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## Infants - Juvenile Courts - Jurisdiction over Offenses Arising under Municipal Ordinances

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under all conditions, but would make effective all endorsements within the apparently normal chain.<sup>8</sup>

A primary purpose of statutory construction is to fulfill the legislative intent and remedy the evil that prompted the legislation.<sup>9</sup> Although the narrow construction of this section of the Negotiable Instruments Law handed down in the instant case is unquestionably in agreement with the majority of cases today<sup>10</sup> it does not fulfill this purpose. There can be little doubt that the intention of the legislature in adopting § 9(3) of the Negotiable Instruments Law was to enhance the negotiability of negotiable instruments by protecting innocent purchasers for value. In order to effectuate this intent the court in the instant case should have discarded the doctrine of *stare decisis* in favor of a broad construction. Under the present majority rule<sup>11</sup> the statute is rendered ineffectual, for the security systems used in the business world of today seldom permit the maker of a negotiable document to designate the payee or afford him an opportunity to negotiate the instrument.

The doctrine of *stare decisis* is without question a firm foundation for the guidance of our courts, but precedent, like an automobile, does become outmoded.

BAYARD LEWIS.

INFANTS — JUVENILE COURTS — JURISDICTIONS OVER OFFENSES ARISING UNDER MUNICIPAL ORDINANCES — The petitioners, two minors, were sentenced to confinement in the city jail after pleading guilty to disorderly conduct before a police magistrate. They applied to the District Court, sitting in its capacity as a juvenile court, for writs of habeas corpus. These were granted on the ground that the police magistrate lacked jurisdiction to try the petitioners without the consent of the juvenile court. *Held*, order affirmed. The constitutional provision vesting exclusive jurisdiction to try violations of municipal ordinances in the police magistrate did not authorize him to try minors without the consent of the juvenile court. *State ex rel City of Minot v. Gronna*, 59 N.W.2d 514 (N. D. 1953).

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8. Uniform Commercial Code §3-405.

9. See, *E. g.*, *Houghton Mifflin Co. v. Continental Ill. Nat. B.E.T. Co.*, 293 Ill. App. 423, 12 N.E.2d 714, 716 (1938); *Schoellkopf v. DeVry*, 366 Ill. 39, 7 N.E.2d 757, 759 (1937) "A primary purpose of statutory construction is to ascertain the legislative intention."; *People v. Continental Illinois Nat. Bank and Trust Co.*, 360 Ill. 454, 196 N.E. 515, 517 (1935); *People v. Hughes*, 357 Ill. 524, 192 N.E. 551, 553 (1934) (to find the intent of the legislature the courts will look at "the evil to be remedied and the object to be attained").

10. *E. g.*, *Commonwealth v. Globe Indemnity Co.*, 323 Pa. 261, 185 Atl. 796, 798 (1936); *American Sash and Door Co. v. Commerce Trust Co.*, 332 Mo. 98, 56 S.W.2d 1034, 1040 (1933); *See Swift and Company v. Bankers Trust Co.*, 280 N.Y. 135, 19 N.E. 992, 994 (1939).

11. *Jorgenson Chevrolet Co. v. First National Bank*, 217 Minn. 413, 14 N.W.2d 618, 621 (1944); *City of St. Paul v. Merchants Nat. Bank*, 151 Minn. 485, 187 N.W. 516, 518 (1922) "Where by the fraud of a third person a depositor of a bank is induced to draw a check payable to a non-existing person or order, the drawer ignorant of the fact and intending no fraud, the bank is not authorized to pay . . . although it appears to have been previously endorsed by the party named as payee."; 24 Minn. L. Rev. 988 (1940) (where an agent with fraudulent intent is not authorized to sign but merely supplied the name of the payee, "the general rule is that his knowledge that the payee is fictitious cannot be imputed to the principal.").

The principles underlying the creation of juvenile courts are not new. Their source is the common law; the juvenile court being a growth in, rather than a departure from prior legal theory.<sup>1</sup> A statute creating a juvenile court is an assertion of the state's power as *parens patriae* and its consequent right to exercise proper parental control over its minor citizens who are disposed to go wrong.<sup>2</sup> The juvenile courts have generally been upheld against various constitutional objections to their operation, *e.g.*, that they deprive the minor of trial by jury, upon the theory that the delinquent child is not on trial for a crime and is not to be punished, but is rather to be rehabilitated.<sup>3</sup> This, then, is a civil action and not a criminal action.<sup>4</sup> Legislation creating such courts has been characterized as an exercise of the state's police power, intended for the protection, care, custody, maintenance and welfare of the child.<sup>5</sup>

The District Court, which is also the juvenile court, assumed jurisdiction from its interpretation of the statute creating the juvenile court,<sup>6</sup> whereas the police magistrate contended that the North Dakota Constitution gave him jurisdiction over all cases arising from violations of city ordinances.<sup>7</sup> The case thus presented this question, is the statute creating the juvenile court in conflict with the constitutional provision giving police magistrates jurisdiction over cases arising under city ordinances?

In Mississippi the Youth Court Act of 1946,<sup>8</sup> which vested exclusive and original jurisdiction in all proceedings concerning delinquent children in a juvenile court, was held by the Mississippi Supreme Court, in a five to four decision, not to violate the constitutional provision giving original jurisdiction over felonies to the circuit courts.<sup>9</sup> An Oklahoma case<sup>10</sup> held that the district court had no jurisdiction until a delinquent minor had been certified to it for prosecution for a felony.

1. See Flexner and Oppenheimer, *The Legal Aspect of the Juvenile Court*, 57 Am. L. Rev. 65 (1923).

2. See *Lindsay v. Lindsay*, 257 Ill. 328, 100 N.E. 892 (1913); *Mill v. Brown*, 31 Utah 473, 88 Pac. 609 (1907).

3. *Wissenberg v. Bradley*, 209 Iowa 813, 229 N.W. 205 (1930); *State v. Brown*, 50 Minn. 353, 52 N.W. 935 (1892).

4. *Wissenberg v. Bradley*, 209 Iowa 813, 229 N.W. 205, 207 (1930) "The action is, in a sense, a special proceeding provided by statute, wherein the state, by virtue of its authority as *parens patriae*, takes jurisdiction of the incorrigible child . . . for its care, education, and training."

5. *State v. Issenhuth*, 34 S.D. 218, 148 N.W. 9, 12 (1914). "That legislation of this character is a valid exercise of the police power of the state is too plain to require discussion or the citation of authorities."

6. N.D. Rev. Code §27-1608 (gives the juvenile court original jurisdiction in all proceedings concerning delinquents under 18 years of age).

7. N.D. Const. §113 "The legislative assembly shall provide by law for the election of police magistrates in cities, incorporated towns, and villages, who in addition to their jurisdiction of all cases arising from the ordinances of said cities, towns and villages, shall be *ex officio* justices of the peace of the county in which said cities, towns and villages may be located, and the legislative assembly may confer upon said police magistrate the jurisdiction to hear, try, and determine all cases of misdemeanors, and the prosecutions therein shall be by information."

8. Miss. Gen. Laws 1946 c. 207.

9. *Wheeler v. Shoemaker*, 213 Miss. 374, 57 So.2d 267 (1952) (the statute held to be within the state's police powers) "these purposes are brought out by the basic concept of the statute, which is, that the court proceedings thereunder are of a civil nature by the state in the interest of the child, as opposed to criminal proceedings by the state against the child." The dissenting opinion stated bluntly that the statute conflicts with the constitution.

10. *Ex parte Powell*, 120 Pac. 1022 (Okla. Cr. 1912); *Accord, Wilson v. State*, 82 P. 2d 308 (Okla. Cr. 1938).

Some statutes creating juvenile courts have been held invalid because the jurisdiction had been conferred on courts or officers whose powers were so limited by the constitution of the state as to exclude the exercise of the intended powers.<sup>11</sup> Section 103 of the North Dakota Constitution which defines the jurisdiction of the District Courts also limits that jurisdiction as provided elsewhere in the Constitution. Section 113 gives to police magistrates jurisdiction over all cases arising under city ordinances and this would appear to be a limitation on the jurisdiction of the District courts. The dissenting judges in the instant case so considered it.<sup>12</sup>

The contention of the majority in the instant case was that a municipality, being a creature of the state, has only those powers granted to it by the legislature. But the legislature, in passing the juvenile court act, limited the operation of municipal ordinances and not the jurisdiction of city magistrates to hear cases arising under those ordinances. Thus the majority circumvented what appeared to be a conflict between a statute and a constitutional provision. This reasoning appears to give the legislature the indirect power to sharply curtail the constitutionally granted jurisdiction of city magistrates.

Thus while the majority have undoubtedly reached a socially desirable result the reasoning of the minority seems more in keeping with strict legal interpretation.

JAMES A. MURRAY.

**LIENS — RELATIVE PRIORITY OF FEDERAL AND MUNICIPAL STATUTORY LIENS.**—Two mortgages on the real property of a corporation were foreclosed by judgment sale and the gross sum realized was \$27,071.34. Against this fund were \$31,000 in claims, including expenses of the sale, the two mortgages, a judgment of record, a federal statutory lien and a municipal statutory lien. Following a Connecticut statute providing that real estate tax liens shall take precedence over all transfers and encumbrances in any manner affecting the property subject to the lien,<sup>1</sup> the Supreme Court of Errors of Connecticut affirmed<sup>2</sup> the lower court's determination that the claims should be paid in the following order: the expenses, the city's liens, the mortgages, the judgment lien and the federal lien. The United States appealed the decision on the ground that the city's liens should not have been given priority over the federal liens. On certiorari the Supreme Court of the United States held that the judgment be vacated. The relative priority of the federal and municipal claims should be determined by the principle, "first in time is first in right." *United States v. City of New Britain, Conn.*, 74 S.Ct. 367 (1954).

Priority of federal tax liens over other liens and encumbrances is governed by § 3466 of the Revised Statutes<sup>3</sup> and §§3670-2 of the Internal Revenue

11. *State v. Tincer*, 258 Mo. 1, 166 S.W. 1028 (1914); *Pugh v. Bowden*, 54 Fla. 302, 45 So. 499 (1907); *Hunt v. Wayne Circuit Judges*, 142 Mich. 93, 105 N.W. 531 (1905).

12. See *State ex rel City of Minot v. Gronna*, 59 N.W.2d 514, 541 (N.D. 1953) (dissenting opinion).

1. Conn. Gen. Stat. 1949, c. 88, §1853.

2. *Brown v. General Laundry Service, Inc.*, 139 Conn. 363, 94 A.2d 10 (1952).

3. Rev. Stat. §3466, 31 U.S.C. §191 (1946). "Whenever any person indebted to the United States is insolvent . . . the debts due to the United States shall be first satisfied . . ."