Perhaps the two lines of decision can be reconciled to a large extent by making the burden of proving prejudice or absence of prejudice depend upon the specific nature of the error complained of, and the facts of the case as a whole, as they appear on the record. Attempts have been made to state a more exact rule which will throw the burden on one party or the other according to the nature of the error and other circumstances. Some of these statements are in substance as follows: depriving the defendant of a substantial right raises a presumption of prejudice, *Territory v. Prather,* 18 N. M. 19, 145 P. 1086 (1915); if the record as a whole shows a *material* error, prejudice will be presumed, unless it appears from the record that the error was harmless, *Miller v. State,* 174 Ind. 255, 91 N. E. 930 (1910); *probable* prejudice must be shown by appellant before a conviction will be reversed, *State v. Driscoll,* 106 Ohio St. 33, 138 N. E. 376 (1922). Contrast with this last rule that stated in *State v. Sage* (N. J. 1923) 122 A. 827, that the record must show that error was, or *might* have been prejudicial. F. W. F. '27.

CRIMINAL LAW—DOUBLE JEOPARDY—IDENTITY OF OFFENSES.—Defendant, driving an automobile, hit two girls simultaneously, killing one and injuring the other. He was acquitted of manslaughter for the death of one, and later tried for atrocious assault on the other. *Held,* plea of *autrefois acquit* was good under the circumstances; where several persons are injured by the same act, only one, if any, crime is committed. *State v. Cosgrove,* (N. J. 1927) 135 A. 871.

The nicety of the distinction between cases where injuries to more than one person result from what is in law a single crime, and those where substantially the same act constitutes several crimes against different persons, has led to some conflict of authority. Where several persons are killed or injured in the same affray, but by separate shots or blows, the authorities agree that more than one crime has been committed, and an acquittal or conviction of one homicide or assault does not bar a subsequent prosecution for another. *Augustine v. State,* 41 Tex. Cr. R. 59, 52 S. W. 77, 96 A. S. R. 765 (1899) (acquittal); *State v. Temple,* 194 Mo. 228, 92 S. W. 494 (1906) (conviction). A few cases hold that, even where the identical shot or blow injures several persons, there may be a prosecution for a separate crime for each person injured. *Vaughan v. Commonwealth,* 2 Va. Cas. 273 (1821); *Commonwealth v. Browning,* 146 Ky. 770, 143 S. W. 407 (1912). But by a slightly larger number of cases the contrary conclusion is reached, at least where the first prosecution results in a conviction. *State v. Damon,* 2 Tyler (Vt.) 387 (1803); *Clem v. State,* 42 Ind. 420, 13 Am. Rep. 369 (1873); *Sadberry v. State,* 39 Tex. Cr. R. 466, 46 S. W. 639 (1898). On the other hand, there are cases which go so far as to hold that, even though several persons are killed or wounded by distinct shots, only one crime has been committed, if the shots are fired in such rapid succession as to be practically continuous, and there is no intention to commit distinct acts of violence. *Moss v. State,* 16 Ala. App. 34, 75 So. 179 (1917) (acquittal on first trial); *Fews v. State,* 1 Ga. App. 122, 58 S. E. 64 (1907) (conviction on first trial). This seems to be the case especially where the shots are fired in self-defense and both of them hit persons other than those for whom they were intended. *State v. Houchins* (W. Va. 1926) 134 S. E. 740 (acquittal). But *State v. Corbett,* 117 S. C. 356, 109 S. E. 133, 20 A. L. R. 328 (1921) is *contra,* though the shots were alleged to have been fired in self-defense. (See also note, 20 A. L. R. 341, and cases cited.) The rule for determining when the defense of double jeopardy may be pleaded is usually stated to be, whether the proof of facts alleged in the one indictment would sustain a conviction on the other indictment. *Commonwealth v. Browning, supra.* But such cases as *Moss v. State, supra,* apply the test of whether there was an intention to in-

flict separate injuries; and the application of this test, in *People v. Warren,* 1 Parker Cr. R. (N. Y.) 338 (1852), leads to the result that where two persons are killed by the same act of poisoning an acquittal of the poisoning of one is no bar to prosecution for the poisoning of the other, because there was a separate intent to poison each victim.

As to whether there may be more than one prosecution, as for separate assaults, where the defendant shoots at one person and hits another instead, there is another conflict of authority. For the view that such prosecutions would constitute double jeopardy, see *Spanell v. State,* 83 Tex. Cr. R. 418, 203 S. W. 357 (1918); for the contrary view, see *People v. Brannon,* 70 Cal. App. 225, 233 P. 88 (1925). The preponderance of authority seems to favor the former holding. (See also note, 2 A. L. R. 606, and cases cited.)

F. W. F. '27.

CRIMINAL LAW—SEARCHES AND SEIZURES—INTOXICATING LIQUORS.—Plaintiff arrested and part of his stock seized under warrant issued six days previously, with no evidence of any unavoidable delay in the service thereof. *Held,* that process must be executed in reasonable time where no time is named in process or law authorizing it, and intoxicating liquors seized under a search warrant so delayed in service is inadmissible as evidence. *State v. Wiedeman,* (Ill. 1926) 154 N. E. 432.

The matter of what constitutes a reasonable time is regulated in many states by statute, and penalties are imposed on officers who fail to comply with the requirement. In states where the period of reasonableness is not regulated by statute, it is determined according to the circumstances of the case, such as the distance to the place to be searched, the condition of the roads, the facilities for travel, and the demands made upon the time of the officer. If there is any delay, it must be entirely unavoidable. In *State v. Guthrie,* 38 Atl. 368, where the delay was three days, and could not be explained, the warrant was held void. In *Weston v. Carr.* 71 Me. 356 a delay of more than 24 hours was held unreasonable.

All searches and seizures must be reasonable (Const. Art. 2, Sect. 6), and a search made under a warrant which has become *functus officio,* by reason of its not having been served until six days after it was issued, is not reasonable. *Link v. Commonwealth,* 199 Ky. 778; CORNELIUS ON SEARCH AND SEIZURES, sect. 141. Where intoxicating liquors have been obtained under a search warrant not meeting the requirements of the Constitution, they will not be admissible in evidence. All the authorities seem to be agreed on these points, and the Supreme Court of Missouri unhesitatingly confirms them in *State v. Hude,* 297 Mo. 213.

D. C. J., '28.

EVIDENCE—EXPERT TESTIMONY—ADMISSIBILITY OF DECEPTION TESTS.—In a prosecution for rape the deposition of a doctor that he administered a "truth-telling serum" to the defendant and while under its influence the defendant denied guilt was offered in evidence on behalf of the defendant. The testimony was excluded. *Held,* the evidence was properly excluded as unworthy of consideration. *State v. Hudson,* (Mo. 1926), 289 S. W. 920.

The past two decades have witnessed increasing interest in the results of scientific study of human behavior. In the field of criminology only tentative deductions have been made and none of the deception tests yet devised support a claim of infallibility. Suggested tests are the "association word and time reaction"; the "respiration" or "internal excitement"; the "galvanometric"; and the "systolic and diastolic blood-pressures." For a discussion of these see, William M. Marston, "Psychological Possibilities in the Deception Tests," 11