Louisiana Law Review

Volume 5 | Number 2
May 1943

Criminal Law - Contributing to the Delinquency of Minors - Adjudgment of Minor as Delinquent as a Prerequisite

B. R. D.

CRIMINAL LAW—CONTRIBUTING TO THE DELINQUENCY OF MINORS—ADJUDGMENT OF MINOR AS DELINQUENT AS A PREREQUISITE—Defendant was convicted of contributing to the delinquency of children under Act 139 of 1916.[1] He appealed the conviction to the supreme court on a writ of certiorari, alleging that the juvenile court's judgment was erroneous, since the child had not been convicted of delinquency, nor in fact, was she delinquent. *Held,* that under certain provisions of Act 139 of 1916, it was not a necessary element of the misdemeanor of contributing to the delinquency of children that the child actually be found delinquent and convicted thereof. The only requirement being that the parent, tutor, or guardian allowed the child to perform acts which under ordinary circumstances would tend to cause him to become delinquent. *State v. Scallan,* 10 So. (2d) 885 (La. 1942).

The above question, as to whether a juvenile must actually be proved delinquent, before an adult can be convicted of contributing to his delinquency, has often been contested in Louisiana and in other jurisdictions. The crime itself is one which was unknown at common law;[2] but most states have enacted statutes making it punishable.[3] These statutes, as interpreted judicially, may be broadly divided into two groups. First, those which require as a necessary element of the crime that the juvenile has actually become delinquent,[4] although in some states this need not be proven by a separate suit for that purpose prior to the trial for the criminal act, but may be established as a fact at the trial itself.[5] And second, those which do not require, as an element of the crime, that the conduct of the accused actually caused the child to become delinquent, but rather that it had the effect

1. Dart's Crim .Stats. (1932) § 929: "Any parent, guardian, or other person having the custody or control of a child under the age of seventeen years . . . who permits such child . . . to enter any place where the morals of such child may be corrupted, endangered, or depraved, or may likely be impaired . . . shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than two hundred dollars, or be imprisoned in the parish jail or prison for not more than one year, or both, in the discretion of the court."

2. State v. Williams, 73 Wash. 678, 132 Pac. 415 (1913).

3. California: Edgington v. Superior Court of Yolo County, 18 Cal. App. 739, 124 Pac. 450, 128 Pac. 338 (1912); People v. Oliver, 29 Cal. App. 576, 156 Pac. 1005 (1916); People v. DeLeon, 35 Cal. App. 467, 170 Pac. 173 (1917); People v. Young, 44 Cal. App. 279, 186 Pac. 383 (1919); Idaho: State v. Drury, 25 Idaho 787, 139 Pac. 1129 (1914); Illinois: People v. Calkins, 291 Ill. 317, 126 N.E. 200 (1920); Indiana: Tullis v. Shaw, 169 Ind. 662, 83 N.E. 376 (1908); Ohio: Walton v. State, 19 Ohio 452, 3 Ohio App. 97 (1914); Oregon: State v. Eisen, 53 Ore. 297, 99 Pac. 282, 100 Pac. 257 (1909).

4. People v. Pierro, 17 Cal. App. 741, 121 Pac. 689 (1911).

5. State v. Williams, 73 Wash. 678, 132 Pac. 415 (1913). Accord: State v. Ramey, 173 La. 478, 137 So. 859 (1931).

of tendering and encouraging him to become such.[6] These statutes may be further classified into those which require that the accused actually stand in the position of loco parentis;[7] and those, more general in scope, which punish anyone who contributes to the minor's delinquency.[8] In Louisiana, after adopting Act 139 of 1916, requiring that the accused actually stand in loco parentis, the legislature two years later adopted a second statute punishing anyone, other than parents, guardians, or persons having the custody of a child (in which case Act 139 of 1916 still applied), who contributed to the child's delinquency.[9]

Due to the fact that so few convictions of this nature are appealed from the juvenile courts, or the district courts sitting as juvenile courts, Louisiana's position as to the necessity of the juvenile being actually delinquent is not too clearly settled.[10] However, there are a few cases which indicate Louisiana's position. In *State v. Ramey*[11] the defendant was convicted and appealed, alleging error in that the child was not declared delinquent prior to his conviction. The court held that under Act 169 of 1918 it is not always necessary that the minor be adjudged delinquent, the only requirement in such an instance being that the child's conduct brought him under the definition of a delinquent child as defined by Section 6 of Act 83 of 1921.[12] And again, in *State v. Lewis*,[13] the court cited *State v. Ramey* and held that it was not a prerequisite to conviction for the crime to charge and prove the juvenile a delinquent child where his act amounted to delinquency as defined by statute. Thus these two decisions seem to have definitely settled that under Act 169 of 1918 (and in all probability, under Act 139 of 1916), where the juvenile's conduct amounts to delinquency as defined by Act 83 of 1921, it is not a prerequisite to conviction of the adult that the child actually be adjudged delinquent in a separate suit for that purpose. But, as the principal case clearly indicates, under Act 139 of 1916 there were instances, where the child was neither a delinquent as de-

6. State v. Dunn, 53 Ore. 304, 99 Pac. 278, 100 Pac. 258 (1909).
7. People v. Lee, 266 Ill. 148, 107 N.E. 112 (1914).
8. State v. Plastino, 67 Wash. 374, 121 Pac. 851 (1912).
9. La. Act 169 of 1918 [Dart's Crim. Stats. (1932) § 930].
10. Under La. Acts 139 of 1916 and 169 of 1918 there was no doubt that if the child was adjudged delinquent, then any adult who contributed to his becoming delinquent could be punished.
11. 173 La. 478, 137 So. 859 (1931).
12. Dart's Stats. (1939) § 1684. In Caddo Parish, La. Act 30 of 1924, § 10 [Dart's Stats. (1939) § 1699]. In Orleans Parish, La. Act 126 of 1921, § 4 [Dart's Stats. (1939) § 1712].
13. 183 La. 823, 165 So. 1 (1935).

fined by statute nor could he have been adjudged delinquent in a suit for that purpose, in which the adult could be convicted.[14] Act 169 of 1918 does not extend this far.

A question which might have arisen under these two statutes, but as far as can be found, never arose, is whether lack of knowledge of the child's age may be used as a defense. In some common law jurisdictions this is held to be such.[15] In Louisiana, however, it would seem otherwise from the decision of *State v. Dierlamm*.[16] The opinion of the court in this case, although pertaining to the crime of carnal knowledge of a juvenile,[17] appears equally applicable to any similar criminal statute enacted for the protection of minors.

With the adoption of the new Criminal Code, Acts 139 of 1916 and 169 of 1918 were repealed,[18] and a new article adopted: The new single article serves the purpose of the prior two statutes by extending its coverage to anyone contributing to the minor's delinquency. In scope it is somewhat limited as compared to the prior statutes, omitting several acts which formerly were punishable. It definitely settles what doubt might have existed under the old statutes as to the matter of knowledge of the child's age, and specifically states that lack of such knowledge shall not be a defense. It also appears to clear up the question of whether the child must first be declared delinquent before conviction of the crime may be had. It defines the crime as "the intentional enticing, aiding, or permitting, by anyone over the age of seventeen, of any child under the age of seventeen [and then lists nine punishable acts]." From the phrasing of the article it can be seen that it punishes the acts without making any mention of a requirement that the child be adjudged or rendered delinquent.[19] There-

14. "Or who omits to exercise reasonable diligence in the control of such child to prevent such child from becoming guilty of delinquency . . . or who permits such child . . . to enter any place where the morals of such child may be corrupted, endangered or depraved."

15. Gottlieb v. Commonwealth, 126 Va. 807, 101 S.E. 872 (1920).

16. 189 La. 544, 180 So. 135 (1938). In this case the defendant upon conviction brought error on the ground that the trial judge refused to instruct the jury that it must be shown that he knew the minor to be under the age of lawful consent. The supreme court, in upholding the trial judge's refusal, said: "Even in criminal law, when a statute makes an act indictable without regard to guilty knowledge, then ignorance of fact, although sincere, is no defense, and the intent with which the act is done is of no consequence."

17. La. Act 192 of 1912 [Dart's Crim. Stats. (1932) § 1142], superseded by Art. 80, La. Crim. Code.

18. Art. 92, La. Crim. Code.

19. Article 93 of the new Criminal Code punishes intentional neglect of the minor, which was formerly punishable with contributing to delinquency of minors, under Acts 139 of 1916 and 169 of 1918.

fore, it seems that the only logical interpretation of the article is that the drafters of the Code intended to omit that requirement. If an additional argument is needed, a review of the decisions under the old statute[20] will lend force to the above interpretation of the new Article 92.

B.R.D.

INSURANCE—OPTIONAL RIGHT OF INSURER UNDER THE LOUISIANA NON-FORFEITURE STATUTE—Action by beneficiary to recover face value of a policy which lapsed due to nonpayment of premiums after being in existence for more than three years. The policy contained a stipulation providing for automatic paid-up insurance in the event of lapse for nonpayment of premiums. Defendant contends that in accordance with the authority granted it by Act 57 of 1932, and because of a stipulation contained in the policy providing for automatic paid-up insurance in the event of lapse for nonpayment of premiums, the maximum amount of defendant's liability was the paid-up insurance value of said policy. *Held,* the insurer cannot insert in their policies conditions requiring the insured to exercise his option before the policy lapses. The insurer's right granted by statute to apply the reserve fund is a conditional right. The policy not having granted the insured an option as required by Act 193 of 1906, as amended by Act 57 of 1932, the secondary optional right of the insurer never came into existence. *Edwards v. National Life & Accident Insurance Company, Incorporated,* 11 So.(2d) 125 (La. 1942).

"The delinquent policyholder has no inherent right to the reserve value of his policy. . . . Hence any claim made by the insured to paid-up or extended insurance must necessarily be based upon an agreement or a statute according to him such a right."[1] Statutes giving the insured certain rights to the reserve for the purpose of this note will be classified into five categories. First, the minority group of non-forfeiture statutes provide that in the event of a default in payment of premiums, the reserve shall be applied in the one form which is stipulated in the statute.[2] The better constructed non-forfeiture statutes compose the

20. State v. Ramey, 173 La. 478, 137 So. 859 (1931); State v. Lewis, 183 La. 823, 165 So. 1 (1935).

1. Vance, Handbook of the Law of Insurance (2 ed. 1930) 302, § 88.

2. Me. Rev. Stat. (1930) 998, § 133, provides that, on forfeiture of a life policy for nonpayment of premiums after it has been in force three full