

be justified by anybody." It is interesting to note here that the court in *Handcock v. Baker* (1800), 2 B and P. 260, held that a man was justified in breaking into another's house and imprisoning him in order to prevent the latter from committing a felony, viz., the murder of his wife. The general principles running through the American cases, supported by abundant authority (2 R. C. L. 449) are: I. A felony must have in fact been committed. *Davis v. United States* (1900), 16 App. D. C. 442; *Jacques v. Child's Dining Hall Co.* (1923), 244 Mass. 438, 138 N. E. 803, 26 A. L. R. 1329; *Martin v. Houck* (1906), 141 N. C. 317, 54 S. E. 291. II. Private person must have had reasonable grounds for suspicion. *Maliniemi v. Gronlund* (1892), 92 Mich. 222, 52 N. W. 627; *American Ry. Express Co. v. Summers* (1922), 208 Ala. 531, 94 S. 737. III. The privilege is restricted to the arrest of those committing felonies. *Siegel, Cooper & Co. v. Connor* (1898), 171 Ill., 572, 49 N. E. 728; *contra, Tobin v. Bell* (1902), 73 App. Div. 41, 76 N. Y. S. 425.

It is a noteworthy fact, and one not a little surprising, that many criminal codes contain no reference to the arrest of criminals by private individuals, but these states follow the old rule authorizing the arrest when the felony has been in fact committed and there are reasonable grounds to believe the person arrested to be the offender. The criminal codes expressly treating the subject of arrest by private individuals are merely declaratory of the rule referred to, and would logically justify the result reached in the Texas case, since none of them, with the exception of Illinois (Smith-Hurd Rev. Stat. Ill. Ch. 38 S. 657) contain a clause requiring the felony to have been committed in the presence of the individual. Code of Iowa, 1924, sec. 13469; Comp. Stat. of Neb., 1922, sec. 9962; Gen. Stat. Minn., 1923, sec. 10573; 2 R. C. L. 449.

Hence it can be seen that although this decision is a departure from the strict letter of some of the common law decisions and of a few codes requiring the felony to have been committed in the presence of the person making the arrest, the decision is within the spirit of the common law when the circumstances of the case are considered; and despite the fact that the Texas case is based more immediately on the special statute relating to the recovery of stolen goods and the arrest of the thief thereof, the result is in accord with the more liberal provisions of most modern codes, and is a logical amendment to the former rule. The most representative statute on this subject is found in the Criminal Code of Minnesota (sec. 10573) *supra* and is framed in the following language: "A private person may arrest another: 1, For a public offense committed or attempted in his presence; 2, When such person has committed a felony, although not in his presence; or 3, When a felony has in fact been committed, and he has reasonable cause for believing the person arrested to have committed it." W. V. W., '30.

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CRIMINAL LAW—KIDNAPPING—INTENT.—An *ex parte* decree awarded custody of two minor children to the mother. The father of the children later took them away without the consent of the mother. There was evi-

dence that the father acquired knowledge of the divorce decree before the taking, but none to show that he knew that the exclusive custody of the children had been awarded to the mother by a decree of court. *Held*, the intent of the statute is to protect the parent from the kidnapper and not to penalize the erroneous assumption of a parental right. Ignorance of the decree of custody will excuse the parent, and he is not guilty of the crime of kidnapping. *Hicks v. State* (Tenn., 1928), 12 S. W. (2d) 385.

In the case of *State v. Taylor* (Kan., 1928), 264 P. 1069, the Kansas court held the principle announced in the above case, under a similar statute, to be the same, but upon similar facts decided that the crime of kidnapping had been committed. It was there asserted that the facts showed an intent to deprive the lawful custodian of the child of such custody and that this was sufficient under the statute. The principal case is guided by the determination of the policy laid down by the legislature. It certainly seems that a mistaken assumption of parental right should not be put down as a crime, or at least that it should not be classified with the really serious crime of stealing children by those whose whole intent is criminal. For comment upon *State v. Taylor*, *supra*, see 14 ST. LOUIS L. REV. 200.

G. N. B., '29.

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CONSTITUTIONAL LAW—DUE PROCESS—STATUTORY PRESUMPTIONS.—

A statute of Georgia declared that every insolvency of a bank shall be deemed fraudulent for which the directors were punishable unless they repelled the presumption by showing that the affairs of the bank had been "fairly and legally administered, and generally, with the same care and diligence that agents receiving a commission for their services are required and bound by law to observe." Insolvency was defined as inability to meet debts as they accrue; or the excess of liabilities over actual market value of assets; or the falling of the reserve below the amount required where the deficiency was not made good within thirty days. Defendant was convicted under this statute and appealed to the Supreme Court of the United States. *Held*, that the statute was unreasonable and arbitrary and constituted a denial of due process. *Manley v. Georgia* (1929), 49 S. Ct. 215.

It is within the general power of the legislature to declare that proof of a particular fact or of several facts taken collectively shall be prima facie evidence of the main fact in issue. *Lindsley v. Natural Carbonic Gas Co.* (1911), 220 U. S. 61. This power results from the right of the legislature to change any rule of evidence now existing. *Cockrill v. California* (1925), 268 U. S. 258. But the presumption created by statute must not be unreasonable nor operate to deny a fair opportunity to repeal it. *Bailey v. Alabama* (1910), 219 U. S. 219. "Mere legislative fiat may not take the place of fact in the determination of issues involving life, liberty, or property." *McFarland v. American Sugar Refining Co.* (1916), 241 U. S. 79. There must be a rational connection between what is proved and what is to be inferred. *Cockrill v. California, supra*. Thus where proof of injury inflicted by the running of locomotives or cars is made prima facie evidence of negligence, the statute is not violative of due process. *Mobile J. & K. C.*