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cannot be considered as a qualified eyewitness.[10] What about the person who is present at the scene but who for some reason is unable to testify, or the one who was present but did not see what happened?[11] These and other situations have given the courts a great deal of trouble in deciding whether or not the presumption would apply.

All available material points out that in those jurisdictions in which the burden of showing lack of contributory negligence is on the plaintiff as a condition precedent to his recovery, the presumption is of a great aid to plaintiffs in those special cases in which it is applicable. It serves a real purpose and should be applied where it is applicable. In such states as Wyoming, however, the use of the presumption seems to serve no good purpose as the plaintiff in a negligence action is already relieved of the burden concerning contributory negligence, and the application of the presumption does no more than that. Rather than to determine whether the prerequisites of the presumption are present, the Wyoming Court could well ignore the presumption and simply apply the rule that in negligence actions, contributory negligence is an affirmative defense which must be pleaded and proved by the defendant. The same results would be reached and the court would not have to justify its ruling as it did in the *Wilhelm* case. The same results could be reached by this much simpler procedure.

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ADMISSIBILITY OF VIOLATIONS OF LAW BY CHILD AS EVIDENCE IN PROSECUTION OF PARENTS FOR CRIMINAL NEGLECT

Considerable interest has been aroused by newspaper reports of the efforts of law enforcement officials in Rawlins, Wyoming, to employ a new weapon in the attack on juvenile delinquency.[1] This new weapon is a procedeing against the parents of juvenile law violators under sections 58-101 and 58-104 of Wyoming Complied Statutes, 1945, which make neglect of one's children a misdemeanor, punishable by a fine of $50 to $1,000, or a jail sentence of not more than 12 months, or both.[2] It is the purpose

10. McHale v. U.S., 81 F. Supp. 372 (1948); Collar v. Maycroft, 274 Mich. 376, 264 N.W. 407 (1936) (contra).
11. Fenn v. Mills, 243 Mich. 634, 220 N.W. 770 (1928); Hittle v. Jones, 217 Iowa 598, 250 N.W. 689 (1933); Breker v. Rosema, 301 Mich. 685, 4 N.W. 2d 57 (1942); Hayes v. Stunkard, 230 Iowa 582, 10 N.W. 2d 19 (1943); Peck v. Hampel, 293 Mich. 252, 291 N.W. 648 (1940).

1. Laramie Republican Boomerang, Dec. 18, 1951, Vol. 71, No. 173.
2. So far as pertinent, sec. 58-101 provides that: "It shall be unlawful for any person having or being charged by law with the care or custody or control of any child under the age of nineteen (19) years knowingly to cause or permit . . . the health or morals or welfare of such child to be endangered or injured, or knowingly to cause or permit such child to be in any situation or environment such that the life, health, morals or welfare of such child will or may be injured or endangered . . . or negligently or knowingly . . . fail to provide the necessities of life for such child . . . or in any other manner injure said child."

of this article to explore the problem of whether contemporary violations of law by children are admissible in evidence in prosecutions of their parents under the Criminal Neglect statutes. The question is whether, as a matter of sound law, we can reverse the biblical admonition that "The sins of the fathers shall be visited upon the sons."[3]

At the outset it should be observed that in a large proportion of cases involving juvenile law violators, investigation of the child's home and parents will likely disclose evidence sufficient to convict the parents of Criminal Neglect without the necessity of resorting to proof of the child's crime as evidence of such Criminal Neglect.[4] However, for the purposes of this article we shall limit discussion to cases wherein the quantum of evidence is insufficient to sustain a conviction against the parents without proof of the child's crime.

It should also be observed at the outset that under the new Juvenile Court Act of Wyoming[5] a child under 18, or one under 20 who is alleged to have violated a state or local law while under 18, cannot be "arrested,"[6] nor can he be "convicted," "found guilty," or be deemed a "criminal."[7] One of the purposes of the Act is to protect juveniles from such stigmas. The Juvenile Court may, however, find that the child has committed a violation of law,[8] and such a finding may be regarded from the standpoint of the present discussion of the equivalent of a conviction of crime.

There is a further preliminary problem of statutory construction regarding secs. 58-101 and 58-104. As noted by the compiler, these sections as they now appear in the 1945 Compiled Statutes originated as Sections 1 thruogh 6, respectively, Chapter 46, of the Session Laws of 1895. Chapter 46 did not expressly repeal corresponding sections of the Laws of 1890-91, and there is some question as to whether the latter were repealed by implication. We shall assume, for present purposes, that the later Act did repeal the former by implication, and that secs. 58-101 and 58-104, as they presently appear in the 1945 Wyoming Compiled Statutes, correctly state the law.

Contributing to the delinquency of a minor is an offense unknown at common law.[9] Liability of parents for the acts of their children is predicated on statute, and all states with the exceptions of Vermont and Delaware have such "contributing" statutes.[10]

It is an old rule of common law that one cannot be guilty of a crime unless he takes parts in its commission, or owes a duty to the one upon whom

3. Old Testament, Exodus, Chaper 2, 5th Verse.
4. As indicated in letter from K. W. Keldsen, Esq., Deputy County and Prosecuting Attorney of Carbon County, Rawlins, Wyoming, to the writer, dated January 24, 1952.
5. Wyo. Comp. Stat. 1945, secs. 1-701 to 1-719.
6. Id. 1-701.
4. Ld. 1-712 d.
8. Id. 1-712 c.
9. State v. Williams, 73 Wash. 678, 132 Pac. 415 (1913).
10. Intramural Law Review of N.Y. University, Vol. 4, Page 231 (May, 1949).

the crime is committed to prevent it, and fails to do so.[11] This rule has been illustrated by a variety of cases. For example, if a person commands a minor, over whom he has control, to do an act which damages another,[12] or by coercion causes an infant of tender years who is unaware of the consequences of his act, to burglarize a store, the parent is criminally liable for the act of the minor.[13] Mere assent by the father to the son's sale of liquor in violation of a statute rendered the father criminally liable.[14] A mother who knowingly permitted her children to violate a quarantine order was subjected to the statutory penalty for violating the quarantine.[15] By enabling a minor to dispose of the fruits of his wrongful acts, the parent was found guilty of contributing to the delinquency of a minor.[16]

Cases in which the acts of the parents directly contribute to the delinquency of the child do not present problems in obtaining convictions, but it is more difficult to prove in a criminal case in a court of law that failure on the part of the parents to provide their children with the right knid of training, supervision and discipline was the contributing factor to the delinquency. This is pointed out by Judge Alexander, who describes acts of omission as "subtle and intangible" in his study of the effect of punishment on contributing parents by the Toledo, Ohio Domestic Relations and Juvenile Court.[17]

Parents have, however, been convicted of contributing to the delinquency of a minor by omitting to act. A father was charged with contributing to the delinquency of a minor daughter by permitting her to enter a night club where her morals might be corrupted. The judge in this case construed the act to penalize the father for failure to exercise reasonable diligence in the control of the minor in order to prevent her from becoming delinquent.[18] A New York court held a father guilty of violating the statute and charged him with failure to supervise, guide and care for his child when he left a loaded gun in an open drawer. His child seriously injured another child with it. The court held that the father was guilty of contributing to the delinquency of the child.[19]

The statute was invoked when the child had been pronounced delinquent in a New York Court, and the mother was found guilty of contributing to the delinquency of the child when it was found that she was guilty of the charge of failing to provide a home and to have the minor attend school, and that by her parental indifference, and irresponsibility, the child had developed a pattern of delinquent behavior.[20]

11. Elmendorf v. Commonwealth, 171 Ky. 410, 188 S.W. 483 489 (1916).
12. Cleveland v. Mayo, 19 La. 414 (1869).
13. State v. Leonard, 41 Vt. 585 (1869).
14. Commonwealth v. Slavski, 245 Mass. 405, 140 N.E. 465 (1925).
15. State v. Racskowski, 86 Conn. 677, 86 Atl. 606 (1913).
16. People v. Dritz, 259 App. Div. 210, 18 N. Y. 455 (1940).
17. Alexander, P. W., Whats This About Punishing Parents? 12 Federal Probation 23 March, 1948).
18. State v. Scallon, 201 La. 1026, 10 So. 2d 885 (1942).
19. In re Di Maggio, 65 N.Y.S. 2d 613 (Domestic Relations Ct.) (1946).
20. Humann v. Rivera, 272 App. Div. 352, 71 N.Y.S. 2d 321 (1947).

Evidence of the wrongdoing of the child has been admitted in prosecutions against the parents for contributing to the delinquency of a minor.[21] Because the crime of contributing to the delinquency of a minor was unknown at common law, we must look exclusively to the statute for definitions of this offense.[22] Statutes vary, in that some of them require as a necsesary element of the crime of contributing to delinquency, the adjudication of the delinquency prior to the trial of the accused,[23] while other statutes permit the delinquency to be established as a fact at the trial.[24] Another type of statute does not require that the child shall have been adjudged delinquent, and it is sufficient to show that the conduct of the accused tended toward causing such delinquency on the part of the child.[25]

Wyoming has no "contributing" statutes, but its Criminal Neglect Statutes give the court jurisdiction over parents whose misdeeds consist of a failure to provide for the physical needs such as food, clothing and shelter, for their children. The statute has never been adjudicated in the Supreme Court of Wyoming, and it is possible that it would be construed to be broad enough in its scope to include acts of omission, such as a failure to provide adequate moral supervision, as evidence of neglect which would determine parental guilt.

Whether the crime be contributing to the delinquency of a minor, or the neglect of a minor, the same principles apply to the handling and disposition of the offenders. Some state statutes punish anyone who contributes to the delinquency of a minor,[26] others require that the accused stand in position of *loco parentis*.[27] The Wyoming Criminal Neglect statute includes those who have, or are charged by law with the care or custody or control of the minor.[28] The Juvenile Court Act, in support of any order or dceree, may require the parents, "or other person having the custody of the child, or any other person who has been found by the court to be encouraging, causing or contributing to the acts or conditions which bring the child within the purview of the Act, to do or omit to do any acts required or forbidden by law, when the judge deems such requirement necessary for the welfare of the child." Failure to comply with the order of the court subjects them to prosecution for contempt of court.[29]

Parents may be liable for the torts of their children, which liability may indirectly tend to curb delinquency. A parent is not, because of his family relationship, legally responsible to answer in damages for torts of his infant child.[30] Many exceptions to this rule are now recognized by

21. See Note 14 Supra.
22. State v. Nease, 46 Ore. 433, 80 Pac. 897 (1905).
23. People v. Pierro, 17 Cal. App. 741, 121 Pac. 869 (1911).
24. State v. Williams, 73 Wash. 678, 132 Pac. 415 (1931).
25. State v. Dunn, 53 Ore. 304, 99 Pac. 258 (1909).
26. State v. Plastino, 67 Wash. 374, 121 Pac. 851 (1912).
27. People v. Lee, 266 Ill. 148, 107 N.E. 112 (1914).
28. See Note 2 Supra.
29. Wyo. Comp. Stat. 1945, sec. 1-712c.
30. Lewis v. Steele, 52 Mont. 300, 157 Pac. 575 (1916).

courts such as holding the parent liable if he directed or ratified the wrongful act of his child, or accepted the benefits thereof, or if the child at the time the tort was committed, was engaged in performing work or service for the father.[31]

A parent will be liable in an action of tort, in a situation in which he fails to exercise power of control over a child. If he knows the minor is contemplating an act which may result in an injury,[32] or permits children to conduct themselves in such a manner that injury will result, he is legally responsible in damages.[33] If he intrusts a minor with a dangerous instrumentality such as a gun,[34] or if he fails to remove a swing which his children have placed across the road, he will be liable for injuries incurred as a result of his failure to act.[35]

When a boy driving cattle and acting within the general scope of authority conferred by his parent "set on the dogs" contrary to the directions of his parent, the father was held liable.[36] The father responded in damages for the negligence of his son while driving the father's delivery wagon.[37] Parents were also liable for the son's negligence when he drove the car provided as a means of recreation and amusement for the family,[38] and the trend is to hold parents liable in situations in which the son is using the car for his own pleasure.[39]

Statutes in a number of states have provided that every preson shall be liable for the torts committed by a minor, under his control, but not so when such acts are done without his authority, knowledge, or consent, had no connection with his business, were not ratified by him, and were of no benefit to him.[40]

Another possible remedy would be to proceed against the parents under Section 1-712c of the Juvenile Court Act of Wyoming. The parents may be responsible for bringing the child within the purview of the court, and the court in finding him guilty of a violation of the law may require parents to comply with the order of the court or the court may proceed against them for contempt.[41] This would seem to afford an adequate solution so far as the parents are concerned. The contempt sanction would be just as effective as fine and imprisonment under Secs. 58-101 and 58-104 of Wyoming Compiled Statutes, 1945. Perhaps as Wyoming officials become more accustomed to Juvenile Court techniques, this contempt device will be used with increasing frequency.

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31. Broadstreet v. Hall, 168 Ind. 192, 80 N.E. 145 (1907).
32. Sharpe v. Williams, 41 Kan. 56, 20 Pac. 497 ( ).
33. Hoverson v. Noker, 60 Wis. 511, 19 N.W. 382 (1884).
34. Dickens v. Barnham, 69 Colo. 349, 194 Pac. 356 (1920).
35. Stewart v. Swartz, 57 Ind. App. 249, 106 N.E. 719 (1914).
36. Schmidt v. Adams, 18 Mo. App. 13 (1885).
37. Jennings v. Schwab, 64 Mo. App. 13 (1885).
38. Stowe v. Morris, 147 Ky. 386, 144 S.W. 52 (1912).
39. Griffin v. Russel, 144 Ga. 275, 87 S.E. 343 (1913).
40. Chastain v. Johns, 120 Ga. 977, 48 S.E. 343 (1904).
41. Statute cited supra, note 5.

The tort cases mentioned heretofore have significance only in so far as they show that the person damaged by the delinquent child's conduct may seek redress in a civil action and recover damages for the injuries if the child's parents are financially responsible defendants, and if the conduct falls within one of the exceptions to the rule that "the parent is not liable for the torts of his child."

In conclusion, contemporary violations of law by children are not admissible in evidence in prosecutions of the parents under the Criminal Neglect Statutes of this state. Such admissisons were possible back in the days of Henry I, when it was recognized that although the lunatic and infant would not be held liable for their wrongful acts, those responsible for their custody could not escape. Guilt has become more personal and individual since that time.[42]

The authorities of Rawlins, aware of the problem of delinquency in their community, are not complacently waiting for a Moses to lead them out of the wilderness, but are doing something about it. The wisdom of their plan of action may not be readily or accurately ascertained, but results might show a decrease in delinquency and reformation of parents arrested, even if the amount of deterrence is unknown.

In their consideration of the costs incurred by the county, the economic loss resulting to the jailed parents and the loss of status by the children in the community where the people know their parents are jailed, may incline the authorities to change their plan to one of re-education of the offenders under the skilled guidance of Welfare workers. By giving a suspended sentence, the offenders would be under the control of the court without the loss of characater and the other harmful results which ensue when the family is broken up. This plan might be less expensive, and give more protection to society than the punitive procedure employed at present.

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THE CONSTITUTIONALITY OF ANTI-BIRTH CONTROL LEGISLATION

The general statutes of Connecticut forbid the use by any person of drug, medicinal article or instrument for the purpose of preventing conception.[1] The statutes make liable to prosecution and punishment any person who shall assist, abet or counsel another to commit such an offense. The purpose of this article is to determine the constitutionality of the Connecticut statute and others of the same type. If such statutes are un-

42. Holdsworth, History of Englishs Law (Vol. II, 3rd Ed. 1923) 53.

1. "Any person who shall use any drug, medicinal article or instrument for the purpose of preventing conception shall be fined not less than fifty dollars or imprisoned not more than six months or both." Sec. 6246, General Statutes of Connecticut.