It is unfortunate that the Illinois court in the instant case followed the dictates of *stare decisis*.[13] Probably the only solution now lies in recourse to the legislature, a step which has already been taken by several states.[14]

Conflict of Laws—Civil Death—Application of Local Penalty to Conviction in Another State—[Federal].—The plaintiff was sentenced in Florida to life imprisonment for murder. Having been paroled, he brought suit in a federal court in New York on a tort claim arising in New York. The sole question was whether § 511 of the Penal Law of New York,[1] which states that "a person sentenced to imprisonment for life is thereafter deemed civilly dead," prevented the plaintiff from suing. *Held*, that the New York statute was not applicable to a person sentenced to life imprisonment in another state. *Panko v. Endicott Johnson Corporation*.[2]

The restriction placed upon the application of the New York statute in the instant case is in accord with the tendency to mitigate the harshness of common law civil death.[3] This policy has reduced the effect of civil death in New York to the dissolution of the marriage of the person sentenced,[4] the loss of his political rights, and the loss of his right to sue. But this latter vestige of common law civil death seems to be without justification today.[5] It cannot be supported as a deterrent to crime. It may

[13] For cases holding that the de jure officer may not recover salary from a city after it has already been paid to the de facto incumbent see: People *ex rel.* Sartisan v. Schmidt, 281 Ill. 211, 117 N.E. 1037 (1917); People *ex rel.* Durante v. Burdett, 283 Ill. 124, 118 N.E. 1009 (1918); Hittell v. Chicago, 327 Ill. 443, 158 N.E. 683 (1927). Two widely cited cases have held that the de jure officer may recover from the de facto officer the salary the latter has received: Mayfield v. Moore, 53 Ill. 428 (1870); Kreitz v. Behrensmeyer, 149 Ill. 496, 36 N.E. 983 (1894).

[14] See Cal. Pol. Code 1937, § 936, 7; Mo. Rev. Stat. 1929, § 11423.

[1] Cahill's Cons. L. of New York 1930, c. 41, § 511.

[2] 24 F. Supp. 678 (N.Y. 1938).

[3] Strict common law civil death which resulted only from profession in religion, abjuration of the realm, and banishment from the realm, had practically the same effect on one's legal rights as natural death. Co. Litt.* 133a (§ 200); 2 Woerner, Administration 699 note 11 (3d ed. 1923). Civil death following attainder for treason or felony had less radical consequences. It resulted primarily in the loss of political rights, such as the right to vote or hold office, and in the loss of the right to sue and to be a witness. 1 Chitty, Criminal Law 723 (2d ed. 1826); 3 Coke, Institutes 215 (1797). It is this milder form which the New York courts have held to be the pattern of civil death in that state. New York statutes abolishing disqualification of a person sentenced to life imprisonment as a witness and providing the appointment of a committee to manage the real and personal estate of a life convict have further abated the rigour of the early form of civil death.

[4] Avery v. Everett, 110 N.Y. 317, 18 N.E. 148 (1888); Gargan v. Sculley, 82 Misc. 667, 144 N.Y. Supp. 205 (1913); Glielmi v. Glielmi, 72 Misc. 511, 131 N.Y. Supp. 373 (1911).

[5] Before the abolition of forfeiture and corruption of blood, the suspension of the right to sue might have been supported on the ground that a person convicted of a felony could not be a party in any action as a consequence of the forfeiture of his estate and the corruption of his blood.

give a windfall to debtors, and it may inflict an unmerited punishment on innocent third persons,[6] namely, on the dependents of the person sentenced and his heirs.[7] This savors of forfeiture and corruption of blood which have long been prohibited in New York.[8]

The disfavor with which the courts regard the suspension of the right to sue is manifested by their tendency to restrict its application.[9] In following this tendency the court has a sound basis on which to stand. Because it deprives a person of a civil right which he previously possessed, the civil death statute is in effect a penal law.[10] A penal statute will not be applied, even by the courts of the state in which it is enacted, to an act taking place wholly in another state.[11] Furthermore, the strictness with which penal statutes are ordinarily construed[12] prevents the application of such a statute to a situation which, like that in the instant case, does not unequivocally come within its terms.[13] Finally, a sentence to imprisonment under the laws of one state can have no effect by way of penalty or disability, beyond the limits of the state in which the judgment is rendered, in the absence of an express statute in another state giving effect to such sentence.[14] The decision is also consistent with the general

[6] As a reason for confining the application of infamy statutes, Beale suggested an analogous argument, namely, that they inflict an unmerited punishment on third persons—those who need the convict's testimony. Beale, Progress of the Law, 1919–20, 34 Harv. L. Rev. 50, 62 (1920).

[7] The force of this argument is greater in other states than New York because New York has provided by statute for the appointment of a committee to manage the real and personal property of life convicts. Cahill's Cons. L. of New York, c. 10b, §§ 320, 321 (2d ed. 1930). The cases do not indicate what effect this provision has on the right to sue.

[8] They were abolished by the legislative act of the 26th of March, 1796, Platner v. Sherwood, 6 Johns. Ch. (N.Y.) 118 (1822). See Cahill's Cons. L. of New York, c. 41, § 512 (2d ed. 1930).

[9] A life convict in New York has been allowed to sue the state for tort injuries suffered in prison work. Bhullar v. State, 248 App. Div. 802, 289 N.Y. Supp. 41 (1936). If a plaintiff has instituted suit, and is then convicted and sentenced, he is entitled to go on with his action. Bowles v. Habermann, 95 N.Y. 246 (1884).

[10] Huntington v. Attrill, 146 U.S. 657, 673 (1892); Cummings v. State of Missouri, 4 Wall. (U.S.) 277 (1866); Bowles v. Habermann, 95 N.Y. 246 (1884); Beale, The Progress of the Law, 1919–1920, 34 Harv. L. Rev. 50, 62 (1920).

[11] 1 Wharton, Conflict of Laws 20 (3d ed. 1905). In State v. Knight, 1 Taylor (N.C.) 143 (1799), the court expressly declared "one state cannot punish crimes committed in another state." For a thorough discussion of the considerations involved in the application of the principle stated, see Stimson, Conflict of Criminal Law 1–8 (1936); see also Stumberg, Conflict of Laws 53, note 5 (1937).

[12] Doubts as to correct interpretation of penal statutes are resolved in favor of the accused. People v. Mangan, 262 N.Y. 508, 188 N.E. 41 (1933).

[13] For examples of strict construction, see the cases holding that statutes providing special consequences for a sentence "to imprisonment in the state courts" do not apply to a sentence to imprisonment in the reformatory, Sample v. Horner, 61 Kan. 738, 60 Pac. 745 (1900), or to a sentence in the county penitentiary, Bowles v. Habermann, 95 N.Y. 246 (1884), and not even to sentences in the federal courts, Presbury v. Hull, 34 Mo. 29 (1863).

[14] Logan v. United States, 144 U.S. 263 (1892); Commonwealth v. Green, 17 Mass. 515 (1822); Sims v. Sims, 75 N.Y. 466 (1878); People v. Gutterson, 244 N.Y. 243, 155 N.E. 113 (1926).

treatment of analogous statutes attaching special disabilities to a sentence of imprisonment.[15] It may finally be justified by the consideration that a state may be unwilling to attach penal consequences to a judgment rendered in proceedings, the fairness of which it cannot control.

The court held correctly that *Jones v. Jones*,[16] on which the defendant relied for applying the statute to the plaintiff, was distinguishable from the instant case. The *Jones* case held that a statute providing that a second marriage was not void if contracted after the first spouse had been finally sentenced to life imprisonment was applicable to a sentence in a foreign jurisdiction. But the decision was motivated by a desire to liberate the spouse of the person sentenced and was not intended to provide an additional penalty.

Conflict of Laws—Divorces Entitled to Full Faith and Credit—Qualification of Haddock Case—[Federal].—In 1925 the District Court of the District of Columbia granted the plaintiff a separation from the defendant, his wife, on ground of the latter's cruelty. In 1929 the plaintiff started suit in Virginia to secure an absolute divorce on the ground of desertion, the defendant being personally served in the District of Columbia. The defendant appeared specially and unsuccessfully contested the plaintiff's Virginia domicile. Upon the defendant's failure to plead to the merits within a ten-day period granted by the court, the case proceeded to judgment for the plaintiff. The husband, the plaintiff, remarried in 1933, and in 1935 sought to set aside the 1925 decree for separate maintenance and to get recognition of the Virginia decree. *Held*, that the defendant could not relitigate the good faith of the plaintiff's Virginia domicile, and also that the Virginia decree was entitled to recognition in the District of Columbia. *Davis v. Davis*.[1]

The holding that the Virginia court's decision as to the husband's Virginia domicile was to be regarded as *res judicata* in the principal case is discussed in connection with a separate note in this Review.[2] This note deals with the question of the recognition of the Virginia decree: Although a foreign divorce will not be recognized unless one spouse at least be domiciled in the jurisdiction granting the divorce,[3] according to the

[15] Among the analogous statutes which the courts have refused to apply to convictions or sentences in a foreign jurisdiction are those providing that a conviction of a felony or sentence to imprisonment shall be a ground for divorce, Leonard v. Leonard, 151 Mass. 151, 23 N.E. 732 (1890), or shall result in disbarment as an attorney, *In re* Ebbs, 150 N.C. 40, 63 S.E. 190 (1908), or in disqualification as an executor, *In re* Cohen's Will, 164 Misc. 98, 298 N.Y. Supp. 368 (1937), or in increased punishment for subsequent crimes, People v. Gutterson, 244 N.Y. 243, 155 N.E. 113 (1926), or in disqualification as a witness, Sims v. Sims, 75 N.Y. 466 (1878), Logan v. United States, 144 U.S. 263 (1892).

[16] 249 App. Div. 470, 292 N.Y. Supp. 705 (1937), aff'd without opinion, 274 N.Y. 574, 10 N.E. (2d) 558 (1937).

[1] 59 S. Ct. 3 (1938). The decision arose from the repeated refusal of the Court of Appeals of the District of Columbia to recognize the Virginia divorce: 57 F. (2d) 414 (App. D.C. 1932), and 96 F. (2d) 512 (App. D.C. 1938).

[2] 6 Univ. Chi. L. Rev. 293 (1939).

[3] Andrews v. Andrews, 188 U.S. 14 (1903).