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same constitutional restraints that are placed upon it in respect to private corporations."¹⁸

Again this was dictum, because the court held that the purchase of an interstate bridge by a city was not a matter of purely local concern but was clearly of state concern.

However, in an even more recent case,¹⁹ a statute fixing the minimum salary for city waterworks commissioners was held invalid solely on the authority of the *Thompson* case, as relating to a matter of purely local concern.

Prior to these two cases it would no doubt have been safe to conclude, on the basis of the cases subsequent to the *Thompson* case, that the inherent rights doctrine had been abandoned by the Kentucky Court. Such a conclusion is now impossible. It seems that the doctrine has been rejuvenated with all the vitality which it possessed when first advanced in the *Thompson* case. However, the scope of the doctrine in Kentucky, as far as the writer is able to discern, has never been extended specifically to include anything as being of purely municipal concern except the functions of a city fire department and a city waterworks commission.

The according of limited recognition to the concept of the inherent rights doctrine of local government in Kentucky need not mean that very far-reaching results will follow. The separation of powers doctrine will not disintegrate because the court invalidates a few acts of the legislature without any express constitutional authorization. But technically, the theory that a state legislature is restricted by implied extra-constitutional limitations in connection with the cities which it has created is unsound. Furthermore, the inherent rights doctrine would seem to need a stronger basis than the changing attitude of the Court of Appeals. Perhaps a "home rule" constitutional amendment is the solution.

HOLLIS E. EDMONDS

CIVIL LIABILITY OF CHILD TO SUPPORT INDIGENT PARENT IN KENTUCKY

The support of the aged has become a problem of great magnitude in recent years. Nearly every state⁴ has passed laws concerning the well being of indigent parents of adult children who either cannot or will not provide for their parents support. Many children, who are supported from birth, abandoned their aged parents and these persons are left without proper support and become charges of an already overburdened state. How does the law cope with this problem? Is there a civil liability imposed upon adult children in Kentucky to support their parents?

First, let it be understood that there is no common law duty to support one's parent. One of the earlier English cases made this clear when it was said in *Rex v. Munden*, "By the law of nature a man was bound to take care of his own father and mother; but there being no temporal obligation to enforce that law of nature, it was found necessary to establish it by Act of Parliament." A Con-

¹⁸ *Id.* at 820, 79 S.W. 2d at 219.

¹⁹ *Board of Aldermen of City of Ashland v. Hunt*, 284 Ky. 720, 145 S.W. 2d 814 (1940).

⁴ 4 VERNIER, *AMERICAN FAMILY LAWS* sec. 235 (1st ed. 1936).
1 *Strange* 190, 93 Eng. Rep. 465 (1719).

necticut case³ decided in 1795 was perhaps the first case in this country to recognize that there was no common law duty. This view was also early expressed in *Edwards and Wife v. Davis*,⁴ an action of indebitatus assumpsit for necessaries which the plaintiff provided to the defendant's parents. The defendant, one of eight children, was held liable by the lower court for one-eighth of the necessaries furnished the parents. The court on appeal, however reversed, stating, "Now the duty of a child, of sufficient ability to maintain its poor and indigent parents, being an imperfect one, not enforced at the common law the statute remedy is the only one to be resorted to."⁵ This view has been reiterated in modern times by such recent cases as *Gardner v. Hines* (1946)⁶ and *Couteau v. Couteau* (1948). Alabama and perhaps Louisiana are the only jurisdictions which seem to recognize a common law duty to support indigent parents. The Alabama Court said, "[The father is bound to support minor children] and it is therefore likewise the duty of the child to support the parent if the parent is unable to support himself and the child, and the child is able to do so."⁷

Modern statutes, however, create a legal duty to support an indigent parent in nearly all jurisdictions. Many jurisdictions provide for civil liability; while others provide for a criminal punishment. In some jurisdictions the adult child is both civilly and criminally responsible for his parents; but in several jurisdictions, the statutes provide no enforcement provisions.⁸

Kentucky is one of the jurisdictions which provides for the criminal liability of the adult child. The Kentucky statute entitled, *Support of Indigent Parent*, provides as follows:

"Any adult person residing in this state and having in this state a parent who is destitute of means of subsistence and unable because of old age, infirmity or illness to support himself or herself, shall, after reasonable notice, provide that parent with necessary shelter, food, care and clothing, if he has, or is able to earn, sufficient means to do so."⁹

The enforcing provision for this statute provides:

"Any person who violates KRS 405.080 shall be imprisoned at hard labor for not less than one nor more than six months; but if, after the conviction and before sentence, the person appears before the court in which he was convicted and gives bond to the Commonwealth in the penal sum of five hundred dollars, with good and sufficient surety approved by the court, conditioned that he will furnish the parent with necessary and proper shelter, food, care and clothing, the court shall suspend the sentence."¹¹

The question presented is whether or not the criminal remedy is the exclusive

³ *Gilbert v. Lynes*, 2 Root 168 (Conn. 1795).

⁴ 16 Johns 281 (N. Y. 1819).

⁵ *Id.* at 285.

⁶ — Ohio — 68 N.E. 2d 397 (1946).

⁷ 77 N.Y.S. 2d 113 (1948); see also *Duffy v. Yordi*, 149 Cal. 140, 84 Pac. 838 (1906); 46 C. J. 1279.

⁸ See *Cooley v. Stringfellow*, 164 Ala. 460, — 51 So. 321, 323 (1909); *Williams v. Williams*, 202 Ala. 539, — 81 So. 41, 42 (1919); *Stieb v. Owens*, 190 La. 517, — 182 So. 660, 661 (1938).

⁹ 4 VERNIER, AMERICAN FAMILY LAWS sec. 235 (1st ed. 1936).

¹⁰ KY. REV. STAT. sec. 405.080 (1948).

¹¹ KY. REV. STAT. sec. 405.990 (5) (1948).

one; or may a civil action also be brought to force the child to aid in the parent's support.

Vermier, in his exhaustive study, *American Family Laws*, declares that, "It is generally held that the enforcement provisions contained in the statutes are exclusive."¹² An early New York case takes this view and holds that, "the statute having prescribed the manner in which it is to be enforced and, the extent of the penalty, the statute remedy is the only one to be resorted to."¹³ In *Gardner v. Hines*,¹⁴ a son-in-law sought to recover from his brother-in-law amounts expended in supporting his mother. The court denied the recovery and said, "The civil liability of a child who has sufficient ability to support an infirm, destitute, or aged parent depends upon the existence of a statute, or upon contract. While Section 12429, General Code, provides a criminal liability for the failure of a child to support an indigent parent, there is no statute in Ohio creating a civil liability."¹⁵

In Kentucky, the imposition in other situations of a criminal penalty generally does not preclude damages in a civil suit, by virtue of an express statutory provision.¹⁶ This was applied in *Graham v. John R. Watts & Son*,¹⁷ where the plaintiff purchased seed which was supposed to be alfalfa, but instead the sack contained sweet clover seed. A statute prohibited the mislabeling of seed, but here no samples were tested as required before prosecuting for violation of the statute; the court in a civil action allowed recovery, saying,

" it may be said at the outset that whatever may be the effect of a violation of a penal statute, where there is no express conferring of a right of action to one injured as a consequence thereof, this court, since the enactment of section 446, supra, has, under various circumstances, sustained causes of action based upon violations of penal statutes, when it was alleged and proven that plaintiff proximately sustained injuries by reason thereof."¹⁸

The court limited this somewhat by deciding that the duty imposed must be for the benefit of the person damaged before he can maintain a suit.

It seems, therefore, that in order to determine whether or not the adult child is civilly liable, we must determine what the legislature intended.

If the intent of the Kentucky Legislature was to protect the public from the burden of supporting people who have children able to support them, as in *Duffy v. Yordi*,¹⁹ a California case, then no civil liability would attach since "a statute which does not purport to establish a civil liability, but merely makes provision to secure the safety or welfare of the public as an entity, is not subject to a construction establishing a civil liability."²⁰ It might create a civil liability enforceable by the state alone upon the theory of the *Graham* case;²¹ that is, that the state is

¹² Sec. 235 at 94 (1st ed. 1936).

¹³ *Edwards v. Davis*, 16 Johns 281, 285 (N. Y. 1819).

¹⁴ — Ohio — 68 N.E. 2d 397 (1946).

¹⁵ *Id.* at — 68 N.E. 2d 398.

¹⁶ Ky. REV. STAT. sec. 446.070, "A person injured by the violation of any statute may recover from the offender such damages as he sustained by reason of the violation, although a penalty or forfeiture is imposed for such violation."

¹⁷ 238 Ky. 96, 36 S.W. 2d 859 (1931).

¹⁸ *Id.* at 106, 36 S.W. 2d 863.

¹⁹ 149 Calif. 140, 84 Pac. 838 (1906).

²⁰ 50 AM. JUR. 582, sec. 586.

²¹ *Graham v. John R. Watts & Son*, 238 Ky. 96, 36 S.W. 2d 859 (1931).

the one for whose benefit the statute is imposed and therefore could claim that Kentucky Revised Statutes Section 446.070 allows recovery.²² If, on the other hand, the intent of the Kentucky Legislature was to benefit the indigent parent, as was the case in *Bismarck Hospital and Deaconesses Home v. Harris*,²³ or those who are forced to support him, then it seems that again the *Graham* case would apply and the suit could be maintained by the parent or by this third person.

It seems that the latter view would more nearly be the intention of the legislature when they enacted this statute calling for support of parents. There is a common law duty²⁴ of parents to support their infant children as well as a statutory duty.²⁵ It would seem that the legislature intended to create by the statute the same degree of support for aged parents as exists for minor children. The purpose of this act is *security* and *protection* of the aged rather than *punishment* of the young. Even if it be conceded that a secondary purpose of the legislature was to protect the Commonwealth and to remove from its shoulder the burden of supporting the aged parents of adult children, the moving factor and the prime purpose of this legislation is the protection of aged parents who are destitute. The 1906 Kentucky Legislature was surely looking at human interests rather than the mere saving of a few dollars for the state. It was the logical intention that even third persons, who supply what the child should supply, have a like cause of action either based on subrogation or that the child has breached the duty and the third person is the real party in interest.

Perhaps this would be mere speculation were it not for the case of *Wood v. Wheat*,²⁶ which is in fact the only Kentucky case in which the civil liability under this support statute has been ruled upon. Here a daughter brought an action against her brothers and sisters to compel contribution for the support which she had furnished their mother who was unable to support herself. The court denied recovery, but only because no notice had been given to the other children that she was expecting them to aid in their mother's support. The court said in clear and convincing language that the statute created a duty giving rise to a right which could be enforced civilly. The court said,

“ but, where support is voluntarily provided by one child, when no punishment is imminent or prosecution pending, if it is desired to hold the others liable, we think it essential that notice be given to the effect that the delinquent children will be expected to bear their share of the burden. In the absence of such notice, the delinquent children may be justified in assuming that the other child is performing the filial duty voluntarily and without any expectation of reward or reimbursement. There is authority to the effect that such a statute may be enforced only in the mode pointed out by its terms. 29 Cyc. 1620. *But, as the statute imposes a duty, the performance of that duty creates a right, which may be enforced, as any other right, by appropriate action by one entitled to maintain it.*”²⁷ (Italics writer's).

The court goes on to show that the intent of the law is to protect the indigent parent and that third persons aiding such parent should be protected.

²² Statute set out in full *supra*, note 15.

²³ 68 N. D. 374, 280 N.W. 423 (1938).

²⁴ 46 C. J. 1270.

²⁵ KY. REV. STAT. SECS. 405.030, 405.040 (1938).

²⁶ 226 Ky. 762, 11 S.W. 2d 916 (1928).

²⁷ *Id.* at 765, 11 S.W. 2d at 918.

"These cases proceed on the principle that the suffering of indigent persons shall be relieved when they may be found in a destitute condition, and that advancements made for such purposes are justly chargeable in equity and conscience to the person whose relation towards the indigent person under the statute creates a duty or imposes the necessity of furnishing aid, and such obligation, when neglected or disregarded by those who should perform it may be enforced in favor of whomsoever grants the relief as for money paid out and expended for another's benefit, provided they are not mere volunteers."²⁸

This case clearly shows that the Kentucky Court of Appeals has decided that the statutory remedy is not exclusive and that the court does not believe that the legislature so intended. Having established the existence of a civil duty, let us look briefly at its extent and prerequisites.

1. May a third person maintain the action against the adult child to recover for necessities given an indigent parent? As to this point, *Wood v. Wheat* is dictum, but it is strongly worded so as to indicate that the court believed such a right existed. Such an action should be allowed because, if a third person does aid the parent, he is the one who is hurt by the failure of the child to live up to his duty. To allow him to sue would also prevent the circuitous action of the parent suing the child and then the third person suing, if necessary, on the debt to recover from the parent.

2. Must notice be given the non-supporting child? If the action is being brought by one child against another, *Wood v. Wheat* would apply and notice would be a prerequisite to recovery. Where one child provides for the parent it might well be argued that there is ample reason to require notice, since it would be presumed that his support was furnished gratuitously, and the non-supporting child should have equal opportunity to supply the needs of the indigent parent. This reasoning, however, would not apply in the case of a third party. It is submitted that notice should not be required in either case since to so require would in many cases allow the child to escape a duty that is placed upon him by law.

3. What if the non-supporting child has a small income? Clearly, the child would not be required to support the parent if he is unable to do so. The statute is clear on this point and it is the only logical view as the child's financial future should not be jeopardized to any great extent.²⁹

4. Should a court provide for future support? Two factors must be considered in answering this question. First, failure to provide for future support could create an annoying multiplicity of actions in that failure to so provide might compel the supplier to bring separate actions periodically as the necessities were furnished. Second, the future expenditures are speculative and the court would hesitate to determine what they might be. Weighing the first factor, the great nuisance of possible multiple actions, against the possibility of mitigating the second factor by entering a decree, similar to an award of alimony, based on average expenditures in the past and subject to reduction or increase upon a future change of circumstances, the preferable solution to the question would permit the court to provide in its decree for future support of the indigent parent.

There is no common law duty of an adult child to support his parent. Kentucky Revised Statutes 405.080 creates a duty and 405.990 (5) provides a criminal

²⁸ *Id.* at 766, 11 S.W. 2d at 918.

²⁹ 4 VERNIER, AMERICAN FAMILY LAWS sec. 235 (1st ed. 1936).

punishment. The criminal punishment is not exclusive and a civil action may be maintained. It seems that this civil action can be maintained by third persons. Notice is necessary if the suit is brought by another child but may not be necessary if the action is brought by third persons. Future support should be allowed to prevent multiplicity of actions and should be similar to a decree for alimony.

GERALD ROBIN GRIFFIN

KENTUCKY'S OBSOLETE LAW ON GIFTS BY DEBTORS

The Statute of Elizabeth,¹ progenitor of most modern statutes and case law concerning conveyances deemed fraudulent as to creditors, declared broadly that every conveyance and gift made with the "intent to delay, hinder or defraud creditors and others is void." Thus the sole criterion for declaring a conveyance within the operation of the statute was whether there was an intent on the part of the grantor to delay or defraud his creditors. Literally interpreted, the statute makes of no consequence the fact that a conveyance would have the effect of delaying or defrauding a creditor unless there is also present the requisite intent. Nevertheless the courts have uniformly held that a gift, or a voluntary conveyance without consideration, made while the financial position of the debtor is such that the payment of creditors is necessarily defeated, as where the debtor is insolvent or is rendered thereby insolvent, is fraudulent as a matter of law without regard to actual intent of the debtor.³ From a practical standpoint there can be no quarrel with this holding. An irresponsible person should not be permitted to dissipate completely his assets by gifts leaving his creditors without any assets on which to realize their claims.

A more difficult problem is what effect mere indebtedness without near insolvency of the donor should have upon the validity of a gift as against contemporaneous creditors. Two views have been developed by courts interpreting the Statute of Elizabeth or its successors as to this problem. The holdings are that the voluntary conveyance (1) is presumed to be fraudulent with respect to the existing debt and no circumstance will suffice to repel the legal presumption of fraud,⁴ and (2) is merely *prima facie* fraudulent.⁵

As early as 1836, Kentucky laid down without reservation the rule that voluntary conveyances were conclusively fraudulent as to antecedent creditors and the court has followed it undeviatingly until the present time.⁶ In *Hanson v. Buckner s Devisees*,⁷ the first case holding squarely on this point, the court said:

"And the presumption of law as to prior debts, does not depend upon the amount of the debts, the intentions, or circumstances of the party conveying, or the amount of property conveyed. The law

¹ 3 ELIZ., c. 5 (1540).

Although there were earlier statutes for the protection of creditors such as 50 EDW. III, c. 6 (1376) and 3 HEN. VII, c. 4 (1488), the statute of 13 ELIZ. is the starting point for most discussions of fraudulent conveyances.

² GLENN, *THE LAW OF FRAUDULENT CONVEYANCES* sec. 269 (1940).

³ GLENN, *op. cit. supra*, note 3, at sec. 268.

⁴ GLENN, *op. cit. supra*, note 3; 37 C. J. S. 935, 936.

⁵ Daniels v. Goff, 192 Ky. 15, 232 S.W. 66 (1921); Townsend v. Wilson, 114 Ky. 504, 24 Ky. L. Rep. 1276, 71 S.W. 440 (1903); Miller v. Desha, 66 Ky. (3 Bush) 212 (1867); Trumble v. Ratcliff, 48 Ky. (9 B. Mon.) 511 (1849). The paucity of recent cases on this point is further evidence of the rigidity of this rule.