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Domestic Relations

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raised *despite* petitioner's undisputed confinement. The conclusions reached are justifiable, however. First, and probably most important, there was no attempt made in the *Ashley* case to bring the petition within the liberalizing framework of the 1947 amendment of the habeas corpus statute. Petitioner did not allege a violation of his constitutional rights. Indeed, his challenge was not on constitutional grounds at all, but rather was on a claim of misapplication of sentencing statutes. Second, the petitioner sought, in the *Ashley* case, the determination of an issue of law; in the *Nahl* and *Palmer* cases the petitioner raised an issue of fact. Where the question raised is one of fact, the dangers of postponement until the end of the valid sentence are that "witnesses move away; evidence disappears; memories grow dim." *In re Palmer v. Cranor*, 45 Wn.2d at 285, 273 P.2d at 990. No such problems necessitate an immediate hearing where the question raises a point of law.

Finally, it must be pointed out that although the supreme court turned down the application for a writ in the *Ashley* case the petitioner did not go away empty-handed. In an interesting "asides" remark to the attorney general, the court concluded its opinion by stating that "The attorney general, having conceded that there may be some merit to the petitioner's contention that his sentence... should be ten instead of twenty years, will, we are sure, co-operate with him in working out a *modus operandi* for a speedy determination of that issue." 149 Wash. Dec. at 5, 297 P.2d at 960.

The cases of *In re Nahl v. Delmore* and *In re Ashley v. Delmore*, decided in 1956, serve to illustrate the liberal attitude that our supreme court holds toward the purpose of the writ of habeas corpus in Washington.

Exclusive Jurisdiction of Federal Courts Over Crimes Committed By Indians. In *In re Andy*, 149 Wash. Dec. 437, 302 P.2d 963 (1956), the petitioner had been convicted of burglary. The crime was committed on land which was within the boundaries of the Yakima Indian reservation but which had been patented in fee to a non-Indian. Petitioner, a quarter-blood Indian, applied for a writ of habeas corpus, alleging that the superior court in which he was tried had no jurisdiction. *Held*, petition granted. The federal government has exclusive jurisdiction over an unemancipated Indian who is alleged to have committed murder, manslaughter, rape, incest, assault with intent to kill, assault with a dangerous weapon, arson, *burglary*, robbery and larceny within "Indian country." Indian country includes any land within the boundaries of an Indian reservation. Ownership of the land by a non-Indian does not affect the federal government's exclusive jurisdiction. 18 U.S.C. §§ 1151-1153, 3242 (1952).

DOMESTIC RELATIONS

The Right of Contribution Between Parents for the Support of Their Minor Children. In *Scott v. Holcomb*, 149 Wash. Dec. 377, 301 P.2d 1068 (1956), the Washington Court, on the basis of RCW 26.26.010, held that a father who has cared for four of five minor children of the parties in the absence of any provision in the divorce decree, is entitled to a set-off in an action brought by the mother on a judgment for contribution for the support of the fifth minor child of the parties.

The father and mother, residing in New York, separated in 1934 with the father leaving the home of the parties, taking with him the four oldest children and a woman who later became his wife. The four children resided with the father and were supported by him until they reached majority. In 1940 the mother obtained a divorce on the ground that her husband had absented himself for more than five years and was thought to be dead. In 1949 the father returned to New York to attend the funeral of his son and was served to defend an action brought by his former wife to recover contribution for the support of the child who had remained with the mother.

The father left before trial and a default judgment was entered against him for $7,579. The mother then brought suit on the judgment in Washington. A defense was entered on the ground that the judgment was obtained by fraud and a cross complaint was filed for one-half the amount the father had expended in the support of the four other children.

The action was dismissed by the court on the basis of RCW 26.20.010 which provides for joint and several liability of both the husband and wife for the expenses of the family and the education of the children. The court said the statute provides that the obligation of a mother and father for the support of the children is expressly prescribed as joint and several, not as primary and secondary as under the common law. There is nothing in the statute which indicates that the legislature intended that the mother should be entitled to contribution from the father while the children were in her custody but that there would be no reciprocal right in the father while the children were in his custody. The court went on to state that while in a divorce action there exists a wide discretion to adjust the property rights of the parties, in a subsequent action the court is bound by the statute. In commenting on the evidence supporting the mother's contention that the father had abandoned her and was consequently barred from claiming contribution, the court said that the evidence was not only inconclusive but that on the basis of *Schoennauer v. Schoennauer*, 77 Wash. 132, 137 Pac. 325 (1913), the fact of abandonment was immaterial.

The court disposed of the mother's argument to the effect that the father's claim should have been interposed in the New York suit by holding that nothing had been pleaded as a basis for such a decision and that consequently under RCW 4.32.090 the father's counterclaim was proper as an independent cause of action.

A dissenting opinion pointed out that RCW 26.20.010 had never before been applied to facts such as these. The dissenting judge felt that the correct rule should be that a spouse's right to contribution is suspended during such time as the one from whom contribution is sought is wrongfully deprived of the custody of the child or children in question, or during any period that the children's whereabouts are wrongfully concealed.

EVIDENCE

Sound Recordings—Foundation for Admission in Evidence.[1] The foundation which must be laid before a sound recorded confession may be received in evidence has been prescribed by the Washington Supreme Court in *State v. Williams*.[2] The *Williams* case was a rape prosecution in which the state offered in evidence a tape recording of a conversation from which a written statement purportedly signed by the defendant was taken. The trial court admitted the tape recording and the written statement. On appeal defendant assigned as error admission of the statement and the recording. The supreme court ruled only on admission of the recording since it alone was argued in defendant's brief in support of the assignment of error. The supreme court held that admission of the recording was prejudicial error because a proper foundation had not been laid. A new trial was granted.

[1] Annot., 168 A.L.R. 927 (1947) (a discussion of admissibility of sound recordings as evidence).

[2] 149 Wash. Dec. 347, 301 P.2d 769 (1956).