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Criminal Law--Forgery--Use of Fictitious or Assumed Name

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Arnold, *supra*, at 74. Mr. Arnold states that this power is analogous to the power which courts have possessed in the field known as common law crimes.

The law of common law crimes is regarded as a tool with which courts are free to fill up omissions in criminal codes. "The law of criminal attempts is exactly the same kind of a thing. . . . it simply means that courts are permitted to fill in the gaps which a set of definitions inevitably leave when applied to human conduct. . . . To treat this power as the definition of a substantive crime is either to destroy it or hopelessly to confuse it." Arnold, *supra*, at 75.

And what of our original concept of scientific precision? To speak of precision in an area where judicial discretion is the governing force is futile. But strivings for scientific precision in the law of criminal attempts have produced results which are the diametric opposite of the accuracy desired. To try the rule of judicial discretion could certainly produce nothing worse and there is a good chance for something a great deal better.

E. P. K.

CRIMINAL LAW—FORGERY—USE OF FICTITIOUS OR ASSUMED NAME.—Having established himself as one "R. E. Spaine," a fictitious person, *D* gave a check payable to the G Hotel, drawn on the X Co., and signed "R. E. Spaine," to the hotel manager. The check was to pay his bill at the hotel where he had registered twice within a month under the fictitious name; he received the balance in cash. *D* had no account in the X Co. The check was transported in interstate commerce. *D* was convicted for violation of a federal statute making it a crime to cause a falsely made and forged security to be transported in interstate commerce, knowing the instrument to have been falsely made and forged. 18 U.S.C. § 2314 (Supp. 1958). *Held*, sustaining the conviction, where *D* assumes a name and in addition uses that name to create a fictional person with real characteristics, personality and identity, the use of that name as an instrument of fraud is as much a forgery as though the fictional person were real. *Edge v. United States*, 270 F.2d 837 (5th Cir. 1959).

Two views of forgery have been expounded by the federal courts in an effort to establish the law on this subject. Under the "broad" view, if an instrument is sufficiently valid on its face to

enable it to be used to the prejudice of another, and it is so used with intent to defraud another, forgery has been committed even though a fictitious name has been used. Those courts following the "narrow" view hold that the name signed must purport to be that of a person other than the one signing it, or there is no forgery. *Hubsch v. United States*, 256 F.2d 820 (5th Cir. 1958). The broader rule, expounded by the Fifth Circuit in the principal case, is perhaps the better rule, and is followed by the majority of American courts. *State v. Lutes*, 38 Wash.2d 475, 230 P.2d 786 (1951). See generally Annot., 49 A.L.R.2d 852 (1956).

Since the key word "forgery" is not defined by the federal statute creating the crime, the result reached in cases of this nature seems to depend on the definition used by the court in each particular jurisdiction as applied to the facts of the case under consideration. *Hubsch v. United States*, *supra* at 823, quoted in the principal case, defines forgery in the generally accepted manner as "the false making or materially altering, with intent to defraud, of any writing, which, if genuine, might apparently be of legal efficacy, or the foundation of legal liability." 37 C.J.S. *Forgery* § 1 (1943). Although it has been said that technically the signing of a fictitious name is not forgery, in applying this general definition to the facts at hand, the court in the principal case logically concluded that there may be a forgery where a person uses a fictitious name to defraud another.

Since the "broad" view of forgery has been adopted and is the rule in a great number of jurisdictions, in many courts it is well-settled that forgery may be committed by signing a fictitious name. *State v. Barnhart*, 127 W. Va. 545, 33 S.E.2d 857 (1945). This rule especially holds true if the instrument is made with the intent to defraud another, and on its face has sufficient legal efficacy to enable it to be used for such a purpose. *Buckner v. Hudspeth*, 105 F.2d 393 (10th Cir. 1939). In line with this trend of thought is *Owens v. State*, 152 Neb. 841, 43 N.W.2d 168 (1950). There the defendant entered a store and bought a billfold for \$14. In payment he gave a check for \$50, receiving the difference in cash. The name signed to the check was that of a fictitious person. The court held, expounding the same theory used by the court in the principal case, that forgery had been committed.

Some courts, on the other hand, have modified the "broad" rule by stating that forgery by the use of a fictitious or an assumed

name may be properly applied only when the writing is used as that of a fictitious individual. *Greathouse v. United States*, 170 F.2d 512 (4th Cir. 1948). There the defendant signed his own name, purporting that the signature was authorized by another. The court further stated that when the writing is not passed off as that of another, it is really immaterial whether the one it purports to designate is real or fictitious.

While the "broad" rule is the generally accepted view, there is authority to support application of the "narrow" view. In a case prosecuted under the same federal statute violated in the principal case, the defendant signed various fictitious names to checks on a Rhode Island bank in the presence of the agents of several payees, who knew the defendant by the name he signed on the checks. The bank had no account in the name of either the fictitious or the real drawer. The court held that ". . . though there may be fraud and false pretenses, there has been no forgery where the payee in accepting the check has relied upon and given credit to the person who has signed and presented the check, and not the signature itself. It is only in a case where reliance is placed on the signature as creating a valid obligation, not on the person who presents the check, that forgery has been committed." *United States v. Greever*, 116 F. Supp. 755, 756 (D.C. Cir. 1953). The "narrow" view is further supported by the fact that a cautious payee could easily ascertain whether the drawer of the check had an account with the drawee bank where a fictitious name is used. It would be more difficult to determine if the name of a real person with an account in the drawee bank were used by the forger. This "narrow" view has been followed by some state as well as federal courts. *State v. Wilson*, 168 La. 932, 123 So. 624 (1929). The latter case is significant in that it points out a remedy for those jurisdictions which follow the "narrow" rule. The defendant need not be let free; he may be tried for false pretenses. But when the check purports to be the check of the person issuing it, and no other, there can be no forgery.

Although several courts choose to follow the view that there can be no forgery by use of a fictitious name when the parties are dealing at arms length, the majority of jurisdictions, including the Fifth Circuit in the principal case, follow the better and broader rule that forgery may be committed by signing a fictitious name. The rule advanced by this case probably follows the modern trend, for justice is better served by its application. Public mischief is equally great whether the name forged is real or fictitious. *Milton*

v. United States, 110 F.2d 556 (D.C. Cir. 1940); *Jones v. United States*, 234 F.2d 812 (4th Cir. 1956).

F. L. D., Jr.

DOMESTIC RELATIONS—PARENTAL IMMUNITY NOT EXTENDED TO STEPFATHER.—*P*, an unemancipated minor, was seriously injured while riding in his stepfather's truck. The accident was the result of alleged negligent operation by the stepfather's agent. *P* was not employed by the stepfather but occasionally "helped out" in the business. *P* lived with his mother and stepfather, and the stepfather voluntarily stood in loco parentis to *P*. *P* sued the stepfather to recover damages for his personal injuries. *Held*, although the stepfather voluntarily stood in loco parentis, he was not under any legal obligation to care for, guide or control the child. Since the death of *P*'s father this obligation had fallen to *P*'s mother. Only the mother had the power to emancipate, and *P*'s reciprocal legal obligations were only to his mother. There is no justification for extending the doctrine of parental immunity from suit to one voluntarily standing in loco parentis, such as stepfather. *Burdick v. Nawrocki*, 154 A.2d 242 (Conn. 1959).

It may be said as a general proposition of law, that a parent is immune from suit by an unemancipated minor for negligence resulting in personal injury to the child. *Luster v. Luster*, 299 Mass. 480, 13 N.E.2d 438 (1938); *Crosby v. Crosby*, 230 App. Div. 651, 246 N.Y.S. 384 (1930); *Annot.*, 19 A.L.R.2d 425 (1951). The underlying reason of the parental immunity doctrine is quite simple. Society's concern for the stability of the family unit far exceeds the right of the individual to redress for the occasional tort by a parent to a child. *Cowgill v. Boock*, 189 Ore. 282, 218 P.2d 445 (1950).

The principal case refused to extend the doctrine of parental immunity to a stepfather voluntarily standing in loco parentis. The wisdom of the general rule was not questioned, but the denial of application of the rule was based entirely upon the legal relationship of the parties. There is a conflict of authority as to whether an unemancipated minor may sue a stepparent standing in loco parentis, but there is a definite trend to extend the immunity to a stepparent where only ordinary negligence is involved. *Reingold v. Reingold*, 115 N.J.L. 532, 181 Atl. 153 (1935); 39 AM. JUR. *Parent & Child* § 90 (1942). The stepfather is not in loco parentis to the child merely by virtue of the fact he is a stepfather. Such a person must