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Comment on Recent Decisions

CONSTITUTIONAL LAW—CRUEL AND UNUSUAL PUNISHMENT—PROVINCE OF LEGISLATURE.—Defendant, who was convicted of the unlawful transportation of "moonshine," was given the maximum sentence by the jury. On appeal he contended that the punishment was excessive. *Held,* that since fixing the punishment for crime is a legislative and not a judicial function, appellate courts can not adjudge as excessive a punishment which is within the range prescribed by statute. *State v. Wheeler,* 2 S. W. (2d) 777 (Mo., 1928).

The eighth amendment to the Federal Constitution provides against cruel and unusual punishment. This provision has reference only to federal statutes and does not apply to state statutes establishing punishment for crimes. *Commonwealth v. Murphy,* 165 Mass. 66, 42 N. E. 504; *Loeb v. Jennings,* 133 Ga. 796, 67 S. E. 101. Most states have in their bill of rights clauses similar to the federal amendment. Article 2, Section 25 of the Missouri Constitution is such a provision, and is the one sought to be invoked in the principal case in an effort to have the punishment adjudicated excessive, on the ground that it was cruel and unusual. But such a prohibition has reference only to the statutes fixing the punishment and not to the punishment assessed by the jury or court within the limits of the statute. If the statute is not in violation of the constitution then any punishment assessed within the limits of such statute can not be adjudged excessive. *State v. Alexander,* 315 Mo. 199, 285 S. W. 984; *State v. Van Wye,* 136 Mo. 227, 37 S. W. 938; *Miller v. State,* 149 Ind. 607, 49 N. E. 894; *Commonwealth v. Murphy, supra; State v. Davis,* 88 S. C 229, 70 S. E. 811. The term cruel and unusual punishment means that the mode of punishment is of a barbarous character and unknown to the common law. *State v. Williams,* 77 Mo. 310; *State v. McCauley,* 15 Cal. 429. "It devolves upon the legislature to fix the punishment for crime and in the exercise of their judgment great latitude must be allowed and courts may reasonably interfere only when the punishment is so unreasonable or so cruel as to meet the disapproval and condemnation of the conscience and reason of men generally." *State v. Becker,* 3 S. D. 29, 51 N. W. 1018.

In the principal case the constitutionality of the statute under which the defendant was convicted was not questioned. Therefore, in the light of the authorities above cited, the Missouri Supreme Court properly refused to go into the question of excessive punishment so long as such punishment was within that prescribed by the limits of the statute. R. B. S., '30.

CONSTITUTIONAL LAW—STATUTE REGULATING ADMISSION TO BAR.—Appellant, a member of the Philadelphia Bar, and a resident of Delaware County, applied to the board of law examiners of that county for the purpose of becoming enrolled as a member of the Delaware County Bar. The Court rule provided that "an applicant for admission to the bar of Delaware County shall make a formal declaration in writing that he intends permanently to practice in that county, and within three months to open his principal office there. . ." Olmstead did not state his intention to open his principal office in Delaware County and his application was refused. *Held,* that the rule of the court was binding upon all applicants, notwithstanding that a statute literally construed, apparently provided to the contrary. *In re Olmstead,* 292 Pa. 96, 140 Atl. 634 (1928).

The judicial departments of the respective states have sagaciously sustained the constitutionality of statutes providing reasonable requirements for admission to the bar. Such action has been based upon the sensible attitude of the courts to avoid friction with the legislative department, and a recognition of the police

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