

904.

ROBBERY—IS A FELONY—CONVICTED PERSONS BETWEEN AGES OF 16 AND 21 SHALL BE SENTENCED TO THE REFORMATORY.

SYLLABUS:

*Robbery as defined by Section 12432, General Code, is a felony and by the express terms of Section 2131, General Code, "male persons between the ages of sixteen and twenty-one years convicted of felony shall be sentenced to the reformatory instead of the penitentiary."*

COLUMBUS, OHIO, August 23, 1927.

*Ohio Board of Clemency, Columbus, Ohio.*

GENTLEMEN:—This will acknowledge receipt of your letter dated August 17, 1927, which reads:

"Section 2131 provides that male persons between the ages of sixteen and twenty-one years, convicted of felony shall be *sentenced* to the Ohio State Reformatory instead of the Ohio Penitentiary.

Section 12432, prescribes that robbers in the first degree shall be *imprisoned* in the penitentiary not less than ten years nor more than twenty-five years.

In March, 1925, Judge Charles W. Hoffman of Hamilton County, refused to grant a divorce to the wife of a prisoner in the Reformatory by holding that the Reformatory is not a penitentiary. She carried the case to the Court of Appeals and that Court sustained the judgment of the lower Court, holding that whereas, originally, the Reformatory was an intermediate penitentiary, the legislation of 1891 changed this and so the court held that imprisonment in the Ohio State Reformatory was not a valid grounds for divorce since the *Ohio State Reformatory* is not a penitentiary. This decision has never been annulled by a superior court.

Question 1. Did the Legislature in enacting Section 12432 in 1921, antedating the legislation of 1891 by thirty years, intend to classify robbery with the two major crimes, murder in the first or second degree and intend that robbers, notwithstanding where they may have been sentenced, should be *imprisoned only in the Ohio Penitentiary?*

Question 2. In other words, can a court lawfully sentence a robber minor between sixteen and twenty-one years to a Reformatory whose very name would be a misnomer if any number of its inmates had to be imprisoned there for a period of ten years?"

There are no common law offenses in Ohio. No act or omission, however, hurtful or immoral in its tendencies is punishable as a crime in Ohio, unless such act or omission is especially enjoined or prohibited by the statute laws of the state. Offenses generally are divided into felonies and misdemeanors and by the terms of Section 12372, General Code are classified as follows:

"Offenses which may be punished by death, or by imprisonment in the penitentiary, are felonies; all other offenses are misdemeanors."

Section 12432, General Code, to which you refer was originally Section 6818, Revised Statutes (33 v. 33) and when first enacted read as follows:

"Whoever, by force and violence, or by putting in fear, steals and takes from the person of another any thing of value, is guilty of robbery, and shall be imprisoned in the penitentiary not more than fifteen years, nor less than one year."

It is a matter of common knowledge that in 1921, and for some time prior thereto, this state and the entire nation was experiencing a so-called "crime wave." There was a justifiable demand on the part of the citizenship that something be done to suppress crime and in particular the crime of robbery. In response to that demand the legislature, on May 12, 1921, (109 v. 612) amended Section 12342, supra, to read as it now appears, viz.:

"Whoever, by force or violence, or by putting in fear, steals and takes from the person of another any thing of value is guilty of robbery, and shall be imprisoned in the penitentiary not less than ten years nor more than twenty-five years."

Your attention is directed to the fact that the legislature did not change the *place where* such imprisonment was to be suffered, but only changed the *period of time* for which such imprisonment should be imposed upon one convicted of robbery. In other words, the place of commitment of one convicted of robbery now is the same as before the amendment of 1921, the only change being that the period of duration of such imprisonment has been greatly increased.

If you will examine the various sections of the General Code which define the penalties for the various felonies you will note that all provide that the person convicted "*shall be imprisoned in the penitentiary*" for a specified number of years.

The act creating the Ohio State Reformatory was passed April 14, 1884 (81 v. 206) and is entitled:

"An Act to establish an intermediate penitentiary, and to provide for the appointment of a board of managers to locate, construct and manage the same."

Section 7 thereof provides:

"The warden shall have supervision of the penitentiary, subject to the approval of the board of managers, and shall receive and take into said penitentiary all criminals not known to have been previously sentenced to a state penitentiary or reformatory in this or any other state or country, on conviction of any criminal offense in any court having jurisdiction thereof; and all courts shall sentence criminals, convicted for first offense, except those sentenced for murder in the second degree, to said intermediate penitentiary."

By an act passed April 30, 1891, (88 v. 418) the name of said institution was changed to the Ohio State Reformatory, which name it now bears.

Section 2131, General Code, provides who may be sentenced to the Ohio State Reformatory, and reads as follows:

"The superintendent shall receive all male criminals between the ages

of sixteen and thirty years sentenced to the reformatory, if they are not known to have been previously sentenced to a state prison. Male persons between the ages of sixteen and twenty-one years convicted of felony shall be sentenced to the reformatory instead of the penitentiary. Such persons between the ages of twenty-one and thirty years may be sentenced to the reformatory if the court passing sentence deems them amenable to reformatory methods. No person convicted of murder in the first or second degree shall be sentenced or transferred to the reformatory."

The fundamental rule in all statutory construction is to ascertain and give effect to the intention of the legislature and the object to be attained by the particular enactments. In so far as the statutes relating to the Ohio Penitentiary and the Ohio State Reformatory relate to the same subject matter, the incarceration of prisoners convicted of felonies, it is evident that they are statutes in *pari materia* and must be so construed.

In its legislation pertaining to the Ohio State Reformatory it is very evident that the General Assembly was engaged in adopting a system of laws controlling a particular subject. The legislature, by the terms of Section 2131, *supra*, has specified who shall be sentenced to the Ohio State Reformatory, *viz.*; "Male persons between the ages of sixteen and twenty-one years *convicted of felony*" and "such persons (i. e., males convicted of felony) between the ages of twenty-one and thirty years" as "the court passing sentence deems \* \* \* amenable to reformatory methods." However, "no person convicted of murder in the first or second degrees shall be sentenced or transferred to the reformatory.

Construing these several statutes in *pari materia* the general policy evinced by the legislature discloses that the provisions of Section 2131, *supra*, relating to who may be sentenced to the Ohio State Reformatory supersedes the general statutes defining the various felonies containing provisions relating to imprisonment generally. The statutes relating to the Ohio State Reformatory contain provisions relating to imprisonment of a particular class of prisoners, *viz.*, those of the ages prescribed.

The general rule upon the subject is stated in 36 Cyc. 1151 as follows:

"Where there is one statute dealing with a subject in general comprehensive terms and another dealing with a part of the same subject in a more minute and definite way, the two should be read together and harmonized, if possible, with a view to giving effect to consistent legislative policy; but to the extent of any necessary repugnancy between them, the special will prevail over the general statute."

In the case of *City of Cincinnati v. Holmes*, 56 O. S. 104, Judge Minshall, at page 115, adverts to the following rule of construction in such cases:

"I know of no rule of construction of statutes of more uniform application than that later or more specific statutes do, as a general rule, supersede the former and more general statutes, so far as the new and specific provisions go."

It is apparent that the provisions of Section 2131, *supra*, relating to the commitment of a certain class of felons to the Ohio State Reformatory, are inconsistent with the several statutes defining the penalties for the various felonies. They are in conflict with one another in their respective provisions relating to where imprisonment shall be had. They must be read together and harmonized. It there-

fore follows that under the express provisions of Section 2131, *supra*, the several statutes defining penalties for the various felonies do not apply to the extent of such inconsistency and in so far as they relate to the commitment of male felons between the ages of sixteen and thirty years.

I note that in your letter you refer to the holding of Judge Hoffman of Hamilton County that imprisonment in the Ohio State Reformatory was not grounds for divorce within the meaning of Section 11979, General Code, which prescribes that "the imprisonment of either party in a penitentiary under sentence thereto" shall be a cause for divorce. I have not discussed this case for the reason that it is manifest that what is a penitentiary within the meaning of the section pertaining to divorce and alimony does not in any way affect the question of the place of imprisonment of persons convicted of felony.

In view of the foregoing and answering your questions specifically I am of the opinion that:

1. Your first question must be answered in the negative.
2. Robbery as defined by Section 12432, General Code, is a felony and by the express terms of Section 2131, General Code, "male persons between the ages of sixteen and twenty-one years convicted of felony shall be sentenced to the reformatory instead of the penitentiary."

Respectfully,  
EDWARD C. TURNER,  
*Attorney General.*

905.

PAROLE—CONCERNING PRISONER WHO HAS BEEN PAROLED FROM OHIO PENITENTIARY AND WHILE ON PAROLE COMMITS A NEW CRIME—LONDON PRISON FARM DISCUSSED.

SYLLABUS:

1. *In contemplation of law inmates of the London Prison Farm are inmates of the Ohio Penitentiary and it is immaterial whether they are paroled by the Ohio Board of Clemency from the London Prison Farm direct or retransferred to the Ohio Penitentiary before being released on parole.*

2. *When a prisoner sentenced to the Ohio Penitentiary and transferred to the London Prison Farm, has been subsequently paroled and while upon parole commits a new crime and is resentenced to the Ohio Penitentiary, the provisions of Section 2175, General Code, to the effect that he "shall serve a second sentence, to begin at the termination of his service under the first or former sentence, or the annulment thereof," apply.*

COLUMBUS, OHIO, August 23, 1927.

*Ohio Board of Clemency, Columbus, Ohio.*

GENTLEMEN:—This will acknowledge receipt of your letter of recent date which reads as follows:

"On July 9, 1927, Section 1835-1 became effective, creating the London Prison Farm as a separate institution, not under the control of the Warden of the Ohio Penitentiary. From time to time Ohio Penitentiary prisoners