

Evidence - Refusal to Permit Cross-Examination of Witness as to Drug Addiction for Impeachment Purposes Held Reversible Error

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clared that an invalid provision which is a material part of the entire consideration voids the entire contract.

However the court in the instant case endorsed the public policy that refuses to aid a party who has benefited from an agreement and now seeks to have it held void. In this case non-enforcement of the illegal contract would be injurious to the deceased wife's estate, and enforcement would benefit plaintiff who has already enjoyed the maximum benefits of his wife's release. Since enforcement of the contract would contravene public policy, the court held the parties to the terms of the agreement.

In holding support waivers invalid because of public policy, courts seek to protect the wife as well as the public which might have to support the wife if waiver of the support duty was tolerated. The court cited *Central Republic Trust Co. v. Evans*,¹⁶ which stated:

Public policy frequently requires the enforcement of a contract tinged with illegality where not to do so would produce a harmful result on the persons for whose protection the law violated exists.¹⁷

This rationale for the enforcement of an invalid contract has frequently been applied to cases involving business contracts, but rarely if ever to separation agreements.

By overruling the *Lyons* case, the court has met an important criticism, *viz.*, that its earlier decision had overstressed the invalidation of an entire separation agreement because of the presence of an express support waiver and, as a consequence, had unjustly enriched the husband-claimant. Consistency has now been achieved through protecting the wife and the public while simultaneously preventing the husband's unjust enrichment.

¹⁶ 378 Ill. 58, 37 N.E. 2d 745 (1941).

¹⁷ *Ibid.*, at 71 and 751.

EVIDENCE—REFUSAL TO PERMIT CROSS-EXAMINATION OF WITNESS AS TO DRUG ADDICTION FOR IMPEACHMENT PURPOSES HELD REVERSIBLE ERROR

Defendant was convicted of murder largely upon the testimony of an accomplice witness, and the jury recommended the maximum penalty. The trial court sustained objection to the following questions by the defense on cross examination of the accomplice witness:

1. "Are you a narcotic addict?"
2. "Do you take the stuff?"
3. "Did you ever take heroin?"
4. "Didn't you, on March 20th, buy some narcotics and pay \$17.00 for it?"

In a case of first impression the Illinois Supreme Court held that the refusal to permit cross-examination of an accomplice witness as to his drug addiction for the purpose of impeaching the witness' credibility was prejudicial error. *People v. Crump*, 5 Ill. 2d 251, 125 N.E. 2d 615 (1955).

The supreme court restated the general rule in Illinois that

it is proper to cross-examine a witness to bring out the witness' unlawful and disreputable occupation and *activity* as a matter affecting credibility.¹

This rule is based on three leading cases which were relied upon by the defense in support of the contention that the cross-examination was proper. Two of them, *People v. Bond*² and *People v. Winchester*,³ were prosecutions for murder in which the court held it proper to cross-examine a witness to bring out the fact that the witness operated a house of prostitution. The third case, *People v. White*,⁴ also a prosecution for murder, held that the rule applied to an alibi witness whose chief occupation was the operation of a gambling house. In the *Bond* case, the court stated that if a witness is engaged in an unlawful and disreputable occupation, in justice and fairness he should not be permitted to appear before the jury as a person of high character who is engaged in a lawful and respectable occupation.⁵

Although these cases did not pass on the precise factual question at issue in the instant case, they serve to outline the attitude taken by the Illinois courts.

There is conflict in other jurisdictions as to whether addiction to, or mere use of, narcotics may be shown to affect credibility. A Montana case, *State v. Gleim*,⁶ held that in order to discredit or weaken the testimony of a witness it is not enough to show that he in the habit of using opiates; the proof must go further and establish that the powers of recollection are impaired by the habitual or excessive use of it or that he was under the influence of the opiate at the time the transaction occurred or is under its influence at the time of the trial. The courts of Tennessee,⁷ Minnesota,⁸ and Nebraska⁹ have excluded evidence, both of narcotic addiction by the witness and expert evidence as to the effects of such use. It had also been held improper cross-examination to inquire whether a witness was addicted to narcotics ten years earlier.¹⁰

¹ *People v. Crump*, 5 Ill. 2d 251, 260, 125 N.E. 2d 615, 620 (1955). Emphasis added.

² 281 Ill. 490, 118 N.E. 14 (1917).

³ 352 Ill. 237, 185 N.E. 580 (1933).

⁴ 251 Ill. 67, 95 N.E. 1036 (1911).

⁵ *People v. Bond*, 281 Ill. 490, 499, 118 N.E. 14, 18 (1917).

⁶ 17 Mont. 17, 41 Pac. 998 (1895).

⁷ *Franklin v. Franklin*, 90 Tenn. 44, 16 S.W. 557 (1891).

⁸ *State v. King*, 88 Minn. 175, 92 N.W. 965 (1903).

⁹ *Katleman v. State*, 104 Neb. 62, 175 N.W. 671 (1919).

¹⁰ *Webb v. People*, 97 Colo. 262, 49 P. 2d 381 (1935).

A somewhat different rule was set out in the case of *State v. Jordan*,¹¹ a murder case in which a witness for the prosecution was asked on cross-examination if she was a drug addict and she stated that she was not. The Oregon Supreme Court approved the trial court's action in sustaining an objection to further inquiry into the question of addiction. While the language of the court is not entirely clear, the case was apparently decided on the theory that the question was collateral and that the defendant was precluded from further pursuit of the matter by the witness' denial of drug use.

One of the leading cases on this subject, *State v. Prentice*,¹² upheld the contrary view that the use of narcotics by a witness is a material fact and the denial of such use may be attacked. In this case, an alibi witness for the defendant charged with larceny denied, on cross-examination, that she used morphine. The defense was unsuccessful in its contention that the issue was a collateral one and, therefore, that the answers on cross-examination were conclusive. The Supreme Court of Iowa held it proper to admit evidence of a druggist that the witness had purchased the drug from him. One of the oldest cases upholding this view is *People v. Webster*,¹³ a murder case in which an eyewitness for the defense admitted on cross-examination that she had the opium habit and was under its influence at the time of the killing, though "no more than any other time." Regarding the extent of her habit, the witness denied making an admission that the deprivation of the drug would kill her, and the court held that such was a denial of a material fact and might be contradicted.

Similarly it has been held that one acting as the interpreter of the dying declaration of a foreigner alleged to have been murdered may be cross-examined as to whether he is an habitual user of narcotics. The court pointed out that this evidence went to the credibility of the witness, not to his competency to testify.¹⁴ Further support to this view has come from the courts of Texas¹⁵ and Nevada.¹⁶

It seems appropriate to quote the language of the Supreme Court of Washington in the recent case of *Lankford v. Tombari*¹⁷ in which the court stated:

There is a difference of judicial opinion as to the relevancy of the drug habit or the mere use of narcotics . . . to propensity for veracity. The view of a majority of the courts and the better view, according to Wigmore, is that it is relevant. . . .¹⁸

¹¹ 146 Ore. 504, 26 P. 2d 558 (1933).

¹² 192 Iowa 207, 183 N.W. 411 (1921). ¹³ 139 N.Y. 73, 34 N.E. 730 (1893).

¹⁴ *State v. Fong Loon*, 29 Idaho 248, 158 Pac. 233 (1916).

¹⁵ *Beland v. State*, 86 Tex. Crim. Rep. 285, 217 S.W. 147 (1920).

¹⁶ *Effinger v. Effinger*, 48 Nev. 205, 239 Pac. 801 (1925).

¹⁷ 35 Wash. 2d 412, 213 P. 2d 627 (1950). ¹⁸ *Ibid.*, at 632.