SURVEY OF IOWA LAW

IOWA CRIMINAL LAW

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During the period covered by this survey,[1] the Iowa supreme court handed down significant opinions in fifty-five criminal appeals.[2] Several of the decisions in this period have some effect on the substantive criminal law of the state, but the greater number dealt with procedural matters. Two non-criminal cases during this period,[3] involving commitment, may also be of some interest in that they point out the difference between the criminal process and civil commitment.

I. SUBSTANTIVE LAW

A. *General Observations*

One of the more interesting cases dealing with substantive law is *State v. Nickelson*,[4] a prosecution for embezzling mortgaged property. The indictment was phrased in the language of the 1962 Code,[5] although at the time of the alleged offense, the 1962 Code section had been repealed and replaced by another section similar in purpose but differing in terminology, part of the act adopting the Uniform Commercial Code.[6] The court held that this section was in conflict with Article III, Section 29 of the Iowa Constitution, which requires that the subject of every act be expressed in the title of the act. An examination of the title to this act gave the court no indication that somewhere

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[1] The period covered by this survey is that between March 1969 and March 1970, and includes cases which can be found in volumes 165 through 173 of the Northwestern Reporter, Second Series.

[2] Two of these cases, *State v. Spier*, 173 N.W.2d 854 (Iowa 1970) and *State v. Holliday*, 169 N.W.2d 768 (Iowa 1969) have been noted in this or previous issues of the Drake Law Review. Three other cases, *State v. Wisniewski*, 171 N.W.2d 882 (Iowa 1969), *State v. Evans*, 169 N.W.2d 200 (Iowa 1969), and *State v. Galloway*, 167 N.W.2d 89 (Iowa 1969) were prosecutions which were caught in the "backwash" from *Stump v. Bennett*, 398 F.2d 111 (8th Cir.), *cert. denied*, 393 U.S. 1001 (1968). These cases were tried prior to *Stump*, but were pending on appeal when *Stump* was decided. Although the Iowa supreme court did not consider *Stump* to be retroactive in effect, the court was unwilling to hold that *Stump* had no effect on pending appeals, and as the alibi instruction which was fatal in *Stump* had also been given in these three cases, they were reversed and remanded for further proceedings consistent with that opinion.

[3] State *ex rel.* Fulton v. Sheetz, 166 N.W.2d 874 (Iowa 1969); State v. Allan, 166 N.W.2d 752 (Iowa 1969).

[4] 169 N.W.2d 832 (Iowa 1969).

[5] IOWA CODE § 710.12 (1962).

[6] Ch. 413, § 10153 [1965] Iowa Acts 799.

in this rather long and involved piece of legislation was there included a provision by which certain conduct was made a felony. The conviction was reversed and remanded with directions to dismiss the charge. Although the court did not specifically so state, it appears that Iowa is at present without a statute making it a crime for a debtor to fraudulently dispose of property in which someone else has a security interest. The repealer of the former code section is apparently valid, since the title to the act does make reference to repealers of inconsistent laws, and it was a conviction under the old code section which was reversed here.

State v. Johnson[7] was a prosecution for assault with intent to commit murder which resulted in a conviction of assault with intent to commit manslaughter. Defendant challenged his conviction on the grounds that the jury had reached an impossible verdict, and under the circumstances of the case it must be conceded that the verdict was somewhat unusual. The usual situation in which one might expect a verdict of guilty of assault with intent to commit manslaughter is where the assault was made with the purpose of killing someone, but where adequate provocation existed so that if the defendant had been successful the crime would have been voluntary manslaughter rather than murder. In the *Johnson* case, the shot was fired by the defendant while he was in the act of perpetrating a robbery. Had death resulted, it appears that consideration of voluntary manslaughter would have been out of the question. However, the court held that it was proper for the jury to return such a verdict. This verdict, though difficult to justify under the law, may be tolerated as an exercise of the jury's power to mitigate guilt where, in its judgment, mitigating factors are present. However, in this case there was conflicting evidence as to who fired the shot in question. Under such circumstances the court must be alert to the possibility that the jury may be compromising with the standard of proof, rather than finding the existence of mitigating circumstances.

In *State v. McNeal*,[8] a statute which made it a felony for persons who are unlawfully or riotously assembled to perpetrate any premeditated but non-felonious injury on the person of another was challenged on constitutional grounds.[9] The statute was challenged for vagueness, for imposing cruel and unusual punishment and for not being uniform in operation. It is not clear just what arguments were offered in support of these allegations, but the court seems most concerned with the fact that the statute in question combines two misdemeanors—riot[10] and simple assault[11]—providing that whenever these two relatively minor offenses are committed in conjunction with one another the resulting combined offense is raised to the status of a felony. The court dismissed the argument based on cruel and unusual punishment as having no merit, which is not surprising in view of the fact that the described process is

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7 167 N.W.2d 696 (Iowa 1969).
8 167 N.W.2d 674 (Iowa 1969).
9 IOWA CODE § 743.9 (1966).
10 *Id.* § 743.2.
11 *Id.* § 694.1.

not at all unique in the law.[12] The court dismissed the argument that the statute was not uniform in operation with the observation that infrequent use of the statute by state officers did not make it non-uniform. The argument that the statute was vague and ambiguous, which seems to have been based upon the use of the term "felony," was dismissed with the observation that it makes no difference whether the premeditated injury was the result of a felony or not. The trial court's refusal to let the defense counsel argue to the jury, that if it found defendant's acts amounted to a felonious assault rather than to the simple assault it must find the defendant not guilty of the charge, was approved.

B. *Defenses*

Several of the cases decided during the period involved the special defenses of justification, intoxication and insanity. The two justification cases were argued primarily on the evaluation of the evidence that was before the court. In the first of these,[13] the defendant, who admitted that she had killed her husband with a knife, claimed that she had done so in self-defense. There was no direct testimony as to the circumstances of the homicide. Defendant offered testimony as to the violent character of her husband, and there was direct testimony that the two had been quarreling rather bitterly. The state's evidence was to the effect that she had initially provoked the quarrel, that she had made no attempt to avoid her husband during the evening although there was an opportunity for her to do so, that she was a strong, 190-pound woman who had in the past always been able to take care of herself in fights with her husband, and that she had willingly pressed the quarrel immediately prior to the time of the killing. The court held that it was not necessary for the state to prove by direct evidence that the accused did not act in self-defense, but that circumstantial evidence may justify the jury in finding either that she had willingly provoked or continued the quarrel or that she did not reasonably believe that she needed to use this amount of force to protect herself from her husband, either of which would have nullified the self-defense argument in this case. In the second of these cases,[14] an assault and battery prosecution, the court reaffirmed the defendant's right to come to the aid of his brother when he was about to be injured by another. However, under the facts as they appeared in this case, the defendant did not come upon the scene until after the danger to his brother had occurred, and it appeared that he had acted more in retaliation for the assault which had been made upon his brother than in defense against such assault. The conviction was affirmed.

The similarity, as well as the dissimilarity, between the defenses of insanity and intoxication was pointed out in the case of *State v. Booth*,[15] a rape

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[12] For example, the two misdemeanors—petty larceny and simple assault—when combined constitute the felony robbery.

[13] State v. Badgett, 167 N.W.2d 680 (Iowa 1969).

[14] State v. Brown, 168 N.W.2d 922 (Iowa 1969).

[15] 169 N.W.2d 869 (Iowa 1969).

case in which the defendant offered evidence of his mental instability and his intoxication as defense. In discussing the evidence as to his mental instability, the court reaffirmed its adherence to the M'Naghten rule for insanity, and found that although the defendant obviously had some sort of mental disorder, he was still able to distinguish between right and wrong and therefore was not insane under the law of this state. Additional testimony was to the effect that the defendant had consumed a considerable amount of alcohol and that as a result of this he was not able to distinguish between right and wrong at the time of the crime. The court rejected this defense, pointing out that the inability to tell right from wrong must be the result of a mental disease, not of intoxication. However, the court recognized that the excessive use of intoxicating beverages may sometimes produce an abnormal mental condition which may be considered as insanity. The court also recognized the fact that in some cases intoxication may be accepted as evidence tending to negate the existence of a necessary specific intent for a particular crime. Neither of these propositions helped the defendant in this case. His intoxication was shown to have produced a temporary condition only. As to the question of specific intent, the court stated that the crime of rape requires none, a proposition which most certainly has some validity but which cannot be accepted completely. In two other cases, the court reaffirmed its position that intoxication is a defense only to the extent that it tends to negate the existence of a required specific intent.[16] In neither case were the defendants successful. It is plain that the defense will always be a difficult one to establish.

II. Procedural Law

A. *Evidentiary Matters*

The cases raising procedural questions include several raising constitutional objections to the admission of evidence. The *Miranda* question was involved in two cases where the defendants had made incriminating admissions while somewhat under the influence of intoxicants. In the first of these,[17] the defendant had been stopped by a highway patrolman while traveling the interstate highway on foot. In response to the officer's questions as to what he was doing there, the defendant made some statements which the officer recognized as connecting him with a recent robbery. At this time, the *Miranda* warnings were given and the defendant said no more. The court ruled that statements made to the police officer prior to the time when the police officer had any reason to believe that the defendant had any connection with the robbery were admissible, since the investigation had not reached the accusatory stage at this time. In the second of these cases[18] the defendant had been given the required warnings and was in the process of being booked

[16] State v. Church, 169 N.W.2d 889 (Iowa 1969); State v. Hunley, 167 N.W.2d 645 (Iowa 1969).
[17] State v. Church, 169 N.W.2d 889 (Iowa 1969).
[18] State v. Mayhew, 170 N.W.2d 608 (Iowa 1969).

on a homicide charge. Defendant was offered the opportunity to make a phone call and refused to do so. At this point, the booking officer asked the defendant if he knew what he was being booked for, and the defendant then proceeded to make the incriminating statements. The court approved the admission of these statements into evidence, overruling the defendant's objection that he was too intoxicated at the time to waive his rights to remain silent or to have an attorney present at his interrogation.

In the three search-and-seizure cases decided during this period, the prosecution was successful in securing the admission of evidence which had been seized without the benefit of a search warrant. In the first of these cases,[19] the defendant was convicted of the illegal possession of marijuana, which had been found by the police in a search of the defendant's apartment. The search was made with the consent and cooperation of the defendant's cotenant, who had initially informed the police that the defendant had the marijuana. The permission of the cotenant to make the search was held to justify the search without a warrant, and the evidence was properly admitted. In another case,[20] the defendant himself gave permission to conduct a search. Police officers, who had information that the defendant was intoxicated and was carrying a gun, stopped the car which he was driving, required him to get out of the car and searched him for the weapon. Defendant was admittedly intoxicated at the time. The officers asked him where his gun was. He denied having a gun and invited them to search the car. The gun in question was found in the resulting search. The search and seizure was found to be justified by the court on two grounds: first, that the defendant had consented to a search of his car; and second, that the police were in the process of making a lawful arrest based on probable cause. The third case[21] also involved a search made incident to an arrest. However, in this case, the defendant's home was searched at the time of his arrest and evidence tending to link him with a theft was discovered. The court ruled that under the circumstances the search was reasonable even though it might have been practical for the arresting officers to obtain a search warrant prior to making the search. Beyond stating that what is reasonable depends on the circumstances of each case, the court did not discuss this point.

B. *Arrests and Release*

On the subject of arrest, it was held in *State v. Medina*,[22] a prosecution for resisting execution of process where the defendant resisted being taken into custody by a deputy sheriff who had an apparently valid warrant for his arrest, that the actual validity of the warrant was irrelevant to the conviction. Thus, the court held that a person may not legally resist the service of legal

19 State v. Freese, 166 N.W.2d 785 (Iowa 1969).
20 State v. Baych, 169 N.W.2d 578 (Iowa 1969).
21 State v. Harty, 167 N.W.2d 665 (Iowa 1969).
22 165 N.W.2d 777 (Iowa 1969).

process which is valid on its face. It is questionable as to whether this rule would be carried over to the search-and-seizure cases, authorizing the admission of evidence seized incidental to an arrest made pursuant to an invalid warrant.

Recent legislation directing the release of accused persons on their own recognizance under certain circumstances was the subject of two cases.[23] In the first of these,[24] the defendant, who had been charged with the rape of a fourteen-year-old girl, was unable to post a seventy-five hundred dollar bond which had been set, and stated that he could not post ten percent of that bond even if the court would permit him to do so. He requested to be released on his own recognizance, but the court denied this request. On appeal, the supreme court stated that the release of an accused on his own recognizance was a matter within the discretion of the magistrate, and in the light of the circumstances present in this case that discretion had not been abused. At a hearing on such request, it had developed that the defendant had been charged on a number of occasions with assault, and that his conduct in several instances in the past indicated a propensity for avoiding arrest and custody. Therefore, the supreme court affirmed the denial of the defendant's request. In the second of these cases,[25] the defendant, who had been charged with robbery with aggravation, was refused his request to be released on his own recognizance or, in the alternative, that he be allowed to post ten percent of the ten thousand dollar bail which had been set. The defendant's record of a number of arrests, coupled with his lack of any deep roots in the community, were given as the reason for denial of the requests. The supreme court affirmed the trial court's action on this request, stating once again that the matter is within the discretion of the magistrate.

C. *Discovery*

Five decisions involved requests by the defendants for information in the hands of the prosecution. The supreme court affirmed (1) the trial court's refusal to permit the defense counsel to examine a parole agent with respect to statements and conclusions contained in the pre-trial report;[26] (2) a denial of the defendant's motion that he be furnished with a list of police officers involved in the investigation of the alleged crime;[27] and (3) the denial of defendant's request for a statement made by a witness before the grand jury which the defense wished to offer as evidence.[28] The court upheld the trial court's order in a murder case which directed the state to produce statements, reports, photographs and physical evidence for the defendant's inspection prior to trial, but annulled that part of the order which directed the state to deliver to

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23 Ch. 420 [1967] Iowa Acts 804.
24 State v. Fenton, 170 N.W.2d 678 (Iowa 1969).
25 State v. Gaines, 171 N.W.2d 303 (Iowa 1969).
26 State v. Cole, 168 N.W.2d 37 (Iowa 1969).
27 State v. Redding, 169 N.W.2d 788 (Iowa 1969).
28 State v. Schlater, 170 N.W.2d 601 (Iowa 1969).

the defense statements of all witnesses expected to testify and to produce copies of police reports.[29] The supreme court reversed the trial court's action in another murder case denying a request of defense counsel for a copy of an investigating police officer's report, and ordered an *in camera* hearing.[30] This case will no doubt have considerable effect upon future criminal prosecutions in the state, since the court noted with approval the recently decided case of *Jencks v. United States*,[31] in which the United States Supreme Court adopted a rule permitting the defense to obtain, for impeachment purposes, statements made to government agents by government witnesses. The Iowa supreme court indicated that a similar rule will be followed in this state in future cases.

D. *Pleading*

The recently adopted procedure for including habitual criminal charges in indictments and informations was the subject of two cases in which diametrically-opposed arguments were made by the defendants.[32] In the first,[33] the defendant was charged with breaking and entering in one information and with being an habitual criminal in a second information. The breaking and entering information made no reference to the habitual criminal charge and the habitual criminal information made no reference to the breaking and entering charge. In answer to the defendant's objections that this was not proper form and was misleading, the court replied that it certainly had not misled the defendant and that the variance from the approved form was not fatal to the prosecution of this charge. In the second case,[34] the defendant objected to the fact that both the habitual criminal charge and the charge of going armed with intent were included in the same indictment, claiming that this was an improper inclusion of more than one charge in the same indictment. The court noted that the procedure in this case was identical with that provided in the relevant code section, and that it could not be challenged on those grounds. In addition, the court stated that the habitual criminal charge was not an additional offense that was being charged on the indictment, but was merely a matter pleaded in aggravation of the primary charge.

E. *Guilty Pleas*

In four cases the supreme court considered the question of whether the trial court had properly accepted a guilty plea. In the first of these decisions,[35] no substantial question appeared, since it was apparent from the records that the trial judge had extensively interrogated the defendant as to the voluntariness

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29 State v. Eads, 166 N.W.2d 766 (Iowa 1969).
30 State v. Mayhew, 170 N.W.2d 608 (Iowa 1969).
31 353 U.S. 657 (1957).
32 IOWA CODE §§ 769.6, 773.3 (1966).
33 State v. Robinson, 165 N.W.2d 802 (Iowa 1969).
34 State v. Hunley, 167 N.W.2d 645 (Iowa 1969).
35 State v. Walker, 166 N.W.2d 799 (Iowa 1969).

of his plea and as to whether he understood its effect. In the second case,[36] the defendant, who appears to have been adequately represented by counsel, entered a guilty plea to a charge of rape. The defendant appears to have thoroughly discussed the matter with his attorney, who apparently was somewhat dubious as to the advisability of entering this plea, but who did so upon the defendant's insistence. The trial court, apparently relying upon the fact that the defendant was acting with advice of counsel, accepted the guilty plea after doing no more than inquiring of the defendant as to whether it was his desire to plead guilty. The supreme court reversed the conviction, stating that the trial court should make its own inquiries to satisfy itself that the defendant was fully aware of the charge which was being made against him, of his right to a jury trial and of the maximum possible sentence which he might receive on entering this plea of guilty. In doing so the court adopted the standards which have recently been formulated by the American Bar Association Project on Minimum Standards for Criminal Justice. In the third case,[37] the court affirmed the conviction upon a guilty plea to a charge of operating a motor vehicle while intoxicated, even though the American Bar Association's standards had not been complied with. The court's reason was that the defendant had not entered his motion to withdraw his guilty plea until after the sentence had been pronounced, and had stated that his only reason for wishing to withdraw his guilty plea was that he thought that the fine which had been imposed against him was excessive. The court reaffirmed its position that the defendant should not be permitted to enter a guilty plea, gamble on the sentence and then move to withdraw the plea if he is disappointed with the sentence which he receives. In the fourth decision,[38] a similar question was presented, with the additional factor that the defendant's attorney had had some conversation with the counsel for the state which gave him the impression that probation would be recommended. Subsequently the state changed its mind and no probation was recommended. The court recognized that the problem was somewhat different than one in which the defendant is merely disappointed in the sentence which he receives, and noted that where a guilty plea is induced by promises of leniency careful inquiry must be made to determine the voluntariness of the confession. However, the court was convinced that the confession was not induced by the promises of leniency in this instance.

F. *Waiving Jury Trial*

In *State v. Pilcher*,[39] the defendant, who was being tried for rape, attempted to waive his right to a jury and have the case tried to the court. This request was refused, and he appealed. The supreme court stated that all criminal trials must be tried to a jury and that the defendant has no right to

[36] State v. Sisco, 169 N.W.2d 542 (Iowa 1969).
[37] State v. Vantrump, 170 N.W.2d 453 (Iowa 1969).
[38] State v. Lindsey, 171 N.W.2d 859 (Iowa 1969).
[39] 171 N.W.2d 251 (Iowa 1969).

waive jury trial. In *State v. Grove*,[40] defendant had been charged with breaking and entering, and on trial had been discharged after a verdict was directed for him. One week later he was tried on the charge of forgery. Five members of the jury at the second trial had also served on the jury at the first trial. This was known to the defendant and his attorney at the time of the trial, but they had made no objection to it. The supreme court held that the absence of any challenge by the defendant to these jurors, whose connection with the first trial was known to him, constituted a waiver of the right, which he clearly possessed, to object to such jurors at his second trial.

G. *Sentencing*

Several cases involved the sentencing procedure. The first of these,[41] a recidivist proceeding following conviction on a charge of lewd and lascivious acts with a child, concerned the admission of evidence to establish prior convictions. The information read to the jury charged four prior convictions, but the court later excluded proof of two of these. It was held that reading the entire information to the jury was not error even though subsequently no proof was offered as to two of the convictions alleged in the information. The second decision[42] was a denial of probation based upon a parole officer's report, challenged because of the court's refusal to permit the defendant's attorney to examine the parole officer to determine the validity of the conclusions stated in such report. The supreme court held that pre-trial reports are confidential and that the court may validly exercise its discretion not to permit the parole officer to be cross examined. In *State v. Pilcher*,[43] the defendant had been convicted for rape and sentenced to fifty years in the penitentiary. This conviction was reversed and the case was remanded for a new trial. On remand the defendant was again found guilty, and sentenced to sixty years in the penitentiary. On appeal the court stated that it is error to increase the sentence at the second trial unless it is affirmatively shown that there is a valid reason for giving him a more severe sentence the second time. The sentence was reduced to the original fifty years. In *State v. Young*,[44] defendant, along with three other men, was convicted of the non-forcible rape of a fourteen year old girl. Defendant objected that the length of his sentence—twenty years—was excessive in view of the fact that one of the other men involved in the rape received only five years, a second only three years, and the charge against the third was dismissed. The supreme court held that, in light of the evidence that it was the defendant who was primarily responsible for involving the girl in the affair, the sentence was not excessive. Furthermore, the court stated that the sentence for rape is within the discretion of the court if within the statutory limits of five years to life, and that in the absence of some affirmative

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40 171 N.W.2d 519 (Iowa 1969).
41 State v. Cameron, 167 N.W.2d 689 (Iowa 1969).
42 State v. Cole, 168 N.W.2d 37 (Iowa 1969).
43 171 N.W.2d 251 (Iowa 1969).
44 172 N.W.2d 128 (Iowa 1969).

showing that this discretion was abused they would not disturb the trial court's findings. In *State v. Mehuys*,[45] the defendant complained that he had been sentenced without being informed of his right of allocution. The record revealed that the defendant had been convicted upon a plea of guilty, at which time he had been subjected to the required interrogation to determine the voluntariness of his plea. The supreme court held that in the course of this interrogation defendant had ample opportunity to present any arguments which he might make to mitigate his sentence.

H. *Appeals*

The final case for discussion involved the right to appeal from a conviction of a traffic offense in a municipal court having the same jurisdiction as the justice of the peace court. In *State ex rel. City of Dubuque v. McCloskey*,[46] the defendant had been convicted in the Dubuque Municipal Court, and fined thirty-five dollars and costs. Defendant attempted to appeal but gave no notice of appeal within the twenty day period in which appeals are allowed. In addition, he paid the fine on the day it was assessed. The supreme court ruled that since the appeal had not been taken within the time period allowed, the right of appeal had been lost. Additionally, the court reaffirmed the rule that satisfaction of a judgment in a criminal action, by paying the fine and cost assessed, amounts to a waiver of the right to appeal. To counter these objections the defendant pointed to a section of the Iowa Code which states that no appeal from the judgment of a justice of the peace in a criminal case should be dismissed.[47] The court disposed of this objection by saying that appeal could only be dismissed if it had been validly taken in the first place, which had not been done here. Furthermore, the court held that in the absence of any showing that the fine was paid other than voluntarily by the defendant, the court could dismiss the appeal, the above-mentioned Code section notwithstanding.

I. *Miscellaneous*

The remaining decisions during this period discussed problems connected with the "proof" of the case, such as sufficiency of proof, instructions, conduct of counsel and the like. These are listed for the reader's information.[48]

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45 172 N.W.2d 131 (Iowa 1969).
46 166 N.W.2d 923 (Iowa 1969).
47 IOWA CODE § 762.49 (1966).
48 State v. Hobbs, 172 N.W.2d 268 (Iowa 1969), character witness; State v. Brown, 172 N.W.2d 152 (Iowa 1969), aiding and abetting, proof of knowledge that crime is being committed; State v. Decklever, 172 N.W.2d 109 (Iowa 1969), felonious assault, proof of intent; State v. Schatterman, 171 N.W.2d 890 (Iowa 1969), conviction of murder on circumstantial evidence; State v. McPherson, 171 N.W.2d 870 (Iowa 1969), improper remarks in final arguments; State v. Heisdorffer, 171 N.W.2d 513 (Iowa 1969), O.M.V.I., proof that defendant was driving a vehicle; State v. Willey, 171 N.W.2d 301 (Iowa 1969), forgery, testimony of handwriting expert; State v. Link, 171 N.W.2d 259 (Iowa 1969), circumstantial evidence to prove larceny; State v. Masters, 171 N.W.2d 255 (Iowa 1969), sufficiency of evidence, robbery; State v. Redding, 169 N.W.2d 788 (Iowa 1969), ad-