

1953

Abstracts of Recent Cases

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were the true purpose of the informational provisions, it is difficult to understand why the information so obtained for the benefit of the Bureau is made a matter of public record.

It is clear that the Supreme Court possesses an arsenal of doctrine to sustain the wagering tax in the *Kahriger* case. The presumption of constitutionality and the recent precedents strongly weigh in favor of such a decision.⁴⁰ It is disturbing, nevertheless, to realize that the body of judicial doctrine on regulatory taxes does not assist one in determining the limits of the taxing power. Granted, the formulas are useful for rationalizing a conclusion. However, judicial theory should perform more than an articulative function: it should aid in reaching the result. This is where the "penalty," "on its face," and "nonpsychoanalysis of Congressional motives doctrines fail." It is hoped that the Supreme Court in deciding the *Kahriger* case acknowledges the sterile character of the present conflicting doctrines, and develops a rule which will provide a rational basis for determining the extent to which the federal taxing power may be used to attain social and economic reforms.⁴¹

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Criminal Group Libel Statute Upheld—In a five to four decision the United States Supreme Court has upheld the conviction of the publisher of lithographs exposing to "contempt, derision, or obloquy" citizens of the Negro race, under the Illinois "Group Libel Law," ILL. REV. STAT., c. 38, §471 (1951). *Beauharnais v. People of Illinois*, 343 U. S. 250 (1952). The statute extends its protection against publication of libels to classes of citizens "of any race, color, creed, or religion."

Speaking for the majority, Mr. Justice Frankfurter pointed out that no libellous utterances fall within the protection of the Fourteenth Amendment, and that this was a reasonable curtailment of freedom of speech by the legislature. The opinion minimizes the danger of political groups being considered within the protected class, and approved the standards provided to guide enforcement.

Mr. Justice Jackson, dissenting, felt that the "clear and present danger" test must be applied. Mr. Justice Reed objected to vague terminology in the act. Justices Black and Douglas both regarded the Fourteenth Amendment as entirely forbidding group libel laws of this nature.

Criminal Conspiracy to Commit Non-Criminal Act—In *Crolich v. United States*, 196 F.2d 879 (5th Cir. 1952), the defendants were found guilty of conspiracy to hinder and injure citizens in the exercise of their right to vote under 18 U.S.C. §241 (1946). Section 241 is an anomaly in the federal criminal code, for it proscribes conspiracy to perform acts not in themselves criminal. An earlier statute declaring the substantive act unlawful had been repealed. Relying on precedent, the Court of Appeals said that section 241 "could hardly have been inadvertently left on the statute books," and is still in effect.

40. See Rottschaefter, *THE CONSTITUTION AND SOCIO-ECONOMIC CHANGE* 86-95 (1948).

41. For the economic aspects of regulatory taxes, see Blough, *THE FEDERAL TAXING PROCESS* c. 16 (1952).