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though the holder had actual knowledge of the reacquisition. This view is supported by that language of §66 which was so completely disregarded in *Ray v. Livingston.*

The Negotiable Instruments Law is now being revised by the National Conference of Commissioners on Uniform State Laws and the American Law Institute, as a part of their Commercial Code project.[34] This problem should be dealt with explicitly so that there will be no question but what an intermediate indorser will be held to that liability which he assumes.[35]

ALFRED D. WARD

Criminal Law—North Carolina Bastardy Statute—Support of Illegitimate Children

In *State v. Stiles,*[1] the defendant was indicted for willful failure to support his illegitimate child. In order to secure a conviction under this indictment, it is necessary that the State prove two elements. First, that the defendant is the father of the illegitimate child, and second, that his failure to support the child was willful.[2]

The prosecutrix's testimony as to the conception presented sufficient evidence on the point of paternity to support the jury's finding that the defendant was the father of the child. Since the defendant admitted having failed to support the child, it was only incumbent upon the prosecution to show that his failure to support was accompanied by a willful intent. When the State proved that the defendant had known of the prosecutrix's pregnant condition and her requests for "aid" even before the birth of the child, the jury was fully justified in finding that his subsequent failure to support the child was willful, without justification or excuse. However, had the State failed to establish the requisite willful intent, the defendant would have been guilty of no crime, since the statute makes willfullness a necessary ingredient of the offense.[3]

The present statute[4] under which the defendant was indicted superseded the old Bastardy Proceedings. Bastardy Proceedings[5] were civil

[34] See HANDBOOK AND PROCEEDINGS, NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS 143 (1944).

[35] It has been learned through correspondence that the revision in its present tentative form includes a provision discharging an intermediate indorser on reacquisition by a prior party. This draft is, of course, "subject to change without notice," and the writer hopes that such will be the fate of the provision in question.

[1] 228 N. C. 137, 44 S. E. 2d 728 (1947).

[2] N. C. GEN. STAT. (1943) §49-2.

[3] State v. Vanderlip, 225 N. C. 610, 35 S. E. 2d 885 (1945); State v. Hayden, 224 N. C. 779, 32 S. E. 2d 333 (1944); State v. Allen, 224 N. C. 530, 31 S. E. 2d 530 (1944); State v. Moore, 220 N. C. 535, 11 S. E. 2d 660 (1941); State v. McLamb, 214 N. C. 322, 199 S. E. 81 (1938); State v. Tarlton, 208 N. C. 734, 182 S. E. 481 (1935); State v. Tyson, 208 N. C. 231, 180 S. E. 85 (1935).

[4] N. C. GEN. STAT. (1943) §49-2.

[5] N. C. CODE ANN. (Michie, 1931) §265.

in nature and to secure a court decree for the maintenance and support of the child, it was only necessary that the State show by the preponderance of the evidence that the defendant was the father of the child. Under the present laws, however, the establishment of paternity only satisfies the proof of one of the two requisite elements, and since it is a criminal statute, the State must prove beyond a reasonable doubt rather than by a preponderance of the evidence that the defendant willfully failed to support the child. The defendant enters the trial with a presumption of innocence, and this includes innocence from any willful failure on his part to support his child.[6] The failure to support may be an evidential fact tending to prove his willful intent. However, the judge will commit reversible error to charge the jury that the mere finding of a failure to support gives rise to a presumption of willfulness.[7]

In the principal case, the judge instructed the jury that the defendant was indicted for Bastardy, and that North Carolina had a statute which made it a crime for a man to have intercourse with a woman and become the father of an illegitimate child. He later stated that the State was not relying on this statute. He further instructed the jury that the crime included a failure to support and pay medical expenses incurred when the child was born. Considering the first part of these instructions, the jury was at liberty to render a verdict of guilty based solely upon the fact that they found the defendant to be the father of the child, and yet no statute exists in this State making such conduct a criminal offense.[8] The Judge's attempted curative statement that the State was not relying on this statute, at most only served to confuse the jury, and not to lessen the prejudice already heaped upon the defendant. The instructions concerning medical expenses were incorrect as a matter of law, for willful failure to provide such expenses is not a criminal offense although the court may require provision therefor upon the defendant's conviction.[9]

The trial judge's error illustrates one of the many difficulties which may arise in the application of this statute. The Supreme Court of North Carolina more than once has criticized this act for its ambiguity and impossibility of satisfactory construction.[10]

The legislature has provided that the court may order the defendant to pay the mother the necessary medical expenses incurred in bearing the child. However, this order can be issued only after the defendant

[6] State v. Spellman, 210 N. C. 271, 186 S. E. 322 (1936); State v. Cook, 207 N. C. 261, 176 S. E. 757 (1934).
[7] State v. Cook, 207 N. C. 261, 176 S. E. 757 (1934).
[8] State v. Tyson, 208 N. C. 231, 108 S. E. 85 (1935).
[9] State v. Summerlin, 224 N. C. 178, 29 S. E. 2d 462 (1944).
[10] State v. White, 225 N. C. 351, 34 S. E. 2d 139 (1945); State v. Summerlin, 224 N. C. 178, 29 S. E. 2d 462 (1944); State v. Dill, 224 N. C. 57, 29 S. E. 2d 145 (1944).

has been found guilty of a willful failure to support the child. Medical expenses are no part of a child's support.[11] The reputed father is under no duty to support a dead child. Therefore, the mother apparently has no grounds upon which to bring an action under the statute to collect such medical expenses when the child dies at birth.[12] It is doubtful that the legislature intended this result in view of the fact that the former statute[13] afforded her compensation for such expenses, and further considering that the legislature in the present act expressly recognizes the father's duty to pay for such expenses.

The difficulty of interpreting the legislative intent concerning medical expenses again arises when such expenses are considered in light of the statute of limitations.[14] Payments for the support of the child by the reputed father within three years of birth will extend the statute of limitations.[15] This is allowed upon the theory that the payment by the reputed father is an acknowledgment of his issue. But since medical expenses incurred in birth are not a part of the child's support, payment of these alone will apparently not extend the statute in favor of the mother.[16] If the basis of this extension is the acknowledgment by the reputed father of his issue, could it be reasonably contended that payment of medical expenses incurred in birth is any less an acknowledgment than payments made to support the child?

The statute of limitations in part reads, "Proceedings under this article to establish paternity of such child may be instituted at any time within three years next after the birth of the child, and not thereafter."[17] To understand why the legislature restricted the application of the statute of limitations to proceedings to establish paternity, it is necessary to consider the general purpose of the chapter and the operation of the diverse sections within it. The act expressly recognizes that the statutory crime consists of two elements, one, the establishment of paternity, and two, proof of willful failure to support. Affirmative proof of the first is a condition precedent to allowing a verdict of guilty upon the second. Hence, if proof of paternity is barred there can be no action for failure to support. But, if paternity is established within the allowed three years, the legislature must have intended that the State be able to prosecute the action at anytime within the first fourteen years of the child's life. This should be true since failure to support is a continuing crime.[18] The provisions for bringing preliminary proceedings would

[11] State v. Summerlin, 224 N. C. 178, 29 S. E. 2d 462 (1944).
[12] This issue has not yet been decided by the North Carolina Supreme Court.
[13] N. C. CODE ANN. (Michie, 1931) §273.
[14] N. C. GEN. STAT. (1943) § 49-4.
[15] N. C. GEN. STAT. (1943) §49-4.
[16] This issue has not yet been decided by the North Carolina Supreme Court.
[17] N. C. GEN. STAT. (1943) §49-4.
[18] See Mr. Justice Barnhill, dissenting in State v. Dill, 224 N. C. 57, 29 S. E. 2d 145 (1944).

be meaningless if the three year statute of limitations is construed to bar all action under this act. For, if this were so, even after the establishment of paternity in a preliminary proceeding, it would still be incumbent upon the State to bring an action for failure to support within three years from birth. Since paternity may be establishd in the prosecution for failure to support, there would be no purpose in having preliminary proceedings if all action under the act is barred three years after birth. It would seem that if the legislature had intended this result they would have said prosecutions under this article are barred rather than designating specifically preliminary proceedings.

A proviso is written into the statute of limitations which is as follows: "provided however that when the reputed father has acknowledged paternity of the child by payments for the support of such child within three years from the date of birth thereof, and not later, then, in such case, prosecution may be brought under the provisions of such sections within three years from the date of such acknowledgment of paternity of such child by the reputed father thereof."[19] The proviso by its own language limits its operation to the particular case of acknowledgment by payments, and does not act as a restriction upon the three year statute of limitations. It is intended to give additional rights, and not to limit those already given. Construed thus, the proviso gives the mother the additional right to have the defendant prosecuted for failure to support, even though the statute of limitations prevents her from establishing paternity in a preliminary hearing. Since the father has affirmatively recognized his child, it is reasonable to conclude that the legislature intended that the mother should be given a further opportunity to force the father to perform his duty to the child.

In final analysis, the mother, if she establishes paternity in a preliminary proceedings, is given fourteen years from the birth of the child to have the State institute action for failure to support; however, if she fails to establish such paternity in preliminary proceedings within the allowed time, the State must institute action for failure to support within the extended period of three years from the last payment in support made within three years from birth or the action is forever barred.[20]

The North Carolina Supreme Court to date has not accepted this interpretation of the statute of limitations. In *State v. Bradshaw*,[21] the court held that the statute of limitations[22] (which read at that time, "Proceedings under this act may be instituted at any time within three years after birth of the child and not thereafter") barred any action

[19] N. C. GEN. STAT. (1943) §49-4.

[20] State v. Dill, 224 N. C. 57, 29 S. E. 2d 145 (1944). This would seem to be in accord with the separate dissenting views presented by Justices Seawell and Barnhill.

[21] 214 N. C. 5, 197 S. E. 564 (1938).

[22] N. C. CODE ANN. (Michie, 1935) §276(c).

under the statute after the expiration of three years from the birth of the child. In 1939 the statute of limitations was amended to its present form.[23] The effect of the 1939 amendment on the former statute of limitations was first considered in *State v. Killian,* where the court said: "This section (the former statute of limitations) however was definitely changed by Section 3 of Chapter 217 Public Laws 1939 (the present statute of limitations) which limited the application thereof to proceedings to establish the paternity of such child."[24] Considering this statement, it is difficult to understand why the court has held that "the only material change wrought by the particular amendatory proviso was to extend the time within which prosecutions may be brought when the reputed father has acknowledged his child by payments. . . ."[25] Therefore, today the law in North Carolina requires that prosecutions be commenced within three years of birth or they are barred by the statute of limitations, unless the proviso is made operative because of payments in acknowledgment, in which case the maximum limit for commencing the action would be six years from birth.

A father's initial gift to an illegitimate child is universal condemnation. This irreparable disservice should not be further perpetuated by allowing the father to escape the financial responsibility of his wrongful act because of ambiguity in our law. Nor could the legislature have intended such a result. The legislature has expressly distinguished proceedings and prosecutions, but, if there be any uncertainty, society and common decency dictate that it should be construed in favor of the unfortunate child.

THOMAS A. WADDEN, JR.

Federal Jurisdiction—Joinder of Non-Federal Claim with Federal Question

Plaintiff brought an action against FBI agents to recover damages allegedly resulting from an unlawful search and seizure of the plaintiff's property and from a deprivation of his liberty and property without due process of law in violation of his immunities guaranteed by the Fourth and Fifth Amendments of the United States Constitution. The district court dismissed for lack of jurisdiction on the ground that the complaint failed to state a federal claim for which relief could be granted, and the Circuit Court of Appeals affirmed.[1] The Supreme Court reversed[2] on the grounds that the plaintiff had clearly and in

[23] N. C. GEN. STAT. (1943) §49-4.
[24] State v. Killian, 217 N. C. 339, 341, 7 S. E. 2d 702, 703 (1940).
[25] 224 N. C. 57, 29 S. E. 2d 462 (1944); *see* State v. Killian, 217 N. C. 339, 341, 7 S. E. 2d 702, 703 (1940).

[1] Bell v. Hood, 150 F. 2d 96 (C. C. A. 9th 1945).
[2] Bell v. Hood, 327 U. S. 678 (1946). Mr. Chief Justice Stone and Mr. Justice Burton dissented on the ground that "The district court is without jurisdiction as