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Domestic Relations--Criminal Jurisdiction of Domestic Relations Court (Zambrotto v. Jannette, et al., 160 Misc. 558 (1936))

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that the provisions making possible a declaratory judgment do not contemplate that courts shall determine the precise rights existing between public officers and questionable violators of the law, by declaring in advance, whether certain shady transactions do or do not constitute a crime.[13] The opposite conclusion has been reached in Oregon[14] and Utah,[15] in somewhat similar cases. Both of those jurisdictions have adopted the Uniform Declaratory Judgments Act, whereas New York has not. However, the New York Act does not apparently differ from the Uniform Declaratory Judgments Act in any respect which would suggest a principle upon which the Oregon and Utah cases could be distinguished from the instant case.[16]

The discretionary power of the court is best exemplified in situations of this type, when, in the exercise of such discretion, the dignity of the court can be protected from declaring whether options on dogs at this time, or options on horses at a later date, or other cleverly devised gambling schemes constitute a crime. The equitable maxim of "Clean Hands" relegates petitioners of this type of action to the established tribunals of criminal jurisdiction.[17]

H. K.

DOMESTIC RELATIONS—CRIMINAL JURISDICTION OF DOMESTIC RELATIONS COURT.—The defendants contributed to a minor's delinquency and this proceeding is brought by virtue of the Domestic Re-

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[13] Instant case at p. 252. *Contra:* 97 N. Y. L. J. 30, Feb. 5, 1937, p. 4, col. 3.

[14] Multnomah County Fair Ass'n v. Langley, 140 Ore. 172, 13 P. (2d) 354 (1932) (determination at the instance of a county fair whether a proposed game of chance would amount to a lottery and thus violate a statute).

[15] Utah State Fair Ass'n v. Green, 68 Utah 251, 249 Pac. 1016 (1926) (privileged to conduct horse racing without danger of prosecution). Also see: Faulkner v. City of Keene, 85 N. H. 147, 155 Atl. 195 (1931); Rosenberg v. Village of Whitefish Bay, 199 Wis. 214, 225 N. W. 838 (1929).

[16] Editorial, N. Y. L. J., p. 620, col. 1, Feb. 5, 1937.

[17] A distinguished authority on the subject of Declaratory Judgments, Edwin M. Borchard, Hotchkiss Professor of Law at Yale University, comments as follows on the instant case: "It would seem to me that the court has been misled. The plaintiff seeks not an advisory opinion, but a binding and final judgment on a question of law. The court might send the case back for trial to determine the full facts, if these were doubtful, but I do not think that it is authorized to dismiss the case on the ground that it seeks an advisory opinion, or that it is a substitution of a civil for a criminal action, or that there is no authority for this kind of action. The public officials are not indeed claiming any right of property in the dogs. They are merely threatening to send the plaintiff to prison and ruin his business. That gives him a fully matured legal interest to have the court determine as a matter of law that the threat is unfounded and unjustified, and that he is legally privileged to run his business as he is now operating it. Unless there is a doubt on the facts, the court is in a position to decide that question of law, and by doing so serves a valuable social function." (Correspondence, N. Y. L. J., p. 620, col. 3, Feb. 5, 1937.)

lations Court Act, Section 61, (2), which confers on the Domestic Relations Court *criminal* jurisdiction to punish all adults for acts contributing to the delinquency of minors.[1] The defendants contend that the legislature has overreached its authority in conferring criminal jurisdiction inasmuch as it was empowered to confer only civil jurisdiction on the Domestic Relations Court. *Held:* The legislature, by constitutional provision,[2] was authorized to confer such jurisdiction on the Domestic Relations Court as may prove necessary and the former is the sole body to determine the necessity. Therefore the statute conferring criminal jurisdiction on the Domestic Relations Court is constitutional. *Zambrotto* v. *Jannette, et al.,* 160 Misc. 558, 290 N. Y. Supp. 338 (1936).

The Domestic Relations Court, a statutory court,[3] was primarily founded to protect and rehabilitate child-life rather than to punish children.[4] Since it is a statutory court, the jurisdiction which might be conferred upon it must be found in a constitutional provision.[5] Powers which are prohibited by the New York Constitution or reserved exclusively to other courts may not be conferred by statute upon the Domestic Relations Court.[6] However, powers specifically conferred on courts in language sufficiently clear as to its import, when not prohibited or reserved to other courts by the constitution, cannot be taken away by words whose interpretation is open to serious doubt.[7] The powers of the Domestic Relations Court were extended by amendment, so that where formerly it had only jurisdiction to hear and determine acts of parents or those standing in *loco parentis* contributing to juvenile delinquency,[8] it may now punish all adults whose offense is of a lesser grade than a felony.[9] In the recent cases of *Kane* v. *Necci*[10] and *People of the State of New York* v. *Rogers,*[11] decided

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[1] Domestic Relations Court Act § 61 (2) reads as follows: "Such court shall also have jurisdiction whenever the issues involving a delinquent child are before the court, summarily to try, hear and determine any charge or offense less than the grade of felony against any person alleged to have contributed to such child's delinquency and may impose the punishment provided by law for such offense."

[2] N. Y. CONST. art. VI, § 13.

[3] N. Y. Laws 1933, § 61 (2), as amended by N. Y. Laws (1936).

[4] N. Y. Laws 1933, c. 482, § 61 (2), as amended by N. Y. Laws (1936) c. 346, § 4; N. Y. CONST. art. VI, § 18.

[5] Gardner v. Ginther, 257 N. Y. 578, 178 N. E. 802 (1929).

[6] People v. Hopkins, 208 App. Div. 438, 203 N. Y. Supp. 653 (3d Dept. 1924), *appeal dismissed,* 239 N. Y. 589, 147 N. E. 207 (1924); Schley v. Donlin, 131 Misc. 208, 225 N. Y. Supp. 453 (1927); City of Brooklyn v. City of New York, 25 Hun 612 (N. Y. 1881).

[7] People *ex rel.* Paris v. Agent and Warden of State Prison, Comstock, N. Y., 118 Misc. 44, 192 N. Y. Supp. 692 (1922), *order reversed,* Same v. Hunt, 201 App. Div. 573, 194 N. Y. Supp. 699 (3d Dept. 1922); 234 N. Y. 558, 138 N. E. 445 (1922).

[8] N. Y. Laws 1933 c. 482, § 61 (2).

[9] N. Y. Laws 1933 c. 482, § 61 (2), as amended by N. Y. Laws 1936.

[10] 269 N. Y. 13, 17, 198 N. E. 613, 615 (1935).

[11] 248 App. Div. 141, 288 N. Y. Supp. 900 (1st Dept. 1936).

prior to the amendment, it was held that these proceedings were not of a criminal nature as they have been shifted to the civil side of the courts and that the acts involved were to be treated as civil offenses inasmuch as the Domestic Relations Court is not a criminal court.[12] However, the cases mentioned *supra* do not hold that the state legislature has not the *power* to confer criminal jurisdiction upon this court if it so desires. Besides Article 6, Section 18 of the New York Constitution [13] specifically empowers the legislature to confer such jurisdiction as may be necessary to punish offenses of adults who contribute to juvenile delinquency and thereby impliedly gives the legislature authority to confer criminal jurisdiction on the Domestic Relations Court.

H. R. K.

EMINENT DOMAIN—ESCHEAT—MUNICIPAL CORPORATIONS.—By a holographic will, deceased attempted to convey a life interest in property located in New York City to his illegitimate daughter and the fee to his daughter-in-law, petitioner herein. The will was invalid because it was not witnessed in accordance with the laws of New York. The daughter as sole heir was barred from taking by intestacy by reason of her illegitimacy, and as a result, the property escheated to the state. The illegitimate daughter died in 1912. In 1916 while title was in the state, the City of New York acquired title to part of the property by condemnation. In 1918, the legislature, acting upon a petition of the daughter-in-law, passed a special act which authorized the commissioners of the land office to release to her all the property of the intestate which had escheated to the state. In 1919, the city made an award for the property condemned and in the same decree levied an assessment for benefit against the portion which the city had not condemned. In 1924 the Supreme Court ruled that the legislature had released the interest held by the state by the passage of the special act. Petitioner did not make application pursuant to the special act until 1933, at which time the commissioners passed title to the land to her. Petitioner then made application for the award. Petitioner claims that at the time of the condemnation title was in the state; and since the city cannot condemn or assess state property without the permission of the state, and such permission was not given, the condemnation and assessment fall; but petitioner may ratify the condemnation proceedings and claim the award apart

[12] 269 N. Y. 13, 17, 198 N. E. 613, 615 (1935); 248 App. Div. 141, 288 N. Y. Supp. 900 (1st Dept. 1936).

[13] N. Y. CONST. art. VI, § 18: "The legislature may establish * * * courts of domestic relations * * * and may confer on them such jurisdiction as may be necessary * * * for the punishment of adults contributing to such delinquency, neglect or dependency."