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Abstracts of Recent Cases

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ABSTRACTS

CRIMINAL LAW—EXTENSION OF STATUTE OF LIMITATIONS NOT AN EX POST FACTO LAW.—*D* committed the crime of transporting a female in interstate commerce for the purpose of prostitution. At the time the crime was perpetrated, a three year statute of limitations was applicable to such crimes. Before the three year statute had run on *D*'s crime, the statute was amended to provide a five year limitation. Within the new five year period, *D* was indicted and convicted of the crime. *D* contended that the amendment extending the statute from three to five years was an ex post facto law, and as such, it was unconstitutional and moreover it deprived him of due process of law. *Held*, that the amendment was not an ex post facto law, nor did it effect a denial of due process of law for it neither rendered a previously innocent act criminal nor did it aggravate or increase the punishment for the crime here involved. *Clements v. United States*, 266 F.2d 397 (9th Cir. 1959).

The unanimous opinion of the court concludes with the firm statement that the action of Congress in the enactment "does not offend the sense of justice and right." On the day the statute was amended *D* could have been indicted for the crime and the statute of limitations would not have been a good defense to such an indictment. Since the statute was amended during the time *D* was still amenable to justice under the old statute, the new period absorbed the old.

Little authority is found directly in support of this decision. However, *Commonwealth v. Duffy*, 96 Pa. 506 (1880), is in point. In that case the statute of limitations was held to be an act of grace on the part of the legislature and especially so in the case of crimes. The state makes no contract with the criminal and he has little cause to complain if the time is extended beyond that limit on which he had planned. The statute of limitations is a matter of public policy and is subject to the will of the legislature. It can be extended or repealed, as the law making body sees fit, without impinging constitutional guarantees.

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STATUTE OF LIMITATIONS—FEDERAL EMPLOYERS' LIABILITY ACT (FELA).—Decedent, employed in interstate commerce by *D*, sustained personal injuries on July 14, 1954 when a large quantity of fuel oil was sprayed in his face through the alleged negligence of *D*. Decedent died on April 19, 1956 and an autopsy revealed the

cause of death to have been pulmonary fibrosis, a disease of the lungs, caused by decedent's exposure to the fuel oil. Decedent's personal representative filed the complaint on February 18, 1958 claiming damages for wrongful death and for the pain and suffering of decedent during his illness. *D* contends the action is barred by the three year statute of limitations for personal injuries under FELA. *Held*, that the statute of limitations under FELA, 45 U.S.C. § 56 (1952), does not apply to a claim for damages resulting from an occupational disease until the injured employee has some reason to discover the existence of the disease. The personal representative of the decedent would be barred from recovery under this action only if the disease had been discovered during the lifetime of the decedent and such statutory period had expired while he yet lived. *McGhee v. Chesapeake & O.R.R.*, 173 F. Supp. 587 (W.D. Mich. 1959).

The above case bears a marked resemblance to the West Virginia cases on silicosis. In allowing claims against the state, West Virginia courts had held that persons claiming compensation for silicosis must initiate such claim within one year from the claimant's last exposure to the silicon dioxide dust. In many of these cases, as in the above case, there was no reason to know of the disease until the statutory period had passed. Later, the state admitted a moral obligation to these claimants and made settlements with those applying for compensation within one year from the date they were informed of the said disease by the state physician. *Hayes v. State Bd. of Control*, 4 Ct. Cl. 202 (W. Va. 1948).

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INSURANCE—INSURABLE INTEREST.—*P* acquired ten policies of hospital expense insurance on himself. *D*, one of the insurance companies, refused to pay the amount claimed under one policy on the ground that *P* had obtained so many policies covering the same risk that the policy constituted a wagering contract, and thus was contrary to public policy. The court stated that *P*'s average take home pay was fifty-three dollars per week, whereas if hospitalized he would receive approximately 745 dollars per week under these insurance policies. *Held*, reversing the lower court, that *P* had an insurable interest in his own health, and he could sustain a loss by the happening of the event against which *D* had issued its policy of insurance, therefore, such is not a wagering

contract. There is no established public policy which prevents one from purchasing as many hospital expense policies as he may desire and can afford so long as he is not guilty of fraud. There is no statute prohibiting other similar insurance, and there are no judicial decisions making such practice contrary to public policy. Since there is not a clause in any of the insurance acquired by *P* prohibiting additional insurance, there is nothing to prevent *P* from entering into as many such contracts of insurance in whatever amount and in as many companies as he may desire. *Batchelor v. American Health Ins. Co.*, 103 S.E.2d 36 (S.C. 1959).

The authorities seem to be in complete agreement that a life or health insurance policy is not a wagering contract if the insuree has an interest in the person to be insured. To insure against loss from illness or accident is not a wagering contract as who would have anything more worthy of insurance than one's life or health. The fact that *P* had a greater income by virtue of the insurance policies if hospitalized, than he would have had if he had been gainfully employed is not indicative of an intention to wager, since such a value is purely subjective and is not open to question by the insurer after the loss is sustained, unless so stated in the policy. *Nelson v. N.H. Fire Ins. Co.*, 263 F.2d 586 (9th Cir. 1959).

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CONSTITUTIONAL LAW—RELIGIOUS FREEDOM IN THE USE OF PROPERTY—*P* (wife) was divorced from *D* by a decree which in part provided that *P* should live in the jointly owned residence and have custody of the children. *D* sought to have the terms of the decree altered to limit the use of the home to residence purposes only. In his petition for modification of the decree, *D* alleged that *P* had been using the house for a meeting place of a religious group. In the modifying decree the trial court enjoined *P* from holding or permitting others to hold such religious meetings in the residence. In reversing the lower court, the West Virginia Supreme Court of Appeals *held*, that the use of the home could not be so limited and that the modifying decree was void and unenforceable because of the unconstitutional restraint upon the wife in the exercise of religious freedom. *Bond v. Bond*, 109 S.E.2d 16 (W.Va. 1959).

The court reviews at length the history and principles of religious freedom in America and notes that "the law knows no heresy, and is committed to the support of no dogma." The use *P* is making of the home in instructing the children in the religious belief which makes the strongest appeal to her conscience, is a normal use of the home. That home is her "castle" in the sense that the court has no constitutional right or authority to "cross the threshold" in order to restrain her in the free but orderly and lawful exercise of her religious freedom. The West Virginia Constitution states that "No man shall be compelled to frequent or support any religious worship, place or ministry whatsoever; nor shall any man be enforced, restrained, molested or burthened in his body or goods, or otherwise suffer on account of his religious opinion or belief . . ." W. VA. CONST. art. III, § 15. The West Virginia court squarely holds that these constitutional guarantees are violated by a decree in a divorce suit which prohibits the divorced wife from using the home as a place for meetings of a religious group. Such a decree would deny her the exercise of her religious freedom. The right of the father to determine what education his children will receive is terminated by a divorce decree which awards the custody of the children to the mother. *Esteb v. Esteb*, 138 Wash. 174, 244 Pac. 267 (1926).

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