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## Criminal Law—Compensation of Convicts Through Reduced Time

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This case points up the strength of the Constitutional right of *habeas corpus*. Though the procedurally proper method of raising the question of a court's jurisdiction, after the court has already rendered a judgment, is by appeal, still the right of *habeas corpus* can be brought even while the appeal is pending. Thus, procedural orderliness gave way to a firmly embedded Constitutional right.

#### COMPENSATION OF CONVICTS THROUGH REDUCED TIME

Compensation, to a convict laborer in prison, takes the form not of money but of a reduced sentence.<sup>2</sup> Similar to compensation is commutation which is a reduced sentence because of good behavior.<sup>3</sup> In *People v. Denno*,<sup>4</sup> convict Antonio Vanilla successfully argued that he was entitled to compensation, already granted to him, as a matter of right and that the Prison Board could not take such compensation from him merely in the exercise of its discretion. Vanilla had committed the crime of robbery in 1920 and in 1924 was sentenced to imprisonment for a definite term of 40 years. He was released on parole in 1940 with credit for commutation and compensation. At that time he signed an instrument wherein he agreed to be subject, while on parole, to the "jurisdiction and control" of the Parole Board. In 1957 he was retaken into custody for violation of parole. The issue was whether, by virtue of the compensation previously granted him, he had fully served his term so that prison authorities could no longer confine him. The resolution of such issue depended, in turn, on whether compensation once granted is a matter of right or only of grace.

Section 230(3) of the Prison Law enacted in 1916 stated that, "Compensation credited to a convict in the first instance, in his account, by the agent and warden . . . shall stand as the compensation allowed, unless withheld wholly or partly by the board as punishment, as above provided." (emphasis supplied.) The statute contained no corresponding provision as to commutation. In *People v. Denno* the court stated that, "From these provisions and from the others in force from 1916 to 1926, it seems clear that compensation once earned and credited in the convict's account was irrevocable and automatically reduced the convict's sentence—except in cases (1) where he violated prison rules (Prison Law, Section 236), (2) where he escaped from prison (Section 238), and (3) where he was convicted of a felony later committed (Section 243)."

The distinction between compensation and commutation, whereby compensation was a matter of right and commutation a matter of grace, continued at least until 1926. An amendment to Section 230 of the Prison Law preserved compensation as a matter of right to convicts whose crimes were

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2. N.Y. Correction Law § 230(2).

3. *Ibid.*

4. 7 N.Y.2d 29, 194 N.Y.S.2d 486 (1959).

## COURT OF APPEALS, 1959 TERM

committed before July 1, 1926, but denied such compensation to convicts whose crimes were committed after that date.<sup>5</sup> Thus, in the *Denno* case the Court disposed of Warden Denno's contention that, compensation being no longer a matter of right but of grace, the Prison Board in its discretion could deny Vanilla his previously granted compensation. Vanilla committed his crime in 1920 when, by the express terms of the 1926 amendment to Section 230 of the Prison Law, compensation was still a matter of right.

The case settles the law only as to compensation of criminals who committed their crimes between the years 1916 and 1926. Such compensation, once granted, cannot be taken away except, as mentioned above, for violation of prison rules, escaping from prison, or being convicted of a felony committed after release on parole.<sup>6</sup> Though the Court expressly limited its decision to crimes committed between the years 1916 and 1926, the distinction between compensation and commutation in the 1916 statute by which compensation was a matter of right has in subsequent amending legislation entirely disappeared.<sup>7</sup> The case provides a strong indication that, as to crimes committed after July 1, 1926, compensation will be treated as commutation always has been—as a matter not of right but of grace.

### DECEDENTS' ESTATES AND TRUSTS

#### REVOCAION OF LETTERS OF ADMINISTRATION WITHIN SURROGATE'S JURISDICTION

An administratrix, who was the plaintiff in a cause of action for wrongful death and for pain and suffering of the deceased, had obtained letters of administration from the Surrogate on the bona fide representation that she had been the wife of the deceased. The trial court dismissed the cause of action and revoked the letters of administration upon discovering that the plaintiff was not the legal widow of the decedent since her marriage to him was void. The Court of Appeals, in *Stolz v. New York Central Railroad Company*,<sup>1</sup> unanimously reversed an Appellate Division affirmance,<sup>2</sup> holding that the revocation of the letters was solely within the Surrogate's discretionary powers.

The relationship of the Surrogate's Court Act, Section 43, with Sections 99 through 101 of the same Act was the determining factor in the case. According to Section 43, where the jurisdiction of a Surrogate Court to make a determination is drawn in question collaterally, the jurisdiction is presumptively, and in the absence of fraud or collusion, conclusively, established by an allega-

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5. Former N.Y. Prison Law § 230 as amended in 1926.

6. Former N.Y. Prison Law §§ 236, 238, 243.

7. The distinction ceased with the 1926 amendment to § 230 of the Prison Law. No evidence of the distinction appears presently in Art. 9 of the Correction Law.

1. 7 N.Y.2d 269, 196 N.Y.S.2d 969 (1959).

2. 6 A.D.2d 643, 180 N.Y.S.2d 88 (3d Dep't 1958).