1955

Updating Resources

To ensure that they were working with the latest information, a student would check the pocket part (an insert at the back of the book) of Volume One of Florida Law and Practice. The relevant pages are shown below.

§ 36. Failure to prosecute.—

111. F. S. A. § 45.19 was amended by Fla. Laws 1959, c. 59-65 so as to deem certain suits abated for want of prosecution.

§ 39. Death or incompetency of party.—

(Substitute the following for the gist statement and text of this section.)

Proper parties may be substituted by court order within ninety days after suggestion of death is made upon the record.

These matters are governed by the new rules. If a party dies and the claim is not thereby extinguished, the court may order substitution of the proper parties. The motion for substitution may be made by any party or by the successors or representatives of the deceased party, and together with the notice of hearing, shall be served on all parties as provided in Rule 1.260, Fla. Rules Civ. Proc. and upon persons not parties in the manner provided for the service of a summons. Unless the motion for substitution is made within ninety days after the death is suggested upon the record by service of a statement of the fact of the death in the manner provided for the service of the motion, the action will be dismissed as to the deceased party.[124-125]

124-125. Rule 1.260(a)(1), Fla. Rules Civ. Proc. (1967).

ABORTION

II. OFFENSES AND ELEMENTS.

A. PERFORMING ABORTION.

§ 3. Statutory provision.—

5. Rodriguez v. State, 189 So.2d 656 (Fla. App. 3rd Dist. 1966), cert. denied 389 U.S. 848, 88 Sup.Ct. 66, 19 L.Ed.2d 116 (1967).

§ 4. Advising or procuring commission of offense.—

6. In prosecution for abortion, the paramour who arranged and abetted was tried with the doctor as a principal. His conviction was not appealed. On appeal by doctor, it was held that denial of motion for severance was within trial court's discretion and the lower court did not commit error in charging the jury that the paramour could not be found guilty if the doctor

was found not guilty. The statement of law was not incorrect and it was not shown how the charge could prejudice the doctor. Pessolano v. State, 166 So.2d 706 (Fla. App. 3rd Dist. 1964).

See also, Adkins, Crim. Law (3d Ed.), § 111.

§ 5. Pregnancy.—

7. Urga v. State, 155 So.2d 719 (Fla. App. 2d Dist. 1963).

C. DEATH OF WOMAN OR CHILD.

§ 8. Murder in third degree.—

Manslaughter in an abortion attempt may result from acts of culpable negligence as including conduct which would be equivalent to an intentional violation of deceased's rights.[11.1]

11. In Sinnefia v. State, 100 So.2d 837 (Fla. App. 3rd Dist. 1958) the court stated that Weightnovel v. State, 46 Fla. 1, 35 So. 856 (1903) has not been modified or receded from, but on the contrary had been reaffirmed and further explained by the supreme court in Johnson v. State, 91 So.2d 185 (Fla. 1956).

11.1. Sinnefia v. State, 100 So.2d 837 (Fla. App. 3rd Dist. 1958).

III. PROSECUTION AND PUNISHMENT.

B. EVIDENCE.

§ 11.1. Sufficiency of evidence; attempt.—

In the circumstances, the use of an implement cannot reasonably be characterized as mere preparation, where the requirement of law charging attempted abortion is that the defendant went beyond mere preparation and committed an overt act.[17.1]

17.1. Josey v. State, 235 So.2d 736 (Fla. App. 3rd Dist. 1970).

See also Jiminez v. State, 208 So.2d 124 (Fla. App. 3rd Dist. 1968); where there was not sufficient evidence of defendant's presence and participation in the abortion conspiracy and attempt, his conviction had to be reversed.

ACCORD AND SATISFACTION

I. INTRODUCTORY.

§ 2. Definitions and distinctions.—

a. Definitions: