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Article 10

Constitutional Law: Due Process

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state. In the second case the Court ruled that a divorced wife for all purposes of giving testimony "was still the wife of the plaintiff notwithstanding the decree of divorce had been entered a few weeks previously."

The Illinois court of last resort held that William could not again marry anywhere until this divorce became absolute. Hence, his attempted remarriage was void and Hannah Wilcox was not the lawful wife of her ex-husband. A similar statute prevails in Illinois.[3]

We quote the Illinois court as follows: "It follows, therefore, that under the laws of this state on October 2, 1922, when the marriage ceremony was last performed between Hannah and William Wilcox, the courts of this state would not recognize as valid an attempted marriage of one who was defendant in a divorce proceeding in the State of Wisconsin, where such attempted marriage took place within one year from the date of the decree of divorce.

Stevens v. *Stevens*[4] and *Wilson* v. *Cook*[5] are two Illinois cases cited by that court in support of its contentions. The *Stevens* case held that a marriage contracted in another state in violation of the section of the statute quoted was absolutely void. The second case[6] cites cases about which the court says: "these cases sustain the principle that where a state has enacted a statute lawfully imposing upon its citizens an incapacity to contract marriage by reason of a positive policy of the state for the protection of the morals and good order of society, against serious social evils, a marriage contracted in disregard of the prohibition of the statute, wherever celebrated, will be void." The award was set aside by the Supreme Court and the judgment reversed.

SAM GOLDENBERG

Constitutional Law—Due process:

A recent decision of the United States Supreme Court[1] has caused a great deal of comment and discussion not only among members of the bar, but also among a large number of thinking Americans; who fear that this decision is a step in the wrong direction, and leads to the belittling and crumbling of that bulwark of personal liberty which the courts have so zealously preserved against the mistaken efforts of those who have believed that the end justifies the means in the con-

[3] Sec. 1a of the Divorce Act, Hurd's Revised Stat. 1921, C. 40.

[4] 304 Ill. 297. 136 N.E. 785.

[5] 256 Ill. 460. 100 N.E. 222. 43 L.A.R. (N.S.) 315.

[6] *Brook* v. *Brook* 9 H.L. Cas. 193; *Lussex Peerage Case*, II Cl. & F. 85; *State* v. *Tuhy* (c.c.), 41 Fed. 753. 7 L.R.A. 50; *Pennegar* v. *State*, 87 Tenn. 244, S.W. 309, 2 L.R.A. 703, 10; *McLennan* v. *McLennan*, 31 Or. 480; 50 Pac. 802; *Stulls Estate*, 183 Pa. 625, 39 Atl. 16.

[1] *Olmstead* v. *U.S.* Sup. ct. Advance Sheets Jul. 2, 1928, p. 662.

viction of criminals. I refer to what is already familiarly known as the "Wire Tapping Case," where Chief Justice Taft, on behalf of the majority of the court, upheld the admission of evidence obtained almost solely by wiretapping in the State of Washington, where, by statute, wiretapping is made a misdemeanor! The case was a conspiracy of huge ramifications against the Volstead Act, and it may have been the magnitude of the operations, together with the fact that the government claimed that it could obtain the evidence in no other way, which impelled the majority to what may aptly be termed a "main force" decision. The court overruled the objection that the admission of this evidence was a violation of the Fifth Amendment in that it required the prisoner to testify against himself, by saying that he was not forced to make these telephone calls, and also held that the means used did not constitute an unreasonable search and seizure. It was also urged that the court should frown on the unethical means, not to say crimes, by which the mass of evidence, consisting of several hundred pages, was obtained, but the court was able to dispose of this objection by pointing that at common law, it made no difference by what means the evidence was obtained, and the Federal Court sitting in the State of Washington followed the rules of evidence of the common law.

Four justices, for whom Justice Holmes and Justice Brandeis wrote able dissenting opinions, pointed out that this decision was contra to the long line of cases in which the Supreme Court has assiduously rejected evidence obtained by unlawful means of governmental agents. They also declared that the government should always use ethical means in obtaining evidence, and that at the risk of losing a conviction in a particular case it should be the last to encroach on the individual rights and liberties of its citizens.

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