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Commitment of Misdemeanants to the Colorado State Reformatory

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COMMITMENT OF MISDEMEANANTS TO THE COLORADO STATE REFORMATORY

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That part of Sec. 512, Ch. 48, 1935 C. S. A., here pertinent, provides as follows:

> Courts having criminal jurisdiction in Colorado shall sentence to the state reformatory all male persons, and none other, *duly convicted before them of felony for the first time,* who shall at the time of sentence be of full age of sixteen (16) years and not more than twenty-one (21) years of age; * * * and also all male persons between said ages, duly convicted before them of a misdemeanor, *where the imprisonment for the offense charged shall not be less than ninety days;* * * *." (Italics supplied.)

Sec. 513, Ch. 48, 1935 C. S. A., provides as follows:

> Any person who shall be convicted of an offense punishable by imprisonment in the state reformatory, and who, upon such conviction, shall be sentenced to imprisonment therein, shall be imprisoned according to this section and the other sections codified from the act of 1889, and not otherwise; *and the courts of this state imposing such sentence shall not fix or limit the duration thereof;* the term of such imprisonment of any persons so convicted and sentenced shall be terminated by the board of penitentiary commissioners and warden, as authorized by this section and other sections codified from the act of 1889; but such imprisonment shall not, in any event exceed the maximum term provided for which the prisoner was convicted and sentenced. (Italics supplied.)

Sec. 514, Ch. 48, 1935 C. S. A., provides as follows:

> If, through oversight or otherwise, any person be sentenced to imprisonment in the said state reformatory for a definite period of time, said sentence shall not for that reason be void, but the person so sentenced shall be entitled to the benefit and subject to the liabilities of this section and other sections codified from the act of 1889, in the same manner, and to the same extent as if the sentence had been in the terms required by the last preceding section, and in such case the commissioners shall deliver to said offender a copy of this act, with written information of his relation to the commissioners.

Sec. 1, Art. VI, Colo. Const., provides as follows:

> The judicial power of the state as to all matters of law and equity, except as in the constitution otherwise provided, shall be vested in the supreme court, district courts, county courts, and such other courts as may be provided by law. In counties and cities and counties hav-

ing a population exceeding 100,000, exclusive original jurisdiction in cases involving minors and persons whose offenses concern minors may be vested in a separate court now or hereafter established by law.

The courts having original criminal jurisdiction and the limitations thereof are as follows:

District Courts: The district court shall have original jurisdiction of all cases both at law and in equity, * * *. (Sec. 11, Art. VI, Colo. Const.)

County Courts: Original jurisdiction is hereby conferred upon the county courts in each of the several counties of this state, *in cases of misdemeanor,* and such courts shall hereafter be empowered to try such cases upon information by the district attorney of the district in which such counties are situated. (Sec. 170, Ch. 46, 1935 C. S. A.) (Italics supplied.)

Justice of the Peace Courts: Original jurisdiction is hereby conferred *in all cases of misdemeanor* upon any justice of the peace of the county in which the offense is committed; such jurisdiction to be concurrent with the jurisdiction of the county court and district court as provided by law; * * *. (Sec. 158, Ch. 96, 1935 C. S. A.) (Italics supplied.)

Juvenile Court: The juvenile court is not a constitutional court, it is created by statute and possesses only such powers as are properly conferred upon it by law. (*Abbott v. People,* 91 Colo. 510.)

Therefore, we shall consider the juvenile court apart from the district, county and justice courts.

I.

The District Court is a court of general jurisdiction, and, as such, has jurisdiction over both felonies and misdemeanors. Therefore, there is no argument as to the applicability of Sec. 512, Ch. 48, 1935 C. S. A., to this court.

The jurisdiction of the County and Justice Courts is limited to misdemeanors. This eliminates them from the first part of Sec. 512, *supra,* since that portion of the said Sec. 512 is only applicable to persons "convicted before them of felony," but gives them jurisdiction under that part of the statute which reads as follows:

All male persons between said ages, duly convicted before them of a misdemeanor where the imprisonment for the offense charged shall not be less than ninety days.

Sec. 513, *supra,* provides that:

" * * * the courts of this state imposing such sentence shall not fix or limit the duration thereof.

Sec. 514, *supra,* provides that:

If, through oversight or otherwise any person be sentenced to imprisonment in the said state reformatory for a definite period of time, said sentence shall not for

> that reason be void, but the person so sentenced shall be entitled to the benefit and subject to the liabilities * * * in the same manner, and to the same extent as if the sentence had been in the terms required by the last preceding section, * * *.

In my opinion, Sec. 512 must be read with said two sections and, when so read, it is then apparent that the sentencing judge is not the one that can fulfill the requirement of said Sec. 512, to-wit: "where the imprisonment for the offense charged shall not be less than ninety days," but that this phraseology must relate to the statute which fixes the term of imprisonment for the misdemeanor.

For example—Under authority of Sec. 512, *supra,* John Doe was convicted of the crime of petit larceny and sentenced by the justice court to serve five (5) months in the state reformatory.

Under authority of Sec. 21, Ch. 16, 1935 C. S. A., Richard Roe was convicted of joy riding, first offense, and sentenced by the justice court to serve an indeterminate sentence in the state reformatory.

In *Van Kleeck v. Ramer,* 62 Colo. 4, 20, our court quotes with approval from *Town of South Ottawa v. Perkins,* 94 U. S. 267, 24 L. Ed. 154, as follows:

> "That which purports to be a law of a State is a law, or it is not a law, according as the truth of the fact may be, and not according to the shifting circumstances of parties * * * and whether it be a law, or not a law, is a judicial question, to be settled and determined by the courts and judges."

In *People v. Leddy,* 53 Colo. 109, 111, our court said:

> As every enrolled bill, signed by the proper officers and lodged with the secretary of state, however, repugnant to the constitution, has the appearance, semblance and force of law, the general rule is, that public officials shall obey its terms until some one, whose rights it invades, complains, and calls in the aid of the judicial power to pronounce it void as to him, his property or his rights.

In view of these decisions, the executive department would take no action in the said two cases until someone whose rights were involved challenged the statute and the jurisdiction of the courts thereunder. These challenges came by way of writs of *habeas corpus* issued in the above test cases, and were heard in the district court together as cases numbered A-40602 and A-40606.

Petit larceny is defined by Sec. 85, Ch. 48, 1935 C. S. A., as amended by Ch. 146, S. L. '51, insofar as here pertinent, as follows:

> * * * where the aggregate value of the things stolen or removed does not exceed the value of fifty dollars ($50.00) shall be punished * * * or by imprisonment at hard labor for a term not exceeding six months, or by both such fine and imprisonment. Stealing from the person of another shall, upon conviction, be punished by im-

prisonment in the penitentiary for a term of not less than one year nor more than ten years.

(a) The first crime defined in the statute is petit larceny and is a misdemeanor.

(b) The second is larceny from the person, and because of its sentence is denominated a felony by Sec. 4, Art. XVIII, Colo. Const.

Under the misdemeanor, the sentencing court, whether district, county or justice court, must prescribe an indeterminate sentence under Sec. 513, *supra,* the maximum of which shall not "exceed six months." If the said court prescribes a fixed sentence, such as ninety days; three months; four months; five months; or six months, such fixed sentence fails under Sec. 514, *supra,* and the sentence then becomes indeterminate under said Sec. 513. In other words, the very part of the sentence which was fixed by the court to meet the conditions of said Sec. 512, to-wit: "imprisonment for the offense charged shall not be less than ninety days," has failed and can never meet the requirements of the statute in that respect.

(b) The felony charge—of larceny from the person—is cognizable by the district court, but not by the county or justice courts, because their jurisdiction is limited to misdemeanors, *supra.* If the male felon is a first offender and comes within the other provisions of the said Sec. 512, then the district court shall or may sentence to the state reformatory, depending upon the age of such male felon.

The district court found:

1. That the said imprisonment, restraint and holding of the said John Doe, as aforesaid, was and is illegal and not warranted in law for the following reasons:

(a) That the said *mittimus* is void on its face, because it provides for two places of confinement, to-wit, the state reformatory at Buena Vista and the common jail of the City and County of Denver;

(b) That the imprisonment for the offense of petit larceny, as provided by Sec. 1, Ch. 146, Colo. S. L. 1951, does not meet the requirements of Sec. 512, Ch. 48, 1935 C. S. A., in that the imprisonment for petit larceny therein provided is " by imprisonment at hard labor for a term not exceeding six months," and not for a term of "not less than ninety days," as provided in said Sec. 512;

(c) That Sec. 513, Ch. 48, 1935 C. S. A., requires that the courts of this state imposing such sentences (i.e., to the state reformatory), shall not fix or limit the duration thereof, and that, by sentencing the petitioner "to 5 months in the State Reformatory," the court did not thereby supply to itself jurisdiction to sentence the petitioner to the state reformatory at Buena Vista for petit larceny.

2. That the petitioner should be discharged from the

custody of the warden of the Colorado State Reformatory at Buena Vista, Colorado, and the *mittimus* or order of commitment be quashed and held for naught.

3. That that portion of Sec. 512, Ch. 48, 1935 C. S. A., which reads: "and also, all male persons between said ages, duly convicted before them of a misdemeanor, where the imprisonment for the offense charged shall not be less than ninety days," is unconstitutional and in violation of Sec. 1, Art. VIII, and Sec. 4, Art. XVIII, Colo. Const.

And entered its judgment of discharge upon the writ accordingly.

In the case of Richard Roe, the district court found:

1. That said restraint and imprisonment at the said state reformatory is illegal and without warrant in law, for the following reasons, to-wit:

(a) That said *mittimus* or order of commitment is void upon its face, inasmuch as it there appears that the court has ordered two places of confinement at the same time, to-wit, state reformatory at Buena Vista, Colorado, and the common jail of the City and County of Denver;

(b) That Sec. 21, Ch. 16, '35 C. S. A., provides that: "Any person or persons who shall without authority of the owner or his duly authorized and accredited agent, wilfully, wantonly, or maliciously take possession of, or drive, or propel, or take away, or attempt to take possession of, drive, propel, or take away an automobile, the property of another, for the purpose of temporarily depriving the owner thereof of said automobile, or of the use of the same, or for the purpose of temporarily appropriating the same to his own use, or of temporarily making use of the same, or who shall knowingly aid, abet or assist another in so doing, shall, upon first conviction, be deemed guilty of a misdemeanor and shall be punished by imprisonment of not less than thirty days nor more than twelve months *in the county jail of the county where such conviction is had.*" (Italics supplied.)

And that the said justice court was limited by said statute to the sentencing of the said Ralph Martin Gonzales to a term in the county jail of the City and County of Denver for not less than 30 days nor more than 12 months;

2. That Secs. 512, 513 and 514, Ch. 48, '35 C. S. A., have no application to the instant case;

3. That the petitioner should be discharged from the said Colorado State Reformatory, and that the said *mittimus* or order of commitment should be quashed and held for naught.

And entered its judgment of discharge upon the writ accordingly.

As a result of these two decisions, the Executive Department has

a court determination of the law and can now proceed accordingly.

II.

Commitments from a juvenile court pose a far more difficult problem by reason of the court's peculiar status.

In the case of *Abbott v. People,* 91 Colo. 510, our Supreme Court, quoting from *Colias v. People,* 60 Colo. 230, said:

> The jurisdiction of the court extends only to cases in which the disposition, custody or control of a minor or other person is involved under certain acts concerning minors, parents, etc. Criminal cases in the juvenile court must, therefore, be such only as are incidental to cases arising under the acts named unless a larger jurisdiction is conferred by some other part of the act, and the opinion held that no such larger jurisdiction was conferred (p. 512).
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> * * * * *
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> "Juvenile courts are not criminal courts. Their function is not to try criminal charges and punish for criminal offenses. It is only upon the theory that they are not criminal courts that their establishment, and that their methods of procedure, can be authorized as constitutional" (Citations) (p. 515).

Sec. 199, Ch. 46, 1935 C. S. A., establishes juvenile courts as follows:

> In each county, and in each municipality known and designated as a city and county, in this state, in which there is a population of one hundred thousand or more inhabitants, there is hereby created and established a court of record, to be known as the juvenile court of such county, or city and county.

Sec. 216 of said Ch. 46 provides, among other things, that:

> Neither the county court, nor the judge thereof, in any county, city and county, as the same may be, wherein a juvenile court is created and established under the provisions of this article, shall hereafter exercise any jurisdiction in which the disposition, custody or control of any child or minor, or any other person, may be involved under the acts concerning delinquent, dependent or neglected children, or any other acts or statutes or law of this state concerning dependent, delinquent or neglected children, or which may in any manner concern or relate to the person, liberty, protection, correction, morality, control, adoption or disposition of any infant, child or minor, * * *.

In counties where the is no juvenile court, Sec. 177 of said Ch. 46, provides that:

> Original jurisdiction is hereby conferred upon the county courts in each of the several counties of this state in all criminal cases where at the time of the filing of

> the information the accused shall be a minor; and such courts shall hereafter be empowered to try such cases upon information filed by the district attorney of the judicial district in which such counties are situated.

Sec. 53, Ch. 33, *supra,* among other things, provides:

> In case such child has passed the age of sixteen years and its delinquency is chronic or repeated, or would under the laws of this state constitute a felony, the court may, in its discretion, where any such commitment is necessary, commit such child to any state institution under the same terms and conditions as it might have been committed if prosecuted and convicted in the criminal court for a felony; * * *.

This poses the following problems:

1. Does this section give the juvenile courts and the county courts, acting in the capacity of juvenile courts, concurrent jurisdiction with the district courts over all criminal matters, including felonies?

2. Can a county court, as such, sentence a male person, over the age of 16 years, to the state reformatory, when the misdemeanor bears imprisonment for "not less than ninety days," and at the same time, sitting as a juvenile court, sentence a child (male or female), which is past the age of sixteen *"to any state institution* (this would include the penitentiary) under the same terms and conditions as it might have been committed if prosecuted and convicted in the criminal court for a felony"?

Said Sec. 53 is a part of the 1923 act and was in effect when our Supreme Court decided the case of *People v. Morley,* 77 Colo. 25. In reviewing the juvenile court act, the court said (p. 27):

> The Constitution, article VI, section 1, originally read: "The judicial power of the state, as to matters of law and equity, except as in the Constitution otherwise provided, shall be vested in a supreme court, district courts, county courts, justices of the peace, and such other courts as may be provided by law." R. S. 1908.
>
> In 1912 the following was added: "In counties and cities and counties having a population exceeding 100,000, exclusive original jurisdiction in cases involving minors and persons whose offenses concern minors may be vested in a separate court now or hereafter established by law."
>
> Section 11 of said article is as follows: "The district courts shall have original jurisdiction of all causes both at law and in equity, and such appellate jurisdiction as may be conferred by law." * * *
>
> No attempt was made by legislation to grant the exclusive jurisdiction permitted by the amendment of section 1, until 1923. Chapters 75 and 78 of the Session Laws of that year contain the following: "The words 'delinquent child' shall include any child eighteen years

of age or under such age who violates any law of this state. * * *" S. L. 1923, c. 75, p. 197.

The relator is charged with violation of a law of this state, therefore, if guilty, he is delinquent. If his delinquency is denied, the juvenile court may try the issue. People v. Juvenile Court, *supra.*

"Any child committing any of the acts herein mentioned may be proceeded against in the courts of record of this state having jurisdiction over juveniles in the manner provided for in this act: * * *" S. L. 1923, c. 75, p. 198.

The relator is charged with the commission of one of "the acts herein mentioned" and therefore may be prosecuted in a court of record having jurisdiction over juveniles, i.e., the juvenile court.

Juvenile courts "shall have coordinate jurisdiction with the district and county courts of this state in any criminal case of the people against or concerning any person under the age of twenty-one years, * * * and in proceedings concerning the annulment of marriages, where either of the parties thereto are under the age of twenty-one years at the time of filing such case in such court, and in cases under the Redemption of Offenders Act, being Chapter 199, page 478, Session Laws of 1909. Such courts shall also, in their respective counties, have exclusive jurisdiction, subject to appeals and writs of error as provided by law, in all cases concerning neglected, dependent or delinquent children or persons who cause, encourage or contribute thereto, and in all cases concerning the adoption, custody or disposition of children and the care and protection of their persons from neglect, cruelty, abuse and proceedings concerning feebleminded children; provided that in all cases of feebleminded children under the age of twenty-one years the proceedings in such courts shall be as provided in Chapter 118 of the Session Laws of 1915, page 336 thereof, * * *." S. L. 1923, c. 78, p. 209.

* * * * *

There are two possible interpretations which may be given to these statutes, neither of which is entirely satisfactory:

1. One is that the juvenile and district courts have coordinate jurisdiction in cases of persons nineteen to twenty-one years of age, and the juvenile court exclusive jurisdiction of persons eighteen or under. If, however, this is what the legislature meant, it is inexplicable that they did not say so in plain terms. It is almost inconceivable that the legislature should, under an apparent grant to one court of jurisdiction over a certain subject coordinate with another, deprive that other of 19/21 of

the jurisdiction which it had before. Moreover by this construction section 2 is inconsistent with itself, because it gives coordinate jurisdiction as to all under 21 and "*also* * * * exclusive jurisdiction" as to all eighteen or under.

2. The second meaning is that the jurisdiction is coordinate as to criminal cases of the people against or concerning any minor, and exclusive as to other matters *concerning* those eighteen or under. This makes the section consistent with itself, and, while it seems inconsistent with the definition of delinquent and dependent children in chapter 75, it is not necessarily so. That chapter, except by the quotation from page 198, which we notice below, does not refer to the jurisdiction of any court. It defines a delinquent as one who has broken the law, but it says nothing about criminal cases or cases by the people against him. This second interpretation, therefore, is the one to be preferred, and is not at variance with our construction of this section in People v. Juvenile Court, *supra.*

There are additional reasons for this preference, although, when taken alone, they are perhaps inconclusive. The constitutional jurisdiction of the district court is unlimited. It should not be limited without circumspection, and no statute should be held to limit it unless it says so plainly, which this statute does not. Then too the above quoted provision of c. 75, "Any child * * * may be proceeded against in the courts of record in this state having jurisdiction over juveniles," should read "must" for "may" to approach consistency with the interpretation first above stated, but, reading "may" more nearly agrees with the second construction. These two acts were passed by one legislature and approved on the same day and should be made to agree if possible.

In cases where the jurisdiction of the subject matter is concurrent, that court which first acquires jurisdiction over the case controls it. 15 C. J. 1134, sec. 583.

It follows, then, that the district court has jurisdiction. We are less concerned about the results of this judgment because it is easy for the legislature to amend the statutes to make them say plainly what it wishes.

In the case of *Abbott v. People,* 91 Colo. 510, our Supreme Court said (p. 512):

"It will be observed that the expressed purpose of the liberal construction prescribed is that the jurisdiction of the court, * * * shall be concurrent with the District Court in specified criminal cases. That is to say, in any criminal case arising incidentally in causes in which the Juvenile Court has jurisdiction under said section two that court has concurrent jurisdiction with

the District Court. General jurisdiction in cases of criminal offenses against minors could hardly be given in a section which merely prescribes a liberal construction of a statute conferring jurisdiction in a specified class of cases." And the court further said:

"This repetition of the language of section two, defining the court's jurisdiction, in the same section in which is found the requirement for a liberal construction, is conclusive that no general jurisdiction of criminal cases was intended. This conclusion finds support in other parts of the act, which emphasizes the purpose of the law as being to provide for the protection and care of neglected or delinquent children, as the very name of the court indicates. * * * Section 18 authorizes the calling in of county judges in case of the absence, sickness, or disability of the judge of the Juvenile Court, and if the Juvenile Court has the jurisdiction for which the state contends, judges of the County Courts may sit in the trial of all criminal cases, where the offense is committed against a minor.

"In view of the fact that judges of the County Court are not required to be, and frequently are not members of the bar, or learned in the law, it is highly improbable that the legislature intended by this act to make it possible for county judges to sit in cases which they are, in many instances, wholly unqualified to try."

The legislature has made no subsequent changes to these sections; therefore, we must assume that this interpretation by the Supreme Court stands approved. When read in that light, a juvenile court, or a county court sitting as a juvenile court, can sentence a child, past the age of sixteen who is a chronic or repeated delinquent, to a state institution for misdemeanants, to-wit, Industrial School for Boys, Sec. 10, Ch. 105, '35 C. S. A.; Industrial School for Girls, Sec. 20, Ch. 105, '35 C. S. A.; Boys Reformatory, Sec. 61, Ch. 105, '35 C. S. A.; Girls Reformatories, Sec. 65, Ch. 105, '35 C. S. A.

That all male persons sentenced to the state reformatory by such juvenile court must bear an indeterminate sentence, in view of the requirement of Sec. 513, Ch. 48, *supra;* that *"the courts of this state imposing such sentence shall not fix or limit the duration thereof;* * * *."*

That if the juvenile court, or the county court sitting as a juvenile court, does, "through oversight or otherwise," fix a definite sentence, it is to be disregarded under Sec. 514, Ch. 48, *supra,* and treated as an indeterminate sentence under said Sec. 513, *supra.*

The phraseology in said Sec. 53, Ch. 33, *supra,* "or would under the laws of this state constitute a felony, the court may in its discretion, where any such commitment is necessary commit such child to any state institution under the same terms and con-

ditions as it might have been committed if prosecuted and convicted in the criminal court for a felony; * * *" then fits into the general scheme of said Sec. 513, *supra*. The sentence is indeterminate in character, and the Parole Board, or the Parole Board plus the warden, can proceed under said Sec. 513, *supra*, as in other reformatory cases.

It must be apparent by this time that the juvenile court needs some new statutes to work with if its work is to be effective. Also, some statutory line of demarcation as to when a county court is sitting as a court with criminal juridiction over misdemeanors, and when it is sitting as a juvenile court with jurisdiction only over chronic or repeated acts of delinquency, although such repeated acts may consist of larceny, burglary or rape. As the situation now exists, confusion has been added to chaos.

CORRECTION

The American Bar Association and other groups urge the adoption of an amendment to the United States Constitution which would read as follows:

> A provision of a treaty which conflicts with any provision of this Constitution shall not be of any force or effect. A treaty shall become effective as internal law in the United States only through legislation by Congress which it could enact under its delegated powers in the absence of such treaty.

The treaty making power and certain related problems were discussed in the June, 1952, issue of *Dicta*, Volume XXIX, Number 6. On page 197 of that issue your editor noted that the action taken by the House of Delegates of the American Bar Association in favoring such a constitutional amendment was not unanimous and was opposed by the Standing Committee on Peace and Law through United Nations. This was error and the Section of International and Comparative Law was meant. The resolution was hotly debated in the House of Delegates. The Section of International Law did not consider a constitutional amendment either necessary or desirable. The Committee on Peace and Law, having drafted the proposed amendment, strongly supported it and the resolution was carried by a very large majority.

CORPORATION NEEDS LAWYER

A major oil company in Wyoming is seeking an attorney (30-38 years of age) having from five to ten years experience in general practice. Experience in oil and gas law is desirable but not required. Address inquiries to the Colorado Bar Association, 702 Midland Savings Building, Denver, Colorado, stating salary desired, educational background and experience and references. All inquiries will be kept strictly confidential.