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Contempt: Right to Trial by Jury Refused in Criminal Contempt Proceedings Against Public Employees Union

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of precedent which has recognized the validity of Mexican divorces on the basis of comity. Moreover, Mexican divorces serve an important socio-economic function and ought not to be dealt their death blow. The same considerations which probably moved the *Rosenstiel* appellate courts, *i.e.*, adultery, bigamy and illegitimacy, must still be considered when deciding whether or not section 250 will prevail, although it may cogently be argued that since the enactment of the section, New York domiciliaries have received fair warning of the possible consequences arising from failure to comply with its mandate, and therefore it would not offend due process or "equity" to declare such a divorce void.[132] But when a marriage is finished in fact, it is, or should be, finished at law as well.[133] Since divorce proceedings in New York are cumbersome and the grounds for divorce are limited, the "quicky" Mexican divorce often serves as the liberator of the unhappy and troubled. It is quick, efficient and unhampered by the vestiges of Puritanism which so heavily pervade our present law. Unfortunately, the *Kakarapis* opinion chose to ignore section 250 rather than confront the issues which it presents by attempting to explain its applicability, if any, to out-of-state divorces.

To deny validity to Mexican divorces through the use of section 250 will only serve to increase traffic to sister-state divorce havens since they are presumably unscathed by the section under the aegis of the full faith and credit clause of the Constitution. Thus, out-of-state divorces will not be prevented even if section 250 is held valid upon review. It is hoped that future decisions will attempt to distinguish *Kakarapis* and define the scope of section 250, or that the New York legislature will take a serious look at the "presumption" which the judiciary has declared presumes nothing.

Criminal Contempt Proceedings

Contempt: Right to trial by jury refused in criminal contempt proceedings against public employees union.

The New York Court of Appeals has decided that neither the Taylor Law nor the equal protection clause of the United States Constitution mandated a jury trial in *Rankin v. Shanker*.[134]

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132 Seigel, *Conflict of Laws*, 19 Syracuse L. Rev. 235, 262-63 (1967).

It should be noted, however, that the question of the illegitimacy of the children born from such a marriage (*i.e.*, a marriage entered into after at least one of the parties thereto has obtained a foreign divorce which the New York courts may subsequently declare void) is no longer a valid consideration. New section 24 of the DRL declares that a child born out of such a marriage "is the legitimate child of both natural parents notwithstanding that such marriage is void or voidable or shall hereafter be annulled or judicially declared void." DRL § 24, *Laws of New York*, 192 Sess. ch. 325 (1969).

133 *See* 1957 N.Y. Leg. Doc. No. 32 at 21-22.

134 23 N.Y.2d 111, 242 N.E.2d 802, 295 N.Y.S.2d 695 (1968).

In pursuing the constitutional argument, Chief Judge Fuld, writing for the majority, concluded that a legislative classification which distinguishes between public and private employees is reasonable and hence does not violate the equal protection guarantee. Moreover, having examined the United States Supreme Court decision in *Bloom v. Illinois*,[135] the Court resisted the argument that the Constitution mandates a jury trial in all criminal contempt proceedings. *Bloom* only mandated jury trials in serious as distinguished from petty crimes. Since the Supreme Court has held that a less than six-month sentence is insufficient to warrant a trial by jury, a jury trial was not required in the instant case where the Judiciary Law provided for a maximum punishment of 30 days in jail.[136]

It is significant that the 4-3 split in the bench was precipitated by the public-private distinction enunciated by the majority. The distinction, necessarily valid in denying public employees the right to strike, is not necessarily applicable when determining the right to a jury in a criminal contempt proceeding. Presumably therefore, if the sentence in *Shanker* had approximated the six-month *Bloom* limitation, the majority position would be less tenable. It should be noted that recent amendments to the Taylor Law have lodged complete discretion in the judiciary in fixing the size of the fine.[137] Should the size of *the fine* ever be a controlling factor in evaluating the right to trial by jury, a defendant may be entitled to a jury trial even though he is a public employee.

If the instant case in effect holds that a jury trial is *never* required where the punishment is so limited, there is still the latent problem connected with misdemeanor cases currently handled by three-judge courts in New York. A misdemeanant can presently be confined for a period of up to one year,[138] but the *Bloom* Court has stated that a sentence in excess of six months requires a jury trial.

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135 391 U.S. 194 (1968).

136 N.Y. Judiciary Law § 751.

137 McKINNEY'S SESSION LAWS, Public Employees' Fair Employment Act, Civil Service Law § 212 (1969).

138 N.Y. PEN. LAW § 10.00(4).