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Constitutional Law--Primary Elections--Racial Discrimination by Political Parties (Nixon v. Condon, 286 U.S. 73 (1932))

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CONSTITUTIONAL LAW—PRIMARY ELECTIONS—RACIAL DISCRIMINATION BY POLITICAL PARTIES.—Promptly after the decision of the Supreme Court declaring unconstitutional a statute of the state of Texas prohibiting Negroes from voting in a Democratic party primary election,[1] the Texas Legislature passed the statute herein questioned vesting in the State Executive Committee of a political party the power to prescribe the qualifications of its own members and to determine who shall vote at primary elections.[2] The committee of the Democratic party passed a resolution disqualifying Negroes from voting at a Democratic primary. The plaintiff, a Negro, having been prevented from voting at a Democratic primary, brought suit against the election judges for their refusal to allow him to vote. *Held,* four judges dissenting, the resolution of the State Executive Committee came within the prohibitions of the Fourteenth and Fifteenth Amendments and was therefore void. *Nixon* v. *Condon,* 286 U. S. 73, 52 Sup. Ct. 484 (1932).

A political party is merely a voluntary association and has the inherent power to determine its own membership.[3] The primary elections are the private affairs of the political parties despite the control of the state legislature over the nomination procedure at the primaries.[4] This seems to be the view of the state courts. However, the federal courts, with the exception of that in Texas,[5] incline to the theory that a primary is part of the regular election system.[6] If the Texas primary is to be regarded as part of the election system, it must have its foundation in the recognition of the State Executive Committee as an agency of the state.[7] Whatever inherent power a state political party has to determine the content of its membership resides within the state party convention.[8] Here, however, the state chose the executive committee to exercise that power, and did, therefore, make a grant of power to the State Executive Committee,[9] thereby constituting the committee an agency of the state. The state convention never voted to bar Negroes from the party, hence whatever power the committee exercised was not derived from the party, but was delegated by the state. As was said by Justice Elliott of the Supreme Court, "the facts and circumstances of the particular case must not be overlooked." The result to the Negro is the same whether as in *Nixon* v. *Condon,* the rule of exclusion is adopted by

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[1] Nixon v. Herndon, 273 U. S. 536, 47 Sup. Ct. 446 (1927).

[2] TEX. REV. CIV. CODE (Vernon, 1928) art. 3107.

[3] Waples v. Marrast, 108 Tex. 5, 184 S. W. 180 (1916); Koy v. Schneider, 110 Tex. 369, 218 S. W. 479 (1920).

[4] *Supra* note 3.

[5] Grigsby v. Harriss, 27 F. (2d) 942 (S. D. Tex. 1928); Nixon v. Condon, 34 F. (2d) 464 (W. D. Tex. 1929), *aff'd,* 49 F. (2d) 1012 (C. C. A. 5th, 1931).

[6] West v. Bliley, 33 F. (2d) 177 (E. D. Va. 1929).

[7] MERIAM AND OVERCRACKER, PRIMARY ELECTIONS (1928) 140.

[8] Stephenson v. Commissioners, 118 Mich. 396, 76 N. W. 914 (1898); 2 BRYCE, MODERN DEMOCRACIES (1924) 40.

[9] See Love v. Buckner, 49 S. W. (2d) 425, 426 (1932).

the political parties as organs of the state, or by the legislature itself as in *Nixon* v. *Herndon*.[10] Where a state attempts to do by indirection what it may not do directly, the validity of the act may be questioned.[11]

R. L. L.

CONTRACTS—AGREEMENT TO COMMIT A TORT UNENFORCEABLE —PUBLIC POLICY.—Plaintiff contracted for passage on the *Graf Zeppelin* from Germany to New York. He knew that the exclusive news rights of the flight had been acquired by a third party. As a condition of being given passage he had agreed that he would give no interviews and send no reports of said passage. Plaintiff thereafter contracted to supply defendant with news through a pretense of answering messages from his friends. As a defense to this action defendant set up the fact that the contract was made in violation of the terms of the contract of passage. *Held,* the contract was in effect a contract to commit a tort. The court will not aid one who has committed a tort to recover from another the price agreed to be paid for his wrongful act. *Reiner* v. *North American Newspaper Alliance,* 259 N. Y. 250, 181 N. E. 561 (1932).

The law is ever anxious to safeguard and to protect the interests of parties in existing contractual relations from intentional and wrongful interference by strangers. An action will lie for intentionally inducing a breach of contract without excuse or justification.[1] Such conduct is considered a tort since it is a fraud upon the parties and the public and is against public policy.[2] The contract for the exclusive news of the trip made between the owners of the *Graf Zeppelin* and third parties was interfered with by the contract between plaintiff and defendant. Such contract was in effect a contract to commit a tort. The courts will not aid one who has committed a tort to recover from another the price agreed to be paid for the tortious act.[3] The courts are called upon to make a choice between two evils—either to enforce the contract in favor of the tort feasor and allow him to recover for his unlawful act,

[10] *Supra* note 1.

[11] *Supra* note 6. See also Note (1930) 15 CORN. L. Q. 262; Note (1930) — HARV. L. REV. 467; Note (1930) 39 YALE L. J. 423, for comments on Nixon v. Condon as decided by the federal courts before reaching the Supreme Court.

[1] Lamb v. Cheney & Son, 227 N. Y. 418, 125 N. E. 817 (1920); Campbell v. Gates, 236 N. Y. 457, 141 N. E. 914 (1923); Hornstein v. Podwitz, 254 N. Y. 443, 173 N. E. 674 (1930).

[2] Materne v. Horwitz, 101 N. Y. 469, 5 N. E. 331 (1886).

[3] 3 WILLISTON, CONTRACTS (1924) §1753.