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CRIMINAL PROCEDURE—BURGLARY INDICTMENT—OWNERSHIP OF GOODS.—PEOPLE V. MENDELSON ET AL., 106 N. E. (ILL.) 249.—*Held*, that a defendant is not placed in double jeopardy by two successive indictments for burglary relating to the same breaking and entry, if the second indictment alleges a different ownership of the subject matter of the intended larceny.

This holding presupposes that the first indictment could not have been sustained by the evidence required to support the second. This position might be maintained on the theory that the allegation of ownership, while not essential, yet, if made, must be proved as alleged. *Conn. v. Moore*, 130 Mass. 45. This doctrine, however, is not generally accepted. *Reg. v. Clarke*, 1 C. & K. 421; *Harris v. State*, 61 Miss. 304. And the principal case is rested rather upon the ground that the allegation itself is indispensable. Widely different rules have been applied to this question. Generally it is sufficient to allege in terms of the governing statute, if the statute sets forth the facts constituting the intended crime. *McRae v. Commonwealth*, 20 Ky. Law Rep. 1199. Sometimes this is sufficient even though, in designating the intent, the statute does not proceed beyond conclusions of law. *State v. Powell*, 61 Kan. 81. Several authorities, in accord with the principal case, hold that the owner of the goods must be specified. *Barnhart v. State*, 154 Ind. 177, and authorities there cited. This has been deemed so essential that variance as to the nature of the interest of the alleged owners has been held fatal. *State v. Ellison*, 53 N. H. 325 (joint-tenancy alleged, severalty proved). Most courts, however, refuse to apply so rigorous a rule. *Lamater v. State*, 38 Tex. Crim. Rep. 249 (ownership laid in janitor of school house). By the weight of authority the allegation of ownership need not be made. *Reg. v. Clarke*, 1 C. & K. 421; *Brown v. State*, 72 Miss. 990; *Commonwealth v. Wicker*, 9 Ky. Law Rep. 474. And if made, it may be treated as surplusage. *State v. Simpson*, 32 Nev. 138. Failure to make it would merely prevent the finding of larceny under the burglary indictment. *Bowen v. State*, 106 Ala. 178. This conclusion is supported by the obvious practical impossibility which the contrary rule would often impose upon the pleader. *Jones v. State*, 18 Fla. 889. Accordingly it is usual to require a relatively slight degree of specification in the averment of purely mental ingredients of crimes. *State v. Newberry*, 26 Iowa 467 (assault with intent to commit murder); *State v. Hughes*, 76 Mo. 323 (attempt to commit larceny); *McKee v. State*, 111 Ind. 378 (conspiracy to defraud). The minority doctrine seems an extreme application of the rule that omissions in pleading shall be construed in a sense most unfavorable to the pleader.

DUE PROCESS OF LAW—FALSE IMPRISONMENT—JUVENILE DELINQUENTS.—WEBER V. DOUST ET AL., 143 PAC. (WASH.) 148.—Under a statute prescribing the procedure for bringing juvenile delinquents before the juvenile court, *held*, that an officer summarily arresting an alleged delinquent

without information, complaint, or warrant, commits an unconstitutional deprivation of liberty without due process of law, and is liable in an action for false imprisonment. Crow, C. J., and Chadwick, J., *dissenting.*

The law has long permitted courts of chancery to assume custody over the person, for the purposes of friendly guardianship, by processes quite distinct from those requisite in criminal proceedings. *Wellesley v. Wellesley,* 2 Bligh. (N. S.) 124. Summary arrest, however, even for the most benevolent purposes, could be justified at common law by nothing short of immediate and urgent necessity. *Keleher v. Putnam,* 60 N. H. 30. Accordingly constitutional inhibitions against deprivation of liberty without due process of law, apply to protective detentions of the person, as well as to criminal arrests. *People v. Turner,* 55 Ill. 280; *Allgor v. N. J. State Hospital,* 80 N. J. Eq. 386. The legislature may, however, in the exercise of its long-recognized function of *parens patriae,* dispense with certain forms of procedure which are indispensable in criminal cases. *State v. Brown,* 50 Minn. 353; *Farnham v. Pierce,* 141 Mass. 203; *Commonwealth v. Fisher,* 213 Pa. 48; *State v. Linderholm,* 84 Kans. 603. But such legislation has sometimes heen held unconstitutional on the ground that it has assumed a punitive character. *State v. Ray,* 63 N. H. 406. Juvenile Delinquency Acts frequently authorize or contemplate a summary arrest preliminary to formal proceedings for commitment. N. Y. Penal Code, Sect. 291; Wis. P. S. 573 f. Such acts are generally upheld. *Mill v. Brown,* 31 Utah 473; *People v. N. Y. Catholic Protectory,* 19 Abbot N. C. (N. Y.) 142; *State v. Marmonget,* 111 La. 226. Contra, *Allgor v. N. J. State Hospital, supra.* As introducing novel modes of procedure unknown to the common law and derogatory of common law rights, these acts must be construed strictly. *Matter of Heery,* 51 Hun (N. Y.) 371; *People v. N. Y. Catholic Protectory, supra.* The principal case controverts none of the above authorities and is thoroughly in accord with well established principles of statutory construction.

GIFTS CAUSA MORTIS—REQUISITES.—DANZINGER V. SEAMAN'S BANK FOR SAVINGS, 86 MISC. REP. (N. Y.) 316.—*Held,* It is essential to the gift *causa mortis* of a savings bank account that there be an immediate existing apprehension of death, in contemplation of which the gift is made with a clearly expressed intention to give *in praesenti;* that the subject matter of the gift be delivered to the donee or some one for him; that the donor die from the existing ailment without revoking the gift.

There seems to be no doubt that a gift *causa mortis* must be made because there is an immediate existing apprehension of death. *Catherine Driscoll, Admx. v. Mary Driscoll,* 143 Cal. 528; *Taylor v. Harrinson,* 179 Ill. 137; *Northwestern Life Ins. Co. v. Collamore,* 100 Mo. 578. And it must be in contemplation of that apprehension of death that the gift is made. *Nogga v. Bank of Ansonia,* 79 Conn. 425; *Dickeschied v. Exchange Bank,* 28 W. Va. 340. It must be made with a clearly expressed intention to give *in praesenti. Baker v. Moran,* 136 Pac. (Ore.) 30; *Hecht v. Shaffer,* 15 Wyo. 34. There is no end of authority that the subject matter of the

gift must be delivered to the donee or some one for him. *Wittman v. Pickens,* 33 Col. 484; *Merriweather v. Morrison,* 78 Ky. 572. But the mere intent to deliver is not sufficient. *Tomilson v. Ellison,* 104 Mo. 105; *Executors of M. Egerton v. J. Egerton,* 17 N. J. Eq. 419. Nor is an unexecuted direction to the donee to take possession unless done so before death. *Stokes v. Sprague,* 110 Iowa 89. But it may be good, if possession is taken before death, even though the donor is unconscious. *King v. Smith,* 110 Fed. 95. Delivery may be to a third person for the donee. *Clough v. Clough,* 117 Mass. 83. Or by a direction to a third person in possession to hold for the donee and he agrees to so hold. *Devol v. Dye,* 123 Ind. 321. But mere continued possession by one to whom the gift is made when he had previous possession is not sufficient. *Allen v. Allen,* 75 Minn. 116.

INNKEEPERS—DUTY TO FURNISH ACCOMMODATIONS TO GUESTS.—MORNINGSTAR V. LAFAYETTE HOTEL CO., 105 N. E. (N. Y.) 656.—*Held,* that an innkeeper is not required to continue to entertain a guest who has refused, on the ground of unreasonableness, to pay a lawful charge for past services.

An innkeeper is engaged in a public employment and is under a positive duty to entertain all proper persons willing to pay a reasonable price for such entertainment as long as there is room for accommodation. *Beale on Innkeepers,* Sec. 61. But a guest who has been received loses his right to further entertainment if he neglects or refuses to pay a lawful bill upon reasonable demand. *Doyle v. Walker,* 26 U. C. Q. B. 502. A search has failed to disclose other authorities directly in point. In the analogous cases of Public Service Companies there is seemingly a conflict on this point. One line of cases holds that such companies cannot coerce payment of past bills, but simply have the right to demand payment in advance for future services. *State v. Nebraska Tel. Co.,* 17 Neb. 126; *State v. Kinloch Tel. Co.,* 93 Mo. App. 349; *Lloyd v. Washington Gaslight Co.,* 1 Mackey 331. On the other hand it is held that payment of past indebtedness may, by a rule of the company, be made a condition precedent to further service and service may be discontinued until past bills are paid. *People v. Manhattan Gaslight Co.,* 45 Barb. (N. Y.) 136; *Detroit Gas Co. v. Moreton Truck & Storage Co.,* 111 Mich. 401, 69 N. W. 659; *Irwin v. Rushville Cooperative Tel. Co.,* 161 Ind. 524, 69 N. E. 258; *Machin v. Portland Gas Co.,* 49 L. R. A. (Ore.) 596; *Vanderberg v. Kansas City Gas Co.,* 105 S. W. (Kans.) 17. The holding in the latter group of cases accords with the weight of authority. Applying this test to the principal case, its holding seems justifiable.

INSURANCE—ACCIDENT POLICY—RIGHT OF RECOVERY.—EMPIRE LIFE INS. CO. V. JOHNSON, 82 S. E. (Ga.) 893.—*Held,* where the insured had become involved in a fight and was killed, and the accident policy contained a provision that it did not cover cases "where the accident or disability results from voluntary exposure to unnecessary danger," the Insurance Company was nevertheless liable.

In the same state in which the principal case was decided *voluntary* has been held to mean *intentional* and to imply a "conscious knowledge" of danger. *Empire Mutual Life Ins. Co. v. Allen,* 81 S. E. (Ga.) 120. But in West Virginia "conscious knowledge" was held not to be necessary. "Obvious dangers" in such a clause were held to include those which may be readily perceived and which are plain and evident. The insured must be aware of what a reasonably prudent man would be conscious of under the circumstances. *Combs v. Colonial Casualty Co.,* 80 S. E. (W. Va.) 779. In line with this case it was held that there could be no recovery upon a policy if the insured encounters the danger and is injured even though in the policy there was no express limitation on the freedom of action of the insured. *Diddle v. Continental Casualty Co.,* 63 S. E. (W. Va.) 962. Where the words "unnecessary exposure to danger" were used the company was held not to be liable unless the insured used ordinary care. *Pacific Mutual Life Ins. Co. v. Adams, 27* Okla. 496. Where one attacked another and was killed in a fight it was held that there could be no recovery upon a certificate insuring against death by accident. *Taliaferro v. Traveller's Protective Ass'n of America,* 80 Fed. 368. The ground of decision here was that the death of the insured was due to voluntary exposure to danger. The only difference between the essential facts of this case and the principal case is that in the *Taliaferro* case there was no express exemption clause.

INSURANCE POLICY—LIMITATION ON POWER OF AGENT—WAIVER OF CONDITION.—MADSDEN V. MARYLAND CASUALTY CO., 142 PAC. (CAL.) 51.—*Held,* where there is a provision in a policy that no condition or warranty can be waived by an agent, a mere soliciting agent of an insurance company cannot waive conditions and warranties, and hence the fact that he in writing an application knew a warranty therein was false did not affect a waiver of the warranty.

Where limitation of authority of agent appears in the policy, the assured is presumed to have notice of it and is bound accordingly. *Assurance Co. v. Building Ass'n.,* 183 U. S. 308; *Catois v. American Life Ins. Co.,* 33 N. J. L. 487; *Liverpool Ins. Co. v. Richardson Lumber Co.,* 11 Okla. 585; *Thornton v. Travelers' Ins. Co.,* 116 Ga. 121; *Iverson v. Metropolitan Life Ins. Co.,* 151 Cal. 746. But some courts distinguish between a limitation on agent's authority prior to the issuance of the policy and subsequent thereto, and hold that a restriction in an insurance policy upon an agent's authority cannot be construed to refer to his acts or knowledge prior to the delivery of this policy. *Crouse v. Fire Ins. Co.,* 79 Mich. 249; *Wolf v. Ins. Co.,* 86 Mo. App. 580; *Rickey v. Ins. Co.,* 79 Mo. App. 485; *John Hancock Life Ins. Co. v. Schlink,* 175 Ill. 284; *Independent School District of Doon v. The Fidelity Ins. Co.,* 113 Iowa 65; *Andrus v. Maryland Casualty Co.,* 91 Minn. 358. The authorities in accord with the principal case base their holding upon the fact that from the elemental theory of agency, a limitation by insurance company on the authority of its agents is valid and assured cannot set up an apparent authority in the agent inconsistent with this limitation because the patrol evidence rule

applies and parties must stand on their written contract. Those cases that are contra to the principal case avoid the parol evidence rule by holding that an estoppel exists against the insurance company, preventing the invalidating of the policy at its inception. They hold that the acts of the agent prior to the issuance of the policy which contains restriction on his authority, are the acts of the company. *Insurance Co. v. Wilkinson,* 13 Wall. 222; *Rowley v. Empire Ins. Co.,* 36 N. Y. 550. Public policy seems to demand a relaxation in the strict rules of law in favor of the assured when insurance policies are construed, and the cases contrary to the principal case are in conformity with that policy.

PARENT AND CHILD—SUPPORT OF CHILD—LIABILITY OF FATHER.—ROGERS V. ROGERS, 143 PAC. (KANS.) 410.—*Held,* that a father who abandons and wholly neglects to provide for his wife and children, is liable to his wife after divorce for expenses incurred in caring for the children before the divorce, even though such support came from the earnings of the mother.

At common law the duty of the parents to provide for the maintenance of their children was well recognized. 1 Bl. Com. 447. The duty rested upon the father alone while living. *Gilley v. Gilley,* 79 Me. 292. This was because of the peculiar position of the wife at common law. All her property passed to her husband upon her marriage, and she had no right to the services of her children. Therefore she could not be held liable for the support of the children. *Gleason v. Boston,* 144 Mass. 25. So, where a wife was deserted by her husband, and he failed to provide for their children, she could pledge his credit as agent for their support, and he was liable to those who furnished necessaries on his credit. *Gill v. Read,* 5 R. I. 343; *McMillen v. Lee,* 78 Ill. 443. But where the mother wrongfully took the child from the care of the father, he being able and willing to care for the child, he could not be charged for its support elsewhere. *Shields v. O'Reilly,* 68 Conn. 256; *Fitler v. Fitler,* 33 Pa. 50. A suit under the facts of the principal case would have been impossible at common law because, first, a wife could not sue her husband, and second, her earnings belonged to her husband and so she could not recover them when expended in the performance of his duty. These disabilities have been removed in most states by statute. In such states, the wife can recover for money expended under the facts of the principal case. *De Brauwere v. De Brauwere,* 203 N. Y. 460. On principle, it seems that where the disabilities of a wife have been removed by statute, she ought to be under an equal duty to support the children, and that at the most, he should only be liable for an equal share of the expense incurred. It has even been held, where the duty rested on both by statute, that in case a wife has thus incurred expense, no promise to reimburse can be inferred against the husband in her favor. *Johnson v. Barnes,* 69 Iowa 641.

PROPERTY—DOGS—LEGISLATIVE POWER.—PEOPLE V. CALL, 149 N. Y. SUPP. 168.—*Held,* that the enactment of a conservation law which prohibits the keeping or possession of dogs in the Adirondack Park and requires every

game protector to kill any dog found therein, was within the legislative power and not violative of the constitution on the ground that it permits the taking of private property for public use without just compensation.

At common law property in a dog was of a "base" nature and he was not a subject of larceny. 4 Bl. Com. 235. The owner might, however, maintain a civil action for injury or conversion. 2 Bl. Com. 393. In the United States the same rules were adopted, every state recognizing the right of the owner to a civil action. *Grace v. Smith,* 100 Ga. 434; *State v. Lymus,* 26 Oh. St. 400. By statute in some states, by judicial construction in others, a dog is now the subject of larceny. *Patton v. State,* 93 Ga. 111; *Mullaly v. People,* 86 N. Y. 365. "Although since protected by express statutes from theft the common law estimate of property in them has never changed." *Woolf v. Chalker,* 31 Conn. 121. "They have, from time immemorial, been considered as holding their lives at the will of the legislature and properly falling within the police powers of the several states." *Sentell v. New Orleans, etc., R. R. Co.,* 116 U. S. 698. Some few courts have held that a statute such as the one in question is unconstitutional. *Lynn v. State,* 33 Tex. Crim. Rep. 153; *Archer v. Baertschi,* 8 Ohio C. C. 12. The almost universal opinion is that it is a valid exercise of the police power. *State ex. rel. Curtis v. Topeka,* 36 Kan. 76; *Morewood v. Wakefield,* 133 Mass. 240; *Morey v. Brown,* 42 N. H. 373; *McDerment v. Taft,* 83 Vt. 249. The reasons given for the attitude of the common law are that the dog is not useful for food or as a beast of burden; that he retains many of his wild characteristics and is rather prone to a disease that makes him extremely dangerous to man and beast. Had the originators of our law found him as useful as have their neighbors across the Channel, one might reasonably conjecture that he would have received more favorable consideration by the common law.