EXECUTORS AND ADMINISTRATORS—POWER OF PUBLIC ADMINISTRATOR TO RESIGN.—Disputes and controversies had arisen over the administration of an estate and the conduct of the public administrator was challenged. *Held*, that probate court could accept resignation of public administrator for good cause shown. *State ex rel. Russell v. Mueller, Circuit Judge* (Mo. App. 1931) 39 S. W. (2d) 1075.

But in *State ex rel. Gordon v. Kennedy et al.* (1898) 73 Mo. App. 384, the court held that a public administrator has no authority to refuse to enter upon or to continue to administer estates which by law he should administer. The latter case is also generally cited as authority for the proposition that R. S. Mo. (1929) sec. 44 has no application to the resignation of public administrators. This section allows the proper courts to accept the resignation of any executor or administrator for good cause shown and on proof of proper publication of notice of intention.

The statement of the *Kennedy* case concerning the application of the above section was merely obiter dictum, the true decision being in effect, that where a public administrator resigns his office, this act accomplishes his resignation as administrator of estates in his charge and it is not necessary for him to resign as administrator of each estate as is required in the case of a private administrator. This holding would not determine the question as to whether a public administrator may be allowed to resign from the administration of a particular estate for cause in the same manner as is permitted of a private administrator.

R. S. Mo. (1929) sec. 301 provides: "When a public administrator has been appointed to take charge of an estate he shall continue the administration until finally settled, unless he resigns, dies, is removed for cause, or is discharged in the ordinary course of law as the administrator." The word "resigns" was correctly interpreted in the *Kennedy* case as referring solely to the resignation of the public administrator's office and not to the resignation of his appointment to take charge of a particular estate. This interpretation was approved by the Supreme Court in *State ex rel. Gordon v. Kennedy* (1901) 163 Mo. 510, 63 S. W. 678. If strictly interpreted, this statute would seem to prohibit a public administrator from resigning from the administration of a particular estate; or at least it does not provide in terms for such an eventuality. But there are many situations in which it would seem to be advantageous to all parties to allow the public administrator to resign. Exigencies surrounding the administration of a particular estate may make it apparent that the estate could be more efficiently and economically administered by a private administrator. Or it may happen that the public administrator has erroneously exercised his authority in assuming administration of an estate, and it would seem that in such event his resignation should be allowed. The court in the principal case states decisively that a public administrator should not be permitted to choose only the lucrative estates, and reject those which offer no hope of pecuniary compensation. But even a private administrator may not resign at his own option, since the court may refuse to accept the resignation, except for

good cause shown, even after proof of due publication of his intention is made. *State ex rel. Ramsey v. Green* (Mo. App. 1929) 17 S. W. (2d) 629.

At common law the general rule was that the probate court had no power, in the absence of statutory authorization, to accept the resignation of an administrator once duly appointed and qualified. *Flinn v. Chase* (N. Y. 1847) 4 Denio 85. But even at common law there were cases which held that though there might be no statute allowing an administrator to resign, yet the acceptance of his resignation by the probate court amounts to a revocation of his authority. *Marsh v. The People* (1853) 15 Ill. 284; *Trumble v. Williams* (1885) 18 Neb. 144; *Tulburt v. Hollar* (1889) 102 N. C. 406. See also 2 Woerner, THE AMERICAN LAW OF ADMINISTRATION (3rd ed. 1923) 886. Such cases lend further plausibility to the views of the principal case and apparently minimize the importance of statutory authorization of the procedure permitted in that case. H. H. G., '33.

JUVENILE COURTS—CONSTITUTIONALITY—DENIAL OF RIGHT OF APPEAL.—Petitioner, a minor under 18 years of age, was committed to the Iowa Industrial School for Boys, after a hearing before a district judge without a jury, in accordance with provisions of Iowa Code (1927) cs. 179-180, secs. 3605-3657. It was contended that the statute which provided for no appeal, constituted a denial of due process of law. The contention was rejected. *Wissenburg v. Bradley* (1929) 209 Iowa 813, 227 N. W. 136. Rehearing denied, judgment modified (Iowa 1929) 229 N. W. 205.

The right of appeal was unknown at common law, being purely a creature of statute. *State v. Olsen* (1917) 180 Iowa 97, 162 N. W. 781; *Davidson v. Commonwealth* (1917) 174 Ky. 789, 192 S. W. 846; *State v. Thayer* (1900) 158 Mo. 36, 58 S. W. 12. It is not a constitutional right and is wholly within the power of the legislature to grant or deny, in either civil or criminal cases. *Applebaum v. U. S.* (C. C. A. 7, 1921) 274 F. 43; *Marlow v. Commonwealth* (1911) 142 Ky. 106, 133 S. W. 1137; *Andrews v. Swartz* (1895) 156 U. S. 272; *McKane v. Dwiston* (1894) 153 U. S. 684.

In *Ex parte Januszewski* (D. C. S. D. Ohio 1911) 196 F. 123, the petitioner, a boy 14 years of age, alleged that he was unlawfully imprisoned in the Boys' Industrial School and asked to be discharged on a writ of habeas corpus. It was held the federal court could not adjudge the Juvenile Act [Ohio Gen. Code (Page, 1926) secs. 1639-1683], regulating the control of delinquent children, invalid because it contained no provision for appeal. The quasi-criminal nature of juvenile court proceedings has been outweighed, in this connection, by the fact that the judgment is not one of imprisonment, but merely a provision of the government, standing in *loco parentis*, for the protection, correction, and care of the child. *Marlow v. Commonwealth, supra.* It is not necessary for the right of appeal to be granted to juvenile delinquents, even though it is granted to criminals. The state in its capacity of *parens patriae* may, without violation of the guaranty of due process of law, restrain delinquent, incorrigible, and homeless children of their