St. John's Law Review

Volume 5
Number 2 *Volume 5, May 1931, Number 2*

Article 17

June 2014

Constitutional Law--Separation of Powers--Right of Court to Reduce Sentence (U.S. v. Benz, 282 U.S. 304 (1931))

St. John's Law Review

CONSTITUTIONAL LAW—SEPARATION OF POWERS—RIGHT OF COURT TO REDUCE SENTENCE.—Defendant, indicted for violation of the National Prohibition Act, pleaded guilty, and was sentenced to 10 months' imprisonment. While serving sentence, and during the same term of the federal court which imposed sentence, he petitioned for a modification of sentence. The court, over objection of prosecution reduced the sentence to six months. Plaintiff appeals. Question certified: "After a district court of the United States has imposed a sentence of imprisonment upon a defendant in a criminal case, and after he has served a part of the sentence, has that court, during the term in which it was imposed, power to amend the sentence by shortening the term of imprisonment?" *Held,* question certified answered in the affirmative. U. S. v. Benz, 282 U. S. 304, 51 Sup. Ct. 113 (1931).

Judgments, decrees, and orders are within the control of the court during the term at which they are made, subject to be amended, modified, or vacated by that court, but not increased.[1] The rule is not confined to civil cases, but applies in criminal cases as well, provided the punishment be not augmented.[2] For a court to increase a judgment or sentence would be a violation of the double jeopardy clause of the constitution.[3] Generally, records and decrees cannot be altered after the term; but such rule does not apply in the case of mere clausal errors.[4] The above rules would have set at rest the question here presented had it not been for a statement in U. S. v. Murray,[5] that "The beginning of the service of the sentence in a criminal case ends the power of the court even in the same term to change it." But this case was regarding the probation act of March 4, 1925,[6] and ruled that the court was without power to grant probation under this act. The words used were not necessary to the conclusion reached in the Murray case. "That they stated the rule more broadly than the Lange case warrants is apparent."[7] In ruling that the action of this court in reducing its own sentence was not a usurpation of executive power the Court said: "The case arises on an apparent conflict of the judicial and executive functions that are however, readily distinguishable. To render judgment is a judicial function. To carry the judgment into effect is an executive function. To cut short a sentence by an act of clemency is an exercise of executive power which abridges the enforcement of the judgment, but does not alter it *qua* judgment. To reduce a sen-

[1] Goddard v. Ordway, 101 U. S. 745, 752, 25 L. ed. 1040 (1879).

[2] In re Lange, 18 Wall. 163, 167-174, 21 L. ed. 872 (U. S., 1874); Bassett v. U. S., 9 Wall. 38, 19 L. ed. 548, 44 L. R. A. 1203 (U. S., 1869).

[3] U. S. Constitution, Amendment 5.

[4] Rupinski v. U. S., 4 F. (2d) 17 (C. C. A., 6th, 1925).

[5] 275 U. S. 347, 48 Sup. Ct. 146, 72 L. ed. 309 (1927).

[6] U. S. C. A., Tit. 18, Secs. 724-727.

[7] Instant case.

tence by amendment alters the terms of the judgment itself and is a judicial act as much as the imposition of the sentence in the first instance." [8]

J. C.

CONTRACTS—BROKERS' COMMISSIONS—CONDITIONS PRECEDENT AS DISTINGUISHED FROM TIME OF PAYMENT.—Plaintiffs, real estate brokers, employed by the defendants to bring about a sale of their property, brought a party to the defendant whom the latter accepted as one ready, willing, and able to purchase the property. At the time the contract was entered into between defendant and buyer, the former executed and delivered to plaintiff a writing recognizing the plaintiffs as the brokers who brought about the sale and agreed to pay a stated sum, "one-half of which is to be paid this date and the balance to be paid on the closing of title." Title was never closed. The defendants agreed to relieve the purchaser from the contract and kept a $10,000 deposit. Plaintiff sued for the unpaid half of his commission. The plaintiff's contention was that the contract merely fixed the time for payment of the commission and was not a condition precedent. They also claimed that the voluntary releasing of the buyers by the defendant did not preclude the broker from collecting commission as the contract might have been enforced. The jury found at the trial that the written agreement was the same as the contract the parties originally entered into at the time of employment. *Held,* for defendant. Plaintiff was not entitled to the commission; the agreement was a condition precedent which never came about. Defendants were not at fault, nor obliged to enforce the contract to sell. By retaining the down payment as a forfeiture, they did not thereby waive the condition upon which liability for payment of commission depended. Amies v. Wesnofske, 255 N. Y. 156, 174 N. E. 436 (1931).

Ordinarily a real estate broker has earned his commission and is entitled to it when he has brought to his client one who is ready, willing, and able to purchase the property at the terms stated by the seller or when a new offer is made by the buyer and accepted by the seller.[1] The broker and client may vary this rule at the time of employment by providing that the commission shall be paid upon the happening of some contingent event.[2] The contingency is then a condition precedent and no recovery can be had if it is

[8] *Ibid.*

[1] Davidson v. Stocky, 202 N. Y. 423, 95 N. E. 753 (1911); B. W. Lougheed Co. v. Yone Suzuki, 216 App. Div. 487, 215 N. Y. Supp. 505 (1st Dept. 1926), *aff'd* 243 N. Y. 648, 154 N. E. 642 (1926); 2 Williston, Contracts (1920), 1030; 2 Gerard, New York Real Property (6th ed. 1926) 1080; Robinson's New York Real Estate Law (1930) 277.

[2] Colvin v. Post Mortgage and Land Co., 225 N. Y. 510, 122 N. E. 454 (1919); Reichard v. Wallach, 91 N. Y. Supp. 347 (1904); B. W. Lougheed & Co. v. Yone Suzuki, *supra* note 1; 2 Williston, *supra* note 1, 1030; Robinson, *supra* note 1, 277; Tiffany, Agency (2nd ed. 1924), 150.