trial before a jury also, at the close of the plaintiff's evidence, ordered a nonsuit on the ground that the plaintiff had failed to show negligence on the part of the defendant.

Chief Justice Frear is the author of the opinion, which is signed unanimously. J. A. Magoon and J. Lightfoot appeared for the plaintiff and Castle & Withington for the defendant.

It is found by the court that the conduct of the plaintiff, in handling his team the time of the accident, was not as a matter of law such contributory negligence as would preclude a recovery. The case is decided against the plaintiff on the narrowing down of the case to one where the burden of proof was on him to show that the car was running at an unusual and improper rate of speed. His proof on this point was not conclusive. In the body of the decision, already quoted from, the court makes the following statement of relative rights of the street railway company and the public:

"The defendant in running its electric cars has no such superior rights as will permit it to run its cars willfully over persons or into teams upon or near its tracks even though they are there through negligence. On the other hand, rapid transit has become a public necessity, and electric cars cannot turn out. These conditions are generally known and persons using the streets must act accordingly. They cannot rightfully obstruct the cars nor can they place themselves or their property in positions on or near the tracks of the cars except at their own risk, subject to the exercise of due care on the part of those running the cars. If they are guilty of negligence which proximately contributes to the injury, they cannot recover."

WHOSE FAULT IS IT

A Local Occurrence That Will Interest Many Readers in Honolulu.

If, when a fog horn warns the mariner to sheer off the coast, he still hugs the shore and wrecks upon it, whose fault is it? If the red switch light it up and the engine driver deliberately pulls ahead and pitches into another train, blame the driver. If a careless workman will in spite of warning try to find out how many teeth a buzz saw has, and the saw tries to find out how many fingers the workman has, blame the workman, not the saw. If a sick man knows that a certain medicine is doing him good, and he carelessly neglects to use it, blame the man, not the medicine. If Honolulu people who have kidney complaint and backache will not take Doan's Backache Kidney Pills when they are indorsed by scores of citizens, blame the people, not the indorsers. Read this indorsement:

Mr. John E. Bush of Punchbowl st. this city, is attached to the Hawaiian interpretation staff at the Supreme Court. He says: "I had kidney trouble, and, acting on the recommendation of a friend, who had tried your invaluable remedy, I got some of Doan's Backache Kidney Pills at Hollister Drug Co.'s store. They were just as beneficial to me as they had been to my friend. It is well the virtues of these pills should be made known, for they really are an excellent medicine for kidney trouble."

Doan's Backache Kidney Pills are for sale by all dealers. Price 50 cents per box, or sent by mail on receipt of price by the Hollister Drug Co., Honolulu, wholesale agents for the Hawaiian Islands.

Remember the name—DOAN'S—and take no other.

laration if any degree of influence has been exerted. "The whole procedure of police inquiry known as the 'sweat box' is a matter which has no warrant of law. It is entirely at variance with the spirit of the common law. As pointed out in Bram vs. United States, it is condemned by the English courts as unfair to the prisoner and approaching dangerously near to a violation of the rule protecting an accused person from being compelled to testify against himself. Without holding that no interrogation can be put by the police to a person arrested on suspicion, such investigations must be conducted with a due regard for the rights of the accused, and must be free from browbeating, intimidation and undue pressure of any kind."

THE WRIT UNLAWFUL

Judge Gear Exceeds His Powers in Habeas Corpus.

Judge Gear is found by unanimous opinion of the Supreme Court, written by Chief Justice Frear, to have committed error in granting a writ of habeas corpus for the release of Goto, sentenced by another Circuit Judge to pay a fine of \$350 and costs on his plea of guilty to the charge of selling liquor without a license. This decision is on a writ of error sued out by Arthur M. Brown, High Sheriff. E. C. Peters, Deputy Attorney General, appeared for plaintiff in error, and Cathcart & Miverton for defendant in error. The syllabus of opinion reads as follows:

"Circuit Courts have not jurisdiction to issue writs of habeas corpus in cases in which such writs are not demandable of right. Such jurisdiction is confined by the statutes to the Supreme Court, its Justices and the Circuit Judges. The jurisdiction to issue such writs is not inherent in the Circuit Courts in the sense that the Legislature cannot vest it in other courts or in the judges, to the exclusion of the Circuit Courts as such, nor does the Organic Act deprive the Legislature of such power."

Judge Gear released Goto from prison, to which he was committed in default of paying his fine, on habeas corpus for the reason that his punishment was infamous and therefore unlawful without his having been indicted by a grand jury. On the writ of error it was contended "(1) that the Circuit Court was without jurisdiction to issue writs of habeas corpus and (2) that the offense was not infamous and so could be tried on information and complaint." The appellate court says: "No opinion need be expressed upon the second of these contentions, as we are of the opinion that the first must be sustained."

Reviewing the laws on the subject the court says: "So far as the statutes go, therefore, a Circuit Court cannot issue a writ of habeas corpus in a case in which it is not demandable of right and probably not in any case."

A case of the writ being "not demandable of right," as explained to an Advertiser reporter, is where the writ is employed instead of the right of appeal by a convicted person to escape punishment. If habeas corpus were available for such a purpose and within the power of the lower courts to grant, the result would be that criminal cases would take that route as the shortest and one judge would decide appeals from another judge in disregard of the appellate court of the country.

LECTURE

By Rev. John W. Wadman "Bushido"

At Parsonage of M. E. Church, Beretania and Miller Sts. THURSDAY, DEC. 1, 7:30 O'CLOCK P. M.

Japanese ladies in costume will serve tea according to "Cha-No-Yu" custom, also give musical performance in the Koto Biwa and Fuc. ADMISSION - - - 50 cts. Tickets on sale at Trent & Co. and C. J. Day & Co.

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FOOTBALL

Saturday, Dec. 3. Punahou vs. H.A.G

CHAMPIONSHIP GAME -AT-

New Baseball Park 3 P. M.

Admission 50 cents Including Reserved Seat. Under 17 years 25 cents Seats on Sale at Woods - Sheldon.

NOTICE. ANY WOMAN OR GIRL NEEDING help or advice, is invited to communicate, either in person or by letter, with Ensign L. Anderson, matron of the Salvation Army Woman's Industrial Home, No. 1680 King street.

THIS DAY Auction Sale

TUESDAY, Nov. 29, 1904. AT 10 O'CLOCK A. M.

Household Furniture

I will sell at the residence of Mrs. W. Cunningham on College street, Maki-ki, on above date the whole of her household furniture comprising, Drawing Room Furniture, Dining Room in Oak, Bedroom in Oak and Walnut, Kitchen ware, Stove, etc., Pictures, Glassware, also 1 Small Steel Safe.

JAS. F. MORGAN, AUCTIONEER.

THIS DAY Auction Sale

Tuesday, Nov. 29, 1904. AT 10 O'CLOCK A. M.

Wines, Liquors, Etc.

I am instructed by the Trustee in Bankruptcy of the Estate of W. M. Cunningham a bankrupt to sell at public auction at my salesroom, 847 Kaahumanu street, on above date, 281 1-2 Bott. Wines, Liquors, Bitters, Beer, etc. 1-2 case empty pint Flasks, 1-2 case empty 1-2 pint Flasks.

JAS. F. MORGAN, AUCTIONEER.

Auction Sale

THURSDAY, DEC. 1, 1904. AT 10 O'CLOCK A. M.

At Government Shops

FOOT OF ALAKEA ST.

I will sell lot of old Material, comprising Digging Engine, Old Lumber, Winches, Corrugated Iron, Propellers, Yellow Metal, Gears, Towing Hawsers, Pulleys, Window Frames, Doors, Sash, and a Miscellaneous Lot of Tools, all in good condition.

JAS. F. MORGAN, AUCTIONEER.

Auction Sale

FRIDAY, DEC. 2, 1904. AT 10 O'CLOCK A. M.

Genuine Panama Hats

I will sell at my salesroom, 847 Kaahumanu street, a sample line of Ecuador Hats received per S. S. Alameda—Invoice value, \$5.00 to \$60.00 each; but my instructions are to sell.

JAS. F. MORGAN, AUCTIONEER.

Auction Sale

SATURDAY, DEC. 3, 1904. AT 7:30 O'CLOCK P. M.

Watches, Clocks, Jewelry

I am instructed by Mr. J. Kelle to sell at his jewelry store on Hotel street, near Fort, opposite Miller's restaurant, all his stock consisting of Diamond Rings, Gold Band, Stone set Rings, Elgin and Waltham Watches, gold and gold filled cases, 7, 15, 17 jewel movements, Watch Chains, gold and filled, Solid Gold Brooches, Cuff and Collar Buttons, Lockets, Charms, Scarf Pins, Tea Sets, Ice Pitchers, Sugar Bowls, Butter Dishes, Knives and Forks, Spoons, Ladies, Castors and novelties in Quadruple, Plate, Clocks, etc. Also—50 Fine Oil Paintings.

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