

process of law.⁹⁶⁸ Nor does a statute providing for the recovery of reasonable attorney's fees in actions on small claims subject unsuccessful defendants to any unconstitutional deprivation.⁹⁶⁹ Congress may, however, severely restrict attorney's fees in an effort to keep an administrative claims proceeding informal.⁹⁷⁰

Equally consistent with the requirements of due process is a statutory procedure whereby a prosecutor of a case is adjudged liable for costs, and committed to jail in default of payment thereof, whenever the court or jury, after according him an opportunity to present evidence of good faith, finds that he instituted the prosecution without probable cause and from malicious motives.⁹⁷¹ Also, as a reasonable incentive for prompt settlement without suit of just demands of a class receiving special legislative treatment, such as common carriers and insurance companies together with their patrons, a state may permit harassed litigants to recover penalties in the form of attorney's fees or damages.⁹⁷²

By virtue of its plenary power to prescribe the character of the sentence which shall be awarded against those found guilty of crime, a state may provide that a public officer embezzling public money shall, notwithstanding that he has made restitution, suffer not only imprisonment but also pay a fine equal to double the amount embezzled, which shall operate as a judgment for the use of persons whose money was embezzled. Whatever this fine is called, whether a penalty, or punishment, or civil judgment, it comes to the convict as the result of his crime.⁹⁷³ On the other hand, when appellant, by its refusal to surrender certain assets, was adjudged in contempt for frustrating enforcement of a judgment obtained against it, dismissal of its appeal from the first judgment was not a pen-

⁹⁶⁸ *Ballard v. Hunter*, 204 U.S. 241, 259 (1907).

⁹⁶⁹ *Missouri, Kansas & Texas Ry. v. Cade*, 233 U.S. 642, 650 (1914).

⁹⁷⁰ *Walters v. National Ass'n of Radiation Survivors*, 473 U.S. 305 (1985) (limitation of attorneys' fees to \$10 in veterans benefit proceedings does not violate claimants' Fifth Amendment due process rights absent a showing of probability of error in the proceedings that presence of attorneys would sharply diminish). *See also* *United States Dep't of Labor v. Triplett*, 494 U.S. 715 (1990) (upholding regulations under the Black Lung Benefits Act prohibiting contractual fee arrangements).

⁹⁷¹ *Lowe v. Kansas*, 163 U.S. 81 (1896). Consider, however, the possible bearing of *Giaccio v. Pennsylvania*, 382 U.S. 399 (1966) (statute allowing jury to impose costs on acquitted defendant, but containing no standards to guide discretion, violates due process).

⁹⁷² *Yazoo & Miss. R.R. v. Jackson Vinegar Co.*, 226 U.S. 217 (1912); *Chicago & Northwestern Ry. v. Nye Schneider Fowler Co.*, 260 U.S. 35, 43-44 (1922); *Hartford Life Ins. Co. v. Blincoe*, 255 U.S. 129, 139 (1921); *Life & Casualty Co. v. McCray*, 291 U.S. 566 (1934).

⁹⁷³ *Coffey v. Harlan County*, 204 U.S. 659, 663, 665 (1907).