

trust, has been deemed exclusive of the jurisdiction of a federal court over a later suit there for the same relief, *Princess Lida v. Thompson*, 305 U. S. 456, 466-67, here the federal court has not attempted to assume such jurisdiction with respect to an asserted but contested interest in land located in another state. So far as the suits in either the federal or the state courts seek an adjudication of the interests of the parties in the land, it cannot be said that the federal court has exclusive jurisdiction. *Commonwealth Trust Co. v. Bradford*, 297 U. S. 613. In any case, exercise by the state courts of their jurisdiction to adjudicate the parties' rights to land located in those states involves no interference with or impairment of the jurisdiction of the federal court in Illinois, and affords no ground for the injunction restraining prosecutions of the suits in the state courts. *Commonwealth Trust Co. v. Bradford*, *supra*. The case does not come within any exception to the prohibition of § 265 of the Judicial Code.

The judgment of the Circuit Court of Appeals will be reversed with directions to the district court to vacate the injunction order.

Reversed.

IN RE WILLIAM V. BRADLEY.

CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE
THIRD CIRCUIT.

No. 473. Argued January 8, 1943.—Decided February 1, 1943.

A federal court having erroneously imposed upon the petitioner a sentence of fine *and* imprisonment for contempt (Jud. Code § 268, 28 U. S. C. § 385), and the fine having been paid to the clerk of the court, who gave a receipt therefor, the court is without power thereafter—although the money had not been covered into the Treasury—to modify the sentence to one of imprisonment only, and the petitioner must be discharged. P. 52.

Reversed.

CERTIORARI, 317 U. S. 616, to review a judgment sentencing the petitioner for contempt.

Mr. Thomas D. McBride for petitioner.

Mr. W. Marvin Smith, with whom *Solicitor General Fahy*, *Assistant Attorney General Berge*, and *Messrs. Oscar A. Provost* and *John Ford Baecher* were on the brief, for the United States.

MR. JUSTICE ROBERTS delivered the opinion of the Court.

A proceeding, instituted by the National Labor Relations Board against Delaware-New Jersey Ferry Company for enforcement of an order of the Board, was pending in the Circuit Court of Appeals. A hearing was set at which witnesses were to be heard. The petitioner was to be a witness for the Board. During the course of the trial the petitioner was summoned and, after hearing, was adjudged guilty of contempt because of his intimidation of a witness for the Ferry Company in the corridor adjoining the court room.

The court sentenced the petitioner to six months' imprisonment, to pay a fine of \$500, and to stand committed until he complied with the sentence. The sentence was erroneous. *Ex parte Lange*, 18 Wall. 163, 176. Under § 268 of the Judicial Code, 28 U. S. C. 385, the sentence could only be a fine or imprisonment. *Ex parte Robinson*, 19 Wall. 505, 512; *Clark v. United States*, 61 F. 2d 695, 709; affirmed 289 U. S. 1.

The marshal was directed forthwith to execute the judgment. On September 28, 1942, the petitioner was taken into custody and committed to prison. On October 1 his attorney paid the fine in cash to the clerk of the court. Later on that day the court, realizing that the sentence was erroneous, delivered to the clerk an order amending it by omitting any fine and retaining only the

six months' imprisonment. The court instructed the clerk, who still held the money, to return it to the petitioner's attorney. The latter refused to receive it, and the clerk has it.

The petitioner, being in jail, petitioned this Court to grant certiorari, alleging as errors the adjudication that he was guilty of contempt and the manner of sentencing him. We granted the writ and admitted him to bail pending decision.

We do not review the finding that the petitioner's conduct was a contempt summarily punishable by the court, for we are of opinion that the errors involved in the sentence require that he shall be freed from further imprisonment.

When, on October 1, the fine was paid to the clerk and receipted for by him, the petitioner had complied with a portion of the sentence which could lawfully have been imposed. As the judgment of the court was thus executed so as to be a full satisfaction of one of the alternative penalties of the law, the power of the court was at an end.¹ It is unimportant that the fine had not been covered into the treasury; it had been paid to the clerk, the officer of the United States authorized to receive it,² and petitioner's rights did not depend upon what that officer subsequently did with the money.³

It follows that the subsequent amendment of the sentence could not avoid the satisfaction of the judgment, and the attempt to accomplish that end was a nullity. Since one valid alternative provision of the original sentence has been satisfied, the petitioner is entitled to be freed of further restraint.

¹ *Ex parte Lange*, *supra*, 176.

² *In re Fletcher*, 71 App. D. C. 108, 107 F. 2d 666, 668.

³ *Ex parte Lange*, *supra*, p. 176; and compare the dissenting opinion, pp. 180, 190, 199-200; *Yavorsky v. United States*, 1 F. 2d 169, 171; *Moss v. United States*, 23 App. D. C. 475, 485.

The judgment is reversed and the cause remanded with directions that the petitioner be discharged from custody.

Reversed.

MR. CHIEF JUSTICE STONE, dissenting:

In *Ex parte Lange*, 18 Wall. 163, the trial court did not remit or offer to remit the fine which the offender had paid. The opinion was careful to point out (p. 175) that the fine paid had been covered into the treasury and that the courts were powerless to direct its return. That decision thus lends no support to that now rendered that the choice rests with the offender rather than with the court whether he shall be punished by fine or by imprisonment, either of which alone the court could have lawfully imposed; and that by payment of the fine, imposed and accepted under mistake of law and immediately remitted, he may irrevocably escape punishment by imprisonment.

So far as *Ex parte Lange* is regarded here as resting on the ground that it would be double jeopardy to compel the offender to serve the prison sentence after remission of the fine on the same day on which it was paid, I think its authority should be reëxamined and rejected. The substance of the punishment imposed on the offender by a fine is in depriving him of the money he has paid. Here he has not been deprived of the money paid to the clerk of the court, for the fine was remitted on the same day on which it was paid, and he was then free to reclaim it. Since he is shown to have suffered no more from the imposition of the fine than if the clerk had refused to receive it when tendered, there is I think no substance in the contention that he will suffer double punishment if compelled to serve out his prison sentence.

The Constitution is concerned with matters of substance not of form. Nothing in its words or history forbids a common sense application of its provisions, or excludes

them from the operation of the principle *de minimis*. I can hardly suppose that we would hold unconstitutional an Act of Congress commanding prompt return of a fine mistakenly imposed under these circumstances, and requiring the prison sentence originally imposed to be served. Yet *Ex parte Lange* as interpreted and applied here rests on constitutional grounds which are equally applicable to an Act of Congress.

I agree with the suggestion of the Government that the court's second order resentencing petitioner could not rightly be entered without affording petitioner or his counsel an opportunity to be present, and that the cause should, on that account, be remanded for further proceedings.

TILLER, EXECUTOR, *v.* ATLANTIC COAST LINE
RAILROAD CO.

CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE
FOURTH CIRCUIT.

No. 296. Argued January 4, 1943.—Decided February 1, 1943.

1. The 1939 amendment of the Federal Employers' Liability Act, which provides that in an action against a common carrier under the Act to recover damages for injury or death of an employee, "such employee shall not be held to have assumed the risks of his employment in any case where such injury or death resulted in whole or in part from the negligence of any of the officers, agents, or employees of such carrier," obliterated from that law every vestige of the doctrine of assumption of risk. P. 58.
2. The rule of decision in cases under the Act as amended is the doctrine of comparative negligence, which permits the jury to weigh the fault of the injured employee and to compare it with the negligence of the employer, and thereupon to do justice to both. P. 65.
3. The question of the negligence of the employer is to be determined by the general rule which defines negligence as the lack of due care under the circumstances; or the failure to do what a reasonable and prudent man would ordinarily have done under the circumstances; or doing what such a person under the circumstances would not have