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Use of Confessions and Admissions of a Codefendant in Washington

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COMMENT

USE OF CONFESSIONS AND ADMISSIONS OF A CODEFENDANT IN WASHINGTON

CHARLES W ELICKER II

As a general proposition, anything that a party to an action has voluntarily said at any time, if relevant, will be admissible against him. In the case of two types of such statements, ordinary direct admissions and voluntary confessions, the legal principles and rationales underlying their admissibility are so well-recognized and self-evident as to occasion little confusion and less need for comment. However, in cases where a person is sought to be charged with a statement made by someone else (the so-called implied or adoptive admissions and the various types of vicarious admissions), the underlying rationalizations and applications of the rules are more difficult and subtle, although equally valid and well-recognized.

Adoptive admissions are those statements which a person "adopts"

as his own through his conduct—in most instances, through his silence. If a statement inimicable to the interests of a person is made in that person's presence, under such circumstances that, were it untrue, he would deny it, the person's nondenial will be deemed a tacit admission of the truth of the statements alleged against him. In *State v McCullum*[1] the defendant was forced by police officers to sit and listen to a confession being made by the man alleged to be his confederate. The defendant made no comment either affirming or denying the statements. The court felt that, under the circumstances, the defendant could not be charged with having adopted the other's confession. In a later case, *State v. McKenzie*,[2] the court laid down the following rule, which seems logical and not unduly harsh. "The silence of an accused under arrest is not to be taken as a tacit admission of accusatory statements made in his presence, but if he makes an equivocal reply or one susceptible of being interpreted as an admission, the statement and answer or comment may be admitted."[3] These general observations as to adoptive admissions are presented here in their criminal aspect, but similar rules apply to civil actions.[4]

Vicarious admissions differ from adoptive admissions in several important particulars. Here the key word is "privity" The theory is that, under some circumstances, the declarant and the person sought to be charged are so united in design, purpose, obligation, title, or interest that it would not be unfair or illogical to consider the act or statement of the declarant as the act or statement of the person sought to be charged, even though the latter was not present when the statemen was being made and was perhaps unaware that it was being made. The courts speak here in terms of each of the persons having a like motive to tell the truth, and it would seem that in the situations to which applications of the rule are restricted, (principal-agent, co-

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[1] 18 Wash. 394, 51 Pac. 1044 (1897)

[2] 184 Wash. 32, 49 P.(2d) 1115 (1935).

[3] This rule has not had easy sailing in recent years. In State v. Redwine, 23 Wn.(2d) 467, 161 P.(2d) 205 (1945), (noted in 20 WASH. L. REV. 234), the court reaffirmed the rule announced in the *McKenzie* case, assuming in the opinion, *arguendo*, that the defendant was under arrest, and held that the trial court erred in admitting evidence of accusatory statements toward the defendant. However, the court refused to reverse and held (four judges dissenting) that it would not reverse in such cases unless it appeared to the court on appeal that the exclusion of the evidence would *probably* have resulted in a different verdict. In State v. Robinson, 24 Wn.(2d) 909, P.(2d) 986 (1946), upon more mature consideration the court overruled the *Redwine* case, and in the last word on the subject, State v. Bauers, 25 Wn.(2d) 825, 172 P.(2d) 279 (1946), the rule of the *McKenzie* case was again affirmed.

[4] Beck v. Dye, 200 Wash. 1, 92 P.(2d) 1113 (1939), wherein the court recognizes the adoptive admissions rule in civil cases.

promisors, joint tort-feasors, co-conspirators, etc.), the reasoning is sound enough. Although this discussion will be concerned principally with the admissibility of declarations of codefendants and co-conspirators in criminal cases, it should be noted that the rules developed apply equally to civil cases, and in particular to those involving joint tort-feasors.[5]

In the recent case of *State v. Goodwin*[6] the Supreme Court of Washington had occasion to review many of its prior decisions on several of these points, and arrived at some interesting results. Goodwin and another were jointly charged and tried for larceny It appeared that the other accused had confessed, and his confession was read in evidence, at which time counsel for Goodwin objected to its admission unless the jury be instructed that it was not to be considered against Goodwin. The trial court overruled the objection, stating that it would admit the exhibit for all purposes. Upon appeal the court reviewed eleven of its prior decisions, found them to be inconsistent, and, reversing and granting a new trial, stated the rule to be:

> Confessions of one defendant jointly tried with another may be introduced in evidence, but—in such cases the defendant or defendants who did not make the confession should be protected by proper statements to the jury that the confession should only be considered against him or them.

The court then overruled, without enumeration, "the cited cases which laid down the rule contrary to the one just announced." In addition the court noted that neither the crime of conspiracy as defined by the statute,[7] nor the common law crime of conspiracy had been charged, and then added at the very end of the opinion this rather cryptic statement: "This holding is not intended to apply to cases in which the crime of conspiracy has been charged and a proper foundation has been laid for the introduction of the statements of a co-conspirator."

The result reached by the court in this case seems logical and sound. It goes without saying that the admissions of a defendant are not admissible against his codefendant solely by virtue of their position as coparties in the trial.[8] As to the nonconfessing defendant, the other's confession is pure hearsay, and there is also the strong possibility that

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[5] *See, e.g.*, Sova v. First National Bank of Ferndale, 18 Wn.(2d) 88, 138 P.(2d) 181 (1943), a civil conspiracy case, wherein the court announces a rule as to the admissibility of the statements of co-conspirators identical with the rule applied in criminal cases.

[6] 29 Wn.(2d) 276, 186 P.(2d) 935 (1947).

[7] REM. REV. STAT. § 2382 [P P C. § 113-99].

[8] WIGMORE, EVIDENCE § 1076 (3rd ed. 1940).

the confessing codefendant is attempting to exculpate himself at the expense of his nonconfessing codefendant or to convince the authorities that he was the dupe of a more culpable participant.[9] As satisfactory as is the result at which the court arrived in the *Goodwin* case, a result which, according to the virtually unanimous voice of the authorities, is correct and orthodox,[10] yet the process employed by the court in arriving at that result may be questionable. For purposes of clarity in attempting to analyze this process, the eleven cases cited by the court in arriving at its decision will be discussed in three groups: (a) Confessions of a Codefendant, (b) Confession of a Principal on the Trial of the Accessory, and (c) Statements of Co-conspirators.

(a) *Confessions of Codefendants.* Four of the cases discussed by the court are precisely in point.[11] In each of these the confession of one defendant was sought to be used against his codefendant, and in each of them the court either ruled or expressly assumed that such evidence could not be so used, but that, in the event of a joint trial, the confession may be admitted in evidence, provided the jury is instructed to use it only against the person making it. In *State v. McCullum*[12] the court found that McCullum had not adopted his alleged confederate's confession, and, accordingly, reversed the trial court for admitting it in evidence against the defendant. In *State v. Tommy*[13] Tommy's codefendant had confessed to the murder and evidence of that confession was admitted. Error was predicated on the fact that the trial court's instructions did not mention that the confession could not be used against Tommy On appeal the court assumed that the confession could not be used against Tommy, but did not reverse, since the court felt that the trial court's instructions on the point had been reasonably clear, and, in addition, the state had expressly disavowed any use of it

[9] *See, e.g.,* State v. Clark, 156 Wash. 47, 286 Pac. 69 (1930), where the confessing codefendant was acquitted of first-degree murder and found guilty of only second-degree murder by the same jury which found her codefendant (who in this case was actually bordering on feeble-mindedness) guilty of first-degree murder.

[10] McKELVEY, EVIDENCE 151 (5th ed. 1944). Also the leading case of Sparf v. United States, 156 U. S. 51, 39 L. Ed. 343 (1894), where the court laid down the following rule at page 56 "After the conspiracy has come to an end the admissions of one conspirator by way of narrative of past facts are not admissible in evidence against the others. The same rule is applicable where the evidence does not show that the killing was pursuant to a conspiracy, but yet was by the joint act of the defendants."

[11] These are. State v. McCullum, 18 Wash. 394, 51 Pac. 1044 (1897) State v. Tommy, 19 Wash. 270, 53 Pac. 157 (1898), State v. Ashe, 182 Wash. 598, 48 P.(2d) 213 (1935), State v. Crossman, 189 Wash. 124, 63 P.(2d) 934 (1937). State v. Beebe, 66 Wash. 463, 120 Pac. 122 (1912) is possibly in point, but the result reached in that case is also consistent with the *Goodwin* case, as will be pointed out later.

[12] Note 11, *supra.*

[13] Note 11, *supra.*

against Tommy In *State v. Ashe*[14] Ashe's codefendant, one Head, had made damaging admissions to a police officer after his arrest. Although Head did not testify, the officer testified as to these admissions, which implicated Ashe and were denied by him. Upon appeal the court held the evidence to be admissible, saying by way of *dictum* that the evidence would probably have been inadmissible had Ashe been on trial alone. While the result announced in the *Ashe* case seems at first sight to be inconsistent with the rule as declared in the *Goodwin* case, a careful reading of Judge Steinert's concurring opinion in the *Ashe* case reveals that the record sent to the Supreme Court showed that the statement by Head was admitted in evidence *as to him only*. As Judge Steinert put it: "Were this made to appear in the opinion, there would be no violation of the rule." In *State v. Crossman*,[15] in a joint trial for larceny where one of the defendants had confessed, the court held it proper to read the entire confession to the jury if the trial court instructs the jury that the confession can be considered only against the person making it.

It is apparent that these four cases are orthodox and consistent. Hence, it will be necessary to examine the remaining seven cases in an effort to determine whence arose the *apparent* inconsistency

(b) *Confession of the Principal on the Trial of the Accessory*. In three of the cases cited by the court, the confession of one codefendant was used against another.[16] Although seemingly inconsistent with the *Goodwin* case, the results in those cases can be reconciled with the rule as laid down in that case, but this can be done only in the light of the historical background relative to principals and accessories. From a time prior to any of the cases here under consideration the distinction between principals and accessories before the fact had been abolished in Washington.[17] The statute abolishing this distinction declares that all persons shall be proceeded against and punished as principals.[18] This statutory language notwithstanding, there still remain in this state the common law distinctions relative to the commission of the act, the language of the indictment or information, and the proof at the trial. According to the construction placed on our statute by the Washington court the prosecution must establish two essential and inde-

[14] Note 11, *supra*.
[15] Note 11, *supra*.
[16] These are: State v. Mann, 39 Wash. 144, 81 Pac. 561 (1905), State v. Vane, 105 Wash. 421, 177 Pac. 728 (1919), State v. Lyda, 129 Wash. 298, 225 Pac. 55 (1924).
[17] *See, e.g.*, Rem. and Ball. Code of 1897, § 6782.
[18] REM. REV. STAT. § 2260; [P P C. § 112-13].

pendent facts on either the joint or separate trial of one who is actually an accessory before the fact:[19] (1) that the defendant's principal committed this crime; (2) that this defendant-accessory aided and abetted him. Thus it can be seen that in a very real sense the guilt of the accessory is predicated upon the guilt of the alleged principal. This means that the prosecution must convince this jury that the alleged principal has committed the crime charged, and the fact that another jury has acquitted the principal does not operate as a bar to the trial of the accessory.[20] But if the principal and the accessory are tried jointly, it would seem that the jury would not be permitted to acquit the principal and convict the accessory, for if the principal is not guilty as charged, then neither can the accessory be guilty as charged.

With this in mind the Washington court has held that any evidence tending to show that the principal has in fact committed the crime and which would be admissible against the principal on his separate trial is admissible against the accessory, whether he be tried jointly or separately.[21] As to whether a judgment of conviction against the principal could be used for this purpose would depend on the court's interpretation of the law of judgments, but, by analogy, if acquittal of the principal is not proof of his innocence, conviction of the principal would probably not be proof of his guilt, although it might be *prima facie* evidence of that fact. Be that as it may, it is clear that the confession of the principal would be admissible evidence of his guilt on the accessory's trial.[22] But it must be remembered that this confession is not being admitted for all purposes, not for the purpose of showing that this defendant aided and abetted, but solely for the purpose of showing that someone else, *i.e.*, the principal, has committed a crime, and the jury ought to be so instructed. Consider for a moment the complicated situation arising when the principal and his accessory are tried jointly and the principal has confessed. In such an instance the court would have to instruct the jury that it might consider the confession as evidence of the guilt of the principal, but insofar as the accessory's guilt was concerned, the confession could only be considered on the issue of the commission of a crime. It is evident that here there is substantial danger of misuse of the evidence by the jury. Our court has recognized this, and in *State v. Lyda*,[23] where a witness was testifying to a

[19] State v. Nikolich, 137 Wash. 62, 241 Pac. 664 (1925).
[20] State v. Gifford, 19 Wash. 464, 53 Pac. 709 (1898).
[21] State v. Mann, note 16, *supra*.
[22] WIGMORE, EVIDENCE, § 1079(c) (3rd ed. 1940).
[23] Note 16, *supra*.

confession made by the alleged principal, the court, granting that the evidence was admissible and of probative value insofar as the issue of the commission of a crime was concerned, insisted that the witness make no unnecessary reference to the defendant-accessory, pointing out the obvious fact that what the principal told the witness regarding the accessory's aiding and abetting was inadmissible hearsay

Two other cases cited by the court in the *Goodwin* case fall into the principal-accessory pattern. In *State v. Mann*,[24] the first of these cases where this point was raised, a husband was being separately tried for aiding and abetting his wife in burning the family barn for the insurance money The trial court admitted evidence of the confession of the wife to the crime. The defendant objected on the ground that the conspiracy had come to an end when she made those statements, and that, accordingly, their admission could not be justified under the so-called "conspiracy rule." The court met this objection by declaring that conspiracy wasn't involved in the slightest and that this evidence was admissible on the issue of whether or not the wife had burned the barn. This case was thought to be inconsistent with the *Goodwin* case, and was apparently overruled, as was the case of *State v. Vane*,[25] where the facts brought the case within the principal-accessory pattern, the court admitting the principal's confession on the accessory's separate trial.

(c) *Statements of Co-conspirators.* There yet remain four cases for consideration.[26] In each of these cases the problem is not that of the admissibility of the *confession* of anyone, but rather the admissibility of the *statements* of a certain class of persons, namely, those who are co-conspirators with the defendant on trial. The general rule relative to such evidence has been succinctly stated as follows:

> Where there is evidence tending to show a community of design between two or more persons for the performance of an unlawful act, the acts or statements of one conspirator spoken or performed in furtherance of the objects of such conspiracy are admissible in evidence in a prosecution against another of the conspirators for the offense alleged to have resulted therefrom, although such statements were made out of the presence of the particular defendant on trial.[27]

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[24] Note 16, *supra.*
[25] Note 16, *supra.*
[26] These cases are. State v. Payne, 10 Wash. 545, 39 Pac. 157 (1895), State v. Dilley, 44 Wash. 207, 87 Pac. 133 (1906), State v. Williams, 62 Wash. 286, 113 Pac. 780 (1911), State v. Beebe, 66 Wash. 463, 120 Pac. 122 (1912).
[27] ABBOTT'S CRIMINAL TRIAL PRACTICE 1133 (4th ed. 1939).

This is a rule which is universally recognized as sound and logical.[28] By the better, and majority, view conspiracy need not be formally charged in the pleadings in order for the prosecution to invoke the benefit of this rule of evidence, but it is sufficient if a conspiracy be shown to exist in fact or be developed by the proof.[29] This was the view of the Washington court in *State v. Williams*.[30] It is of interest to note that the Model Code of Evidence broadens the above-quoted rule considerably and does away with the "in furtherance of the conspiracy" requirement.[31] The question of the actual existence of the conspiracy is one of fact for the jury.[32] The prosecution must make out a *prima facie* showing of conspiracy to the satisfaction of the trial judge (not, as the defendant contended in *State v. McGonigle*,[33] beyond a reasonable doubt), and then may bring in evidence of the declarations and acts of the co-conspirators.[34] In his discretion the trial judge may admit evidence of the declarations of the alleged co-conspirators before sufficient proof of the conspiracy is given, the state undertaking to furnish such proof at a subsequent stage of the trial.[35] The jury is to be told what a conspiracy is, that it does not necessarily mean a formal agreement among the parties, that it is often incapable of direct proof and may be established by circumstantial evidence, and then the jury is permitted to decide whether such circumstances exist that an unlawful combination may be inferred.[36] If the jury so finds, it may then consider the declarations against all the members of the conspiracy Where the alleged conspiracy was carried into effect by the acts of a riotous assembly or seditious society, one who is shown to be associated with or a member of the mob or society will be charged with

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[28] McKelvey, Evidence 151 (5th ed. 1944) In fact the rule is embodied in some state statutes, *e.g.*, Ore. Comp. Laws (Ann.) § 2-28, 1940. California and Montana have like provisions.

[29] The cases are collected in 66 A. L. R. 1311.

[30] 62 Wash. 286, 113 Pac. 780 (1911).

[31] Model Code of Evidence (1942), Rule 508. "Evidence of a hearsay declaration is admissible against a party to the action if the judge finds that:—(b) the party and the declarant were participants in a plan to commit a crime or civil wrong and the hearsay declaration was relevant to the plan or its subject matter and was made while the plan was in existence and before its execution was complete."

Comment on Clause (b) Clause (b) does not accept the rule as generally stated with reference to declarations of co-conspirators and willful tortfeasors, which holds the declarations inadmissible unless made in furtherance of the conspiracy.

[32] State v. Dilley, 44 Wash. 207, 87 Pac. 133 (1906), State v. Dix, 33 Wash. 405, 74 Pac. 570 (1903).

[33] 144 Wash. 252, 258 Pac. 16 (1927)

[34] State v. Wappenstein, 67 Wash. 502, 121 Pac. 989 (1912)

[35] State v. Dilley, note 26, *supra*, and State v. Wappenstein, note 34, *supra*.

[36] State v. McCann, 16 Wash. 249, 47 Pac. 443 (1896) Also State v. Dilley, note 26, *supra*, and State v. Wappenstein, note 34, *supra*.

the statements of all the persons in the mob or society, whether identified or not.[37]

It is interesting to note at this point that the court, in at least two instances, has somewhat enlarged the normal conception of the word "conspiracy" In *State v. Dilley*[38] the state sought to introduce in evidence incriminating notes apparently passed between two of the defendants after their arrest. This was permitted by the court on the theory that "the conspiracy comprehended not only the actual offense of robbery, but from the beginning extended to and included a common design or scheme to fabricate a defense," and, since under this interpretation the notes were in furtherance of the conspiracy, they were admissible. In *State v. Larson,*[39] where three persons were jointly charged with larceny, the court admitted evidence of statements made during the course of a quarrel arising out of the division of the loot, since the court felt that the conspiracy included not only the obtaining of the money but the division of it among the conspirators. Therefore all that occurred with reference to a division of the money came prior to the termination of the conspiracy and was admissible.[40]

It does not follow from this that a conspiracy will exist in every case where two or more persons unite to commit a tort or crime. In *State v. Beebe,*[41] where, in a boundary dispute, a mother and her daughter shot their neighbor, the court was unable to "find in the record any evidence tending to show concerted action on their part looking to the injury of the deceased," and, hence, on the separate trial of the mother, refused to admit evidence of prior statements made by the daughter.

With this background an analysis will now be made of the final four cases cited by the court in the *Goodwin* case. It must be admitted that

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[37] WIGMORE, EVIDENCE § 1079 (3rd ed. 1940). Also State v. Lowery, 104 Wash. 520, 177 Pac. 355 (1918), where pamphlets containing inflammatory IWW propaganda were held to be admissible against one of its members on trial for criminal anarchy, the theory being that they were statements of co-conspirators.

[38] Note 26, *supra.*

[39] 187 Wash. 96, 59 P.(2d) 1119 (1936).

[40] The case of State v. Baker, 69 Wash. 589, 125 Pac. 1016 (1912), is of interest in this connection. In that case the complaining witness was attacked by two female robbers. A police officer answered his cries for help and apprehended one of the women, instructing the prosecuting witness to hold her while he pursued the other woman. The captured robber offered the complaining witness money to release her, which he refused to do, whereupon she jabbed him with her hatpin and made her escape. On the trial of the other woman the complaining witness was permitted to testify as to this scene, and on appeal the court held this to be admissible, since "there was a concert of action between the two women in the commission of the offense." It is at least arguable as to whether these statements were made during the life of and in furtherance of the conspiracy.

[41] Note 26, *supra.*

the opinion in *State v. Payne*[42] is somewhat confusing, although the result seems clear enough. In that case three men were jointly charged with murder and given separate trials, and error was based upon the fact that the trial court had permitted evidence to be introduced as to the acts and statements of those joined with Payne at a time prior to the assault. The court held the evidence to be admissible, announcing three grounds for its decision, the third of which was that there had been a clear showing of a concert of action to terrorize the citizens of a town, and by reason of this concert of action between Payne and those joined with him in the information the statements of one were admissible against all. Although the word "conspiracy" is not mentioned here, it seems quite clear that the court was thinking in terms of the conspiracy rule. The court in the *Goodwin* case listed *State v. Payne* as reaching a result inconsistent with the rule there announced, and, hence, apparently deemed it necessary to overrule it.

In *State v. Dilley*[43] the defendants were jointly charged and tried for robbery, the theory of the prosecution being that the defendants had formed a conspiracy to rob the complaining witness. The court was satisfied with the *prima facie* showing of conspiracy made out by the state, and approved the admission of evidence of conversations between one of the defendants and the complaining witness out of the presence of the other defendants. It seems clear that the statements were made in furtherance of the conspiracy and hence were rightly admitted under the conspiracy rule. Here, too, the court in the *Goodwin* case apparently considered this case inconsistent and considered it necessary to overrule it.

In *State v. Williams*[44] there was a joint charge of larceny, with the two defendants being tried separately On the trial of the one evidence was admitted concerning conversations had between the other coindictee and the complaining witness, again out of the defendant's presence. Here, too, it seems clear that the statements were in furtherance of the conspiracy, and the court so held, pointing out that, for the purposes of this rule or evidence, it makes no difference whether the defendants are tried jointly or separately

Finally in *State v Beebe*[45] Mrs. Beebe and her daughter were jointly charged and separately tried for murder. Although it would appear

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[42] Note 26, *supra.*
[43] Note 26, *supra.*
[44] Note 26, *supra.*
[45] Note 26, *supra.*

that Mrs. Beebe was actually an accessory, the court did not treat her as such, stating that her guilt was in no wise dependent upon that of her daughter, and approved her being tried as a principal.[46] Evidence was sought to be introduced of prior threats made by the daughter toward the deceased and also of admissions by the daughter subsequent to the crime. The court correctly pointed out that the daughter's subsequent admissions were not admissible against her mother, a result entirely consistent with the *Goodwin* case. However, with the following statement the court refused to admit evidence of the prior threats: "We are unable to find in the record any evidence tending to show concerted action on their part looking to the injury of the deceased." It would seem to be almost necessarily inferrable from this that, had the court been able to find evidence of concerted action, *i.e.*, a conspiracy, it would have admitted evidence of these prior threats.

Conclusion. Prior to the *Goodwin* case the state of the Washington law relative to this problem seemed to be clear, well-settled, and entirely consistent with the majority rules throughout the country, viz..

1. Generally speaking the confession of one defendant is not admissible against another, although if jointly tried the confession is admissible against the one making it, the jury being instructed as to its limited use.

2. In cases where the proof shows that the defendant is in fact an aider and abetter, though charged as a principal, the courts have recognized that, to prove him guilty, his principal must also be shown to be guilty, and thus have admitted evidence of the principal's guilt, including his admissions and confessions, on this one narrow issue, with proper limiting instructions.

3. If a conspiracy among several persons is shown to exist, even though conspiracy is not charged or is not the *gravamen* of the offense, the statements of one conspirator, made during the life of the conspiracy and in furtherance of its objects, are admissible against all his co-conspirators. This rule by its very terms serves to exclude the post-crime confessions of a co-conspirator.

What was the impact of the decision in the *Goodwin* case on this apparently consistent and well-settled body of law? Of one thing we

[46] Dean Wigmore, in Section 1077, criticizes the case as being unsound, stating that in his opinion Mrs. Beebe was a true accessory before the fact, which would make the prior threats and subsequent admissions admissible under the theory of State v. Mann, note 16, *supra*. A reading of the charge as contained in the opinion would seem to lend strong support to his views.

can be certain, the confession of one defendant cannot be used substantively against his codefendant. But what is the meaning of the court's statement at the end of the opinion to the effect that the rule announced is not to apply in cases where conspiracy has been charged and a proper foundation laid for the statements of co-conspirators? Does it mean that the confession of conspirator, made after the consummation of the crime, will henceforth be admissible against his co-conspirators if the prosecution charges and proves conspiracy? One might easily deduce this, yet such a result would be contrary to all modern authority Or does the statement mean that, in order to take advantage of the conspiracy rule conspiracy must be formally charged in the pleadings? If so, that too is a radical departure from prior decisions and constitutes the adoption of a rule prevailing in only a small minority of jurisdictions. And when the court overruled all inconsistent cases did it mean to overrule the principal-accessory cases and those cases involving conspiracy, which may seem at first sight to be inconsistent, but which are clearly not so? If so, this result would also seem to be unsound and inconsistent with prevailing doctrine. Perhaps what is intended is merely a clear *caveat* that the rule announced in the *Goodwin* case is not to be deemed, without further consideration, applicable to situations not presented in that case. So narrowly considered the holding itself on the facts of that case is orthodox enough and consistent with the prior cases.

The University of Washington Law School takes pleasure in announcing that Dean William L. Prosser, of the University of California School of Jurisprudence, will be the speaker at the Annual Law School Banquet, to be held in Seattle February 26, 1949.