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THE CONTRIBUTORY DEPENDENCY LAW OF IOWA.

HENRY E. C. DITZEN.¹

This is an age of law reform. Everybody is straining to the utmost to improve our methods of handling criminals and much more attention is being paid to prevention than ever before.

The state of Iowa has, to my mind, taken a very advanced position by passing what is known as the contributory dependency law, mention of which was made in the second issue of this JOURNAL on page 149. Other states have contributory dependency and contributory delinquency laws, but they are, generally, criminal statutes. There is only one other state, so far as I am aware, that has a statute similar to this one, and that is Kentucky. The proceeding in Iowa is an equity proceeding and not a criminal one.

In order to get a thorough understanding of the nature, force, and propriety of the statute it will be necessary to consider briefly the fundamentals upon which it is based.

We are a nation of individuals and not of families, as was the case in early Rome. Each individual is a citizen. We have woman citizens and infant citizens. The state has the same direct relationship to the infant that it has to the parent. The status of infancy is a creation of the state, either by acceptance of the common law or by special statutory enactment. The state, therefore, has absolute control over that status, and, consequently, over all things that depend for their existence upon it. Thus the state can, and in many instances has reduced the period of minority for girls from twenty-one to eighteen and, in consequence, has correspondingly decreased the period of custody, control, right to services and earnings, etc.

In regard to criminal liability it may, incidentally, be said that the period during which minors have been regarded as absolutely incapable of committing crime has been raised from seven, as at common law, to nine years in Texas, to ten years in Georgia and Illinois, and to twelve years in Arkansas, and there is no reason whatsoever why, if the public felt that it would be for their best interest, it should not extend that period to the age of twenty-one.

All persons in the status of infancy are wards of the public and the public has delegated the power of raising and caring for them,

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in trust, to their parents. Lord Redesdale as far back as 1828, in *Wellesley v. Wellesley*, said: "Why is the parent entrusted with the care of his children? Because it is generally supposed that he will best execute the trust imposed in him, for that it is a trust of all trusts the most sacred none of your lordships can doubt."

The question of the right of parents to the custody of their children was thoroughly considered by the Wyoming court in *Nugent v. Powell* (4 Wyo. 189; 33 Pac. 23). After considering the proposition from every viewpoint and quoting from many authorities, the court concludes with these words: "And hence, from a careful consideration of the question we come to the conclusion that the right of the father with respect to his child is not an absolute, paramount, proprietary right or interest in or to the custody of the infant, but is of the nature of a trust reposed in him, which imposes upon him the reciprocal obligation to maintain, care for, and protect the infant; and that the law secures him in his right so long and no longer than he shall discharge the correlative duties and obligations." Parents do not have possession of their children because they own them. No citizen has the right of ownership in or to any other citizen. We are all free men. The state, on the other hand, may take the minor into the criminal court, take the custody from the parent and give it to a penitentiary without notice to, or consent of, the parent; it may draft him into service and may shoot him if he deserts and need ask no question of anyone.

The parent merely represents the state—is the state's agent—having custody of the children in trust, but, as Lord Redesdale said, "it is a trust of all trusts the most sacred." There is no one else, generally speaking, who can fulfill the trust as well as the parent can and, therefore, it is made his absolute duty to be that trustee. Strangers can only be considered in case parents cannot or will not do their duty. In such case either private persons or institutions are appointed in their place and stead to do what they ought to have done. But the parents should by all means, if at all possible, do so. And it has been wisely held that parents cannot easily shake off their responsibility. The parents owing a duty to the community to act as guardian of infant citizens for the state, the state can enforce that duty. This may be done in two different ways. The ordinary way is by punishing by fine or imprisonment or both, in the criminal court, for the nonperformance of certain duties. In other words, the parent can be fined or imprisoned in case he fails to give his child an education; if he allows it to work while yet too young, and in dangerous places; if he treats it cruelly; if he does not give it proper medical attention, etc. The other way of making a parent do his

duty is not so common, although it is, perhaps, the more logical way, namely, that of summoning him into a court of equity and holding him accountable for his nonfeasance of malfeasance as guardian, and, if necessary deposing him.

Mr. Hughes in his second volume on procedure, p. 829, says: "There is every reason, both from public policy and convenience, that in respect to delinquent children and the parents who are accountable for their delinquencies, such children should be under the jurisdiction of a court of chancery, and, should it become necessary in the exercise of this jurisdiction to punish the parents by depriving them of their liberty, the public good is the first concern of the government, and there is no infraction of the constitution in so depriving them, in the very nature of the jurisdiction, the parents of delinquent children are brought into the jurisdiction of a court with full chancery powers, and, if the public good under certain circumstances seems to require that the parents should be deprived of their liberty, such a court may exercise that power without the intervention of a jury." In other words, the court of equity may lock him up for contempt until he makes up his mind to do what he has been ordered to do. This is true in a case of dependency, more so than in a case of delinquency. Nor can there be any doubt that the court can protect the wards of the state and the state's guardians against interference from others.

Such is the common law and such is the statute of Iowa. The only difference is that the Iowa statute provides some ways and means. It does not as yet, however, provide all the instrumentalities that are necessary to carry out the full intent of the law. The law is, virtually, also a contributory delinquency act, since, generally, the delinquents are also dependents. The Iowa statute covers not only the case of parents who are not properly doing their duty, but also "any other person or persons who shall by any act or omission of duty encourage, counsel, or contribute to the neglect of such child." "Neglect" and "dependency" are one and the same thing under the Iowa statute. It covers the entire field of influence upon a child's life.

The court shall try the cases as equity cases and "may enforce obedience to its orders in any way in which a court of equity may enforce its orders or decrees." "Whenever the court upon hearing finds a person guilty of contributory dependency, the court may enter a judgment determining such facts and requiring such person to do or to omit to do any act or acts complained of in the petition; and, for the purpose of enforcing its judgment, the court in its discretion may continue the

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proceeding from time to time and release such person on probation during the period of two years.”

“In case any person found guilty of contributory dependency shall be found to be a spendthrift who is squandering his property, or an habitual drunkard incapable of managing his affairs, the court shall, of its own motion or on application, appoint a guardian as provided by statute, who shall also have the duty to see that such person is employed as much as possible.”

The following section then provides in regard to getting work for such wards, and makes it the duty of the city and county to furnish employment in case no other employment can be found.

The next section provides: “In every case where the contributory dependency consists, in whole or in part, of habitual drunkenness it shall be the duty of the court to commit such person guilty thereof to the state hospital for inebriates, and, after his release therefrom, the court shall put him into the care of some person duly appointed as special probation officer, who shall aid and assist him toward reform and shall see that he is properly employed.”

The statute further provides: “When children are allowed to remain in the custody of such person as is found guilty of contributory dependency the court may prescribe such conditions as seem most calculated to remove the cause of such dependency and neglect, and in case the court deems it for the best interests of the child to remove it from its home until the conditions of the probation have been complied with and the court is satisfied that such compliance will continue, then the court may place the same in the care and custody of the juvenile detention home or of some other suitable institution.”

“In every cause in the juvenile court”—and this is a general provision indicating the intention of the statute—“the court shall investigate whether every person responsible for the care, custody, maintenance, education, medical treatment, and discipline of the child or children involved is doing his full duty by such child or children, and in case the court finds that the parents or other persons *in loco parentis* are not doing their duties, the court shall try all lawful and proper means under this act to make them do so, giving them aid and assistance in case it be deemed necessary.”

As can be readily seen, the court of equity at common law and by virtue of this statute has full control over adults who in any way influence or affect the raising of children. If the courts properly administer this law they can prevent much crime among adults as well as among the children. Parents who are offenders under the criminal law are also

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generally guilty of contributory dependency, since their misdeeds affect the thought and action of their children for evil. The first offender, as well as the hardened criminal, can thus be placed under probation, not as a criminal, nor, primarily, for his own good, but, as an offending trustee, for the good of the child. The probation officers may be expert disciplinarians and educators and they can do much to alleviate the divorce evil; if they are students of sociology and ferret out the causes of dependency and delinquency on the part of children and of adults much valuable data can be obtained for the purpose of improved social legislation. The Iowa law provides the foundation, but the legislature must furnish a sufficiency of help, a sufficient number of paid probation officers with such a salary that really competent men and women can afford to give up their time for the work and do the work in a scientific manner. More institutions should be created. There should be an adult reformatory for people who have the lazy habit; there should be a psychological clinic, homes and hospitals for crippled and otherwise defective children, and for those who have contagious and infectious diseases, etc., etc. No doubt all of these things will be provided by Iowa in time, and when that time comes Iowa will be able to handle almost any kind of a problem affecting delinquency and dependency, juvenile or adult.