

**Criminal Law--Voluntary Confession--Intoxication--Validity--
Question of Fact for Jury or Court (State v. Alexander, 40 So.2d
232 (La. 1949))**

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den of proof is on the defendant to establish his insanity by a *preponderance of evidence*.¹² With this fact in view, it should be noted that the second witness, who testified to the sanity of the defendant, was the *defendant's* expert witness and that said witness testified as to the mental condition of the accused *on the date of the crime*. Thus, taking cognizance of the rule of burden of proof of that jurisdiction and the conflicting testimony of the defendant's own witnesses, the court does not appear to have erred in holding that the defendant had not, as a matter of law, sustained the burden of proof imposed upon him. The striking of the testimony of the first witness was the equivalent of such a holding.

However, the striking of the testimony in the instant case would constitute error in New York. In this jurisdiction the people must prove the sanity of the defendant beyond a reasonable doubt once the defendant has put his sanity in issue.¹³ The stricken testimony would have been sufficient to compel the prosecution to come forward and prove the sanity of the defendant beyond a reasonable doubt and would have raised an issue for the determination of the jury.

C. F. McG.

CRIMINAL LAW—VOLUNTARY CONFESSION—INTOXICATION—VALIDITY—QUESTION OF FACT FOR JURY OR COURT.—The prosecution obtained a conviction of manslaughter by using a confession made by the defendant while intoxicated. The defendant appealed on the ground that he was intoxicated to the point of mania¹ when he made the confession and that, therefore, it was not freely and voluntarily made as required by law.² He also pleaded that it was error for the trial judge to decide as a question of fact that the confession was admissible and to allow the jury to weigh only the *value* of the confession. *Held*, conviction sustained. Intoxication, at the time a confession is made, unless it goes to the extent of mania, does not affect its admissibility into evidence if it was otherwise voluntary. Whether the confession was free and voluntary is a question for the judge to decide. *State v. Alexander*, — La. —, 40 So. 2d 232 (1949).

¹² *State v. Molnar*, 133 N. J. L. 327, 44 A. 2d 197 (1945); *State v. George*, *supra* note 6; *State v. Overton*, 85 N. J. L. 287, 88 Atl. 689 (1913); *State v. Maioni*, 78 N. J. L. 339, 74 Atl. 526 (1909).

¹³ *People v. Tobin*, 176 N. Y. 278, 68 N. E. 359 (1903); *People v. Egnor*, 175 N. Y. 419, 67 N. E. 906 (1903); *O'Connell v. People*, 87 N. Y. 377 (1882) (construing N. Y. PENAL LAW § 815).

¹ "Mania a potu. Delirium tremens, or a species of temporary insanity resulting as a secondary effect produced by the excessive and protracted indulgence in intoxicating liquors." BLACK, LAW DICTIONARY (3d ed. 1933).

² *State v. Berry*, 50 La. Ann. 1309, 24 So. 329 (1898).

In the instant case, the trial judge was sufficiently convinced that the confession was free and voluntary even though made while defendant was intoxicated. In Louisiana the voluntariness of such a confession is to be determined by the trial judge, and his ruling will be upheld by an appellate court unless clearly erroneous.³ Although the confession is admitted into evidence, the jury may discredit its value in whole or in part if they feel it proper to do so.⁴ Courts take the position that a person is rational until the point of mania is reached; and that a valid confession by an intoxicated person may be made up to that time.⁵ This seems to be the prevailing rule in the United States.⁶

There are two distinct views as to who shall determine whether or not a confession is voluntary. The majority of states hold that this determination is ultimately for the jury, while the minority hold that the trial judge shall determine the validity of such evidence.⁷ Some states have utilized both rules allowing the circumstances surrounding each particular case to determine whether the majority or minority view will prevail in any given instance.⁸ The federal courts have followed this procedure; but they have recently evidenced a tendency towards the majority view.⁹ That it is a question for the jury when there is conflict, is definitely established in New York.¹⁰ The jury should be permitted to determine whether the confession is voluntary only where a question of fact is presented.¹¹ If there is *no* conflict, and it is *clearly* evident that the confession was *not* voluntary, the judge should exclude it from the evidence.¹²

Similar instances arise when the confession is obtained while the person is under the influence of drugs. The New York courts have held that a confession of this character is generally admissible; however, the fact that it was procured while the individual was under the influence of drugs is to be weighed by the jury.¹³ An interesting problem arises when a confession is procured after administering scopolamine, a truth serum, to the defendant. As yet the validity of such a confession has not been passed upon by the courts. However, it would seem that when the question does arise, the courts will apply the same rule followed in connection with the use of any other drug.

Confessions extorted by hypnosis present another undecided

³ State v. Porteau, 52 La. Ann. 416, 26 So. 993 (1889).

⁴ State v. Hogan, 117 La. 863, 42 So. 352 (1906).

⁵ Bell v. United States, 47 F. 2d 438 (C. A. D. C. 1931).

⁶ See Note, 74 A. L. R. 1102 (1931).

⁷ See Note, 85 A. L. R. 870 (1933).

⁸ *Ibid.*

⁹ Wilson v. United States, 162 U. S. 613 (1896).

¹⁰ People v. Brasch, 193 N. Y. 46, 85 N. E. 809 (1909).

¹¹ People v. Rogers, 192 N. Y. 331, 81 N. E. 135 (1908); People v. Brasch, *supra* note 11.

¹² People v. Barbato, 254 N. Y. 170, 172 N. E. 458 (1930); People v. Weiner, 248 N. Y. 118, 161 N. E. 441 (1928).

¹³ People v. Kent, 41 Misc. 191, 83 N. Y. Supp. 948 (Sup. Ct. 1903).

question. Since the subject when hypnotized, is under the influence and will of another, he is not master of his own will and is subject to hallucinations which may be suggested by the hypnotist. The validity of such a confession is very questionable.

A confession, extorted from a prisoner in custody through force or fear, is invalid and must be rejected by the court.¹⁴ This is also true where, as an inducement for obtaining a confession, the district attorney promises the accused freedom from prosecution.¹⁵

From the foregoing it can readily be seen that the initial problem is the determination of whether or not the confession is voluntary. Some states have adopted the rule that this question is to be decided by the trial judge, while the majority hold that it falls within the province of the jury. Since the issue is in reality a question of fact, it would appear that the majority view is the better one.

T. W. S.

EQUITY — REFORMATION OF DEEDS — MUTUAL MISTAKE OF FACT.—The plaintiffs' agents effected a contract of sale for the larger of two lots owned by the plaintiffs in Tennessee. The secretary of the plaintiffs' lawyer was instructed by the lawyer to make out the required deed. Through inadvertence she incorporated the description of both of the lots owned by the plaintiffs, whereas the contract concerned only the larger. The deed in this form was executed by the plaintiffs and delivered to the grantee who subsequently transferred the deed to the defendant herein. When the error was discovered the plaintiffs promptly instituted this suit praying for a decree divesting defendant of title to the lot erroneously conveyed and re-vesting title in the plaintiffs. The Chancellor granted the petition by way of reformation of the deed on the ground of mutual mistake of fact. *Held*, affirmed. One of the fountainheads of equitable jurisdiction is the reformation of instruments which have been erroneously constructed due to a mutual mistake as to some extrinsic fact. When there is a mistake of fact so fundamental that the minds of the parties have not met, or where unconscionable advantage has been gained through mistake, equity will act to protect legal rights and prevent intolerable injustice provided that the plaintiff has not been guilty either of gross negligence in effecting the mistake, or of sleeping on his rights, and provided that restitution to status quo is feasible without interference with intervening rights. *Alston v. Porter*, — Tenn. —, 219 S. W. 2d 445 (1949).

¹⁴ *People v. Barbato*, *supra* note 13.

¹⁵ N. Y. CODE CRIM. PROC. § 395; *People v. Reilly*, 224 N. Y. 90, 120 N. E. 113 (1918).