

# Washington University Law Review

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Volume 13 | Issue 4

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January 1928

## Criminal Law—Entrapment

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### Recommended Citation

*Criminal Law—Entrapment*, 13 ST. LOUIS L. REV. 275 (1928).

Available at: [http://openscholarship.wustl.edu/law\\_lawreview/vol13/iss4/9](http://openscholarship.wustl.edu/law_lawreview/vol13/iss4/9)

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power of the legislature. *Ex parte Garland*, 4 Wall. 333, 379, 18 L. Ed. 366; *In re Mock*, 146 Cal. 378, 80 Pac. 64. Also 10 L. R. A. (N. S.) 288. However, all courts have not recognized the power of the legislature to formulate qualifications for admission to the bar. Some courts, zealously guarding the constitutional provisions creating the courts, have denied the existence of any power in the legislature to prescribe prerequisites for the admission to the bar and have held any attempt to do so an encroachment upon the judicial department and void. *In re Goodell*, 39 Wis. 232; *In re Mosness*, 39 Wis. 509. In the latter case the court passed on a statute which provided for the admission of attorneys of another state, holding that if the intention was to admit attorneys of another state to practice, "it was clearly without the power of the legislature." The case of *Re Applicants*, 143 N. C. 1, 55 S. E. 635, is an extreme case, in which it is apparent that the court has divested itself of what other courts have termed their "inherent" power to prescribe rules and conditions for admission to the bar. In that case the applicant's admission to the bar was opposed on the ground that the applicant was not of good character, and the court held that insofar as the legislature had prescribed the requirements for admission to the bar it could not inquire into the character of the applicant since he had complied with the requirements. The statute was held not to violate the constitutional or inherent powers of the courts. No other case is so forceful in upholding the police power of the legislature in regulating the admission to the bar.

The case of *Splane's Petition*, 123 Pa. 527, 16 Atl. 481, considered a statute which provided that one admitted to the bar in one county should on motion be admitted to all other courts of the state. It was held to be an encroachment upon the judicial department and void. But the principal case regarded the decision of this point as mere *obiter dictum* and hence not binding.

In the principal case, the specific issue was whether a person, having been admitted to practice in one county, should on motion be admitted to the bar of another county without first complying with the rules of the court. The *dictum* in the case is stronger than the decision, but it is quite apparent that the spirit of this case is inconsistent with that of *Re Applicants*, *supra*. The court said that there are "certain functions of the lower courts, with which the legislature cannot interfere, one of them being the power to adopt rules to facilitate the proper dispatch of the business of such tribunals, instancing regulations relating to the service of notices and papers. When one who does not intend to establish an office in a county to whose courts he would be admitted, applies for such admission, he is not to expect practitioners having established offices within the county to be subjected to annoyance and inconvenience in the service of papers upon him."

The court further states, "the adoption of a rule to minimize such annoyance and inconvenience was within the power of the court, even if the rule in question affected the right to be admitted to the bar of such court," and the court reached this conclusion this notwithstanding a statute which, apparently provided to the contrary. M. L. M., '29.

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CRIMINAL LAW—ENTRAPMENT.—While the defendant was engaged in making a book on the horse races a police officer in plain clothes placed a bet with him. Following the receipt of the money defendant was arrested for the statutory offense of being custodian and depository of a bet placed on a contest of speed of horses. *Held*, defendant may not avail himself of the defense of entrapment where he was engaged in making a book on the races and the officers had not incited him thereto. *State v. Stolberg*, 2 S. W. (2d) 618 (Mo., 1928).

Entrapment has been pithily defined as the "seduction or improper inducement to commit a crime, and not the testing by trap, trickiness, or deceit of one suspected." Undoubtedly the rule is as stated in the principal case, that where an officer incites a person to commit a crime and lures him on to its consummation

with the purpose of arresting him there may be no conviction, but that when "the genesis of the idea, or the real origin of the criminal act springs from the defendant and not from the officers" the defense does not exist. The difficulty here, however, as in other fields, arises in the application of these principles.

The question has arisen constantly in prosecutions for the violation of the liquor laws. It has been uniformly held that in a purchase of intoxicating liquor made for the purpose of entrapping and prosecuting the seller, when the seller acted voluntarily and independently of outside influence, there is no defense of entrapment. *People v. Christiansen*, 220 Mich. 506, 190 N. W. 236; *Bird v. State*, 96 Tex. Crim. R. 117, 256 S. W. 277. Where the authorities have reasonable grounds to suspect the defendants of violation of the law and one of the officers joined with defendants for the purpose of detecting their crime, there is no entrapment in the absence of suggestion and inducement by the officer. *Billingsley v. U. S.*, 274 F. 86.

The fact that an opportunity is furnished or the accused is aided in the commission of the crime in order to secure evidence is no defense. *People v. Gardner*, 144 N. Y. 119, 30 N. E. 1003; *State v. Dregle*, 21 Ohio Dec. 557. In *People v. Lanzit*, 70 Cal. App. 498, 233 Pac. 1816, the defendant, charged with attempt to commit murder, acted with and was encouraged by one who was cooperating with officers. The court held this no defense where the defendant originally conceived the criminal act and did the overt acts necessary to the completion of the offense.

The locus of the origin of the criminal design and the fact that an officer had suggested the commission of the crime are not conclusive of the availability of the defense of entrapment. The evidence must negative volition and willing compliance by the defendant in carrying out a criminal purpose of his own. *Ex parte Moore*, 233 Pac. 805 (Cal. App.); *State v. Wong Hip Chung*, 74 Mont. 523, 241 Pac. 620.

Where officers of the law incite and lure defendant to the commission of the crime for the purpose of arresting him there may be no conviction. *Sam Yick v. U. S.*, 240 F. 60, 13 S. C. C. A. 96. *State v. Mantes*, 32 Idaho 724, 187 Pac. 268. Thus in *Butts v. U. S.*, 273 F. 35, 18 A. L. R. 143, the defense of entrapment was held available where the defendant, charged with the unlawful sale of morphine, never had been a dealer in the drug, had none, and had never before sold any nor conceived any intention to do so. He was induced by an acquaintance, who knew he had become addicted to its use, to procure a quantity from a third person, the whole transaction being a device of internal revenue agents. In *Shouquette v. State*, 219 Pac. 727 (Okla.) it was held that the defense would exist where a detective, to entrap others to commit a contemplated robbery, induced them to join, planned the robbery, and was the chief actor in the forcible taking of the property which would not have been taken without such inducement. Nor may the government prosecute when by its own conduct, through its agents, it misleads the defendant into believing the act was lawful, *Voves v. U. S.*, 279 F. 191, 161 C. C. A. 227.

In *State v. Driscoll*, 119 Kan. 473, 239 Pac. 1105, it was held that the fact that an officer, in order to prosecute the accused, persuaded him to obtain and to sell liquor to the officer was no defense. In *Bauer v. Commonwealth*, 138 Va. 463, 115 S. E. 514, it was held that initiative on the part of one violating the liquor laws not being essential to charge him with criminal responsibility, it is no defense that the accused was induced to violate such laws for the sole purpose of prosecuting him. These cases, however, do not represent the general ruling, with which the principal case is in accord. S. E., '30.

EVIDENCE—SHOP BOOK RULE.—Plaintiff and defendant entered into a contract by which defendant was to manufacture plaintiff's cloth into shirts. Plaintiff sued defendant for breach of this contract. Defendant filed a counterclaim, al-