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Article 18

Criminal Law - Jurors Reading Newspaper Account of Prior Acts of Defendant Held Error

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establish liability on promises[16] to be based on three rules that are controlled by such words as *substantial*, *forseeable*, *reasonable*, *actual*, and *injustice*. Corbin presents a good argument in stating that the courts are already familiar with such terms and their application.[17] Nevertheless, it is understandable that they should be somewhat jealous of a rule that is relatively simple to apply, and which works justice in the majority of cases.

As yet, the Illinois courts have not been called upon to apply the doctrine of promissory estoppel to a commercial case.

To conclude, it is probably a fair appraisal of this case to say the New Jersey court has taken a step toward joining the many states that while adhering to the doctrine of consideration pay some recognition to the doctrine of promissory estoppel.

[16] 1 Williston, Contracts § 139 (rev. ed., 1936).

[17] 1 Corbin, Contracts § 200 (1950).

CRIMINAL LAW—JURORS READING NEWSPAPER ACCOUNT OF PRIOR ACTS OF DEFENDANT HELD ERROR

The defendant was convicted of rape and given a life sentence. Sixteen years later, under the subsequently passed Illinois Post-Conviction Hearing Act,[1] the defendant filed a petition for relief alleging a substantial denial of his constitutional rights. The Criminal Court of Cook County granted a new trial, holding that because the jury had been allowed to read prejudicial newspaper articles concerning the defendant during the trial, his right to a fair and impartial trial was impaired. It was alleged and not denied that the prosecuting attorney released the story. The Illinois Supreme Court affirmed, three justices dissenting, holding that where all of the jurors were allowed to read, on the evening before they were to render their verdict, that the defendant had confessed to two murders, had boasted of attacking more than fifty women, had been referred to by the police as a "vicious degenerate" and had been arrested while attempting to attack another woman, it was an abuse of the trial court's discretion to deny the defendant's motion to withdraw a juror. The court so held notwithstanding the jurors' affirmances that they could and would disregard what they had read and notwithstanding the court's instructions to that effect. *People v. Hryciuk*, 5 Ill. 2d 176, 125 N.E. 2d 61 (1954).

The majority of decisions support the view that a mistrial is warranted only if the reading of the prejudicial matter appears to actually have the effect of influencing a juror's decision, and this determination is vested with the trial court.[2] The effect of reading a prejudicial article may be mitigated by showing that the

[1] Ill. Rev. Stat. (1953) c. 38, §§ 826–832.

[2] People v. Herbert, 340 Ill. 320, 172 N.E. 740 (1930); Collins v. Dunbar, 131 Me. 337, 162 Atl. 897 (1932).

jury was not influenced by the article and by also showing that instructions by the court were given to disregard the contents of the article. On the jurors' affirmance that they have not been influenced and that they will disregard the prejudicial matter and return a fair and impartial verdict, a new trial, mistrial, or reversal is generally denied. Thus, in *United States v. Pisano*,[3] a misleading report was read by the jurors during the course of the trial. On inquiry the jurors indicated that they would not be influenced and the court instructed them to discontinue reading reports of the case and to disregard what they had already read. On review, the court held that the action taken was appropriate and the "purity" of the trial was not destroyed.

People v. Murawski,[4] cited and discussed at length in the majority opinion, indicates the Illinois court's reasoning on the effect of instructions as a mitigating agency though the doctrine that the prejudicial effect of a news story can in all cases be removed by instructions has never been adopted. That was an abortion trial where the court concluded that the record showed that at least some jurors read a newspaper account pointing out the defendant's prior indictment for abortion. The jurors were not given any instructions to disregard the contents of the article. On appeal, a mistrial was declared. The inference is apparent that if precautionary instructions were given, the effect of the prejudicial matter could have been overcome, though the majority did not comment on it. In line with the majority view, Illinois has permitted a juror to say he has not been influenced by reading prejudicial articles. In *People v. Mangano*,[5] in view of this disavowal, a mistrial was not declared.

The test of whether a new trial, mistrial or reversal is in order on the occasion of a juror's reading prejudicial reports has been said to be whether or not a fair and impartial trial has been prevented.[6] This determination necessarily is centered around the fact situation in each case. The majority in the instant case commenting on the point said:

> A determination of this question involves the court's consideration of all facts and circumstances and conjecturing upon the effect that the incompetent information has had upon the minds of the jurors, a determination incapable of absolute accuracy or a very high degree of reliability.[7]

The majority of the courts rely heavily on the jurors' statements that they will be fair and impartial, apparently proceeding on the premise that the juror's own decision as to the article's influence on him will be more accurate than conjecture by the court.[8] In the instant case, the court said that to regard the jurors' statements as conclusive would be to overlook the real issue.

[3] 193 F. 2d 355 (C.A. 7th, 1951).

[4] 394 Ill. 236, 68 N.E. 2d 272 (1946).

[5] 354 Ill. 329, 188 N.E. 475 (1933).

[6] State v. Pierce, 178 Ia. 417, 159 N.W. 1050, 1056 (1916).

[7] People v. Hryciuk, 5 Ill. 2d 176, 183, 125 N.E. 2d 61, 65 (1954).

[8] Marrin v. United States, 167 Fed. 951, 953 (C.A. 3d, 1909).

A few courts have adopted the approach taken by the court in the instant case. The showing of no conscious influence by the jurors' affidavits was held in *State v. Caine*[9] to be insufficient to mitigate the effect of reading a long and sensational account of the proceedings in the trial, though the court considered them generally unobjectionable. The court said:

> The unconscious influence of such accounts would be far more likely to effect the result than an influence of which they were conscious and which they might the more readily resist.[10]

Again, in *Commonwealth v. Jacques*[11] the unconscious influence which might be had was controlling. In this case all of the defendant's witnesses were credited with prison records in a newspaper account. At least two decisions have held that a verdict is vitiated where there was a mere possibility of prejudice.[12]

The minority adhering to the above theory place the most controlling emphasis on the nature of the prejudicial article. In the instant case, the court considering that the article reported that the defendant had confessed to two murders and more than fifty criminal attacks on women and therein was described as a "vicious degenerate" and arrested in another criminal attempt said it would be a "violent assumption" to conclude that a jury could ignore their emotions and render a verdict without any conscious or unconscious prejudice. Mere recitation that the defendant has committed prior crimes is not the sole distinguishing feature, however.[13]

A particularly cogent argument advanced by the dissent and one not considered by the majority in its opinion is the prevailing rule that where the evidence is such as the jury could not have honestly or intelligently returned any other verdict a new trial will not be granted, though the jurors had read prejudicial accounts.[14] In the instant case, the defendant confessed to raping the prosecutrix, leaving no doubt as to his guilt. He was identified by the victim and he, thereafter, confessed again. The dissent concluded that adequate and convincing proof of the defendant's guilt was placed before the jury and the verdict returned was the only one that could have been "honestly and intelligently" returned.

In summary, the instant case characterizes a liberal Illinois view where constitutional rights are involved. The nature of the article is controlling. Apparently of nominal importance are the jurors' affidavits, the court's instructions and the manifestly just verdict.

[9] 134 Ia. 147, 111 N.W. 443 (1907).

[10] Ibid., at 156 and 446.

[11] 1 Pa. Dist. 287 (1892).

[12] State v. Barille, 111 W.Va. 567, 163 S.E. 49 (1932); Commonwealth v. Johnson, 5 Pa. Co. 236 (1887).

[13] State v. Cunningham, 173 Ore. 25, 144 P. 2d 303 (1943); People v. Lubin, 190 App. Div. 339, 179 N.Y. Supp. 691 (1st Dept., 1920).

[14] State v.Williams, 96 Minn. 351, 105 N.W. 265 (1905); State v. Barille, 111 W.Va. 567, 163 S.E. 49 (1932); Commonwealth v. Dougherty, 13 Erie Co. L.J. 126.