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CRIMINAL LAW

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In *State v. Mathe*[1] the appeal was from a conviction of indecent behavior with juveniles. The defendant sought to have his conviction set aside on the ground that the repeal of the Criminal Code,[2] incidental to its incorporation in the Louisiana Revised Statutes as Chapter 1 of Title 14, "acted as a legislative pardon for all offenses committed before and not tried prior to its effective date of May 1, 1950."[3] The Louisiana Supreme Court squarely rejected this argument, and Justice LeBlanc's opinion accurately states the true nature and effect of the Revised Statutes. Justice LeBlanc first examined the general legislative mandate under which the projet of the statutes had been prepared by the Law Institute and then looked at the title of the act adopting the Revised Statutes. These significant criteria of legislative intent clearly indicated that the original statutory provisions, except as necessarily modified to remove incongruities and to organize them according to a logical pattern, were carried forward and continued in effect in the Revised Statutes. Turning more directly to the Criminal Code, Justice LeBlanc emphasized the fact that the code had been incorporated in the Revised Statutes in its entirety. Relying on a well-settled rule of construction of revised statutes, he then declared, "There was no interruption in the existence of this Code, as the re-adoption and re-enactment of all of its provisions came simultaneously with the repeal of the former Act under which it existed; the reaffirmance of the law as it existed had the effect of counteracting the repeal." [4]

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1. 219 La. 661, 53 So. 2d 802 (1951).

2. La. Act 43 of 1942.

3. 53 So. 2d 802, 804 (La. 1951). Certain alleged trial irregularities, upon which defense counsel had intended to rely, were unavailable because of a failure to perfect the bills of exceptions relative thereto. Similarly, defense counsel had failed to take any bill of exception to the overruling of his motion for a new trial on the ground of newly discovered evidence, and this issue was not reviewable on appeal.

4. 53 So. 2d 802, 805. In so holding, Justice LeBlanc quoted from 50 Am. Jur. Stat. § 555, that ". . . the rule of construction applicable to acts which revise and consolidate other acts is, that when the revised and consolidated act re-enacts in the same or substantially the same terms the provisions of the act or acts so revised and consolidated, the revision and consolidation shall be taken to be a continuation of the former act or acts, although the former act or acts may be expressly repealed by the revised and consolidated act; and all rights and liabilities under the former act or acts are preserved and may be enforced." This view is also nicely and clearly stated in State v. Prouty, 115 Iowa 657, 80 N.W. 670 (1900).

Additional and specific evidence of the all-important legislative intent was found in the general provision of Section 16 of Title 1 (the introductory title) of the Revised Statutes, which declared "the Louisiana Revised Statutes of 1950 shall be *construed as continuations of and as substitutes for* the laws or parts of laws which are revised and consolidated herein." Then in order to make sure that the rights and penalties incurred prior to the effective date of the Revised Statutes would be fully preserved, Section 16 concluded, "The adoption of these Revised Statutes shall not affect the continued existence and operation, subject to the provisions hereof, of any department, agency, or office heretofore legally established or held, nor any acts done, any funds established, any rights acquired or accruing, any taxes or other charges incurred or imposed, *any penalties incurred or imposed*, or any judicial proceedings had or commenced prior to the effective date of these Revised Statutes." (Italics supplied.) After setting out this provision in his opinion, Justice LeBlanc concluded, "To ascertain the intent of the Legislature of this State in adopting the Revised Statutes of 1950 we need go no further than to read again the language of the provisions just quoted from Section 16 of Title 1. Concerning the issue presented in this case, its intention could hardly have been more clearly expressed than that the Revised Statutes then being adopted were to govern from the day on which they became effective, that is May 1, 1950, but all judicial proceedings had or commenced prior to that date should continue in full force and effect. The provision operated as a general savings clause which protected the prosecution which had been initiated on March 1, 1950 in this case." [5]

From the standpoint of logic, Justice LeBlanc's clearly written opinion, to which this discussion can add little, follows sound principles of statutory interpretation. From a practical standpoint, the true intent of the legislature which enacted the Revised Statutes has prevailed over an attempt to thwart justice by a technicality, and a "most mischievous consequence" has been avoided.[6]

The *Mathe* decision was recently followed in *State v. Bradford*,[6a] holding that a prohibition ordinance, adopted pursuant to the state local option law, was not invalidated by the simultane-

5. 53 So. 2d 802, 806 (La. 1951).
6. St. Louis v. Alexandria, 23 Mo. 483, 509 (1856).
6a. La. Sup. Ct. Docket No. 40,474 (Dec. 10, 1951).

ous repeal and reenactment of that law in the Revised Statutes of 1950. Again the court quoted and relied upon Section 16 of Title 1, which "unmistakably disclosed the intent of the Legislature not to disturb the status of any acts or rights exercised under the laws which are revised." [6b]

THEFT OF CATTLE

In *State v. Hamlet*[7] the defendant had been convicted of theft of eight head of cattle valued at $755.00, in violation of Article 67 of the Criminal Code.[8] The 1950 legislature subsequently added a special crime of cattle theft designated as Article 67.1 of the Criminal Code,[9] which provided a minimum penalty of three years imprisonment for any theft of cattle, horses, mules, sheep or goats. This new statute became effective while the defendant's motion for a new trial was pending. It was the defendant's contention, on appeal, that the enactment of the special cattle theft statute, before his conviction for theft under the general provisions of Article 67 became final, had the effect of granting him a legislative pardon since the new statute contained no saving clause. In rejecting this contention the supreme court pointed out that the new law was merely an addition to the general theft article of the Criminal Code, and was not intended to repeal any of its provisions or limit its scope and application. In this regard Justice LeBlanc declared, "We take it that the intention of the Legislature was to make the theft of the particular species of property described in the Act, the crime of theft, without regard to the value of such property, leaving it to the discretion of the prosecuting officers of the State whether an accused should be prosecuted under its provisions for theft of that kind of property as distinguished from the [general] theft of that same kind of property or any other property where the value of the property is involved." [10]

The supreme court's holding is further bolstered by the general provision in Article 4 of the Criminal Code,[11] which grants the district attorney a discretion to prosecute under *either* provision when the offender's conduct is "criminal according to a general article of this code and also according to a special article

6b. Justice McCaleb, speaking for a unanimous court.
7. 219 La. 278, 52 So. 2d 852 (1951).
8. La. R.S. (1950) 14:67.
9. La. Act 173 of 1950.
10. 52 So. 2d 852, 853 (La. 1951).
11. La. R.S. (1950) 14:4.

of this code." In view of the fact that the special provision provides the almost Draconic penalty of not less than three years imprisonment, regardless of the value of the animal stolen, it is entirely conceivable that prosecuting authorities may frequently choose to prosecute less serious cases of livestock stealing under the general theft article.

CONSPIRACY—OVERT ACT REQUIREMENT

The Criminal Code contains two general inchoate offense provisions which apply to all crimes. In both instances completion of the basic offense is not necessary to criminal liability. Article 27[12] provides for the punishment of one who *attempts* to commit a crime. While this offense is highly mental in its composition, requiring a specific intent to commit the crime, it also requires that the offender do an act "for the purpose of and tending directly toward the accomplishment of his object." The article further specifies that "mere preparation to commit a crime shall not be sufficient to constitute an attempt . . . ." Article 26[13] defines the offense of *criminal conspiracy* as requiring an "agreement or combination of two or more persons for the specific purpose of committing any crime . . . ." While a criminal agreement or combination is the essential characteristic of this offense, it is further provided that liability does not attach unless "one or more of such parties does an act in furtherance of the object of the agreement or combination." This additional requirement, which was not found in the common law definition of criminal conspiracy but has usually been included in modern conspiracy statutes, was inserted for the purpose of guaranteeing the genuineness of the alleged conspiracy and of establishing a point at which criminal liability attached regardless of subsequent change of plans. In *State v. D'Ingianni*[14] the supreme court recognized and applied the proper distinction between the overt act requirement of the *criminal conspiracy* offense, and the act "tending directly toward the accomplishment" of the crime which was essential to liability for a criminal *attempt*. In that case the indictment charged a conspiracy to defraud an insurance company by pretending that one of the defendants had been robbed of his insured jewels. The only overt act alleged in the bill of information was that the owner of the jewels had been taken in a car to a point where he was let out with the under-

12. La. R.S. (1950) 14:27.
13. La. R.S. (1950) 14:26.
14. 217 La. 945, 47 So. 2d 731 (1950).

standing that the parties would represent that he had been forcibly abducted and robbed. If the charge had been *attempted theft* (by seeking to defraud the insurance company), the act alleged would not have gone beyond the zone of preparation and would not have established criminal liability. In holding that the overt act was sufficient to meet the *criminal conspiracy* physical act requirement the supreme court stressed the distinction between the two inchoate offenses, pointing out that the overt act in a criminal conspiracy need not have the same nearness to the completion of the offense that is required for an attempt.

Justice McCaleb makes one dictum statement which might bear a little further analysis. He declares, "any act such as a visit by one of the parties to his co-conspirators for the purpose of discussing details might suffice as an overt act to complete a criminal conspiracy although such an act would be regarded as merely preparatory in a prosecution for an attempt."[15] This statement shows that very little is necessary to meet the overt act requirement of a criminal conspiracy. At the same time the conference of the conspirators to plan details of the offense, if it is to be considered as an overt act (which is doubtful), clearly would have to come after the parties had already agreed upon their course of criminal action. The case cited[16] by Justice McCaleb for the proposition that a meeting to discuss details "might suffice as an overt act" was one where the parties had gone beyond mere conferring and had actually prepared fraudulent income tax returns with the intent to file them.

INSURANCE

*J. Denson Smith**

Under Act 222 of 1928 a breach of representation, warranty or condition contained in a fire insurance policy cannot be relied on by the insurer to avoid liability unless the breach exists at the time of the loss and in fact increases the moral or physical hazard under the policy. The supreme court has established the principle that the insurer carries the burden of proving the actual increase in the moral hazard. The theory it has adopted is that the moral hazard is greatest when the insured's pecuniary interest is such

15. 217 La. 945, 951, 47 So. 2d 731, 733.
16. United States v. Rachmil, 270 Fed. 869 (S.D.N.Y. 1921).

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