

Criminal Law--Homicide by Minor--Degrees of Homicide--Juvenile Delinquency (People v. Murch, 263 N.Y. 285 (1934))

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CRIMINAL LAW—HOMICIDE BY MINOR—DEGREES OF HOMICIDE—JUVENILE DELINQUENCY.—Under an indictment for murder in the first degree, the defendant was found guilty of murder in the second degree. At the time of the crime the defendant was just under sixteen years of age. The jury was charged that they might bring in one of three verdicts, guilty of murder in the first degree, guilty of murder in the second degree, or not guilty. *Held*, charge proper; defendant was not entitled to a charge on the lesser degrees of homicide. *People v. Murch*, 263 N. Y. 285, 189 N. E. 220 (1934).

Both by statute¹ and common law, a child under the age of seven years cannot be convicted of a crime.² At common law, however, full criminal responsibility attaches at the age of fourteen years.³ Such responsibility does not attach under the statute until the age of sixteen years.⁴ Today the law conclusively presumes that an infant over the age of seven and under the age of sixteen years cannot commit any crime except those punishable by death or life imprisonment.⁵ Acts other than those so punishable, in the opinion of the law, are committed without felonious intent.⁶ The Children's Court has sole jurisdiction of such acts⁷ on the ground that they constitute juvenile delinquency.⁸ A verdict of manslaughter rendered against an infant under sixteen would be equivalent to an acquittal.⁹ under the statutes as they exist.¹⁰ If the evidence on the trial is not sufficient to support treason,¹¹ murder in the first degree¹² murder in the second degree,¹³ or kidnapping,¹⁴ the child must be acquitted.¹⁵ If the act committed by the child is one which in an adult would be a crime not punishable by death or life im-

¹ N. Y. PENAL LAW (1909) §816. In *People v. Gardner*, 78 Misc. 514, 139 N. Y. Supp. 1013 (1912) a motion for arrest of judgment was granted after an infant had pleaded guilty and received a suspended sentence. The indictment was dismissed.

² COOLEY, BLACKSTONE (4th ed. 1899) 1229; 1 BARBOUR, CRIM. LAW (3rd ed. 1883) 569; *R. v. Giles*, 1 Moody 166 (1834); *People v. Teller*, 1 Wheel. Cr. 231 (N. Y. 1823); *People v. Townsend*, 3 Hill 479 (N. Y. 1842).

³ *People v. Teller*, *supra* note 2, at 231, 232, "But the attainment of that age (fourteen years) the person of an infant is placed on the same footing as the rest of mankind, as regards their accountability for crime"; 1 WHARTON, CRIM. LAW (10th ed. 1896) 85, §68.

⁴ N. Y. PENAL LAW (1909) §2186; *cf.* *People v. Kaminsky*, 208 N. Y. 389, 102 N. E. 515 (1915).

⁵ N. Y. PENAL LAW *id.*

⁶ *People v. Roper*, 259 N. Y. 170, 181 N. E. 88 (1932).

⁷ N. Y. STATE CHILDREN'S COURT ACT (1922) §6, subd. 1; *People v. Fowler*, 148 N. Y. Supp. 741, 33 N. Y. Cr. Rep. 57 (1914), reversed because of an appeal taken to the County Court instead of to the Supreme Court, Appellate Division. 166 App. Div. 605, 152 N. Y. Supp. 261 (1915).

⁸ *Supra* note 5.

⁹ Instant case.

¹⁰ *Supra* note 5; N. Y. STATE CHILDREN'S COURT ACT (1922) §6, subd. 1.

¹¹ N. Y. PENAL LAW (1909) §2382.

¹² *Id.* §1045.

¹³ *Id.* §1048.

¹⁴ N. Y. PENAL LAW (1933) §1250.

¹⁵ Instant case.

prisonment, then the Penal Law¹⁶ says that it was done without felonious intent.¹⁷ The definition of felony murder in this state is the unintentional killing of a person by another in the act of committing a felony or in the attempt to commit a felony.¹⁸ Therefore, since a child under the age of sixteen cannot be convicted of a crime which does not amount to treason, murder in the first or second degree, or kidnapping, then he cannot be convicted of felony murder.¹⁹

J. A. R., JR.

DOMESTIC RELATIONS—DECLARATORY JUDGMENTS.—The plaintiff's husband and the second defendant are living together in illicit relations, as man and wife. To them has been born an illegitimate child. The two defendants hold themselves out to all as man and wife. The marriage between plaintiff and defendant has never been dissolved by any court. The plaintiff seeks judgment declaring that she is the lawful wife of the defendant, that the second defendant be restrained from using the name of Somberg, that they be enjoined from holding themselves out as man and wife, and the child born to them as their lawful issue. *Held*, declaratory judgments will not be decreed where there is no necessity for it. *Somberg v. Somberg*, 263 N. Y. 1, 188 N. E. 152 (1933).

Courts of Equity will not ordinarily administer relief for an invasion of personal or individual rights, but where the invasion involves a property right or right of substance we find many cases where courts have protected such right.¹ Courts have repeatedly refused to enjoin the use of another's name where there is merely an invasion of the right of privacy.² No such right was recognized at common law.³ However, by statute⁴ today, no person may use the name, portrait or photograph of any living person for advertising purposes without his permission. It is to be observed that this personal right is protected only where it is to be used for advertising purposes. An injunction will not lie so as to enable a lawful wife to restrain another woman and her lawful issue from using the name of another.⁵

¹⁶ *Supra* note 5.

¹⁷ *People v. Roper*, *supra* note 6.

¹⁸ N. Y. PENAL LAW (1909) §1044, subd. 2.

¹⁹ *People v. Roper*, *supra* note 6.

¹ *Routh v. Webster*, 10 Beav. 561, 50 Eng. Rep. 698 (1847); *Walton v. Ashtov*, 2 Ch. 282 (1902); *Edison v. Edison Polyform Co.*, 73 N. J. Eq. 136, 76 Atl. 392 (1907).

² *Roberson v. Rochester Folding Box Co.*, 171 N. Y. 538, 64 N. E. 442 (1902).

³ *Supra* note 2.

⁴ N. Y. CIVIL RIGHTS LAW (1903) §§50-51.

⁵ *Hodecher v. Stricher*, 39 N. Y. Supp. 515 (1896).