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CRIMES - VENUE- NON-SUPPORT, ABANDONMENT, AND DESERTION

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CRIMES — VENUE — NON-SUPPORT, ABANDONMENT, AND DESERTION. — Defendant was divorced by his wife in A county in 1926. In 1929, defendant was indicted for non-support of his children, in B county, where his former wife and the children had maintained their home since the divorce. An objection to the venue was raised by the defense, on the ground that, if a crime was committed, it was consummated in A county, where defendant had been living during the time he was charged with non-support. *Held*, that "the venue of non-support is where that support should be rendered." *State v. Anderson* (Or. 1930) 290 Pac. 1094.

"A crime is in law committed in the place where the doer's act takes effect, whether he is himself in such place or not." 1 BISHOP, NEW CR. PROCEDURE, 2d ed. sec. 53. *Johnson v. People*, 66 Ill. App. 103; *State v. Peabody*, 25 R. I. 544, 56 Atl. 1028; *State v. Yocum*, 182 Ind. 478, 106 N.E. 705, apply Bishop's rule in non-support cases. Defendant may be held liable for non-support or abandonment in B county, despite the fact that he has never set foot within its borders. The gist of the offense is the omission of a duty to support and the venue is properly held in the county in which that duty should have been performed. *State v. Dvoracek*, 140 Iowa 266, 118 N.W. 399; *Allred v. State*, 28 Okla. Cr. 13, 228 Pac. 788. The principal case reflects the weight of authority—prosecutions should be brought within the jurisdiction in which those to whom a duty of support is owed reside when the failure to fulfill this obligation occurs. *Bennefield v. State*, 80 Ga. 107, 4 S.E. 869; *Cleveland v. State*, 7 Ga. App. 622, 67 S.E. 696; *People v. Quigley*, 75 Mis. 151, 134 N. Y. S. 953; *People v. Wexler*, 152 App. Div. 67, 136 N. Y. S. 679; *Higgenbotham v. State*, 20 Ala. App. 476, 103 So. 71. Ordinarily, this duty is owing at the domicile of the defendant or at any place to which the dependent family may go with the defendant's consent, express or implied. *Schmidt v. State*, 110 Neb. 504, 194 N.W. 679; *State v. Winter-*

bauer, 318 Mo. 693, 300 S.W. 1071. But, if the wife removes to another jurisdiction voluntarily, after her abandonment, without her husband's consent, she can not confer power to prosecute upon the court of that jurisdiction by such removal, since the duty of support does not exist except as above stated. *People v. Vitan*, 20 Abb. N. C. (N. Y.) 298, 10 N. Y. S. 909; *Caylor v. State*, 219 Ala. 12, 121 So. 12. A contrary line of decisions fixes as the proper venue for a criminal prosecution, the jurisdiction in which the defendant resides at the time of the commission of the offense of abandonment, non-support, or desertion. *State v. Justus*, 85 Minn. 114, 88 N.W. 415; *In re Baurens*, 117 La. 136, 41 So. 442; *State v. Fick*, 140 La. 1063, 74 So. 554; *State v. Dangler*, 74 Ohio St. 49, 77 N.E. 271. The court in *Poindexter v. State*, 137 Tenn. 386, 193 S.W. 126, made an attempt to reconcile these opposing lines of holdings by an interpretation of the statutes on non-support and abandonment. Assuming that the law is on the statute books in order to avert the danger of wives and children becoming a charge on the county, a prosecution should be brought in the jurisdiction in which the dependent family resides, it was asserted. On the other hand, the residence of the defendant was deemed to be the proper venue when the purpose of the statute is to protect wives and children by punishing their deserters in order to deter others from the commission of similar offenses. An examination of the cases seems to bear out in the main the validity of the distinction made in *Poindexter v. State*, supra. See 47 L. R. A. (N. S.) 218 for a collection of cases on this subject.