

386.

APPROVAL, BONDS OF GREEN RURAL SCHOOL DISTRICT, GALLIA COUNTY, OHIO—\$1,200.00.

COLUMBUS, OHIO, April 26, 1927.

Industrial Commission of Ohio, Columbus, Ohio.

387.

APPROVAL, BONDS OF VILLAGE OF BEXLEY, FRANKLIN COUNTY OHIO—\$8,380.00.

COLUMBUS, OHIO, April 26, 1927.

Industrial Commission of Ohio, Columbus, Ohio.

388.

APPROVAL, BONDS OF CITY OF NILES, TRUMBULL COUNTY, OHIO—\$5,275.00.

COLUMBUS, OHIO, April 26, 1927.

Industrial Commission of Ohio, Columbus, Ohio.

389.

PROBATE COURT—AUTHORITY TO COMMIT TO LIMA STATE HOSPITAL—WHEN PROBATE COURT HAS JURISDICTION.

SYLLABUS:

The provisions of Section 13531, General Code, contemplate commitment to the general hospital for the insane of the district and not to the Lima state hospital.

The probate court has jurisdiction to commit to the Lima state hospital:—(1) When a person tried upon an indictment for an offense is acquitted on the sole ground t'at he was insane and such fact is found by the jury in its verdict, and a certificate of such fact is filed in the probate court. (2) Persons adjudged to be insane who were previous co victed of any of the crimes enumerated in Section 2003, General Code.

Unless such insane person has the status of a person in either of the two classes enumerated, the probate court does not have jurisdiction to commit to the Lima state hospital.

COLUMBUS, OHIO, April 26, 1927.

HON. JOHN E. HARPER, *Director, Department of Public Welfare, Columbus, Ohio.*

DEAR SIR:—This will acknowledge receipt of your recent communication which reads:

“May we have your opinion on the question of the jurisdiction of probate courts to commit insane persons to the Lima State Hospital for the criminal insane?”

From an examination of the General Code, we find the following:

Section 2003, providing for the commitment to Lima of insane persons convicted of certain crimes.

Sections 13577 and 13614, persons accused of crime but not indicted and persons under indictment but believed to be insane; giving the *common pleas* court jurisdiction to commit the accused when found to be insane, to Lima.

Sections 13608-13610, persons indicted, but considered to be insane: providing for the impaneling of a jury to try the question of sanity of one accused of crime and upon a finding of insanity, jurisdiction to commit is transferred to the probate court.

Sections 13612 and 13679, procedure when a person tried upon indictment is acquitted on the grounds of insanity; delivery to probate court for commitment to Lima.

It is the belief of this department that unless the preliminary steps, necessary to give the probate court jurisdiction, are taken as outlined by the sections above referred to, such court in passing upon the insanity of a person accused of crime is without authority to commit to Lima but must commit to the general hospital for the insane in the district of the patient's residence. However, as evidenced by communications addressed to this department, there appears to be a diversity of opinion among the probate judges as to their authority to commit to the Lima State Hospital rather than to a general hospital for the insane.

We cite particularly the following case: One, S. D. was indicted in Stark county for forging checks. Under Sections 13530 and 13531 G. C., notice was given by a citizen of the county to the sheriff that he believed the said S. D. to be insane. The sheriff filed such notice with the probate court, the court held an inquest, two physicians appointed by the court certifying to the insanity of the man, and the court committed him to the Lima State Hospital. It is noted that Section 13531 provides ‘if, before indictment of a person confined in jail charged with an offense.’ As S. D. had been indicted could action be legally taken under this section? Also, do not Sections 13530 and 13531 contemplate commitment to the general hospital for the insane of the district and not to the Lima State Hospital?

May we have your opinion on these two points and also on the general question of the jurisdiction of probate courts in commitments to Lima? As the special case cited above is pending, an early reply will be appreciated.”

Section 2003, General Code, reads as follows:

“When in an inquest of lunacy the judge of the probate court finds to be insane a person theretofore convicted of arson, assault, rape, robbery, burglary, homicide, or attempt to commit such acts, he shall commit such

person to the Lima State Hospital, if ready for the reception of inmates, which fact shall be certified to the courts by the Governor and Secretary of State."

It is noted that the probate court under the provisions of this section has jurisdiction to commit an insane person to the Lima State Hospital if said person has been theretofore convicted of arson, or any of the other crimes named, or of attempts to commit such acts.

Section 13577, General Code, provides that:

"If a grand jury upon investigation of a person accused of crime finds such person to be insane, it shall report such finding to the court of common pleas. Such court shall order a jury to be impaneled to try whether or not the accused is sane at the time of such impaneling, and such court and jury shall proceed in a like manner as provided by law when the question of the sanity of a person indicted for an offense is raised at any time before sentence. If such person is then found to be insane, he shall be committed to the Lima State Hospital until restored to reason. * * *"

Section 13614, General Code, provides as follows:

"If a person under indictment appears to be insane, proceedings shall be had as provided for persons not indicted because of insanity. If such person is found to be insane he shall be committed to the Lima State Hospital until restored to reason when the superintendent thereof shall notify the prosecuting attorney of the proper county, who shall proceed, as provided by law, with the trial of such person under indictment."

Section 13608, General Code, provides:

"When the attorney of a person indicted for an offense suggests to the court in which such indictment is pending, and before sentence, that such person is not then sane, and a certificate of a reputable physician to that effect is presented to the court, such court shall order a jury to be impaneled to try whether or not the accused is sane at the time of such impaneling. Thereupon a time shall be fixed for a trial, a jury shall be drawn from the jury-box, and a venire issued, unless the prosecuting attorney or the attorney of the accused demand a struck jury, in which case such jury shall be selected and summoned as required by law. The jury shall be sworn to try the question whether the accused is or is not sane and a true verdict given according to the law and evidence, and, on the trial, the accused shall hold the affirmative."

Section 13610, General Code, provides:

"* * * If the jury finds him to be not sane, that fact shall be certified by the clerk of the probate court, and the accused, until restored to reason, shall be dealt with by such court as upon inquest had. If he is discharged, the bond given for his support and safe-keeping shall contain a condition that, when restored to reason, he shall answer to the offense charged in the indictment, or of which he has been convicted, at the next term of the court thereafter and abide the order of such court."

Section 13612, General Code, provides that:

"When a person tried upon an indictment for an offense is acquitted on the sole ground that he was insane, such fact shall be found by the jury in the verdict, and certified by the clerk to the probate court. Such person shall not be discharged, but forthwith delivered to the probate court, to be proceeded against upon the charge of lunacy, and the verdict shall be prima facie evidence of his insanity."

Section 13679, General Code, provides that:

"When a person tried upon an indictment for an offense is acquitted on the sole ground that he was insane, and proceedings are had thereafter as provided by law, he shall be committed to the Lima State Hospital. * * *"

In the case of *State ex rel vs. Clark, Superintendent*, 102 O. S. 404, in construing these various sections the court says:

"Upon the first reading of the statutes they appear somewhat cloudy and confusing. Upon a careful study of them, they become comparatively clear. It must be admitted that inquests of insanity have been generally committed to the probate court, but there are particular provisions dealing with inquests of insanity which arise or would in due course arise in certain proceedings touching indictments had in cases in the court of common pleas. * * * It will be observed that by Section 13577, above quoted, it is provided: 'Such court (the common pleas court) and jury shall proceed in a like manner as provided by law when the question of sanity of the person indicted for an offense is raised at any time before sentence.'

It is admitted by the parties hereto that this evidently refers to Section 13608, an old statute that has been in force for a half century or more. It should be noted that not all of Section 13608 is adopted by the later section, Section 13577, but only such parts of it as relate as to how the court and jury shall proceed 'to try whether or not the accused is sane at the time of such impaneling.'

Now Section 13608, and the sections following, deal specifically with the impaneling of a jury, the burden of proof, the number that must concur in the verdict, and other matters touching the procedure to determine the sanity or insanity.

It is admitted that all those matters were complied with in this case, and when the jury determined the sanity or insanity, then the provisions of Section 13608 had fulfilled their purpose so far as they are in any wise referred to or incorporated in Section 13577.

Section 13577 continues specifically and imperatively to direct what shall be done on the return of a verdict that the prisoner is insane. 'He shall be committed to the Lima State Hospital until restored to reason.' And the question here is, Who shall commit him?

The common pleas court is a court of general jurisdiction over crimes and those charged with crimes. It is admitted of course, that this is beyond the jurisdiction vested in the probate court. It would be the sheerest folly after a statute provides that a grand jury investigating crimes within a county shall make a report to the court of common pleas of such matters, and further expressly and explicitly provides for the trial of the issue of sanity or insanity in said court, to presume that upon a finding of the jury upon such issue, the court would be powerless to finally commit the person to an institution of the state, but must turn him over to some other court for that ministerial and mandatory duty. And this court would not so hold, unless the language of

the statute was so clear as to deprive the court of common pleas of jurisdiction to act.

The more so because the order of commitment is one that is purely ministerial and could in no wise be prejudicial to the accused.

We hold therefore:

First. That Sections 13577 and 13614, General Code, are later expressions of the legislative will than Section 13608 et seq., and where they are in conflict, the later sections must control.

Second. That the only parts of Section 13608 et seq., adopted by Sections 13577 and 13614, are the parts that relate to the procedure to determine the sanity or insanity of the accused. Said parts in no wise control Sections 13577 and 13614 in the order to commit the person so found to be insane.

Third. That the fair and reasonable intendment of the general assembly of Ohio under the later, more specific and particular statutes dealing with persons accused of crime in the court of common pleas was to give to that court full jurisdiction to fully hear and determine the questions, and to make all final orders necessary upon the determination of such questions, as provided by said statutes."

Section 1985 reads as follows:

"The Lima State Hospital shall be used for the custody, care and special treatment of insane persons of the following classes:

1. Persons who became insane while in the state reformatory or the penitentiary.
2. Dangerous insane persons in other state hospitals.
3. Persons accused of crime, but not indicted because of insanity.
4. Persons indicted, but found to be insane.
5. Persons acquitted because of insanity.
6. Persons adjudged to be insane who were previously convicted of crime.
7. Such other insane persons as may be directed by law."

It is evident that class one and class two need not be considered in this instance. As to the third class—persons accused of crime but not indicted because of insanity Section 13577 applies. In this instance the grand jury upon finding an accused person insane reports such finding to the common pleas court and if such person under the provisions of said section be found to be insane, he shall be committed to the Lima State Hospital by the common pleas court until restored to reason.

The fourth class—persons indicted but found to be insane; in this instance Section 13614 applies and under said last named section if the person under indictment appears to be insane, proceedings shall be had as provided for persons not indicted because of insanity, which proceedings are prescribed in Section 13577, and the common pleas court has jurisdiction to commit to the Lima State Hospital.

In the fifth class—persons acquitted because of insanity, Section 13612 applies and provides that when a person tried upon an indictment for an offense is acquitted on the sole ground that he was insane and such fact found by the jury in the verdict, shall be certified to the probate court. Such person shall not be discharged but forthwith delivered to the probate court to be proceeded against on the charge of lunacy and if found to be insane by the probate court, said court shall under the provisions of Section 13679, General Code, commit him to the Lima State Hospital.

In the sixth class—persons adjudged to be insane who were previously convicted of certain crimes, Section 2003 applies and provides that:

"When in an inquest of lunacy the judge of the probate court finds to be insane a person theretofore convicted of arson, * * * or attempts to commit such acts, said probate court shall commit such person to the Lima State Hospital."

In the seventh class, provision is made for the admission of such other insane person as may be directed by law.

From a consideration of the herein cited statutes, it is evident that the probate court has jurisdiction to commit to the Lima State Hospital persons in the fifth class as enumerated in Section 1985, General Code. That is, those acquitted because of insanity. It is also evident that the probate court may commit to the Lima State Hospital persons within the sixth class of Section 1985, General Code, that is, those persons adjudged to be insane who were previously convicted of crime, and that jurisdiction for commitment of persons in the other classes under said Section 1985 comes within the jurisdiction of the common pleas court.

It would therefore appear that the probate court has no jurisdiction to commit insane persons to the Lima State Hospital unless such person or persons, have been acquitted because of insanity, or such persons adjudged to be insane have been previously convicted of the crimes named in Section 2003, General Code. Unless such insane person has the status of persons in either of the two classes enumerated, the probate court does not have jurisdiction to commit to the Lima State Hospital, but must commit to some other hospital for the insane, in the district of the patient's residence.

In the special case you mention the person was indicted for forgery, and the sheriff notified the probate court that he believed the prisoner to be insane, and the court held an inquest and found said person to be insane and committed him to the Lima State Hospital. It would appear in this case as though the sheriff and probate court were attempting to act under the provisions of Sections 13530 and 13531, General Code. Section 13531 provides that:

"If, before the indictment of a person confined in jail charged with an offense, notice in writing is given by a citizen to the sheriff or jailer that such person was insane or an idiot at the time the offense was committed, or has since become insane, such sheriff or jailer shall forthwith give the notices and an examining court shall be held as provided in the next preceding section. If such judge find that such person was an idiot when he committed the offense, or was then or still is insane, or afterward became or still is insane, he shall, at his discretion, proceed as required by law after inquest held."

It is noted, however, that the provisions of this section apply where a person is confined in jail charged with an offense, but before indictment, and would not be applicable to the case you cite. Section 13530 was formerly Section 48 of the Criminal Code. In the case of *Newton Kendall vs. David Tarbell*, judge of the court of common pleas of Brown county, 24 O. S. 196, it was held that:

"Section 48 of the Criminal Code, which provides for the holding of an examining court at the instance of a person committed to jail charged with the commission of any crime or offense, does not apply to persons committed on indictment."

In the case you mention the person comes within the class of persons indicted and found to be insane. But in this class Section 13614, General Code, applies and provides that the common pleas court shall have jurisdiction in such cases.

Section 13531, General Code, was formerly Sections 52 and 53 of an Act to pro-

vide for the Uniform Government and Better Regulation of the Lunatic Asylums of the state and the care of idiots and the insane: 71 O. L. 46. Said Section 52 read as follows:

“If any person in prison charged with an offense, * * * shall at any time before indictment is found against him, at the request of any citizen, be brought before an examining court, in the manner provided by the forty-eighth section of the Code of Criminal Procedure, and if it shall be found by the court that such person was an idiot or was insane when he committed the offense, the said court, at its discretion, shall proceed, and the prisoner shall be dealt with in like manner as other idiots or lunatics are required to be after inquest held.”

Said Section 53 as amended, 72 O. L., page 80, provided, after the prisoner was found to be insane, that:

“The prisoner shall for the time being and until restored to reason, be dealt with in like manner as other lunatics are required to be after inquest held.”

The procedure prescribed in said Section 53 of said act is carried into Section 13531 of the General Code, and it is therein provided that, if the court finds the prisoner to be insane:

“He shall, at his discretion, proceed as required by law after inquest held.”

In considering the provisions as originally enacted in said Section 53 and carried into Section 13531, General Code, it is evident that the legislature intended that under said provisions the probate court, after inquest held and finding the prisoner to be insane, shall commit said prisoner as other lunatics are required to be committed, and that the provisions of said section contemplate commitment to the general hospital for the insane of the district and not to the Lima State Hospital.

It is therefore my opinion that:

- (1) In the specific case mentioned in your communication wherein the probate court issued a commitment to the Lima State Hospital of a prisoner who had been indicted, that said court was without authority and jurisdiction to make said commitment.
- (2) The provisions of Section 13531, General Code, contemplate commitment to the general hospital for the insane of the district and not to the Lima State Hospital.
- (3) The probate court has jurisdiction to commit to the Lima State Hospital:—

(1) When a person tried upon an indictment for an offense is acquitted on the sole ground that he was insane and such fact is found by the jury in its verdict, and a certificate of such fact is filed in the probate court.

(2) Persons adjudged to be insane who were previously convicted of any of the crimes enumerated in Section 2003, General Code.

Unless such insane person has the status of a person in either of the two classes enumerated, the probate court does not have jurisdiction to commit to the Lima State Hospital.

Respectfully,
EDWARD C. TURNER,
Attorney General.