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CRIMINAL LAW

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The *attempt* article of the Louisiana Criminal Code punishes an attempt to commit any crime, and the maximum penalty is generally set at one half of the penalty provided for the offense attempted.[1] A special problem was presented by the crime of theft, which is graded according to the amount stolen.[2] In attempted theft it is often impossible to fix, with any degree of accuracy, the amount the defendant planned to steal. Thus a special penalty, with a maximum fine of two hundred dollars and a maximum prison term of one year, was provided for attempted theft.[3]

State v. Ganey[4] presented a difficult problem as to the scope and applicability of the special theft penalty clause of the attempt article. Ganey appealed from a sentence of five years for attempted theft of a cow. The special cattle theft law, upon which the conviction was based, defines the crime of theft of cattle and other livestock, with a maximum penalty of ten years imprisonment, regardless of the value of the animal stolen.[5] In upholding the five-year sentence, the majority of the court reasoned that the crime of theft of cattle was separate and distinct from the general theft crime; and thus concluded that the sentence for attempted theft of cattle was governed by the general attempt penalty clause,[6] rather than by the provision for attempts coming under the general theft article.[7] Following this reasoning, the five-year sentence, which was one half of the maximum sentence for cattle theft, was proper.

Justice McCaleb's dissenting opinion took the position that the special theft penalty clause should apply to all attempted

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1. LA. R.S. 14:27 (1950).
2. *Id.* 14:67.
3. *Id.* 14:27(2).
4. 246 La. 986, 169 So. 2d 73 (1964).
5. LA. R.S. 14:67.1 (1950).
6. *Id.* 14:27(3).
7. *Id.* 14:27(2).

thefts, whether under the general theft article or a special cattle theft statute.[8]

This writer sees no substantial justification for providing a penalty of from one to ten years for stealing a cow, hog, or goat, regardless of the value of the animal stolen. It would appear that the general theft article[9] with the penalty graded according to the value of the thing stolen, is adequate to take care of all such cases. However, since cattle theft is designated as a separate crime, it would seem that the Supreme Court was justified in holding the general penalty clause applicable. This is in keeping with the purpose of the special theft clause, which was aimed at eliminating the difficulty of determining how much the defendant was attempting to steal, *i.e.*, the grade of the theft attempted.

SIMPLE KIDNAPPING

Simple kidnapping is a very broad offense, covering a number of situations where the taking or enticing away of another person is criminal.[10] *State v. Bertrand*[11] involved an interpretation of the scope and interrelation of the first two clauses of the simple kidnapping article of the Criminal Code. Clause (1) covers "the intentional and forcible seizing and carrying of *any person* from one place to another *without his consent.*" (Emphasis added.) It is the essence of simple kidnapping under this clause that the carrying of the victim must be forcible and without his consent. Clause (2) covers "the intentional taking, enticing or decoying away, *for an unlawful purpose,* of any child not his own and *under the age of fourteen years, without the consent of its parents* or the person charged with its custody." (Emphasis added.) Clause (2) is satisfied by enticing the victim away, but requires that the enticing away must have been for "an unlawful purpose" and that the victim must be a child "under the age of fourteen years." Bertrand was convicted of simple kidnapping of a six-year-old girl, and the indictment contained allegations based upon requirements stated in both clauses

8. Justice McCaleb states, 246 La. 986, 998, 169 So. 2d 73, 77 (1964): "This is not a judicial function and, until the Legislature itself changes the penalty provided for attempted theft by R.S. 14:27, it should be applied as written irrespective of whether the substantive crime is denounced by a special statute dealing with thefts of particular things or chattels or by the general statute relating to all thefts."

9. LA. R.S. 14:67 (1950).

10. *Id.* 14:45, as amended, La. Acts 1962, No. 344.

11. 247 La. 232, 170 So. 2d 386 (1964).

(1) and (2) of the simple kidnapping article.[12] A motion in arrest of judgment was largely predicated upon the contention that the indictment had failed to specify the unlawful purpose for which the child was taken, thus omitting "an essential element of the offense."

If the indictment was to be judged by the requirements of clause (2) of the simple kidnapping statute, it would have been insufficient. As the dissenting opinion pointed out, "an indictment . . . does not satisfy constitutional or statutory requirements by simply charging in the language of the statute that the accused carried away the child for an unlawful purpose, as the phrase 'for an unlawful purpose' is a general and indefinite term which does not inform the accused of the specific facts on which the charge is based."[13]

The majority opinion upheld the indictment, however, upon the basis of clause (1) of the simple kidnapping article. It is significant to note that clause (1) covers "the intentional and forcible seizing and carrying of *any person*," and would apply to kidnapping of either adults or children. Justice Sanders, who wrote the majority opinion, stated, "An examination of the language of the indictment discloses that it charges that the defendant intentionally and forcibly seized and carried the child from her home. . . . Under the statute, the distance traversed is immaterial. Nor is it necessary to specify the place to which the child was carried."[14] If the defense needs that information, it may be procured by a bill of particulars. When the prosecution is based upon clause (1), it is not necessary to allege or prove an unlawful purpose. The essential elements are that the seizing and carrying were "forcible" and "without his consent." In the case of a six-year old child this second element was satisfied by charging that the forcible taking away was "without the consent of her parents."

Dissenting Judge McCaleb maintained that *clause (1)* re-

12. The indictment charged that Bertrand "did unlawfully and intentionally commit simple kidnapping by unlawfully, criminally and intentionally, with force, and arms, and for an unlawful purpose, seize one Cheryl Lynn Ortego, a female person not his own and being six years of age, at her home located at Route 1 Box 274, Elton, Louisiana, a place within Jefferson Davis Parish, State of Louisiana, and did forcibly carry and take away the said Cheryl Lynn Ortego, from her home, without the consent of her parents who were charged with custody of said Cheryl Lynn Ortego." *Id.* at 235, 170 So. 2d at 388.

13. *Id.* at 246, 170 So. 2d at 391, citing cases.

14. *Id.* at 237, 170 So. 2d at 388.

ferred only to cases involving the kidnapping of persons fourteen years of age or over; while *clause (2)* covered the kidnapping of children under the age of fourteen, where it is the lack of the parents' consent that is material. It is impossible, on a close point of construction like this, to say that either view is wrong; for there is a logical basis for either analysis. However, it is submitted that the majority opinion, in holding that clause (1) applies to all forcible seizing and carrying, regardless of the age of the victim, provides a practical determination of the probable legislative intent.

CRIMINAL TRESPASS — SPECIAL STATUTES

Criminal trespass is an offense which, by its very nature, is not susceptible of general definition. The needs of a farming community are quite different from those of a swamp or timber area. These variant considerations are evidenced in the 1960 and 1964 amendments of the criminal trespass article of the Criminal Code,[15] which provided a separate rule for certain specified parishes and authorized the governing authorities of those parishes to adopt additional regulations, not inconsistent with the general provisions of the law. In addition, the 1962 legislature adopted a special criminal trespass law for Jefferson Davis Parish,[16] and a 1964 statute provided a special criminal trespass law for Bossier Parish.[17] The Jefferson Davis statute was declared unconstitutional by the City Court of Jennings, which held that, since it applied only to one parish, it was "arbitrary, capricious and discriminatory." In reversing the city court's judgment and upholding the special Jefferson Davis Criminal trespass statute, the Louisiana Supreme Court stated: "The equal protection clause relates to equality between persons as such, rather than between areas. Clearly, the guaranty of equal protection is not a demand that all state laws operate from boundary to boundary. It compels no state to adopt an iron rule of territorial uniformity for legislation. In the enactment of laws, the Legislature may consider the 'needs and desires' of the various sections of the state without infringing equal protection."[18]

15. LA. R.S. 14:63 (Supp. 1964).
16. *Id.* 14:63.5.
17. *Id.* 14:63.6.
18. 247 La. 631, 636, 173 So. 2d 192, 194 (1965), citing United States Supreme Court decisions in point.

It is well settled that the "equal protection" clause of the United States Constitution only relates to equality between persons. "In the absence of restrictions contained in state constitutions, the legislature may determine within broad limits whether particular laws shall extend to the whole state or be limited in their operation to particular portions of the state. All that the Federal Constitution requires is that they shall be general in their application within the territory in which they operate."[19] A relevant limitation in the Louisiana Constitution prohibits local or special laws "concerning any civil or criminal actions."[20] This provision has been construed as meaning "merely that the Legislature shall not pass a local or special law affecting any particular lawsuit or regulating the trial of lawsuits, civil or criminal, in any particular locality."[21]

Turning more specifically to the problem at hand, Justice Sanders added: "The rich diversities in the land, people, and culture of Louisiana are matters of common knowledge. They have been celebrated in song and story. Many of these are deeply rooted in history. The rural-urban diversity is but one of several that affect trespass laws. The variegated patterns of topography and land-use militate against state-wide uniformity in trespass legislation."[22] In further support of the decision, upholding the statute, the court stressed the fact that there had been "no showing that the relevant conditions and needs in Jefferson Davis Parish are the same as those of other parishes," and stated, "The Court cannot assume the absence of differences when there is no proof."[23]

DISCHARGE IN BANKRUPTCY

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The past term produced, as usual, instances of lenders who asserted that their claims were not affected by a debtor's discharge in bankruptcy, by reason of section 17a(2) of the Bankruptcy Act which provides in part:

19. 16 AM. JUR.2d 894.
20. LA. CONST. art. IV, § 4.
21. State v. McCue, 141 La. 417, 421, 75 So. 100, 101 (1917).
22. 247 La. 631, 637, 173 So. 2d 192, 195 (1965).
23. *Ibid.*

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