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faced with the contribution question where a Pennsylvania statute allows contribution to be enforced¹⁸ and Ohio law denies it, the court had to make a choice of laws. Of necessity the court looked to the Ohio law¹⁹ to discover whether it was substantive or procedural in this particular case. By using the rationale that there was an "implied engagement of each to bear the common burden" the court held the right of contribution to be "quasi-contractual". After finding that the contract law which gives rise to the right of contribution is substantive, the court applied it in conformity with conflict rules.²⁰

With the law clear on the contribution aspect of this case the only arguable portion of the opinion is found in the court's holding the Ohio law to be substantive. It appears that the court considered contribution to be a right and since basic classification rules hold that the law of substance is that law which creates a right, it concluded that the Ohio law denying contribution was substantive. Contrary to this, the Pennsylvania statute procedurally allows enforcement of this equitable right. Would it not have been as correct to look to the Ohio law and discover that Ohio law does not allow enforcement of the equitable right of contribution? With this finding the court could then have held the Ohio law to be procedural and could have applied the Pennsylvania statute, thereby preventing this apparently inequitable result.

CRIMINAL LAW — CONVICTION FOR VAGRANCY UNDER CALIFORNIA STATUTE

The defendant was charged with two offenses defined in separate paragraphs of one vagrancy statute.¹ These offenses took place almost a month apart and he was given two sentences to run consecutively. *Held*, on appeal, only one sentence can be imposed for the commission of any or all of the offenses set out in the one statute. *People v. Allington*, 229 P. 2d 495 (Cal. App. 1951).

18. PA. STATS. tit. 12, § 2081 (1939); *Kelly v. Pa. R.R.*, 7 F.R.D. 524 (D. C. Pa. 1948); *Union Paving Co. v. Thomas*, 9 F. R. D. 612 (D. C. Pa. 1950); *Anstine v. Pa. R. R.*, 352 Pa. 43 A.2d 109 (1945).

19. See note 12 *supra*.

20. See notes 13 and 14 *supra*.

1. CAL. PEN. CODE § 647 (1949).

- "1. Every person without visible means of living . . . ; or
2. Every beggar who solicits alms as a business; or
3. Every person who roams from place to place without any lawful business; or
4. Every person known to be a pickpocket, thief, burglar, or confidence operator . . . having no visible means of support . . . ; or
5. Every idle, or lewd, or dissolute person, or associate of known thieves; or
6. Every person who wanders about the streets at late or unusual hours of the night, without any visible or lawful business; or
7. Every person who lodges in any barn . . . or place other than such as is kept for lodging purposes, without the permission of the owner . . . ; or

Generally vagrancy statutes have no application to single instances of conduct which, if habitual, would amount to vagrancy.² One of the necessary elements of the crime is a *continuendo*.³ This means that acts constituting one a vagrant cannot be committed at one point in time, but must extend over a period.⁴ Expressed in another way, vagrancy is a condition, not an act.⁵ Ordinarily, a course of conduct or manner of life, rather than a single act, is necessary to give rise to a charge of vagrancy.⁶ But, on the other hand, the records abound with cases in which a single act sufficed. Some acts are so consistent with the character of a vagrant that one such act will suffice to convict.⁷

Further, a count is not double because it charges the commission of the offense in several of the methods prescribed by this type of statute, none of the alleged being repugnant to the other.⁸ "In other words, if a person is a gambler, he is a vagrant, and if, in addition thereto, he violates at the same time the other definitions as set out in the statute he is still a vagrant. It is the crime of vagrancy that is denounced by the statute, and the subheads simply define what a vagrant is."⁹

In the instant case the defendant was found to have engaged in lewd and lascivious conduct on one occasion, and then, about a month later, to have been a "peeping Tom." With a show of reluctance, the court interpreted the statute as meaning that the condition of being a vagrant, rather than the acts committed, was to be punished. In the words of the court: "The punishment provided by section 647 is not for doing, but for being; for being a vagrant."¹⁰ To strengthen its decision, the court made reference to a number of cases in which a statute similarly constructed had been interpreted.¹¹ However, these cases are readily dis-

8. Every person who lives in or about houses of ill fame; or

9. Every person who acts as runner or capper for attorneys . . . ; or

10. Every common prostitute; or

11. Every common drunkard; or

12. Every person who loiters, prowls or wanders upon the private property of another, in the nighttime, without visible or lawful business with the owner or occupant thereof; or who . . . peeks in the door or window of any structure located thereon and which is inhabited by human beings . . . ;
Is a vagrant, and is punishable by . . . "

2. *People v. Denby*, 108 Cal. 54, 40 Pac. 1051 (1895); *In re Jordan*, 90 Mich. 3, 50 N.W. 1087 (1892); *see People v. Craig*, 152 Cal. 42, 46, 91 Pac. 997, 999 (1907).

3. *Armstead v. State*, 11 Okla. Crim. Rep. 649, 150 Pac. 511 (1915).

4. *Ex parte Oates*, 91 Tex. Crim. Rep. 79, 238 S.W. 930 (1921).

5. *Parshall v. State*, 62 Tex. Crim. Rep. 177, 138 S.W. 759 (1911).

6. *State v. Suman*, 216 Minn. 293, 12 N.W.2d 620 (1944).

7. *Ex parte Lund*, 137 Cal. App. 616, 31 P.2d 221 (1934); *People v. Scott*, 113 Cal. App. 778, 296 Pac. 601 (1931).

8. *Cody v. State*, 118 Ga. 784, 45 S.E. 622 (1903).

9. *Brannon v. State*, 16 Ala. App. 259, 260, 76 So. 991, 992 (1917).

10. *People v. Allington*, 229 P.2d 495, 500 (Cal. App. 1951).

11. CAL. PEN. CODE § 470 (1949), *People v. Dole*, 122 Cal. 486, 55 Pac. 581 (1898), *People v. Leyshon*, 108 Cal. 440, 41 Pac. 480 (1895), *People v. Harrold*, 84 Cal. 567, 24 Pac. 106 (1890), *People v. Frank*, 28 Cal. 507 (1865) (forgery); CAL. PEN. CODE § 508 (1949), *People v. Fisher*, 16 Cal. App. 271, 116 Pac. 688 (1911) (embezzlement); CAL. PEN. CODE § 218 (1949), *People v. Thompson*, 111 Cal. 242, 43 Pac. 748 (1896) (train robbery); CAL. PEN. CODE § 499(a) (1949), *Bealmear v.*

tinguishable because those statutes defined various stages in the accomplishment of one specific crime. The various steps were not separate crimes, for as the crime progressed, the acts merged into one crime.¹² The opinion makes no mention of a holding by the superior court of a contiguous district in which two separate sentences were given for the violation of two of the sub-paragraphs of the same vagrancy statute.¹³

If the vagrancy statute were the only one in the penal code of California which dealt with the diverse acts enumerated, the court might well have some doubt as to legislative intent. Such is not the case, because separate statutes penalize individual acts of lewdness,¹⁴ trespass to property,¹⁵ living in or about a house of ill fame,¹⁶ prostitution¹⁷ and some instances of drunkenness,¹⁸ and each act would be indictable separately. This is the real justification for the result reached in the instant case. The only logical conclusion is that the vagrancy statute merely attempts to encompass all those things which would characterize a vagabond or an incorrigible rogue to insure that these anti-social individuals could be prosecuted for their undesirable condition as such. The double penalty idea is incompatible with this view.

CRIMINAL LAW — MORAL TURPITUDE

An alien was ordered to be deported under the Immigration Act of 1917¹ having twice been sentenced for terms of more than one year for conspiring to defraud the United States of taxes on distilled spirits. *Held*, that this crime involved moral turpitude. *Jordan v. De George*, 71 Sup. Ct. 703 (1951).

Apart from being a basis for the deportation of an alien, moral turpitude has been employed in widely divergent situations, for example: as a criterion in determining whether certain language is slanderous,² for impeachment of witnesses,³ in disbarment proceedings,⁴ for revocation of

Southern California Edison Co., 22 Cal.2d 337, 139 P.2d 20 (1943) (theft of electricity by tapping wires).

12. *Bealmear v. Southern California Edison Co.*, *supra* note 11.

13. *People v. Ambrose*, Superior Court, Dept. One, Riverside County, No. 25249, May 19, 1934. (Memo decision) (cited by 23 CALIF. L. REV. at 514 for this proposition).

14. CAL. PEN. CODE §§ 273(g), 288, 311, 312, 313, 647(a), 968 (1949).

15. CAL. PEN. CODE § 602 (1) (1949).

16. CAL. PEN. CODE § 315 (1949).

17. *Ibid.*

18. CAL. PEN. CODE §§ 273(g), 367(d), 367(e) (1949).

1. 39 STAT. 889 (1917) as amended, 8 U.S.C. § 155 (a) (1946) “. . . any alien . . . who is hereafter sentenced more than once . . . because of conviction in this country of any crime involving moral turpitude, committed at any time after entry . . . shall, upon the warrant of the Attorney General, be taken into custody and deported . . .”.

2. *Baxter v. Mohr*, 37 Misc. 833, 76 N.Y. Supp. 983 (N. Y. City Ct. 1902).

3. *Drazen v. New Haven Taxicab Co.*, 95 Conn. 500, 111 Atl. 861 (1920); 6 JONES, COMMENTARIES ON EVIDENCE § 2441 (2d ed. 1926).

4. *In re Koptic*, 406 Ill. 141, 92 N.E.2d 462 (1950).