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CRIMINAL LAW

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GENERAL SAVING STATUTE PREVENTS LEGISLATIVE PARDONS

In *State v. Bowie*[1] the defendant, who had been convicted of fraudulently selling a mortgaged automobile, sought to have the verdict and sentence set aside upon the last gasp technicality of a "legislative pardon." It was urged that defendant's criminal liability under the Chattel Mortgage Act of 1944[2] had been wiped out when that statute was repealed and superseded by the Vehicle Certificate of Title Act of 1950.[3] This latter statute had been enacted in the interval between the filing of the charge and the conviction appealed from. Although the Certificate of Title statute contains no special saving clause, the Supreme Court held that any repeals effected thereby were automatically qualified by the provisions of a 1942 general saving statute which had been incorporated into the 1950 Revised Statutes.[4] This provision, which expressly stipulates that a repealing statute shall not be construed as extinguishing those penaties, liabilities, et cetera, already incurred under the repealed law, "'was passed by the legislature to do away with so-called "legislative pardons" . . .'"[5] The argument that the general saving provision was applicable only to prosecutions pending prior to the adoption of the Criminal Code of 1942[6] was dismissed as "without merit," since the provision applied to "any law" and contained no indication of any such limitation.

Similarly, in *State v. Robinson*,[7] the court rejected a "legislative pardon" argument urged by a defendant who had been convicted of violation of the Uniform Narcotic Drug Law. The case was found to be on all fours with, and controlled by, the recently decided case of *State v. Mathe*,[8] where the Supreme Court had rejected a similar defense after a careful analysis of the nature of the Revised Statutes, with special emphasis on the interpretation and saving section which had been placed in the

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1. 221 La. 41, 58 So. 2d 415 (1952).
2. La. Act 172 of 1944, La. R.S. 1950, 9:5358-5362.
3. La. Act 342 of 1950, La. R.S. 32:701 et seq.
4. La. Act 35 of 1942, La. R.S. 1950, 24:171.
5. 221 La. 41, 58 So. 2d 415, 417 (1952).
6. La. Act 43 of 1942, La. R.S. 1950, 14:1-142.
7. 221 La. 19, 58 So. 2d 408 (1952).
8. 219 La. 661, 53 So. 2d 802 (1951), discussed by writer in 12 LOUISIANA LAW REVIEW 125 (1952).

introductory title.[9] In reaffirming and applying the *Mathe* decision, Chief Justice Fournet also stressed the 1942 general savings provision which was controlling in the *Bowie case.*

MURDER—FICTIONAL MALICE AFORETHOUGHT ELIMINATED

The Criminal Code definition of murder[10] eliminated the fictional common law requirement of "malice aforethought, express or implied." Symbolic of the unrealistic nature of this concept was the fact that neither "malice" nor "aforethought," according to the generally accepted meanings of those terms, was really necessary for murder at common law.[11] Rather than to continue this vague and purely fictional label, relying upon past decisions for its unnatural interpretation, Article 30 specifically enumerated those situations in which homicide would constitute murder.

In *State v. Sears*[12] counsel for a twice-convicted murderer sought to get his conviction set aside on the ground that the trial judge had refused to instruct the jury that the presence or absence of "malice" was the essential difference between murder and manslaughter. In overruling this contention, the Supreme Court pointed out that the redactors of the Criminal Code had advisedly omitted "malice aforethought" as a distinguishing element of murder. Prior Louisiana decisions, rendered at a time when Louisiana followed the common law definition of murder, were merely indications of what the law was before the new statutory definitions discarded the outworn "malice aforethought" concept. The court also approved the trial judge's method of instructing the jury by following the precise language of the pertinent clauses of the murder and manslaughter articles of the Criminal Code.[13] In this regard, Justice McCaleb significantly declared, "The difference between murder and manslaughter appears clearly in the definitions set forth in Articles 30 and 31 of the Criminal Code and no further explanation is necessary to one of ordinary intelligence."[14]

9. La. R.S. 1950, 1:16.

10. Art. 30, La. Crim. Code of 1942; La. R.S. 1950, 14:30.

11. Clark and Marshall declare, in speaking of malice aforethought, "It must be construed according to the decided cases, which give it a meaning different from that which might be supposed." Clark and Marshall, Crimes, § 240(a) (5 ed. 1952).

12. 220 La. 103, 55 So. 2d 881 (1951).

13. Arts. 30(1), 31(1), La. Crim. Code of 1942; La. R.S. 1950, 14:30(1), 31(1).

14. 220 La. 103, 111, 55 So. 2d 881, 884 (1951).

SIMPLE BURGLARY

The traditional method of defining crimes by means of lengthy enumerations was frequently susceptible to the defense that the act or actor did not fit within any of the specified enumerations.[15] In conformity with a policy of employing inclusive general terms broad enough to cover fully the prohibited conduct, the simple burglary article did not seek to list those structures which might be the subject of burglary, and defined that offense to embrace "the unauthorized entering of *any vehicle, water craft, dwelling or other structure, movable or immovable*, with the intent to commit any forcible felony or any theft therein. . . ."[16]

In *State v. Route*[17] this crime was held to cover the entering of a private office located in a New Orleans office building with intent to commit theft. In so holding, the Supreme Court gave the simple burglary article the broad application which had been intended by the draftsmen and which was called for by the broad language employed in the statutory definition. Defense counsel had urged that, since the office was open to the public, the entry could not be classified as "unauthorized." In support of this contention he cited *State v. Stephens*[18] where the entering of a department store during business hours, with intent to steal, was held not to constitute burglary. Justice Ponder disposed of that argument by succinctly stating that "[T]he pronouncements in the Stephens case cannot be controlling in the case under consideration for the reason that the offices of the steamship company are private offices located in an office building. The defendant did not enter the offices with the view of transacting business with the corporation. His entry was unauthorized and with the intent to commit theft."[19] As an additional basis of distinction, it should be noted that the *Stephens* case involved the application of a burglary statute requiring a "breaking and entering," while the crime of simple burglary requires only an "unauthorized entering."

15. In State v. Fontenot, 112 La. 628, 36 So. 630 (1904) the court held that the burning of a "merry-go-round outfit" was not within an arson statute which enumerated "goods, wares, merchandise" and a long list of other objects as possible of the offense. It made no difference that the act was "of equal atrocity or of a kindred character with those which are enumerated."

16. Art. 62, La. Crim. Code of 1942; La. R.S. 1950, 14:62.

17. 221 La. 50, 58 So. 2d 556 (1952).

18. 150 La. 944, 91 So. 349 (1922).

19. 221 La. 50, 58 So. 2d 556 (1952).

Defense counsel's hyper-technical argument that the offense did not cover the *entry of a room* in an office building was likewise unavailing. Stressing the broad language employed in the article, Justice Ponder concluded "As pointed out in the reporter's comment, under this statute all types of entering not classified as aggravated burglary are intended to be included."[20] In this regard it is significant that the more limited crime of burglary of "a dwelling house" has been held to include the burglarizing of a hotel room.[21]

NONSUPPORT OF ILLEGITIMATE CHILD

The criminal neglect of family article of the Criminal Code was broadened by a 1950 amendment[22] so as to embrace the nonsupport of *illegitimate* children. Support of children born out of wedlock constituted a rather substantial burden on the welfare agencies, since the mother was usually without the means to bring a civil suit to determine paternity and secure alimony covering the child's support. It was the purpose of this statute to provide a penal sanction which would facilitate enforcement of the much neglected obligation of the father to support his illegitimate child. Three 1951-1952 Supreme Court decisions[23] placed a very severe restriction upon the practical effect of this amendment, when they held that the prior establishment of a civil duty to support, under the Civil Code, was a condition precedent to criminal liability for nonsupport of the illegitimate child. This meant that there could be no criminal action except in situations where, prior to the nonsupport complained of, the father had either acknowledged the child or had been judicially declared its father in a civil action. In *State v. Sims*[24] Justice Hawthorne contended, in a vigorous dissent, that the statute itself was the source of the duty to support the illegitimate child—which duty arose out of the fact of parenthood and was not dependent upon any prior special determination under the Civil Code. Whether the requirement of previously established paternity is justified by a normal interpretation of the 1950 statute is a close question involving complicated legal issues and underlying policy considerations which have already been carefully discussed

20. 221 La. 50, 58 So. 2d 556, 557 (1952).

21. People v. Carr, 255 Ill. 203, 99 N.E. 357 (1912); Clark and Marshall, Crimes, § 407(b) (5 ed. 1952).

22. La. Act 164 of 1950, La. R.S. 1950, 14:74.

23. State v. Jones, 220 La. 381, 56 So. 2d 724 (1951); State v. Sims, 220 La. 532, 57 So. 2d 177 (1952); State v. Love, 220 La. 562, 57 So. 2d 187 (1952).

24. 220 La. 532, 555, 57 So. 2d 177, 184 (1952).

in a previous issue of this REVIEW.[25] The result of the decisions, however, was very clear. The requirement of a previous acknowledgment or adjudication of parenthood, as a prerequisite to criminal law liability for nonsupport, served to prevent the direct and simplified use of criminal law procedures and sanctions which was contemplated by the proponents of the statute.

Discussion of these cases would not be complete without mention of a subsequent further amendment of the criminal neglect of family article.[26] A 1952 statute seeks to make it abundantly clear that the parent of an illegitimate child is under an immediate statutory duty to support that child and that failure to provide such support will result in criminal liability. The language employed maintains a clear distinction between the Civil Code procedures for establishing the civil obligations of a parent to the illegitimate child and the basic general duty to support such child which is imposed and enforced under the criminal law. In view of this latest expression of legislative intent it seems appropriate to review the policy considerations involved in this somewhat controversial enactment. Its fundamental purpose is to shift the very substantial burden of supporting illegitimate children from the state's welfare agencies to the shoulders of those who fathered this unfortunate group. The professed danger that this law will be used as an instrument of blackmail is largely obviated by the fact that district attorneys, many of whom are not very sympathetic with the law because of the extra work it places on their offices, will probably not prosecute these cases unless they are completely satisfied of the alleged parenthood. The sometimes cited possibility that the criminal law dockets will be crowded by such cases is also more imagined than real—for many fathers who formerly flaunted their obligation will now be more cooperative as the result of a penal sanction immediately available. Moreover, if a multitude of these cases is expectable, that further serves to point up the need for more effective measures to combat such social irresponsibility.

INSURANCE

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The court disposed of six cases involving insurance problems during this term. It found unanimously that an insured had set

25. Comment, 12 LOUISIANA LAW REVIEW 301 (1952).
26. La. Act 368 of 1952, discussed 13 LOUISIANA LAW REVIEW 59 (1952).
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