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confused the conflict-of-laws rules applicable to foreign decrees under the full faith and credit clause with the law to be applied where foreign decrees for separate maintenance are established as local decrees. In so doing, it is submitted that the Nevada court made an unnecessary extension of the doctrine laid down in the *Estin* case.¹⁰

CONSTITUTIONAL LAW — PENALTY PROVISIONS UNDER THE FEDERAL REGULATION OF LOBBYING ACT

The National Association of Manufacturers sought to enjoin prosecutions against them by the Government for violations of the Federal Regulation of Lobbying Act, contending that the penalty provision¹ infringed constitutional rights of freedom of speech and petition. *Held*, the penalty contravenes the First Amendment of the Constitution guaranteeing freedom of speech and petition. *National Association of Manufacturers of the United States v. McGrath*, 103 F. Supp. 510 (D.D.C. 1952).

The Congress seldom deprives a convicted person of either his Civil or Constitutional rights as the penalty for violation of a statute, preferring to rely on the formula of fine or imprisonment.² However, the last twenty years have evidenced the increased use of punishment designed to regulate a particular economic or political situation without resort to imprisonment.³ Because of the singular nature of the problem involved, the Federal Regulation of Lobbying Act depends for its effectiveness on the prohibition from influencing legislation for three years, those lobbyists convicted for noncompliance.⁴ This sanction is a type which deprives a convicted person of a Constitutional right as the penalty for his crime.⁵ The most frequently expressed grounds for holding a penal provision, unconstitutional as to a litigant challenging the validity of the legislation, is that the penalty prevents

16. 334 U.S. 541 (1948).

1. 60 STAT. 839, 2 U.S.C. §§ 261-270 (1946). (The penalty clause provides for a fine and imprisonment. In addition, it provides that any person so convicted shall be prohibited from appearing in a Congressional committee and from attempting to influence directly or indirectly, the passage or defeat of any proposed legislation for a period of three years. 310 [b]).

2. Statutes covering similar problems: Corrupt Practices Act, 43 STAT. 1070 (1925), 2 U.S.C. § 241 (1927) and 18 U.S.C. § 208 (1950) (registration provisions identical to Lobbying Act, but sanction is fine and imprisonment); The Voorhis Act, 54 STAT. 1201 (1940), 46 U.S.C. 643(b) (1944) (fine and imprisonment); Foreign Agents Registration Act, 52 STAT. 631 (1938), *as amended*, 56 STAT. 248 (1942), 22 U.S.C. § 618 (1952) (fine and imprisonment).

3. 54 STAT. 1141 (1940); 8 U.S.C. § 706 (1942) (deserting naturalized citizen); *Nelson v. Secretary of Agriculture*, 133 F.2d 453 (7th Cir. 1943) (suspension); *Wright v. Securities and Exchange Commission*, 112 F.2d 89 (2d Cir. 1940) (expulsion); *Farmers' Livestock Comm. Co. v. United States*, 54 F.2d 375 (E.D. Ill. 1931) (suspension).

4. 47 COL. L. REV. 98, 109 (1947), n. 66. For the actual effectiveness of this sanction in the Federal and State Lobbying Act see 27 NEB. L. REV. 123 (1947).

5. The right of petition is "... a simple, primitive, and natural right. As a privilege it is not even denied in addressing the Deity." 1 COOLEY'S CONSTITUTIONAL LIMITATION 738 (5th ed.).

resort to the courts,⁶ or that the penalty provided is so excessive as to be unreasonable, thus constituting a denial of due process of law,⁷ or it falls within the prohibition of the Eighth Amendment against excessive fines and cruel and unusual punishments.⁸

The court's decision in the instant case reveals no application of the traditional tests generally applied to penalties, but bases its denial on the very nature and type of the penalty, stressing that a Constitutional right is being suspended.⁹ The court reasoned that a person convicted of a crime "may not for that reason be stripped of his constitutional privileges,"¹⁰ obviously relying on the fact that the First Amendment provides that the Congress shall make no law abridging the various freedoms.¹¹ However, the penalty of imprisonment has been accepted as the traditional method of dealing with public offenders even though it necessitates an obvious regulation of certain Constitutional rights.¹² Implied in the sanction of imprisonment is the strictest regulation, and at times denial of the freedoms of speech, assembly, press, petition and even religion, if necessary to the orderly function of prison routine.¹³ But the imprisonment is regulated and the individual adequately protected by the protection afforded by the Eighth Amendment¹⁴ and the due process clause.¹⁵ It follows that if the Congress impliedly regulates the freedoms of the First Amendment by the sanction of imprisonment, it should be able to impose, as a sanction to the same extent, the regulation

6. Originating as dictum in *Cotting v. Kansas City Stock Yards Co.*, 183 U.S. 79, 99-102 (1901) and receiving elaborate treatment in *Ex parte Young*, 209 U.S. 123 (1908).

7. *St. Louis, Iron Mountain and Southern Ry. v. Williams*, 251 U.S. 63 (1919); *Missouri Pacific Ry. v. Tucker*, 230 U.S. 340 (1913); *Waters-Pierce Oil Co. v. Texas*, 212 U.S. 86 (1909).

8. *Stroud v. Johnston*, 139 F.2d 171, cert. denied 321 U.S. 796 (1944).

9. There has been little question of the ability of the legislature to provide penalties denying Civil Rights as distinguished from Constitutional Rights. Beginning with the early concept of "*Civiliter Mortus*" (the extinction of all civil rights), *Avery v. Everett*, 110 N.Y. 317, 18 N.E. 148 (N.Y. App. 1888) (American courts have rejected any interpretation of the common law which treats a convict as being civilly dead). *Platner v. Sherwoods*, 6 Johns. Ch. 118 (N.Y. 1822). In some jurisdictions, while admitting that the theory of civil death has been repudiated generally in the United States they have felt compelled to apply it because of existing statutes. *Quick v. Western Ry. of Ala.*, 207 Ala. 376, 92 So. 608 (1922). Thus in New York a life convict is not entitled to probate of a will. *In re Lindewall's Will*, 287 N.Y. 347, 39 N.E.2d 907 (1942) (based on Penal Law of New York § 511(2)). Also that a convict is no longer married under N.Y. DOM. REL. LAW 86, Imprisonment for Life, Art. 2, 1941 (61). In states which have abolished civil death there are still some vestiges of this doctrine. Typical of the civil disabilities still remaining are: inability to vote or hold public office, e.g., ILL. ANN. STAT. c. 38, § 587 (1935). Disqualification to serve as a juror. See, e.g., *Dodys v. State*, 73 Ga. App. 483, 486, 37 S.E.2d 173, 175 (1946); *State v. Richey*, 196 So. 545, 546 (La. 1940).

10. *N.A.M. v. McGrath*, 103 F. Supp. 510, 514 (D.D.C. 1952).

11. U.S. CONST. AMEND. I.

12. 1 COOLEY'S CONSTITUTIONAL LIMITATIONS 710, (8th ed. 1927).

13. In modern codes of criminal internment there runs the theme of reasonable restraint. CRAOFALO, CRIMINOLOGY Part IV, *Suggested Basis for an International Penal Code*, 405-414 (1914).

14. *McCleary v. Hudspeth*, 124 F.2d 445 (10th Cir. 1941) cert. denied 316 U.S. 670 (1942) (cruel and unusual). *Rose v. United States*, 128 F.2d 622 (10th Cir. 1942), cert. denied, 317 U.S. 651 (1942) (excessiveness).

15. *Hysler v. Florida*, 315 U.S. 411 (1942).

of a *particular* freedom of that Amendment, subject to the same constitutional requirements.

It is submitted, that the reference in the instant case to the direct regulation of those freedoms in the First Amendment should not be construed to deny the State the power to punish the wrongdoer by the most effective method available, subject specifically to the standards of the Eighth Amendment and the due process clause. The practical result that would follow such a holding would be to compel the Congress to deal with the lobbyist by increasing the term of imprisonment from one to four years; thus restricting the right of petition and the other freedoms of the First Amendment as well.

CONTRACTS—DATE FOR COMPUTING EXCHANGE ON FOREIGN CURRENCY CONTRACT

The parties entered into a contract to be performed entirely in Mexico with payment in Mexican currency. Defendant breached the contract and plaintiff brought suit and recovered judgment in a United States District Court. The judgment awarded damages in the currency of the United States based upon the rate of exchange prevailing at the time of the breach. On appeal *held*, the rate of exchange to be used in computing the damages is that prevailing at the time of the judgment. *Paris v. Central Chiclera, S. De R.L.*, 193 F.2d 960 (5th Cir. 1952).

It is a well settled point of law that, in allowing recovery for the breach of a contract to pay foreign money, the judgment can only direct payment in the money of the forum.¹ The problem arises in the choice of a date from which to compute the rate of exchange. Shall it be the date of breach of the contract or the date of the judgment? This becomes an extremely important point when there has been an appreciable fluctuation in the rate of exchange between these dates. At first glance it appears that there is hopeless confusion among the cases. A closer examination demonstrates that this is not the case. There are two leading United States Supreme Court decisions on this question—the *Deutsche Bank* case² and the *Hicks* case³—and in both cases the opinion of the Court was written by Mr. Justice Holmes. The *Deutsche Bank* case holds the rate of exchange is to be computed as of the date of judgment while the *Hicks* case holds that it is the date of breach which should be used. An examination of the facts in the two cases shows us the reason for the apparent discrepancy between the two decisions and gives us a clear understanding of the law as it applies to these situations. In the *Deutsche Bank* case the action was for a debt in German marks which was *payable in Germany*. In the *Hicks* case, the debt was in

1. *Rives v. Dukes*, 105 U.S. 132 (1881); *Stewart v. Salamon*, 94 U.S. 434 (1877); *Liebeskind v. Mexican Light & Power Co.*, 116 F.2d 971 (2d Cir. 1941).

2. *Deutsche Bank Filiale Nurnberg v. Humphrey*, 272 U.S. 517 (1926).

3. *Hicks v. Guinness*, 269 U.S. 71 (1925).