

Punishing Parents in the Children's Courts

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\$493,468.62,⁶⁰ and in 1954 the figure jumped to \$747,346.00.⁶¹ The cases processed in 1955 resulted in collections for dependents of \$1,198,937.76.⁶² Of this total, \$592,194.34⁶³ was collected by courts of other states as a result of actions initiated in New York.

Thus, there is no doubt as to the value of this interstate procedure. Its significance, however, lies not only in the fact that it has brought relief to persons who would otherwise, for all practical purposes, remain remediless; in a broader sense, its success has demonstrated the value of reciprocal legislation. Such legislation in other areas of the law will substantially prevent defendants from avoiding liability by the simple expedient of crossing state lines.



PUNISHING PARENTS IN THE CHILDREN'S COURTS

Punishing parents of delinquent and neglected children is hardly more civilized than burning witches, in the judgment of some writers.¹ This school of thought has created a straw man, a fantastic image of an opposite school—those who would punish for punishment's sake.²

⁶⁰ REPORT OF THE JOINT LEGISLATIVE COMMITTEE ON INTERSTATE COOPERATION 189 (1954).

⁶¹ REPORT OF THE JOINT LEGISLATIVE COMMITTEE ON INTERSTATE COOPERATION 281 (1955).

⁶² TWENTY-THIRD ANNUAL REPORT OF THE DOMESTIC RELATIONS COURT OF THE CITY OF NEW YORK 30 (1955).

⁶³ *Ibid.*

¹ "Parents need reassurance and strengthening, rather than criticism. . . . Our entire approach to parents should be one of interest and help, rather than of blame.' (Quoted from a report of its Executive Director Herschel Alt for the Child Guidance Institute of the Jewish Board of Guardians.)" *Citrin v. Belcastro*, 196 Misc. 272, 282, 91 N.Y.S.2d 275, 285 (Child. Ct. 1949) (quoted with approval). "Parents of delinquent children need help, not jails, fines or threats and punishment.'" *Id.* at 287 (statement of Mr. Maximilian Moss, in a public debate, January 11, 1949, quoted with approval).

² "I am weary of the old slogan in regard to juvenile delinquents: 'It is really the parents who are to blame. They should be punished.' Are not these unhappy parents already sufficiently punished? They have spent miserable years with themselves and with each other." Irene Kavin (Deputy Chief Probation Officer, Cook County, Chicago), *Family Dissension as a Factor in Delinquency*, YEAR BOOK OF THE NATIONAL PROBATION ASSOCIATION 76 (1946), cited in *Citrin v. Belcastro*, *supra* note 1 at 282, 91 N.Y.S.2d at 285. "We, in the Children's Bureau, have been much concerned about the way in which the idea that parents of children who come into court must be punished appears to be gaining ground throughout the country. Apparently no distinction is made between situations in which parents by deliberate and overt acts have contributed to the delinquency of their children and parents who have neglected to give their children guidance by reason of their own handicaps and limitations, to say nothing of situations in which the cause of misbehavior is beyond the control of parents, as, for

Actually, the true opposing thesis is that the children's courts, by a proper use of orders enforceable in contempt, can and should bring the parents of delinquent and neglected children to recognize and execute their duty to protect, instruct and control their children.³ The supporters of this thesis are as anxious as the "no punishment" advocates to shunt from the children's courts to the criminal courts the task of vindicating the penal law against adult offenders. The assumption and exercise by the children's courts of a criminal jurisdiction over adult misdemeanants ill befits the civil character of these courts. Furthermore, it has obscured the propriety and necessity of exercising in the children's courts the remedial proceeding of ordering parental conduct under the sanction of contempt.⁴

Some published information raises the question, to what extent are our children's court judges influenced by the "no punishment" propaganda. Statistics published in the latest report of the Domestic Relations Court clearly indicate that the judges of the Children's Court of New York City have, in recent years, deemed adult proceedings expedient in an amazingly small number of cases. In the period 1941 to 1949, the per annum ratio was 64 adult proceedings for every 1,000 children's cases; while in the period 1950 to 1955, the proportion dropped dramatically to less than 3 adult proceedings per 1,000 children's cases.⁵ In so far as these figures may represent a shifting of criminal prosecutions of adults from children's courts to the criminal courts, they should occasion congratulation. But to the degree that they may reflect an abdication of the children's courts' responsibility to correct delinquent parents, they should cause serious concern. Nor is this concern without basis in the published figures.

The report cited indicates that during the years 1954 and 1955, in the cases of delinquent or neglected children disposed of after investigation by the court's Probation Bureau, approximately 75 per cent of the children were returned to the homes from which they had come.⁶

example, cases of mental illness. . . ." (Quoted from an April 8, 1947 letter of Dr. Katherine F. Lenroot, Chief of the United States Children's Bureau, Washington, D.C.)" *Citrin v. Belcastro*, *supra* note 1 at 281-82, 91 N.Y.S.2d at 284-85.

³ LUDWIG, *YOUTH AND THE LAW* 146-52 (1955).

⁴ In the reported cases, we find only one directly relating to the contempt jurisdiction of children's courts and decided after *People v. Rogers*, 248 App. Div. 141, 288 N.Y. Supp. 900 (1st Dep't), *aff'd mem.*, 272 N.Y. 612, 5 N.E.2d 357 (1936). Contempt proceedings in Children's Court are civil in nature and the New York Code of Criminal Procedure does not apply. *People ex rel. Quigley v. Marsden*, 188 Misc. 37, 66 N.Y.S.2d 698 (Sup. Ct. 1946) (by implication).

⁵ TWENTY-THIRD ANNUAL REPORT OF THE DOMESTIC RELATIONS COURT OF THE CITY OF NEW YORK 2, Part II (1955). In the period from 1941 to 1949, the court's average annual incidence of new cases concerning neglected or delinquent children was 7,791; in the same period the average annual occurrence of adult proceedings was 503. In the period 1950 to 1955, the annual averages were: children's cases 9,094; adult proceedings 26. *Ibid.*

⁶ The Report cited in the preceding note, at page 17 of Part II, indicates

The statistics fail to indicate whether or not the persons having custody were placed under court orders with respect to their care and supervision of the children. Nor are figures given as to proceedings against adults for violation of such orders.⁷

Control Through Contempt

It seems self-evident that persons who have custody exert at least some control over the circumstances which affect a child's conduct and welfare. If a neglected or delinquent child is to be returned to his home, the court must require that those who have day to day control of the child's life shall assume responsibility toward the child. Care and control of the child's welfare and conduct is exercised by the parents, or it is effectively exercised by no one. If their cooperation cannot be enlisted, it would seem that the court's duty to protect and correct children would require commitment of all, or nearly all, such children; otherwise the remedial process would be limited to the short time that a child is in court or in conference with a probation officer. Parents of such children can be enlisted as agents of the court's corrective and protective effort only if the responsibility is imposed upon them by the court, and that duty cannot be imposed with effect unless it is enforceable by sanction.

The extreme opponents of punishment for parents conceive of the court as a welfare agency only.⁸ They ignore the fact that, although the children's courts may advantageously offer advice and encouragement and make available health and welfare services, the courts remain essentially judicial agencies, with the distinctive power and duty to determine and enforce rights and responsibilities of citizens toward each other and toward the state. The courts are endowed with the authority of the state to make and enforce their determinations. If children's courts are not to have and exercise the power to punish for contempt, they would do better to give way to some agency which will offer counsel only, and let the courts of general jurisdiction reassume the judicial functions delegated to the children's courts.

that in 1954 the Probation Bureau of the Children's Division of the court disposed of a total of 7,933 children's delinquency and neglect cases, after investigation; in 1955 the total was 7,670. No other years are represented in the Table. In 1954, 1,743 children were committed to institutions, 4,291 were placed on probation or supervision, and in 1,899 cases, the children were discharged or sentence was suspended. In 1955 the totals so disposed of were 1,401, 4,280 and 1,989, respectively. Thus, about 75% of the children were returned to their homes; 50% under probation or supervision; 25% without court supervision. No data is given regarding orders made to persons having custody of children.

⁷ The only pertinent figures appearing in the Report are those on "New Adult Proceedings"; in 1954 there were 12, and in 1955, 21. TWENTY-THIRD ANNUAL REPORT OF THE DOMESTIC RELATIONS COURT OF THE CITY OF NEW YORK 2, Part II (1955).

⁸ See notes 1 and 2 *supra*.

That children's courts have power to punish for contempt is clear, but for many years children's courts in this state have gone further and assumed to exercise criminal jurisdiction of adult offenses which are related to juvenile delinquency or neglect. In this they have been upheld by a number of appellate decisions. Yet there is reason to believe that the cases wherein that jurisdiction was upheld were not correctly decided. However that may be, the propriety and necessity of punishing parents in the children's courts cannot be properly evaluated without examining the doctrine so long asserted, that those courts have a criminal jurisdiction of adult offenders against children.

Existing Statutes

The 1921 amendment of Article VI, Section 18, of the New York State Constitution⁹ authorized the legislature to establish courts of domestic relations and children's courts. Accordingly, in 1922, children's courts were established in counties outside the City of New York by the Children's Court Act of the State of New York.¹⁰ Another act, in 1924, established the Children's Court of the City of New York.¹¹ Subsequently, both the Family Court¹² and the New York City Children's Court were made divisions of the New York City Domestic Relations Court.¹³

The children's courts of this state are thus governed by two distinct acts; the Domestic Relations Court Act of the City of New York applies in the five counties comprising the City of New York, and the Children's Court Act of the State of New York has application in the other counties of the state except Chautauqua County. For the sake of clarity and brevity, these acts will be referred to as the "City Act" and the "Upstate Act," respectively. The two acts describe the courts' jurisdiction over adults in provisions which are generally, though not in every respect, parallel. The "Upstate Act" declares that the Children's Court has jurisdiction to:

. . . determine all cases less than the grade of felony which may arise against any parent or other adult responsible for . . . the delinquency of or neglects any child.¹⁴

This provision is echoed by the "City Act."¹⁵ In provisions apart from the foregoing, the acts further provide that:

⁹ N.Y. CONST. art. VI, § 18.

¹⁰ Laws of N.Y. 1922, c. 547, amended in its entirety by Laws of N.Y. 1930, c. 393.

¹¹ Laws of N.Y. 1924, c. 254.

¹² Formerly constituted under N.Y.C. CRIM. CTS. ACT § 105 (later repealed as § 74 by Laws of N.Y. 1933, c. 482, § 164).

¹³ Laws of N.Y. 1933, c. 482.

¹⁴ N.Y. CHILDREN'S CT. ACT § 6(4).

¹⁵ N.Y.C. DOM. REL. CT. ACT § 61(2). For the text of this section, see note 48, *infra*.

Any violation of any order made pursuant to the provisions of this section shall be punishable as a misdemeanor . . . but the court may, in its discretion, proceed with and adjudicate upon it as a contempt of court. . . .¹⁶

To distinguish between a violation of an order of the children's court and the offense of contributing to the delinquency or neglect of a child, the former will be denominated "violations," the latter "contributing offenses."

Decisions in the Higher Courts

Children's Court a Civil Forum

That the children's court, in punishing "violations," can exercise no criminal jurisdiction is well established. This proposition was clearly stated by the Appellate Division in the case of *People v. Rogers*,¹⁷ which was subsequently affirmed without opinion by the Court of Appeals. There, the defendant, having violated an order of a children's court which directed him to pay for the maintenance of his children,¹⁸ was convicted in Special Sessions of the crime of having unlawfully omitted to provide for a child. He appealed his conviction, contending that because the "violations" clause of the "City Act" gave the Children's Court exclusive original jurisdiction over all violations of its own orders, Special Sessions was without power to try him. The court rejected this contention upon two grounds. Special Sessions Court was held to have exclusive jurisdiction to try misdemeanors within the City of New York.¹⁹ Secondly, although the Children's Court has exclusive power to punish the "violation" as a contempt,²⁰ this power is not in derogation of the Special Sessions jurisdiction of misdemeanors; the Children's Court has no power to try the misdemeanor charge as such. This second ground was established by construing the "violations" provision of the "City Act" in the light of a prior Court of Appeals holding that proceedings in Domestic Relations Court are civil in nature.²¹ To further support its construction, the Appellate Division referred to the failure of the act to provide procedural machinery adapted to a criminal prosecution.

¹⁶ N.Y. CHILDREN'S CT. ACT § 6(3) (c); N.Y.C. DOM. REL. CT. ACT § 61(4).

¹⁷ 248 App. Div. 141, 288 N.Y. Supp 900 (1st Dep't), *aff'd mem.*, 272 N.Y. 612, 5 N.E.2d 357 (1936).

¹⁸ The children had been committed to an institution by the court. At that time, Children's Court in the City of New York had jurisdiction to order support in such a case, under former Section 61(3) of the N.Y.C. DOM. REL. CT. ACT (later repealed by Laws of N.Y. 1940, c. 671, § 4). The jurisdiction was transferred to Family Court Division. Laws of N.Y. 1940, c. 671, § 2.

¹⁹ N.Y.C. CRIM. CTS. ACT § 31(1).

²⁰ N.Y.C. DOM. REL. CT. ACT § 61(4); *cf.* N.Y. CHILDREN'S CT. ACT § 6(2)(c).

²¹ *Kane v. Necci*, 269 N.Y. 13, 198 N.E. 613 (1935).

Criminal Jurisdiction and the Children's Courts

Eleven years later, with only one justice remaining of those who had unanimously decided the *Rogers* case, the same Department construed the provisions of the "City Act" which govern "contributing offenses." In *Humann v. Rivera*,²² the court held that the Children's Court had jurisdiction to convict a mother on the criminal charge of contributing to her son's delinquency. She had served part of a jail sentence, imposed by the Children's Court after her conviction in a proceeding where a volume of hearsay had been admitted against her and where she had not understood the charges preferred. On the rationale that a criminal proceeding entitles her to application of the rules of criminal law regarding the quality of evidence and understanding of the charges, judgment was reversed and a new trial ordered, "assuming the proper authorities deem it necessary."²³ But the motion to vacate judgment was denied, because, it was stated, the "contributing offenses" provision of the "City Act" gives to the Children's Court criminal jurisdiction in such a case. The holding in the *Rogers* case was distinguished as applying only to the "violations" provision of the act. On the issue of whether the act provides adequate procedural machinery for trial of criminal cases in Children's Court, it was held, contrary to the doctrine expounded in the *Rogers* case upon this point, that Section 75 of the "City Act"²⁴ properly incorporates, for trial of such cases, the procedure of the criminal courts. The decision relied upon the text of the "contributing offenses" provision of the "City Act," and upon the decisions of the other Departments which broadly construed the "contributing offenses" provisions of the "Upstate Act."²⁵ No attention was given to the doctrine that children's and family courts are civil fora, and their proceedings civil in nature.

Proceedings Characterized by the Nature of the Forum

While no decision of the Court of Appeals has directly construed either the "contributing offenses" or the "violations" provision of the acts governing the children's courts, a line of decisions in that court has established the principles that a proceeding takes on the nature of the forum in which it is tried, and that domestic relations courts generally, and children's courts in particular, are civil fora. These principles formed one of the bases of the *Rogers* decision. *Kane v.*

²² 272 App. Div. 352, 71 N.Y.S.2d 321 (1st Dep't 1947).

²³ *Humann v. Rivera*, 272 App. Div. 352, 357, 71 N.Y.S.2d 321, 326 (1st Dep't 1947).

²⁴ N.Y.C. DOM. REL. CT. ACT § 75; cf. N.Y. CHILDREN'S CT. ACT § 14. See text at note 37, *infra*.

²⁵ The Appellate Division decisions construing the "contributing offenses" provision of the "Upstate Act" are discussed below. See notes 46, 51 *infra*.

Necci,²⁶ relied upon in the *Rogers* case, was an appeal from an order of the Appellate Division²⁷ reversing a Family Court order for support of the defendant's stepchildren. The Court of Appeals held that an appeal from a final order of the Appellate Division in a case which had originated in Domestic Relations Court must comply with the requirements of the Civil Practice Act.²⁸ It could not, as was contended, come to the Court of Appeals under the Code of Criminal Procedure provisions.²⁹ For, the court reasoned, support proceedings are civil proceedings because they have been shifted to the civil side of the courts, being taken from the criminal jurisdiction of Special Sessions and given to Domestic Relations Court, "proceedings in which are treated as of a civil rather than of a criminal nature."³⁰ The court, in referring to Section 102 of the "City Act," which empowers Family Court to impose imprisonment up to twelve months for failure to provide support,³¹ declared that this power to punish does not make the proceeding a criminal one. The same principles were approved in *Matter of Clausi*,³² which was a paternity proceeding originating in an upstate Children's Court. A divided Appellate Division had affirmed³³ an order of filiation, and the defendant appealed, without leave, to the Court of Appeals. The appeal was dismissed as it does not lie as of right, even in criminal cases. But the court corrected the view entertained by both parties that this was a

²⁶ 269 N.Y. 13, 198 N.E. 613 (1935).

²⁷ *Kane v. Necci*, 245 App. Div. 1, 280 N.Y. Supp. 489 (2d Dep't 1935).

²⁸ When the decision was made, Section 58 of the New York City Domestic Relations Court Act expressly incorporated Articles 37 and 39 of the New York Civil Practice Act, but omitted reference to Article 38 which governs appeals from the Appellate Division to the Court of Appeals. Section 43 of the New York Children's Court Act did not provide for appeals to the Court of Appeals. Both sections, as amended in 1954, now expressly provide, "Appeals to the court of appeals shall be governed by the provisions of the civil practice act relating to appeals to that court in civil cases. . . ." Laws of N.Y. 1954, c. 806, §§ 15, 16.

²⁹ N.Y. CODE CRIM. PROC. § 520(3).

³⁰ *Kane v. Necci*, 269 N.Y. 13, 15, 198 N.E. 613, 614 (1935).

³¹ The section cited has been part of the "City Act" since that act became law in 1933. Laws of N.Y. 1933, c. 482. Support jurisdiction was given to the upstate children's courts only in 1942. Laws of N.Y. 1942, c. 810. Those courts also have power to imprison a person guilty of non-support for a maximum term of six months. N.Y. CHILDREN'S Ct. ACT § 31-a. Although the language of Section 31-a is closely similar to Section 102 of the "City Act" which, it was held by the Court of Appeals in *Kane v. Necci*, has not the effect of making a support proceeding in family court a criminal proceeding, yet the Supreme Court has held that a proceeding under Section 31-a of the "Upstate Act" is a criminal proceeding. The county whose children's court had committed persons to a state mental hospital in such proceedings was held liable for their charges, Section 79 of the Mental Hygiene Law making the county chargeable where commitments were made "upon a court order arising out of a criminal action." Application of Eaton, 196 Misc. 648, 92 N.Y.S.2d 461 (Sup. Ct. 1949).

³² 296 N.Y. 354, 73 N.E.2d 548 (1947).

³³ *Matter of Clausi*, 271 App. Div. 845, 66 N.Y.S.2d 347 (3d Dep't 1946) (per curiam).

criminal appeal; it was declared to be an appeal in a civil proceeding because it was tried in a children's court. By the same token, a filiation proceeding brought in Special Sessions, as must still be done in the City of New York,³⁴ would be a criminal proceeding.³⁵ Accordingly, where filiation matters have been shifted, by Domestic Relations Law Section 122(3) and the "Upstate Act" Section 6(3),³⁶ from the criminal courts to the jurisdiction of the children's courts, the proceeding becomes civil and non-criminal. Thus, if the *Rivera* decision is correct in its holding that Children's Court has, by the act which created it, a criminal jurisdiction, the Court of Appeals has been wrong in insisting upon the civil character of proceedings in that court as a necessary corollary to the civil nature of the court, and never once adverting to or distinguishing the court's possession of an innate criminal jurisdiction.

The Rivera Decision Reviewed

Humann v. Rivera, in resolving one issue, relied upon Section 75 of the "City Act" as incorporating procedure for trial of "contributory offenses" in children's courts. The section provides that:

Where the method of procedure in a case . . . in which the court has jurisdiction is not prescribed by this act, such procedure shall be the same . . . [as that of] other courts exercising like jurisdiction. . . .³⁷

However, Section 75, and its parallel procedure section in the "Upstate Act,"³⁸ could not, if taken by themselves, be construed to incorporate criminal procedure. To construe them thus, it would be necessary independently to establish the premise that the children's courts have criminal jurisdiction. Only then can the procedure sections, by the clause which limits their scope to a case or proceeding in which the court has jurisdiction, be held to incorporate criminal procedure.

To construe the "contributing offenses" provisions of the "City Act" as giving to the Children's Court criminal jurisdiction of adult misdemeanors is to assert, in effect, that the provision repeals, *pro tanto*, the grant to Special Sessions of exclusive jurisdiction of misdemeanors which is explicitly contained in the Criminal Courts Act.³⁹ In the *Rogers* case, however, this same consideration led the court to conclude that the "violations" provision did not give the Children's Court jurisdiction to try a misdemeanor charge as such.

In another important respect criminal procedure cannot be incorporated into the children's court acts. Both provide only for pro-

³⁴ N.Y. DOM. REL. LAW § 122(3); N.Y.C. CRIM. CTS. ACT § 31(3).

³⁵ See *Matter of Clausi*, 296 N.Y. 354, 73 N.E.2d 548 (1947), which relied on *Hodson v. Hoff*, 291 N.Y. 518, 50 N.E.2d 648 (1943).

³⁶ The upstate children's courts received filiation jurisdiction in the act which created them. Laws of N.Y. 1922, c. 547.

³⁷ N.Y.C. DOM. REL. CT. ACT § 75.

³⁸ N.Y. CHILDREN'S CT. ACT § 14.

³⁹ N.Y.C. CRIM. CTS. ACT § 31(1).

ceedings before a single judge.⁴⁰ In the "Upstate Act," the court has discretion to employ a jury.⁴¹ Yet in the criminal courts most offenses against children are, as a matter of right, triable before a plural tribunal. In the City of New York, as was pointed out in the *Rogers* decision, Special Sessions has jurisdiction to try misdemeanors,⁴² and a defendant in such case has the right to trial before three judges of that court.⁴³ In the upstate jurisdictions, inferior criminal courts can try a charge of cruelty to children⁴⁴ before a single judge. But the more serious charges in the area of "contributing offenses" are triable, as of right, upon indictment, and in the County Court before a jury.⁴⁵

In the way of precedents, four upstate decisions of the Appellate Division⁴⁶ were relied upon in the *Rivera* case. These decisions are the authority invoked for the propositions that in trying "contributing offenses" children's courts exercise criminal jurisdiction, and that such trials are subject to the safeguards of the Code of Criminal Procedure. In none of the decisions are these conclusions made explicit, nor is there any offer of reasoned justification for them.⁴⁷

⁴⁰ N.Y.C. DOM. REL. CT. ACT § 83; cf. N.Y. CHILDREN'S CT. ACT § 4.

⁴¹ N.Y. CHILDREN'S CT. ACT § 14.

⁴² N.Y.C. CRIM. CTS. ACT §§ 31(1), 130(j).

⁴³ *Id.* § 131.

⁴⁴ N.Y. CODE CRIM. PROC. § 56(27).

⁴⁵ The jurisdiction of Special Sessions in the upstate counties does not extend to the misdemeanor of impairing the morals of a minor described in Section 483 of the New York Penal Law. Cf. *People v. Baxter*, 196 App. Div. 824, 188 N.Y. Supp. 181 (3d Dep't 1921). Nor does the jurisdiction of those courts extend to the other serious offenses against children. *People v. Kramer*, 191 Misc. 426, 74 N.Y.S.2d 715 (County Ct. 1947). These more serious misdemeanors are triable in County Court. N.Y. CODE CRIM. PROC. § 39. The defendant there has a right of trial before a jury. *Id.* § 355.

⁴⁶ *People v. Richard*, 271 App. Div. 1047, 69 N.Y.S.2d 794 (4th Dep't 1947) (mem. opinion); *People v. Smith*, 266 App. Div. 57, 41 N.Y.S.2d 512 (3d Dep't 1943); *People v. Dritz*, 259 App. Div. 210, 18 N.Y.S.2d 455 (2d Dep't 1940) (mem. opinion); *People v. Kelley*, 230 App. Div. 249, 243 N.Y. Supp. 613 (3d Dep't 1930) (per curiam). *Smith* was charged with endangering the morals of a girl sixteen years of age. His conviction was reversed on two grounds; that the children's court which convicted him had no jurisdiction of the adult offense where the child had not been adjudged delinquent, and that the information was defective as stating only a belief that the defendant had done the acts charged. The other defendants were also charged with contributing to juvenile delinquency. *Richard* was accused of indecent conduct in reference to a girl aged fourteen; *Dritz*, of helping a child thief dispose of stolen property; *Kelley*, of giving refuge in a speakeasy to an escaped delinquent girl. *Richard's* conviction was reversed because he had not had a jury trial. The conviction of *Dritz* was upheld against the contention that children's court had not jurisdiction of the adult offense where adjudication of the child's delinquency was had after the adult proceeding had commenced but before the offender was convicted. The information against *Kelley* was permitted to stand in children's court, though an indictment on the same charge had been presented in County Court; the prohibition of double jeopardy was held inapplicable to such preliminaries as indictments and informations.

⁴⁷ Two earlier upstate Appellate Division decisions, not cited in the *Rivera* case, assumed the existence in children's courts of criminal jurisdiction over

The judges who determined the *Rivera* appeal found support for their position in the section of the "City Act" providing for the "contributing offenses" jurisdiction of the Children's Court. Read by itself, the text of the section⁴⁸ supports the construction that criminal jurisdiction is here conferred upon the Children's Court. Although a construction which views the section as granting only the power to hold the offending adult in contempt may seem improper, such a construction is not without warrant. The statute is in derogation of the common law; the Children's Court is one of limited jurisdiction and of statutory origin; and the broader construction of the statute in the *Rivera* case limits the rights of one who is accused of crime. Any statute which can be classified in one of these categories must be strictly construed.⁴⁹ The fact that the Court of Appeals has held these courts and the proceedings therein to be essentially civil⁵⁰ is further reason to construe this provision strictly. But in view of the holdings of the Appellate Division on the criminal jurisdiction exercised under the "contributing offense" provisions,⁵¹ and of the similar course taken in the children's courts' decisions discussed below, it seems that the broader construction of the statute is not likely to be disturbed.

Children's Court Decisions Not Appealed

There are fifteen reported cases in which children's courts have tried adults on "contributing offense" charges. Of these opinions, two were written by Judge Smyth of Westchester County, eleven by Justice Panken and two by Justice Sicher.

Justice Sicher, in a 1947 case,⁵² held that the Children's Court had no jurisdiction of the misdemeanor prosecution of an adult who allegedly contributed to a child's delinquency. The determination

adult offenses. See *People v. De Pue*, 217 App. Div. 321, 217 N.Y. Supp. 205 (3d Dep't 1926); *People v. Hopkins*, 208 App. Div. 438, 203 N.Y. Supp. 653 (3d Dep't 1924), *appeal dismissed*, 239 N.Y. 589, 147 N.E. 207 (1925).

⁴⁸ "The children's court shall have jurisdiction, whenever the issues involving a delinquent or neglected child are before the court summarily to try, hear and determine any charge or offense, less than the grade of a felony, against any parent, or other person in loco parentis to such child, involving an act or omission in respect to such child. . . ." N.Y.C. DOM. REL. CT. ACT § 61(2). For the text of the corresponding section in the "Upstate Act," see text at note 14 *supra*.

⁴⁹ *People ex rel. Cosgriff v. Craig*, 195 N.Y. 190, 197, 88 N.E. 38, 40 (1909) (dictum).

⁵⁰ See *Matter of Clausi*, 296 N.Y. 354, 73 N.E.2d 548 (1947); *Kane v. Necci*, 269 N.Y. 13, 198 N.E. 613 (1935).

⁵¹ *Humann v. Rivera*, 272 App. Div. 352, 71 N.Y.S.2d 321 (1st Dep't 1947); *People v. Richard*, 271 App. Div. 1047, 69 N.Y.S.2d 794 (4th Dep't 1947) (mem. opinion); *People v. Smith*, 266 App. Div. 57, 41 N.Y.S.2d 512 (3d Dep't 1943); *People v. Dritz*, 259 App. Div. 210, 18 N.Y.S.2d 455 (2d Dep't 1940) (mem. opinion); *People v. Kelley*, 230 App. Div. 249, 243 N.Y. Supp. 613 (3d Dep't 1930) (per curiam). See note 46 *supra*.

⁵² *Bowman v. Cruz*, 188 Misc. 826, 68 N.Y.S.2d 413 (Child. Ct. 1947) (The

rested upon the authority of the *Rogers* case, and upon a very well reasoned criticism of the view that the "contributing offense" provisions give criminal jurisdiction to children's courts. Soon thereafter, the Appellate Division determined the *Rivera* appeal. Subsequently, in deciding *Citrin v. Belcastro*⁵³ Justice Sicher did not hold that the Children's Court lacked criminal jurisdiction in a "contributing offense" prosecution, though the question was squarely before him.

In the years 1936 to 1951, Justice Panken wrote eleven opinions in proceedings where adults were tried under the "contributing offense" provisions of the "City Act." Two parents and a grandparent were convicted of offenses contributing to neglect.⁵⁴ Five parents were convicted of offenses relating to the delinquency of their children.⁵⁵ Two adults were found guilty of contributing to the delinquency of children not in their custody,⁵⁶ and one adult so charged was found not guilty.⁵⁷ Judge Smyth convicted the defendants in two cases where criminal charges were made.⁵⁸ In another case, he made

defendant was charged with having sold to the delinquent child cartridges which he used to wound another child. Sale of the ammunition to the child violated the Penal Law.)

⁵³ 196 Misc. 272, 91 N.Y.S.2d 275 (Child. Ct. 1949) (The charge was that the defendant, "boyfriend" of the child's mother, had punished the child so severely as to contribute to his neglect. It was held that one who was the parent's agent in administering punishment, but who was not himself in loco parentis, could not be charged under the "contributing offenses" provision.)

⁵⁴ *People v. Phipps*, 97 N.Y.S.2d 845 (Child. Ct. 1950) (A father not in custody quizzed his six year old child on the sordid details of her mother's associations with other men.); *In re O'Donnell*, 61 N.Y.S.2d 822 (Child. Ct. 1946) (The defendant grandmother, off on a carousal, had left her own young children with those of her daughter unattended in a flat where two of the children perished in a fire.); *In re Whitmore*, 47 N.Y.S.2d 143 (Child. Ct. 1944) (*semble*) (The mother had refused to have her child vaccinated, so that he was not admitted to school and was found delinquent as a truant.)

⁵⁵ *Matter of "Tana"*, 197 Misc. 67, 93 N.Y.S.2d 752 (Child. Ct. 1949) (*semble*) (The father helped his 14 year old daughter to misrepresent her age and so get a marriage license without leave of court.); *O'Rourke v. Reeve*, 93 N.Y.S.2d 88 (Child. Ct. 1949) (The father was accused of drinking the proceeds of the family relief check.); *Seleina v. Seleina*, 93 N.Y.S.2d 42 (Child. Ct. 1949) (The father, separated from his wife and child, encouraged the child in disobeying its mother.); *In re DiMaggio*, 65 N.Y.S.2d 613 (Child. Ct. 1946) (*semble*) (The father negligently left his gun where the son could find it and use it to wound another child seriously.); *People v. Denny*, 50 N.Y.S.2d 435 (Child. Ct. 1944) (The father received goods stolen by his child.)

⁵⁶ *People v. Jones*, 199 Misc. 926, 102 N.Y.S.2d 629 (Child. Ct. 1951) (A group of delinquent children used the defendant's home as a hangout and she bought from them bed linen they had stolen from a neighbor's clotheslines.); *Zambrotto v. Jannette*, 160 Misc. 558, 290 N.Y. Supp. 338 (Child. Ct. 1936) (where defendant apparently received goods stolen by a child.)

⁵⁷ The nature of the specific offense does not appear, and the report does not indicate whether the man was parent or stranger to the child involved. *In re Rosen*, 54 N.Y.S.2d 632 (Child. Ct. 1945).

⁵⁸ *Matter of "Jones"*, 198 Misc. 269, 98 N.Y.S.2d 524 (Child. Ct. 1950) (A woman's immoral conduct with several men, by which her children were conceived, was held to constitute wilful acts by which she contributed to the children's neglect.); *Matter of Weise*, 193 Misc. 672, 84 N.Y.S.2d 725 (Child. Ct.

an order for support under the "violations" provision of the "Upstate Act," and held that to be a civil proceeding distinct from the criminal proceedings which he said were authorized under the "contributing offenses" jurisdiction.⁵⁹

In his opinions,⁶⁰ Judge Smyth clearly asserts that children's courts have jurisdiction, by virtue of the "contributing offenses" provision of the "Upstate Act," to try adults for the crime of contributing to neglect, described in Section 494 of the Penal Law.⁶¹ From the language of his opinions, it is clear that Justice Panken, like Judge Smyth, conceived the direct purpose of the jurisdiction exercised in "contributing offense" cases to be the punishment of adult criminals.⁶² He describes himself as a magistrate of a criminal court⁶³ and he shows zeal for observance of the rules of criminal prosecution.⁶⁴

Yet in passing sentence, neither judge seems to have been anxious to punish for the sake of punishing. In Judge Smyth's two "criminal" cases, the persons convicted were given suspended sentences and placed on probation, with orders regulating their conduct so as to prevent future neglect.⁶⁵ Apparently Justice Panken followed the same practice in many cases; it is mentioned in two only,⁶⁶ but its use in other cases may be inferred from the decisions which make no men-

1948) (The court held that, where it had before it evidence that the defendant's children were neglected, formal adjudication of their neglect was not necessary before convicting the father of contributing to their neglect.).

⁵⁹ *La Rocca v. La Rocca*, 144 Misc. 737, 259 N.Y. Supp. 569 (Child. Ct. 1922).

⁶⁰ See notes 58 and 59 *supra*.

⁶¹ "A . . . person having custody of a child . . . who omits to exercise reasonable diligence . . . to prevent such child from becoming guilty of juvenile delinquency . . . or from becoming adjudged by a children's court in need of the care and protection of the state . . . or who permits such a child to associate with vicious, immoral or criminal persons, or to grow up in idleness, or to beg or solicit alms, or to wander about the streets of any city, town or village late at night . . . or to furnish entertainment for gain . . . in any public place, or to be an habitual truant from school, or to habitually wander around any railroad yard or tracks, to enter any house of prostitution or assignation, or any place where gambling is carried on, . . . or to enter any place where the morals of such child may be endangered or depraved or may be likely to be impaired . . . shall be guilty of a misdemeanor." N.Y. PEN. LAW § 494.

⁶² See, e.g., *Zambrotto v. Jannette*, 160 Misc. 558, 290 N.Y. Supp. 338 (Child. Ct. 1936), where the Justice distinguished the holding in the *Rogers* case, asserting that although children's court was held to be a civil court, the holding had not been that the legislature could not confer a criminal jurisdiction upon that court.

⁶³ *O'Rourke v. Reeve*, 93 N.Y.S.2d 88 (Child. Ct. 1949); *Seleina v. Seleina*, 93 N.Y.S.2d 42 (Child. Ct. 1949); *People v. Denny*, 50 N.Y.S.2d 435 (Child. Ct. 1944).

⁶⁴ See *People v. Phipps*, 97 N.Y.S.2d 845 (Child. Ct. 1950); *In re Whitmore*, 47 N.Y.S.2d 143 (Child. Ct. 1944).

⁶⁵ *Matter of "Jones"*, 198 Misc. 269, 98 N.Y.S.2d 524 (Child. Ct. 1950); see *Matter of Weise*, 193 Misc. 672, 84 N.Y.S.2d 725 (Child. Ct. 1948).

⁶⁶ *People v. Jones*, 199 Misc. 926, 102 N.Y.S.2d 629 (Child. Ct. 1951); *Seleina v. Seleina*, *supra* note 63.

tion of imposition of sentence.⁶⁷ He did, however, commit to jail three convicted misdemeanants,⁶⁸ and fined another \$50.⁶⁹

The practice of convicting the adult upon a criminal charge, but suspending sentence and placing him on probation, is hardly different, in giving the court effective control of his future conduct, from the civil procedure of making an order to the adult which will be enforceable by contempt proceedings. But the incidental effects of the former device may be unfair to the adult and may impoverish the ability of the court to enlist his genuine cooperation. The adult's conviction in children's court, while denying him at least some of the procedural protections of the criminal law, labels him a criminal. If an adult be convicted by a single judge in children's court, and the certificate of conviction is filed with the County Clerk describing the offense as a Penal Law misdemeanor,⁷⁰ that certificate may become the basis, in another criminal prosecution, for convicting the adult as an habitual criminal.⁷¹ Where the children's court proceeds criminally, the punitive nature of the court's approach to him is likely to make the adult resent both the court and the child. On the other hand, the forward-looking character of the order enforceable through contempt proceedings gives the adult a fresh and fair start in meeting his responsibilities, while it gives the court a firm control over his conduct.

Proposed Changes in Children's Court Procedure

Under the present statutes, only the Children's Court of the City of New York is required to summon the child's custodian when a petition alleging neglect has been filed.⁷² If, however, the petition filed alleges delinquency, the court may proceed without hearing the person in charge of the child.⁷³ The "Upstate Act" does not require the parents or those in loco parentis to be summoned, whether the proceedings are in delinquency or in neglect.⁷⁴ In relation to the power of the court to make orders, the "contributing offense" provision of the "City Act" gives the court power, in its discretion, to impose by order, a "duty . . . deemed to be for the best interests of . . . [the] child," where the parent or other person in custody has been

⁶⁷ *People v. Phipps*, *supra* note 64; *In re DiMaggio*, 65 N.Y.S.2d 613 (Child. Ct. 1946); *In re Whitmore*, *supra* note 64; *Zambrotto v. Jannette*, 160 Misc. 558, 290 N.Y. Supp. 338 (Child. Ct. 1936).

⁶⁸ *O'Rourke v. Reeve*, 93 N.Y.S.2d 88 (Child. Ct. 1949); *In re O'Donnell*, 61 N.Y.S.2d 822 (Child. Ct. 1946); *People v. Denny*, 50 N.Y.S.2d 435 (Child. Ct. 1944).

⁶⁹ *People v. Jones*, *supra* note 66.

⁷⁰ See N.Y. CHILDREN'S CT. ACT § 15; see N.Y. CODE CRIM. PROC. § 721.

⁷¹ See N.Y. PEN. LAW § 1020.

⁷² N.Y.C. DOM. REL. CT. ACT § 72.

⁷³ *Ibid.*

⁷⁴ N.Y. CHILDREN'S CT. ACT § 11.

found to have contributed to neglect or delinquency.⁷⁵ Another provision of that act empowers the court to order parental conduct when it has made a finding of neglect as to the child.⁷⁶ While the "contributing offense" provision of the "Upstate Act" makes no direct mention of orders governing adult conduct,⁷⁷ the act does make reference to support orders⁷⁸ and to "orders of protection" in connection therewith.⁷⁹ Also, the act contains the general provision that in the exercise of its jurisdiction the court shall have power "to make any order necessary to carry out and enforce the provisions of this act."⁸⁰ The "violations" provisions of both acts give to the courts power to punish as a contempt any violation of their competent orders.⁸¹ The contempt procedure of the Judiciary Law is incorporated in the acts.⁸²

The New York State Temporary Commission on Youth and Delinquency recently proposed that both acts be amended.⁸³ The purpose of the amendment was to make more effective the courts' power to impose and enforce parental conduct helpful in correcting or protecting a delinquent or neglected child. It proposed that the courts be obliged to summon the custodian of any child whose delinquency or neglect is in issue. Upon adjudication of delinquency or neglect, all children's courts would be clearly empowered to order parental conduct. The orders would be required to be in writing and to *specify* conduct "such as would reasonably prevent delinquency or neglect." A person charged with contempt for wilfully violating an order would have notice of the accusation and a reasonable time to prepare a defense. Fair and objective examination of the reasonableness and specificity of the order, and of the evidence offered to support the accusation, would be assured by providing that the contempt proceeding be had before a judge other than the one who made the order. The maximum punishment for a violation would be a fine of \$250 and/or thirty days imprisonment in the county jail. The proposal has been passed by the Legislature and sent to the Governor.⁸⁴

Conclusion

It may be hoped that enactment of this amendment will clarify the contempt jurisdiction of the children's courts and facilitate its

⁷⁵ N.Y.C. DOM. REL. CT. ACT § 61(2).

⁷⁶ *Id.* § 61(8).

⁷⁷ N.Y. CHILDREN'S CT. ACT § 6(4).

⁷⁸ *Id.* §§ 6(2)(b), 30-a(1).

⁷⁹ *Id.* § 30-a(6).

⁸⁰ *Id.* § 30-a(23).

⁸¹ N.Y.C. DOM. REL. CT. ACT § 61(4); N.Y. CHILDREN'S CT. ACT § 6(2)(c).

⁸² N.Y.C. DOM. REL. CT. ACT § 61(5); N.Y. CHILDREN'S CT. ACT §§ 6(6) and 30-a(20).

⁸³ REPORT OF THE NEW YORK STATE TEMPORARY COMMISSION ON YOUTH AND DELINQUENCY 38 (December 1955).

⁸⁴ A. No. 4666, Int. 3673 (March 23, 1956).

exercise. Proper exercise of this jurisdiction should cause the punishment of parents to be seen in true perspective, as a necessary sanction to the courts' control of parental conduct respecting delinquent and neglected children. The clarity and fairness of such an enactment should help to remove from the children's courts the stigma which attaches to agencies for criminal prosecution. The judges, being more mindful of the efficacy and equity of the order enforceable through contempt, will, it is hoped, insist upon transferring all misdemeanor prosecutions to the competent criminal courts. Thus the criminal jurisdiction exercised under the "contributing offense" provisions of the children's court acts will be abandoned, effecting a de facto repeal of the troublesome statutory provisions. Meanwhile, the legislature should consider how best to revise the "contributing offense" clauses which have been used to impose upon a civil tribunal the incubus of an opprobrious and unwanted criminal jurisdiction.



IN REM TAX FORECLOSURE—ITS DEFECTS AND CONSEQUENCES

A discussion of the evolution of the present New York law on property tax enforcement illustrates a pendulous swing from a situation where the city was handicapped in protecting its tax assessment interests, to one where a property owner is at a great disadvantage in protecting his fundamental property rights. Where formerly the law afforded adequate notice and substantial rights to the surplus of the foreclosure sale and to redemption after judgment, under present circumstances the law permits a foreclosure of all rights upon inadequate notice. The latter extreme requires modification.

Lien-sale Method of Tax Foreclosure

Until 1948, New York City employed the lien-sale method of real property tax enforcement. Controlled by the city's Administrative Code,¹ this method empowers the city to make collection by selling its tax liens on delinquent property to private individuals for the full amount of the arrears,² including interest and penalties.³ If no bids are received, the tax collector may purchase the lien on behalf of the city.⁴ Transfer of the tax lien to the successful bidder operates as an

¹ N.Y.C. ADMIN. CODE §§ 415(1)-23.0 to 415(1)-53.3.

² *Id.* § 415(1)-23.0.

³ *Id.* § 415(1)-31.0. Such a sale is made by the city collector or any deputy.

Id. § 415(1)-27.0.

⁴ *Id.* § 415(1)-29.0.