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Our Supreme Court Holds

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ANNUAL MEETING FOURTH JUDICIAL DISTRICT BAR ASSOCIATION

At the recent annual meeting of the Fourth Judicial District Bar Association Hon. Alfred Zuger was elected President; G. A. Lindell, Vice-president; anl Neil Cameron, Secretary-Treasurer. A good attendance was had, and all report an interesting meeting. A committee consisting of L. J. Wehe, Chairman, Geo. F. Shafer and Nelson A. Mason, was appointed to make an investigation of the unlawful practice of law before State Boards, including the Pardon Board, and instructed to report its findings to the President of the State Bar Association for appropriate action.

OUR SUPREME COURT HOLDS

State of North Dakota, Plft. and Respdt., vs. Gladys R. Gibson, Deft. and Applt.:

That following State v. Hagen, 54 N. D. 136, 208 N. W. 247, it is **held**: "The district court has no power to entertain a motion for a new trial made after the time for appeal has elapsed. An appeal from the judgment and a motion for a new trial are independent remedies, and the taking of an appeal does not extend the time within which the motion for the new trial must be made."

That a "confession", as the term is employed in criminal law, is an acknowledgment in express terms by a person of his guilt of a crime, while an admission is an acknowledgment, direct or implied, of some fact or circumstance which in itself is insufficient to show guilt of a crime, but which is pertinent and tends in connection with the proof of other facts to prove such guilt.

That in order to be admissible as evidence in a criminal action, a confession must be freely and voluntarily made.

That an admission, not amountig to a confession, need not be proven to have been made freely and voluntarily in order to be admissible in evidence against the accused in a criminal action.

That a written statement: "I killed my husband to protect my oldest daughter. I am writing this with my own free will. No one ever helped me to do this" is not a confession but an admission, and is without the scope of the confessions rule.

That the bias of a witness and his interest in the event of the prosecution, are not collateral, and may always be proved to enable the jury to estimate his credibility. It is competent as tending to impeach a witness, to show the witness's bias, prejudice or hostility against, or friendship in favor of, a party, and the extent and cause thereof.

That rulings on hypothetical questions submitted to medical experts considered, and for reasons stated in the opinion, **held** to be proper.

That the constitutional right of a defendant in a criminal action, not to be compelled to be a witness against himself, is not violated by the introduction in evidence of his testimony voluntarily given at a coroner's inquest.

That certain rulings made by the court relating to the admission of evidence considered and held non-prejudicial.

That when oral instructions are given to a jury in a criminal action, exceptions in writing to all instructions given or refused must be filed in the office of the Clerk of the District Court in which the action is tried within twenty days from the filing of the instructions, and unless such exceptions are filed, all objections to the instructions given, or to the refusal to instruct, are waived.

That Section 9459, C. L. 1913, which reads:

"No person can be convicted of a murder or manslaughter or of aiding suicide, unless the death of the person alleged to have been killed and the fact of the killing by the accused as alleged, are each established as independent facts; the former by direct proof and the latter beyond a reasonable doubt; but in no case upon a plea of not guilty, shall the confession or admission of the accused, in writing or otherwise, be admissible to establish the death of the person alleged to have been killed," is construed, and it is **held:** (1) it is only the fact of death that must be established by direct proof, and (2) the fact of the killing by the accused as alleged must be established beyond a reasonable doubt, but may be established by any competent evidence either direct or circumstantial, including the confession or admission of the accused.

That it is held, for reasons stated in the opinion, that no error was committed in submitting to the jury the question whether the defendant was guilty of murder in the second degree.

That the control of the remarks of counsel, during a criminal trial, is a matter largely in the discretion of the trial court, and where the remarks objected to are such as under the attending circumstances would not be likely to prejudice the cause of the accused in the minds of honest and intelligent men, the failure of the court to strike out the remarks, or caution the jury against them, does not constitute prejudicial error.

(Continued in our next issue.)