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Supreme Court Decisions

Dicta Editorial Board

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• Supreme Court Decisions •

(EDITOR'S NOTE.—It is intended to print brief abstracts of the decisions of the Supreme Court in the issue of Dicta next appearing after the rendition thereof. In the event of the filing of a petition for rehearing, resulting in any change or modification of opinion, such will be indicated in later digests.)

NUISANCES—ABATEMENT—PRIVATE NUISANCES—DOG KENNELS—*Krebs vs. Hermann, et al.*—No. 12291—Decided November 30, 1931—Opinion by Mr. Justice Campbell.

1. Where the defendants maintain a large number of dog kennels, accommodating forty to ninety dogs adjacent to the residence of the plaintiff, his wife and children, and the continual barking of the dogs at night disturbs the rest of the plaintiff and his family, and the odor from the kennels penetrates plaintiff's dwelling house so as to render the premises disagreeable as a residence, the same constitutes a private nuisance; and the plaintiff is entitled to have it abated.

2. In such case, it is immaterial whether the plaintiff constructed his dwelling house after the kennels were built or before.

3. It is no defense in an action of this kind that a building, in which a nuisance is being carried on to the injury of another, was constructed before the erection of the building of the complaining owner.

4. The law does not give to the owner of a building the right to maintain a nuisance in it merely because he constructed the same before another building was constructed and later occupied by persons who have been injured by a nuisance conducted in the building first erected.

5. Even though the trial court found, in denying the injunction, that the plaintiff was of a nervous temperament and of more than ordinary sensibilities and unusually disturbed by the barking of dogs, yet there was no evidence whatever that either the plaintiff's wife or his three children, who were similarly disturbed, were not persons of ordinary sensibilities, and hence the plaintiff would be entitled to an injunction.

6. The mere fact that defendants would suffer a great financial loss if the injunctive relief sought was granted, is not in itself sufficient to deny injunctive relief in such cases.

7. The court below erred in denying the injunction.—*Judgment reversed.*

CRIMINAL LAW—MURDER—REBUTTAL EVIDENCE—ORDER OF PROOF—INSTRUCTIONS—EXPERT OPINION NOT ADMISSIBLE WHEN BASED IN PART ON HEARSAY EVIDENCE—*Ingles v. The People*—No. 12835—Decided December 7, 1931—Opinion by Mr. Justice Butler.

1. In a criminal case, confessions of the defendant are admissible in rebuttal where the defendant pleaded not guilty by reason of insanity, where the confessions were offered in rebuttal for the purpose of showing that the

statements made in the confession made immediately after the homicide evidenced clearness of thought and indicated a normal mind..

2. The order of proof as to whether matters should be offered as evidence in chief or as evidence in rebuttal rests within the discretion of the trial court, and unless that discretion has been abused, a judgment will not be reversed for a departure from the usual order of introducing evidence.

3. Where a defendant, in a homicide case, pleads not guilty by reason of insanity, it is not necessary for the prosecution to prove in the first instance that the defendant was sane. Session Laws of 1927, Chapter 90, does not change the order of proof.

4. Chapter 90 of the Session Laws of 1927, relating to insanity pleas in criminal cases, cannot be questioned on the ground of its being unconstitutional where the defendant pleaded not guilty by reason of insanity.

5. Had the defendant entered a simple plea of not guilty and at the trial had offered evidence tending to show insanity, and the court had refused to admit such evidence, and the defendant had accepted such ruling, the defendant would have been in position to raise the constitutional question.

6. The court did not err in refusing to give an instruction that in case the defendant was found not guilty on the grounds of insanity that the defendant was still accountable to the law and must be confined in the Colorado State Hospital for the Insane, at Pueblo, under the laws governing that institution. It was no concern of the jury what the effect of their verdict would be and it should not be permitted to influence them in considering the question whether the defendant was sane or insane; and in addition to this, the use of the words "accountable to the law" were objectionable.

7. Where a physician was permitted to testify for the prosecution that in his opinion the defendant was sane, and where the evidence shows that he based his opinion, not alone on his own observations, but from reports that he had received from third persons as to the acts, family life, social contacts, and mental condition of the defendant, it was reversible error for the court to permit him to state to the jury his conclusions based thereon.

8. A physician is permitted only to express his opinion of the sanity or insanity of a defendant based upon facts personally observed by him in connection with the defendant's history given by the defendant to the physician, and also to express his opinion based upon facts that are in evidence, but not otherwise.—*Judgment reversed.*

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DICTA DISSERTATIONS

Be terse. The art of selection is the greatest human faculty.—*Aaron Burr.*

Law is the expression and perfection of common sense.—*Joseph H. Choate.*

The State exists for the protection and forwarding of human interests mainly through the medium of rights and duties. If every member of the State knew perfectly his own rights and duties, and the rights and duties of everybody else, the State would need no judicial organs; administrative organs would suffice. But there is no such universal knowledge. To determine, in actual life, what are the rights and duties of the State and of its citizens, the State needs and establishes judicial organs, the judges. To determine rights and duties, the judges settle what facts exist, and also lay down rules according to which they deduce legal consequences from facts. These rules are the Law.—*Roscoe Pound.*

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