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Criminal Law—Kidnapping—Intent

gress to raise an army but merely to commit to him execution of its scheme. In *Marshall Field & Co. v. Clark* (1892), 143 U. S. 649, 36 L. Ed. 294, 12 S. Ct. 495 a statutory provision was held constitutional which authorized the President to suspend free importation of specified products if a foreign country did not deal reciprocally. Such statutes are based on the impracticability of legislative action on details, and the necessity of adjustments to maintain established principles in the face of varying conditions.

But the legislature, in invoking the aid of the executive, must not leave too great a field for the exercise of executive discretion. Thus an act empowering the director of agriculture to declare oranges unfit for shipment when frosted to the extent of endangering the reputation of the industry has been held void as delegating to an administrative officer the legislative power of determining what acts or omissions of an individual are unlawful. *Ex parte Peppers* (1922), 189 Cal. 682, 209 P. 896. In *Tarpey v. McClure* (1923), 190 Cal. 593, 213 P. 983 it was held that the creation of a water storage district is a legislative act, performance of which may not be delegated by the legislature to an executive or judicial officer. The statute or ordinance must not purport to vest arbitrary discretion in the executive, but must prescribe definite rules for his guidance. *City of Shreveport v. Herndon* (1925), 159 La. 113, 105 S. 244; *Tarpey v. McClure, supra.*

It is to be noted that the statute in the principal case outlines certain rules of decision to guide the executive, and does not leave to him arbitrary discretion in executing the law. It therefore has solid basis in constitutionality as not being a delegation of legislative power. S. E., '30.

CRIMINAL LAW—KIDNAPPING—INTENT.—A divorce decree awarded custody of a minor child to her stepmother, and later the husband, who was the father of the child by a former marriage, not knowing of the decree, took the child and carried her away. *Held,* that such taking out of the custody of the person having lawful charge of the child without the consent of such custodian, and with the intent to detain and conceal the child, is sufficient to sustain an indictment for kidnapping; and that the fact that the defendant had no personal knowledge of the decree awarding the custody of the child only can be evidence that the defendant did not intend to detain or conceal the child from the person having lawful custody, and if he did so intend it would be no defense if he did not know that the custody of the child had been awarded to the stepmother. *State v. Taylor* (Kans., 1928), 264 P. 1069.

At common law kidnapping was defined as the forcible abduction or stealing away of man, woman, or child from his own country and sending him to another. 4 Blackstone COMMENTARIES 219. The definition has been modified so that the carrying away need not be to another country. *State v. Rollins* (1837), 8 N. H. 550. Kidnapping is false imprisonment, coupled with the idea of abduction. *Click v. State* (1848), 3 Tex. 282. The general rule is that a parent who takes his own child can never be guilty of kidnapping unless he takes this child without the consent of a person to whom the child's custody has been awarded by the decree of a competent

court. *Hard v. Splain* (1916), 45 App. D. C. 1; *Lee v. People* (1912), 53 Colo. 507, 127 P. 1023; *In re Peck* (1903), 66 Kan. 693, 72 P. 265; *State v. Farrar* (1860), 41 N. H. 53; *Burns v. Commonwealth* (1889), 129 Pa. St. 138, 18 A. 756. Thus a parent could not be guilty under the statute for taking a minor child out of custody of his other parent where there is a mere agreement of separation. *State v. Beslin* (1911), 19 Idaho 185, 112 P. 1053; *Hard v. Splain, supra; State v. Dewey* (1912), 155 Ia. 469, 136 N. W. 533, 40 L. R. A. (N. S.) 470; *State v. Parol* (1914), 107 Miss. 770, 66 S. 207, L. R. A. 1915 B 189. Nor, by the weight of authority, can one working in behalf of a parent be convicted of kidnapping if the parent could not be. But the fact that the accused, in enticing a child away from its father, acted as agent for the mother, the parents living apart, did not prevent his conviction under a statute applying to the taking of children under twelve years of age. *State v. Brandenburg,* (1911), 232 Mo. 531, 134 S. W. 529, 32 L. R. A. (N. S.) 845. The contrary view seems the better, however, since the agent should not be convicted of any crime for which another conspirator cannot be guilty.

In kidnapping, as in false imprisonment, fraud or fear may supply the place of force. *Payson v. Macomber* (1861), 3 All. (Mass.) 69; *Haddon v. The People* (1862), 25 N. Y. 373. In the absence of statute, a mistake of fact does not excuse a kidnapping. *State v. Tillotson* (1911), 85 Kan. 577, 117 P. 1030. There is no authority directly in point with the principal case, but it was decided on the general rule taken in conjunction with the doctrine asserted in the last cited case. G. N. B., '29.

FEDERAL COURTS—RULES OF DECISION IN ACTIONS AT LAW.—Plaintiff taxicab company sued defendant taxicab company and a railroad company in the United States District Court for the Western District of Kentucky for interference with the carrying out of a contract made with the railroad company, by which plaintiff company was given the exclusive privilege of entering certain depot grounds and soliciting patronage. Although no statute of Kentucky covered the contract, the Supreme Court of Kentucky, by interpretation of the common law operative in that state, had held such contracts void and contrary to public policy because they were discriminatory and monopolistic. *Held* (with dissent by Holmes, J., Brandeis and Stone, J J., concurring), that the validity of the granting by a railroad company of exclusive privileges at its station to one transfer company is a question of general law upon which the Federal courts are not bound by state decisions. *Black & White Co. v. Brown & Yellow Co.* (1928), 48 S. Ct. 383.

The principal case follows a settled rule in the Federal courts which had its origin in *Swift v. Tyson* (1842), 16 Pet. 1, the decision being based on interpretation of section 34 of the Judiciary Act of 1789 (1 Stat. 92). This section provided that "the laws of the several states shall be regarded as rules of decision in trials at common law in courts of the United States." In construing this provision Mr. Justice Story distinguished between state statutory law, which is mandatory on the Federal courts, and matters of