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Evidence - Admissions - Preliminary Hearing on Voluntary Character of Admission Not Required in Criminal Cases

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It follows, then, that a note may be taken as payment for treasury shares, an exception to the rule as laid down in sec. 4529.[14]

In the case of Nybakken v Baird the syllabus states misleadingly that stock cannot legally be issued before payment of a note given "in settlement when paid." But the actual holding is not contra to the Wanner case as again the court really decides only that a note cannot be considered as payment for stock under the statute.[15]

The North Dakota Courts hold, then, that an unsecured note is property and is good consideration for capital stock, but is not payment, except for treasury shares. The Court's interpretation is logical and literal but eviscerates the constitutional and statutory provisions designed to protect stockholders and creditors. The surest remedy lies in changing the statute. The limiting definition of "property" excluding the unsecured promissory note would give to the law the effect which the Legislature undoubtedly intended it to have.

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[14]56 N. D. 786, 219 N. W. 472 (1928).
[15]Comp. Laws of N. D. (1913) § 4529.

EVIDENCE — ADMISSIONS — PRELIMINARY HEARING ON VOLUNTARY CHARACTER OF ADMISSION NOT REQUIRED IN CRIMINAL CASES

From a judgment of conviction for murder in the second degree the defendant appealed, alleging as error the admission in evidence of a written statement that she had killed her husband to protect her daughter. The defendant contended that the statement constituted a confession and had been involuntarily given, and requested a preliminary hearing as to the voluntary character of the alleged confession. The court refused the request, but charged the jury to disregard it if they had found it to have been made under compulsion. Held: That since the statement was an admission and not a confession, no preliminary hearing was necessary. State v. Gibson, 284 N. W. 209 (N. D. 1938).

A confession is an acknowledgement in express terms, by a party in a criminal case, of his guilt of the crime charged, while an admission is a statement by the accused, direct or indirect, of facts pertinent to the issue and tending, in connection with proof of other facts, to prove his guilt. People v. Crowl, 82 P. (2d) 507 (Cal. 1938); State v. Gibson, supra; Moore v. State, 220 Wis. 404, 265 N. W. 101 (1936).

An admission in criminal matters relates to matters of fact not involving a criminal intent; a confession is an acknowledgement of guilt. It is only with respect to confessions that preliminary proof that they were voluntary must be made before they are admissible in evidence. People v. Fowkes, 178 Cal. 657,

174 Pac. 892 (1918). Accord: People v. Wynekoop, 339 Ill. 124, 194 N. E. 276 (1934) (writ of certiorari denied in 295 U. S. 758); Commonwealth v. Jokinen, 257 Mass. 429, 154 N. E. 189 (1926); State v. Kerns, 50 N. D. 927, 198 N. W. 698 (1924).

In the 16th and 17th centuries there was no restriction upon reception of confessions. Technically, a confession was a plea of guilty, dealing with a matter of criminal pleading, not evidence. In the 1700s some confessions were rejected as untrustworthy, and were thought of as the "highest evidence of guilt." In the 1800s the principle of exclusion was developed to an abnormal extent, and exclusion became the rule and admission the exception. This is the rule today. What the future rule will be is problematical. 2 Wigmore, Evidence (2d. ed. 1923) sec. 817-820.

In twelve states the rule prevailing is that the question of whether a confession is voluntary is one of the admissibility of evidence and is addressed solely to the court. State v. Kerns, supra. Notes (1933) 85 A. L. R. 870. In other jurisdictions the issue may be left to the jury under instructions to disregard the confession unless it finds that it was made voluntarily. 20 Am. Jur., Evidence, sec. 533. Notes (1933) A. L. R. 881. In still other jurisdictions courts have failed to enunciate a clear-cut ruling upon this point, preferring to let each case set its own pattern in that respect. Wilson v. United States, 162 U. S. 613 (1896). Notes (1933) 85 A. L. R. 900. "The admissibility of the confession is a question for the judge, in accordance with the principle defining the functions of judge and jury. This orthodox principle is well recognized in the majority of jurisdictions. But in comparatively recent times the heresy of leaving the question to the jury has made rapid strides." 2 Wigmore, Evidence (2d. ed. 1923) sec. 861.

Is there any justification in the distinction between admissions and confessions, requiring one mode of procedure to determine the voluntariness, and hence the admissibilty, of confessions and a different mode to determine the same questions in regard to admissions? Is there more chance of injustice being done in one case than in the other? The requirement of a preliminary examination has been said to go deeper than procedural formality. As a confession is almost conclusive, a defendant who has pleaded not guilty and gone to trial ought not be found to have waived his objection as to the prima facie admissibility of the alleged confession, or compelled to fight out his objections and preserve his exceptions in the presence of the jury. Cohen v. United States, 291 Fed. 366 (C. C. A. 7th, 1923). Notes (1936) 102 A. L. R. 605. But, are not the risks of testimonial untrustworthiness and encouragement of abusive police practices, which probably is the reason for requiring a preliminary hearing before allowing a confession in evidence, nearly as great in the case of an admission? 52 Harv. L. Rev. 1172; cf. State v. Garney, 45 Idaho 768, 265 Pac. 668 (1928); Commonwealth v. Haywood, 247 Mass. 16, 141 N. E. 571 (1923). "The only real danger in a confession — the danger of a false statement — is of a slender character. . . . The notion that the confession should be guarded

against is not a benefit to the innocent, but a detriment. A full statement of the accused person's explanations, made at the earliest moment is often the best means for him to secure a speedy vindication." 2 Wigmore, Evidence (2d. ed. 1923), sec. 867.

It is submitted that North Dakota should abolish the distinction between confessions and admissions in criminal cases and require a preliminary examination as to voluntariness of any statement that admits a part or all of a crime.

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TAKE NOTICE

Americanization and Citizenship Committee respectfully directs your attention to the following recommendation contained in the report of the 1939 Committee:

> "That each attorney of this state take it on himself to conduct and put on at least one patriotic program within his or her own county, on Constitution Day or week, and at least one such program on Washington's or Lincoln's day or week, in the county in which he or she resides."

Anyone desiring to purchase a set of Corpus Juris in A-1 condition please write H. G. Nilles, Fargo, N. D.

OUR SUPREME COURT HOLDS

In the Department of State Highways of the State of North Dakota, and J. S. Lamb, as State Highway Commissioner and the officer in charge of said Department, Petrs. and Applts., vs. Berta E. Baker, as State Auditor of the State of North Dakota, and John Omland, as State Treasurer of the State of North Dakota, Respts.

That a subordinate ministerial officer to whom no injury can result and to whom no violation of duty can be imputed by reason of compliance with the statute, may not question the constitutionality of the statute imposing such duty.

That under the circumstances in this case wherein it appears that the state auditor is a constitutional officer against whom a proceeding is brought to compel her to disburse public funds under a statute which the attorney general, who is her legal adviser and is also a constitutional officer, has advised is unconstitutional, and the question of constitutionality is of great public importance, affecting many people, the public revenue of the state and one of the major departments of the state government, it is held that the state auditor may question the constitutionality of the statute upon which the proceedings are based.

That Chapter 170, Session Laws 1939 does not amend or change any other statute either directly or by implication.

That Section 64 of the Constitution was not intended to require the reenactment and publication at length of all definitions that might be employed in the construction of the law. Reference to other statutes may be made to determine the meaning of terms used as an aid in determining legislative intent.

That where a statute levies a tax, provides for ascertaining the amount to be paid, and determines where the proceeds shall go, the failure to make specific provisions for detailed procedure of collection of the tax does not render the statute violative of Section 64 of the Constitution.