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CONSTITUTIONAL LAW- RIGHT TO JURY TRIAL - PETTY STATUTORY OFFENSES

James H. Roberton
University of Michigan Law School

CONSTITUTIONAL LAW — RIGHT TO JURY TRIAL — PETTY STATUTORY OFFENSES — The defendant was tried before the police court of the District of Columbia for selling, as a second-hand dealer, unused return-trip railroad tickets without a license, contrary to an Act of Congress.[1] The act provides for

[1] 47 Stat. L. 563 (1932), amending 32 Stat. L. 622 (1902).

a maximum penalty of $300 fine or ninety days in jail. The defendant was denied a jury trial. The Court of Appeals for the District of Columbia found the defendant entitled to a jury trial.[2] On appeal to the United States Supreme Court, it was *held* by a majority of the Court, that the Federal Constitution does not guarantee the defendant a jury trial in a prosecution for this offense. *District of Columbia v. Clawans*, (U. S. 1937) 57 S. Ct. 660.

In a recent previous decision, *District of Columbia v. Colts*,[3] the United States Supreme Court held that one who is charged with the offense of operating a motor vehicle recklessly at a greater rate of speed than the speed limit of twenty-two miles an hour, so as to endanger property and individuals, is guaranteed a jury trial by the Constitution, although the maximum penalty for the offense was a $100 fine or thirty days in jail. The two cases are not conflicting but together demonstrate that the Federal Constitution does not guarantee a jury trial for petty offenses. The jury trial guarantee applies to those criminal proceedings in which the offense charged is by nature so morally offensive that it would be indictable if it were a common-law offense, irrespective of the severity or mildness of the penalty attached, and to those proceedings in which the maximum penalty for the offense is very severe, irrespective of the triviality of moral quality of the offense.[4] In the principal case the

[2] Clawans v. District of Columbia, (App. D. C. 1936) 84 F. (2d) 265.

[3] District of Columbia v. Colts, 282 U. S. 63, 51 S. Ct. 52 (1930).

[4] Callan v. Wilson, 127 U. S. 540, 8 S. Ct. 1301 (1888); Schick v. United States, 195 U. S. 65, 24 S. Ct. 826 (1904). In Callan v. Wilson, the Court held that a conspiracy to refuse to work for another person and to refuse him and his employers and employees patronage and generally to boycott, injure, molest, oppress, intimidate, and reduce to beggary such persons, was not a petty offense, due to its serious nature. The Court did not discuss the severity of the penalty which might be inflicted for that offense. The penalty actually imposed by the lower court was a $25 fine or thirty days in jail. In Schick v. United States, the Court held that the offense of violating a federal statute against knowingly purchasing or receiving for sale oleomargarine not stamped according to law, the penalty being a $50 fine, was a petty offense. The Court added that offenses carrying a fine of not less than $1,000 or more than $5,000, or imprisonment for not less than six months nor more than three years is not a petty offense.

The lower federal courts have held the following to be petty offenses: a refusal to testify before military tribunal, for which a penalty of $500 fine or six months' imprisonment or both was provided, United States v. Praeger, (D. C. Tex. 1907) 149 F. 474; misbranding under Food and Drugs Act, carrying a penalty of $200 fine, Frank v. United States, (C. C. A. 6th, 1911) 192 F. 864; selling liquor, carrying a penalty of $2,000 and two years in jail, Ex parte Dunlap, 5 Alaska 521, (1916); violation of weights and measures law, subject to a penalty of $50 fine or fifty days in jail, Gay v. Cuevas Zequeira, 25 Porto Rico 566 (1917).

The following offenses have been held not to be petty offenses by the lower federal courts: violation of excise laws, carrying a penalty of $500 fine and two years in jail, Low v. United States, (C. C. A. 6th, 1909) 169 F. 86; violation of prohibition act, with penalties of $1,000 fine and twelve months in jail, Coates v. United States, (C. C. A. 4th, 1923) 290 F. 134.

The surprisingly few decisions in the United States Supreme Court and the lower federal courts determining whether a specific federal criminal statute defines an

majority of the Supreme Court were of the opinion that the offense charged is neither of the nature of an offense indictable at common law, nor is the maximum penalty of ninety days sufficiently severe independently to bring it within the jury trial guarantee. In the *Colts* case the Court emphasized its opinion that to drive a car in a reckless manner so as to endanger life and property is an offense of very serious mien,[5] and that it is not a petty offense, even though the penalty is light. The dissenting justices in the principal case and the Court of Appeals of the District of Columbia differed with the majority of the Supreme Court on whether a penalty of ninety days in jail is so severe that it brings the offense subject thereto within the jury trial guarantee.[6] The dissenting justices stated that they believed the framers of the Constitution intended the guarantee of jury trial to cover offenses punishable by a $300 fine or ninety days in jail. The Court of Appeals agreed with the majority of the Supreme Court that the framers of the Constitution did not intend to guarantee a jury trial merely on the basis of a possible ninety-day sentence, because at the time the Constitution was adopted there were many offenses subject to a punishment of ninety days in jail and more which were not triable by jury.[7] But the Court of Appeals argued that the commonly accepted views on the severity of punishment change, and that a penalty once thought mild and not calling for jury trial may come to be regarded so severe as to bring the offense within that class to which the jury trial guarantee applies, and stated that in its opinion it was unfair to subject one to a possible ninety-day penalty without a jury trial.[8] The majority of the Supreme Court assumed for the purpose of the decision that a change in the commonly accepted views on the severity of punishment could bring within the jury trial guarantee

offense subject to the constitutional guarantee of jury trial is probably due to the fact that federal criminal statutes, generally, define only serious offenses, about which there can be no real question as to jury trial guarantee.

[5] In the case of District of Columbia v. Colts, 282 U. S. 63 at 73, 51 S. Ct. 52 (1930), the Court said, "To drive [a car] through the public streets of a city so recklessly 'as to endanger property and individuals' is an act of such obvious depravity that to characterize it as a petty offense would be to shock the general moral sense."

[6] The Court of Appeals of the District of Columbia and all of the justices of the Supreme Court were agreed that the offense charged in the principal case was of a relatively slight moral offensiveness, and if the penalty attached were not so severe, would be outside the jury trial guarantee.

[7] See Frankfurter and Corcoran, "Petty Federal Offenses and the Constitutional Guaranty of Trial by Jury," 39 HARV. L. REV. 917 (1926), for a collection of citations to English and Colonial statutes defining criminal offenses calling for severe punishments and providing for disposition of such offenses without a jury.

[8] The Court of Appeals of the District of Columbia thought that it was especially unfair to subject one to a criminal proceeding involving a possible ninety-day jail sentence when the statute denied the accused a right to appeal from the police court to a court of record for a hearing de novo on the facts, as was the situation in the principal case. The Supreme Court answered this contention by stating that the problem of the right to such an appeal was unrelated to the question of the right to jury trial, and went on to point out that at common law there was no review of criminal cases as of right.

offenses which were not subject to this guarantee at the time the Constitution was adopted, but stated that recent federal and state statutes, state decisions, and recent English law are against the conclusion that the social and ethical judgments of the community have changed in regard to the right of jury trial when a possible ninety-day penalty is involved. It is consistent with established principles to reason that the framers of the Constitution, in providing for a guarantee of jury trial in federal criminal proceedings, intended that this guarantee apply only to criminal proceedings in which jury trial was granted as a matter of right in the Colonies and England.[9] However, the dissenting justices argued that since the Seventh Amendment guarantees a jury trial in suits at common law where the value in controversy exceeds twenty dollars, the framers of the Constitution must have intended to guarantee jury trial in criminal prosecutions when a penalty of a $300 fine [10] or imprisonment for a considerable time is possible. That the intent of the framers of the Constitution as to the scope of the guarantee of jury trial in civil cases is necessarily indicative of their intent as to the scope of the guarantee of jury trial in criminal prosecutions may be questioned. Their failure to be as explicit in the Sixth Amendment as in the Seventh may be construed as indicating that they intended that contemporary practice as to jury trials in criminal proceedings be the measure of the scope of this constitutional right. The principle that a change in the social and ethical judgments of the community toward the severity of a prescribed penalty may alter the scope of offenses covered by the jury trial guarantee may be justified upon the well-recognized principle of constitutional law that the Constitution was intended to be adapted to future changing conditions.[11] The writer feels that a ninety-day penalty is rather severe and believes that a large number of people will be surprised to learn that they may be tried in a police court and sentenced to ninety days in jail without a jury trial and without an opportunity for an appeal to a court of record for a hearing de novo on the facts.

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[9] Callan v. Wilson, 127 U. S. 540, 8 S. Ct. 1301 (1888); Schick v. United States, 195 U. S. 65, 24 S. Ct. 826 (1904).

[10] It was assumed without argument by the majority of the Supreme Court and by the Court of Appeals that the fine of $300 was not of itself a sufficiently severe punishment to give to the defendant the right of jury trial.

[11] This concept of constitutional law is well expressed, with regard to the problem of severe and unusual punishment, in the case of Weems v. United States, 217 U. S. 349 at 373, 30 S. Ct. 544 (1910), in the following language, "Legislation, both statutory and constitutional, is enacted, it is true, from an experience of evils, but its general language should not, therefore, be necessarily confined to the form that evil had theretofore taken. Time works changes, brings into existence new conditions and purposes. Therefore a principle to be vital must be capable of wider application than the mischief which gave it birth."