

# Infants--Confession Made by Delinquent Boy Without Warning of Self-Incrimination--Proper (People v. Lewis, 260 N.Y. 171 (1932))

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would be more equitable for the courts to hold—that upon the remarriage of the plaintiff, the continuing obligation having terminated and the absolute right to alimony being abrogated, the separation agreement, in so far as it provides for future support and maintenance, should also terminate. In the instant case, the Court expressly refrained from giving an opinion as to the wife's right to support under the contract.<sup>14</sup>

P. V. M., JR.

INFANTS—CONFESSION MADE BY DELINQUENT BOY WITHOUT WARNING OF SELF-INCRIMINATION—PROPER.—The defendant infant under the age of sixteen years broke into a store and stole \$12.00. He was charged in Children's Court with juvenile delinquency. The hearing, which was held in the Children's Court, was as follows: The boy was present in company with his mother, sister, and the family clergyman. Before the boy was questioned by the judge, he was advised, as well as the others present, that he might have the aid of counsel if he or the others so desired. The testimony of the boy sustained the charge beyond any doubt; indeed there was a full admission and no attempt at denial. The boy was thereupon adjudged a delinquent child and was committed to a State Industrial School. On appeal, *held*, juvenile delinquency proceeding not being a criminal one, there was neither right to nor necessity for procedural safeguards prescribed by the Constitution and Statute.<sup>1</sup> *People v. Lewis*, 260 N. Y. 171, 183 N. E. 353 (1932).

No act or omission is a crime except as prescribed by Statute.<sup>2</sup> As the power to declare what act or omission is a crime rests solely with the Legislature, there is no doubt that it has the power to declare that an act done by a child shall not be a crime, although the same act, if committed by an adult, would be a crime.<sup>3</sup> Under Statute<sup>4</sup> the concept of crime and punishment disappears where an act or omission of an infant under sixteen years would be a crime if he were an adult. All suggestion and taint of criminality was intended to be and has been done away with by Statute.<sup>5</sup> For the

<sup>14</sup> *Severance v. Severance*, instant case, at 433, 183 N. E. at 909.

<sup>1</sup> Children's Ct. Act of N. Y. (1930) §45.

<sup>2</sup> N. Y. PENAL LAW (1909) §22—*People v. Knapp*, 206 N. Y. 373, 99 N. E. 841 (1912).

<sup>3</sup> *Supra* note 1.

<sup>4</sup> *Ibid.*

<sup>5</sup> *Supra* note 1, par. 8: "This act shall be construed to the end that the care, custody and discipline of the children brought before the Court shall approximate as nearly as possible that which they should receive from their parents, and that as far as practicable they shall be treated not as criminals but as children in need of aid, encouragement and guidance."

purposes of this case, the fundamental point is that the proceeding was not a criminal one. The state was not seeking to punish a malefactor, it was seeking to salvage a boy who was in danger of becoming one. In other words, the problem for determination by the judge is not—"Has this boy committed a specific wrong?" but "What is he, how has he become what he is, and what had best be done in his interest and in the interest of the state to save him from a downward career?"<sup>6</sup> As Statute<sup>7</sup> declares the act committed by the boy was not a crime, there was no need to warn him of self-incrimination at the time he made his confession and the confession is binding evidence.

J. J. L.

LIABILITY OF SHERIFF FOR WRONGFULLY DISCHARGING PRISONER COMMITTED FOR CONTEMPT—MEASURE OF DAMAGES.—One Joseph S. Alberti, an executor, was adjudged in contempt of court for wrongfully neglecting to make certain payments under his mother's will as directed by the surrogate. These payments exceeded \$16,000, some \$6,000 of which were due plaintiffs. Pursuant to the contempt order, a warrant was issued in the usual form, relating the sums due, the persons to whom owed, and that commitment was to last until payments were made. Six months after Alberti's arrest, the sheriff, defendant in this action, released him without getting the required money. *Held*, sheriff liable to plaintiffs to the extent of their damage, namely the \$6,000 with interest. *Bijou et al. v. Jacoby et al.*, 260 N. Y. 289, 183 N. E. 428 (1932).

The Judiciary Law<sup>1</sup> provides that if actual loss is produced by reason of misconduct of a person adjudged guilty of contempt of court, "a fine sufficient to indemnify the aggrieved party must be imposed upon the offender, collected, and paid over to the aggrieved party under direction of the court." Thus, once misconduct has been established (as in the instant case by the surrogate), the only question remaining is the determination of the amount due in terms of the fine.<sup>2</sup> This must be the actual damage suffered,<sup>3</sup> as shown from the extent of the impairment or prejudice caused,<sup>4</sup>

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<sup>6</sup> Mack, *The Juvenile Court* (1909) 23 HARV. L. REV. 104.

<sup>7</sup> *Supra* note 1.

<sup>1</sup> N. Y. JUDICIARY LAW (1909) §773.

<sup>2</sup> Brill v. Brill, 148 App. Div. 63, 131 N. Y. Supp. 1030 (1st Dept. 1911).

<sup>3</sup> *Supra* note 1; Bernstein v. McCahill, 56 Misc. 460, 107 N. Y. Supp. 161 (1907).

<sup>4</sup> People v. Reid, 139 App. Div. 551, 124 N. Y. Supp. 205 (1st Dept. 1910).