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Constitutional Law—Due Process—Statutory Presumptions

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dence that the father acquired knowledge of the divorce decree before the taking, but none to show that he knew that the exclusive custody of the children had been awarded to the mother by a decree of court. *Held*, the intent of the statute is to protect the parent from the kidnapper and not to penalize the erroneous assumption of a parental right. Ignorance of the decree of custody will excuse the parent, and he is not guilty of the crime of kidnapping. *Hicks v. State* (Tenn., 1928), 12 S. W. (2d) 385.

In the case of *State v. Taylor* (Kan., 1928), 264 P. 1069, the Kansas court held the principle announced in the above case, under a similar statute, to be the same, but upon similar facts decided that the crime of kidnapping had been committed. It was there asserted that the facts showed an intent to deprive the lawful custodian of the child of such custody and that this was sufficient under the statute. The principal case is guided by the determination of the policy laid down by the legislature. It certainly seems that a mistaken assumption of parental right should not be put down as a crime, or at least that it should not be classified with the really serious crime of stealing children by those whose whole intent is criminal. For comment upon *State v. Taylor*, *supra*, see 14 ST. LOUIS L. REV. 200.

G. N. B., '29.

CONSTITUTIONAL LAW—DUE PROCESS—STATUTORY PRESUMPTIONS.—

A statute of Georgia declared that every insolvency of a bank shall be deemed fraudulent for which the directors were punishable unless they repelled the presumption by showing that the affairs of the bank had been "fairly and legally administered, and generally, with the same care and diligence that agents receiving a commission for their services are required and bound by law to observe." Insolvency was defined as inability to meet debts as they accrue; or the excess of liabilities over actual market value of assets; or the falling of the reserve below the amount required where the deficiency was not made good within thirty days. Defendant was convicted under this statute and appealed to the Supreme Court of the United States. *Held*, that the statute was unreasonable and arbitrary and constituted a denial of due process. *Manley v. Georgia* (1929), 49 S. Ct. 215.

It is within the general power of the legislature to declare that proof of a particular fact or of several facts taken collectively shall be prima facie evidence of the main fact in issue. *Lindsley v. Natural Carbonic Gas Co.* (1911), 220 U. S. 61. This power results from the right of the legislature to change any rule of evidence now existing. *Cockrill v. California* (1925), 268 U. S. 258. But the presumption created by statute must not be unreasonable nor operate to deny a fair opportunity to repeal it. *Bailey v. Alabama* (1910), 219 U. S. 219. "Mere legislative fiat may not take the place of fact in the determination of issues involving life, liberty, or property." *McFarland v. American Sugar Refining Co.* (1916), 241 U. S. 79. There must be a rational connection between what is proved and what is to be inferred. *Cockrill v. California, supra*. Thus where proof of injury inflicted by the running of locomotives or cars is made prima facie evidence of negligence, the statute is not violative of due process. *Mobile J. & K. C.*

Ry. Co. v. Turnipseed (1910), 219 U. S. 35. Nor is a statute which makes the possession of a record of chances in a policy game prima facie evidence of possession thereof knowingly. *Adams v. New York* (1904), 192 U. S. 585. See to the same effect *Yee Hem v. United States* (1925), 268 U. S. 179; *Cockrill v. California, supra*.

On the other hand, a statute was held unconstitutional which made a refusal without cause to perform labor contracted for prima facie evidence of an intent to defraud, the employee having received money which was not refunded, where testimony by the accused employee in regard to uncommunicated motives was inadmissible. *Bailey v. Alabama, supra*. See also *McFarland American Sugar Refining Co., supra*. On the general question see notes in 2 L. R. A. (N. S.) 1007; 32 L. R. A. (N. S.) 226; and Ann. Cas. 1912 A. 465. Since the legislature may create a presumption where it did not exist before, it follows that the legislature may by repealing the statute destroy the presumption. *Virginia and West Virginia Coal Co. v. Charles* (1918), 254 F. 379.

In the principal case, the court ruled that there was not sufficient connection between the facts proved and that presumed. "Reasoning does not lead from one to the other." The presumption of fraud was raised upon proof of insolvency without regard to the facts from which the condition of insolvency resulted; and the statutory method of rebutting the presumption, i. e., showing that the affairs of the bank had been "fairly and legally administered" was considered to be too vague and indefinite. It would seem that the decision is correct both on principle and authority.

J. N., '29.

CONSTITUTIONAL LAW—INTOXICATING LIQUORS.—Louisiana Statute permitting householders to make and have intoxicating liquor for home use held constitutional. *State v. Schweitzer* (1928), 167 La. 81, 118 S. 699.

The case concerns itself chiefly with the equal protection clause of the Federal Constitution, and the court holds that a denial of permission to make and have intoxicating liquors to other than householders is not a denial of equal protection.

The interesting point, however, is that the statute permits the making and having of intoxicating liquors at all; its constitutionality with reference to the Eighteenth Amendment is not questioned, but is taken for granted. It is well-settled that the Eighteenth Amendment did not take away the states' regulatory power over liquor, nor did it supersede state statutes on the subject, unless they were contrary to the amendment. *Powell v. State* (1921), 18 Ala. A. 101, 90 S. 138; *Kappitz v. U. S.* (1921), 272 F. 96; *State v. George* (Mo. A., 1922), 243 S. W. 948, and cases cited therein. Since the amendment limits its prohibition to the "manufacture, sale, or transportation of intoxicating liquors," it has been held in one case that a state may not prohibit the possession of liquor lawfully obtained. *Spomer v. Curtis* (1923), 85 Fla. 408, 96 S. 836. However, the general judicial opinion is that the states may prohibit the possession of intoxicating liquors.