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314 ROWLANDS BLDG.
COLUMBUS, OHIO

REPORT NO. 2545.

April 5, 1930

OHIO SUPREME COURT

JUDGES: Marshall, C.J., Kinkade, Robinson, Jones, Matthias, Day and Allen, JJ.
c Clerk, Seba H. Miller; Reporter, John L.W. Henney.

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F I L E D

Criminal Law-Conviction for third offense of possession :
of intoxicating liquor upheld, although conviction on :
first offense did not occur until after the second of- :
fense was committed- Construction of Sec. 6212-17 G.C. :

22248 Carl C. Brumbaugh v. State of Ohio. MOTION FOR LEAVE TO FILE PETITION IN ERROR
MUSKINGUM COUNTY.

Brumbaugh was charged with a third offense possessing intoxicating liquor, it being charged that the first offense was committed Jun. 8, 1927; second offense, October 18, 1927 and third offense Dec. 3, 1929; conviction on first offense Sept 22, 1927 and on second offense October 22, 1927.

It is stated the conceded evidence is that defendant plead guilty to the charge of June 8, on October 22, 1927 and plead guilty to the charge of October 18 also on October 22nd; that the plea of guilty to the charge of June 8 did not occur until four days after the charge of October 18th and was not journalized until six days afterwards; and that a plea of guilty was entered to both charges on the same day, October 22, 1927.

COMMON PLEAS COURT: Defendant found guilty on third offense.

COURT OF APPEALS (Judges not designated) Judgment affirmed.

The Court held that all that mattered was and is that there be two convictions prior to the commission of the third offense, and that it mattered not that such prior conviction occurred on the same day, nor that there had been no first conviction when the second offense occurred.

Plaintiff in error maintains that before there can be a third offense there must have been a commission and conviction of a first offense and subsequent to both, a commission and conviction of a second offense.

Clarence J. Crossland, Zanesville, counsel for plaintiff in error.

Criminal Law- Prosecution for non-support of illegitimate child-:
Loss of right of peremptory challenge-New prosecutor friend of juror :
Right to peremptorily challenge juror denied when trial resumed :
after a long continuance. :

22249 Harvey R. King v. State of Ohio. MOTION TO CERTIFY. FRANKLIN COUNTY.

King was prosecuted for non-support of an illegitimate child; jury was empanelled June 10, 1929 and sworn; after some testimony was introduced the prosecution moved an adjournment for the purpose of interviewing other witnesses and the court adjourned the trial for thirty days, instructing witnesses and jury to return then for further consideration of the case; there was other adjournments and the trial was resumed Sept 11, 1929, at which time one McCartney, who is connected with the office of Prosecuting Attorney appeared on behalf of the prosecution; defendant objected but McCartney was permitted to act as a special prosecutor; the court then permitted defendant to inquire of the jury whether they were related or acquainted with McCartney and one juror admitted a long friendship between them, but stated this would not prevent him rendering a fair and impartial verdict; challenge for cause was overruled; likewise a peremptory challenge was overruled.

COURT OF DOMESTIC RELATIONS- Defendant found guilty.

COURT OF APPEALS: (Judges not designated) Judgment affirmed.

Plaintiff in error contends that these long continuances, which resulted in his losing his right of peremptory challenge and his being compelled to submit his case to a jury, one member of which was disqualified, were a violation of his constitutional right to a speedy trial by a fair and impartial jury.

Plaintiff in error also contends the court erred in permitting the entry made in a bastardy proceeding, adjudging him to be the father of the child, to be read in evidence.

It appears that defendant had passed this juror on June 10th, but he contends that at that time the cause for challenge did not exist, and it is claimed that enforcing the rule that the challenging is over when the jury is sworn is a violation of his constitutional rights under Sec. 1, of the 14th amendment of the Constitution of the United States where the prosecution was responsible for the developments which made the juror objectionable.

Daniel Clotts, David E. Evans, Columbus, counsel for plaintiff in error.