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Federal Jurisdiction-Common Law Crimes Against U. S.

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gence is of such outrageous character as to completely outweigh all the charges against the other. A good example within this class of cases is *Hustad v. Evetts*, 230 Wis. 292, 282 N. W. 595, (1939). In this case, the plaintiff was an experienced milk man. He stepped from his wagon without looking for traffic and was found negligent in this respect. The defendant whose automobile struck the plaintiff as he did so step off his wagon was found negligent as to speed, lookout and management. The court held that the plaintiff's negligence, by its very character, was as a matter of law greater than that of the defendant. The following cases are similar in effect: *Wedechy v. Grimes* 229 Wis. 448, 282 N. W. 593, (1938); *Noyes v. Milwaukee E. R. & L. Co.*, 237 Wis. 141, 294 N. W. 63, (1941).

Lastly there are a few cases which stand as individual holdings and do not, from the point of their outcome, fall into any of the groups of cases indicated herein. In *Patterson v. Chicago, St. Pa., Milwaukee & O. R. Co.* 236 Wis. 205, 294 N. W. 63, (1940), the plaintiff was at a place to board the defendant's train. In order to do so he had to cross certain tracks. He was struck and injured. Plaintiff was found negligent with respect to lookout. The defendant was found negligent in failing to keep a proper guard for the protection of the defendant. The court held that the negligence of the plaintiff was as a matter of law equal to that of the defendant. There was a strong dissent by three judges in this case. A like decision with a dissent is *Hoskins v. Thenell*, 232 Wis. 97, 286 N. W. 555, (1939).

ANTHONY J. PALASZ.

Federal Jurisdiction—Common Law Crimes Against the United States.—In *United States v. Jerome*, 87 L. Ed. 433 (1943),—U.S.—, S. Ct. —, the defendant was charged with violating section 2(a) of the bank robbery act (May 18, 1934) 48 Stat. 783 c. 304 (August 24, 1937) 50 stat. 749, c. 747, 12 U.S.C.A. 588b which provides in part that "whoever shall enter or attempt to enter any bank or any building used in whole or in part as a bank with intent to ocmmit in such bank or building or part thereof, so used, any felony or larceny shall be fined not more than \$5,000.00 or imprisoned for more than twenty years or both." The defendant was an army officer who while attempting to borrow money from a National Bank was informed that he would be required to obtain the signature of an officer of at least equal rank as surety upon his note. The defendant forged the signature of an officer of superior rank. The United States Supreme Court reversed the decision of the United States Circuit Court of Appeals and quashed the indictment on the grounds that the crime of forgery, although a felony under the laws of Vermont,

was not a felony within the meaning of the statute, it not being a felony under the statutes of the United States. The Court said, "We must generally assume, in absence of plain indication to the contrary, that congress when it enacts a statute is not making the application of the Federal act dependant on the state law. That assumption is based on the fact that Federal legislation is nationwide, and at times on the fact that the Federal program would be impaired if the state law were to control." The court indicated that caution should be exercised in extending the provision of a Federal statute to state crimes because the double jeopardy provision of the Fifth Amendment does not stand as a bar to Federal prosecution though a state conviction on the same cast has already been obtained.

The United States Supreme Court has therefore affirmatively decided in favor of a second punishment where an act is both a crime against the state and against the United States. Said Chief Justice Taft in *United States v. Lenza*, 260 U. S. 377, 382; 43 S. Ct. 141, 142; 67 L. Ed. 314: "We have here two sovereignties deriving power from different sources, capable of dealing with the same subject under the same territory. Each may without interference from the other enact laws to secure prohibition with the limitation that no legislation can give validity to act prohibitive by the same amendment. Each Government in determining what shall be an offense against its dignity and peace is exercising its own sovereignty, not that of the other. It follows that an act denounced as a crime by both national and state sovereignties is an offense against the peace and dignity of both and may be punished by each."

It has been consistently held that there are no common law crimes against the United States. All Federal crimes must be specifically provided for by statute. While there are no common law offenses against the United States resort may be had to the common law for the definition of terms by which offenses are designated by statute, *Pettibone v. United States* (1893) 148 U. S. 197; 13 S. Ct. 542; 37 L. Ed. 419.

The regulations issued by the several Governmental departments and administrative agencies cannot make acts criminal which congress has not made criminal. In *United States v. George* (1913) 228 U. S. 14; 33 S. Ct. 412; 57 L. Ed. 712, the defendant was indicted for perjury, charging him with falsely and corruptly taking his solemn oath in a proceeding wherein a law of the United States authorized an oath to be administered before the register of the United States land office. The particular statute under which the defendant was charged provided that "If . . . the person making such entry . . . proves by two credible witnesses that he, she, or they have resided upon or cultivated the same for a period of five years . . . and makes affidavit that no part of such land had been alienated . . . and that he, she, or they will bear true allegiance

to the Government of the United States, then in such case he, she, or they . . . shall be entitled to a patent. The Secretary of the Interior in this instance required the applicant to take such oath himself wherein it will be noted the statute merely required proof by two credible witnesses. The defendant falsely swore that he had made certain improvements on the land. The defendant demurred to the charge alleging that where the charge is of crime it must have clear legislative basis. The court held that the Secretary of Interior had no authority to demand such oath where it was not required by statute. The court said "It is manifest that the regulation adds a requirement which that section does not require and is not justified."

In *United States v. Eaton* (1892) 144 U. S. 677; 12 S. Ct. 764; 36 L. Ed. 591, the defendant, a wholesaler, was indicted for failure to keep books showing receipts and sales for oleomargarine. The statute provided that all manufacturers were required to keep such records, but contained no such provisions for a wholesaler. The court ruled that "the Secretary of the Treasury cannot alter or amend a revenue law to regulate the mode of providing to carry into effect what congress has enacted."

Although the principle that there is no common law of the United States has long been recognized in the field of Federal criminal law it has only recently been recognized in Federal civil law. Plaintiff in *Erie Railway Company v. Tompkins*, 304 U. S. 364; 58 S. Ct. 17; 82 L. Ed. 1189 (1937), was injured while walking along defendant's right of way by a boxcar door that was negligently left open, said injury occurring in the state of Pennsylvania. The action was brought in the federal district court in New York. Under the laws of Pennsylvania plaintiff was a trespasser and defendant owed plaintiff no duty except not to wilfully injure him. The lower court gave judgment to the plaintiff holding that under the common law of the United States it was the duty of defendant railway not to negligently injure plaintiff. Reversing the judgment the Supreme Court of the United States said, "Except in matters governed by the Federal constitution or by acts of congress, the law to be applied in any case is the law of the state. And whether the law of the state shall be declared by its legislature in a statute or by its highest court in a decision is not a matter of Federal concern. There is not Federal general common law. Congress has no power to declare substantive rules of common law applicable in a state whether they be local in their nature or 'general,' be they commercial law or part of the law of torts. And no clause in the constitution purports to confer such power on the Federal Courts."

JOHN L. GRAY