Maryland Law Review

Volume 17 | Issue 2 Article 11

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Bankruptcy — Judgment Creditor May Go Behind His Judgment To Show That, Due To The Underlying Transaction, The Debt Is Not Barred By Discharge In Bankruptcy. *United States Credit Bureau v. Manning, 305 P. 2d 970 (Cal. App. 1957).* Plaintiff brought this action to renew a judgment recovered on a note given by defendant to cover funds which he had held as an agent and which he had misappropriated. Defendant pleaded that the judgment debt was barred by a subsequent discharge in bankruptcy since it did not appear on the face of the judgment that the original debt was based on fraud or defalcation. (Section 17a(4) of the Bankruptcy Act specifically provides that debts so incurred are not released by a bankruptcy discharge. 11 U. S. C. A., Sec. 35a(4)). The lower court permitted plaintiff to introduce extrinsic evidence of the origin of the original indebtedness but rendered judgment for the defendant. On appeal, *held,* reversed. Although the weight of authority is *contra,* California is aligned with the minority view that the nondischargeable character of the original indebtedness may be shown by evidence *dehors* the record of the judgment or judgment proceedings. The note was given as evidence of the debt growing out of the defalcation and not as satisfaction thereof. The majority view is fallacious since in an action on the note if the defense of bankruptcy were raised it would be permissible to show that the underlying debt was created by fraud or other excepted cause, and the rendition of judgment does not change the character of the indebtedness. (Citing *Fidelity & Casualty Co. of New York v. Golombosky,* 133 Conn. 317, 50 A. 2d 817 (1946)).

Constitutional Law — Court Rule Prohibiting Taking Of Photographs Within 40 Feet Of Courtroom Is Not A Violation Of Freedom Of The Press. *In Re Mack, 386 Pa. 251, 126 A. 2d 679 (1956).* Defendants were attached for criminal contempt for violating a court order prohibiting the taking of photographs inside or within forty feet of the entrance to a courtroom by photographing a convicted criminal on his way to receive sentence. The photographs were taken by infra-red light and caused no disturbance. On appeal, *held,* modified and affirmed. The freedom of the

press is subject to reasonable rules to maintain the dignity of the court and the orderly administration of justice, and the rule in question was reasonably related to this aim and within the power of the court. Also, the court was charged with a duty to protect the right of privacy of the prisoner, a right unaffected by his status and which he was unable, under involuntary restraint, to protect for himself.

The Pennsylvania court cited the 1927 decision of the Maryland Court of Appeals in *Ex Parte Sturm,* 152 Md. 114, 136 Atl. 312, 51 A. L. R. 356 (1927). Certain photographers had taken a flash picture of an accused murderer outside the courtroom door and had taken others within the courtroom during the course of the trial with a concealed camera. Subsequent to the taking of the first picture but prior to its publication and to the taking of the pictures in court, the trial judge prohibited the taking of pictures and requested the surrender of the one taken. These pictures were published and the trial court found the photographers and publishers guilty of contempt. In dismissing the appeals from this action the Court of Appeals held that the court was within its power to issue such orders to protect the dignity and decorum of the tribunal and to protect the prisoner and other participants from an unnecessary and perhaps objectionable degree of publicity. *Cf.* Rules of the Supreme Bench of Baltimore City (1947), Rule 3.

Criminal Law — McNaghten Test Of Criminal Insanity Will Not Be Modified To Permit Defense That Conduct Was Product Of Mental Disease. *Cole v. State,* ..... *Md.* ....., *128 A. 2d 437 (1957).* Defendant was charged with the brutal rape of a four year old girl, to which he pleaded not guilty by reason of insanity. He was admittedly sane under the *McNaghten* test, 10 Cl. & Fin. 200, 8 Eng. Rep. 718 (1843), being able to distinguish between right and wrong, but sought to introduce in evidence testimony that his conduct was the product of a mental disease. The proffer was rejected and the defendant was adjudged guilty. On appeal, *held,* affirmed. Maryland adheres to the *McNaghten* test, and modification must be left to the legislature.

The court's refusal to modify the *McNaghten* test was consistent with their earlier rejection of the irresistible impulse modification [*Spencer v. State,* 69 Md. 28, 13 A. 809 (1888)] and the *Durham v. United States,* 214 F. 2d 866 (D. C. Cir., 1954) test of whether the act was the product of the mental disease [*Thomas v. State,* 206 Md. 575, 112 A. 2d 913 (1955)]. See, generally, XV Md. L. Rev. 44, 255

(1955, 1956). Two recent federal cases should also be noted. In *Andersen v. United States,* 237 F. 2d 118 (9th Cir., 1956), the Ninth Circuit aligned itself with the majority. The court remarked at page 127, "This Court has no desire to join the courts of New Hampshire and the District of Columbia in their 'magnificent isolation' of rebellion against McNaghten, even though New Hampshire has been travelling down that lonesome road since 1870." In *Douglas v. United States,* 239 F. 2d 52 (1956), the Court of Appeals for the District of Columbia Circuit held that by adopting the product test in the *Durham* case, the court did not intend to bar evidence framed in terms of the *McNaghten* test, and that it is still proper to receive evidence in terms of the latter. See also American Law Institute *Model Penal Code,* Tentative Draft No. 4 (1955), Sec. 4.01.

Domestic Relations — Action For Deceit Will Lie For Fraudulent Inducement To Enter Into Void Marriage Followed By Cohabitation. *Spellens v. Spellens, 305 P. 2d 628 (Cal. App. 1956), reh. den. 1957.* Defendant had induced plaintiff to divorce her husband on the promise that he would marry her and support her and her children. While the decree of divorce was yet interlocutory, he took her to Mexico where they went through a marriage ceremony which he represented would be valid everywhere but which he knew to be a nullity. The parties then returned to California where they lived as man and wife about a year, during which period the defendant was extremely cruel to her. He then suggested that they separate, informing her that their marriage was a nullity. Eventually plaintiff brought suit to have the marriage declared valid and to obtain separate maintenance, or in the alternative, if the marriage were invalid, for damages for fraud. Other causes of action were later added. The lower court granted defendant's motion for non-suit of the fraud claim on the ground that it was barred by WEST'S ANN. CIV. CODE, Sec. 43.5(d) as an action for breach of promise of marriage. On appeal, *held,* reversed. The action is not for breach of promise to marry but for fraud inducing plaintiff to enter into the marriage relation. An innocent woman who is induced by fraud to contract a void marriage and who subsequently cohabits with her putative spouse in performance of her conjugal obligations is entitled to recover damages in an action for fraud. [Citing *inter alia,* RESTATEMENT OF TORTS, Sec. 555]. There having been a confidential relationship between the parties, the misrepresentation of law as to the

validity of the marriage is fraudulent. The action may be maintained regardless of the fact that no financial loss is shown, since the woman so imposed upon has suffered a change in status by being enticed into a meretricious liaison.

The case solves the problem of how to compensate the deceived party, since there having been no marriage, no alimony may be awarded, and the promises which induced the divorce and remarriage are unenforceable as against public policy. The action for fraud in this case was in addition to a recovery of one half of the property accumulated during the existence of the putative marriage, a recovery allowed by equitable analogy to the community property rules which would have applied had the marriage been valid.

Domestic Relations — Cohabitation Pursuant To A Second Marriage Following A Voidable Divorce Is Not Adultery For Purposes Of Recrimination If The Party Acted In Good Faith. *Harmon v. Harmon, 245 N. C. 83, 95 S. E. 2d 355 (1956).* H, a domiciliary of North Carolina, brought an action for divorce there against W a domiciliary of Florida, based on a separation of more than two years. An affidavit for service by publication was made, giving W's proper Florida address. Publication was duly made in a North Carolina paper. W filed no answer, and H was granted an absolute divorce. Several weeks later, H married. W then appeared and moved to vacate the divorce decree on the ground that the court clerk had failed to send her a copy of the notice of service by publication as required by North Carolina statute. The court held that the service of process was incomplete and set aside the decree. The clerk was ordered to comply with the statute, and W was given time in which to answer. In her answer W admitted that she and H had lived apart more than two years, but alleged as a bar to the relief sought by H that he had committed adultery by cohabiting with his second wife. The court over W's objection charged the jury as a matter of law that the relations between H and his second wife between the time the divorce decree was rendered and set aside would not constitute adultery unless H knew or should have known that the decree was invalid and his second marriage ineffective. Verdict and judgment were for H and W appealed. *Held,* affirmed. Cohabitation pursuant to a second marriage constitutes adultery if the parties to the second marriage obtained the divorce decree through collusion and in bad faith or by fraud. There being no evi-

dence that H acted otherwise than in good faith, though the first marriage was valid and subsisting, his second marriage and cohabitation will not bar the divorce.

Since Maryland holds that recrimination is no defense to a suit on grounds of voluntary separation (and, possibly, other non-culpatory grounds: insanity, imprisonment), the specific Harmon situation could not arise here. Matysek v. Matysek, 212 Md. 44, 128 A. 2d 627 (1957). For divorce on culpatory grounds, compare *Geisselman v. Geisselman*, 134 Md. 453, 462, 107 A. 185 (1919), holding that marriage and cohabitation with a second wife under the mistaken belief that the conviction and imprisonment of the first dissolved their marriage was adultery which recriminated the husband's later action for divorce, but stating: "We are not prepared to hold, however, that in no case should relief be granted, because it is shown that the plaintiff had sexual intercourse with a woman other than his real wife, if it was the result of a *bona fide* mistake of fact which led the husband to marry the other woman and cohabit with her, in the full belief that she was his lawful wife — provided the circumstances were such that he was justified in his belief that the first marriage had ended and that he had not been negligent or lax in endeavoring to ascertain the actual facts before he entered into the second marriage."

Domestic Relations — Provision In Divorce Decree Stating Child Must Be "Reared In Catholic Religion" Held Too Vague. *Lynch v. Uhlenhopp, 78 N. W. 2d 491 (Iowa, 1956).* While divorce proceedings were pending, petitioner and her husband entered into an agreement providing that she should have custody of their younger son and that "the said child shall be reared in the Roman Catholic Religion." This agreement was subsequently incorporated in the divorce decree. Petitioner did not take the child to a Roman Catholic church but instead sent him to a Congregational church. She was found guilty of contempt and brought certiorari proceedings to review the judgment. *Held:* writ sustained. To be enforceable by contempt proceedings, a decree must be so clear, definite, and specific that the petitioner could readily understand it and so be capable of performing what was required of her. Since the provision in question embodies such vague terms as "religion" and "reared", the exact duties of the plaintiff are unclear, and the provision is void for lack of certainty. Although not necessary to this decision, enforcement would also violate the freedom of religion provisions of the First

Amendment of the federal Constitution as made applicable to state action by the Fourteenth. Four of the nine justices dissented.

This appears to be a case of first impression on the particular problem involved. The cases in this general area are collected and discussed by Pfeffer in *Religion in the Upbringing of Children,* 35 Boston U. L. Rev. 334 (1955), which at pages 358-360, foreshadowed the dictum in the opinion above.

Insurance — Successive Collisions With Three Motorcycles Being Driven In Echelon Is One Accident Within Automobile Liability Policy. *Truck Insurance Exchange v. Rohde, 303 P. 2d 659 (Wash., 1956).* Insured, while operating his automobile in a negligent manner, collided successively with three motorcycles being driven in echelon about seventy-five feet apart. His insurance company, whose liability was limited to $50,000 bodily injury and $5,000 property damage for each occurrence or accident, sought a declaratory judgment to determine the extent of its liability. The trial court held that there was a separate accident or occurrence as to each motorcycle, to each of which the policy limits applied. On appeal, *held,* reversed. The terms "accident" and "occurrence" included all injuries or damage within the scope of a single act of negligence, regardless of the fact that separate defenses (such as last clear chance or contributory negligence) might exist as to each motorcycle driver. Three of the eight justices dissented on the grounds that insurance contracts should be construed to favor the insured and that the event itself, rather than the proximate cause, should be considered.

Motor Vehicles — The decision in *Boone v. United States,* 235 F. 2d 939 (4th Cir., 1956), reported in the last issue of the REVIEW (Vol. XVII, p. 88), holding that a motor vehicle obtained by embezzlement was stolen within the meaning of the Dyer Act, has been upheld in *United States v. Turley,* 77 S. Ct. 397 (1957), decided after the REVIEW had gone to press.

Taxation — Shareholder Compelled To Pay As Guarantor On Note Of Insolvent Corporation May Deduct Only For A Short Term Capital Loss. *Putnam v. Commissioner of Internal Revenue, 77 S. Ct. 175 (1956).* Petitioner, a lawyer, guaranteed the notes of a newspaper corporation in which he owned stock. The corporation became insolvent

and he was compelled to pay the notes. The Commissioner determined that the loss was a nonbusiness bad debt to be treated as a short term capital loss, and his determination was sustained by the Tax Court and the Court of Appeals for the Eighth Circuit (224 F. 2d 947). Due to a conflict in the circuits, the Supreme Court granted certiorari and affirmed. When the guarantor pays the debt, the result is not a new debt but, by subrogation, a shift of the old. The loss thus sustained is by nature a loss from the worthlessness of a debt and not an ordinary loss in a transaction entered into for profit.

The majority further justified their position by pointing out that there was no real or economic difference between the loss of a loan made directly to a corporation and one made indirectly in the form of a guaranteed bank loan. Mr. Justice Harlan, dissenting, felt that the nonbusiness bad debt provision was intended to prevent the deduction of "family" or "friendly" loans which were in reality gifts and not to remove the type of loan here involved from the loss section.

Taxation — Tax Court Must Follow The Decisions Of The Court Of Appeals Of The Appropriate Circuit. *Stacey Manufacturing Co. v. Commissioner of Int. Rev., 237 F. 2d 605 (6th Cir., 1956).* In a prior case, the decision of the Tax Court had been reversed by the Court of Appeals for the Sixth Circuit. In the present case, the Tax Court found the facts to be the same and acknowledged the rule laid down by the Court of Appeals, but declined to follow it. On petition to review, *held,* reversed and remanded. The desire of the Tax Court to establish a uniform rule does not empower it to disregard the decisions of the several reviewing courts of appeal, which must be followed by the Tax Court as by the district courts until reversed by the Supreme Court.

Torts — Hospital Held Liable As Employer For Negligence Of Technician In Blood Test. *Berg v. New York Society for Relief of Ruptured and Crippled, 1 N. Y. 2d 499, 136 N. E. 2d 523 (1956).* Plaintiff sued defendant hospital and others for injuries resulting from the negligence of a technician in connection with a blood test preparatory to a transfusion. The technician was a salaried employee who had received four to six weeks training and whose work was of a routine nature. Judgment was for plaintiff (136 N. Y. S. 2d 528) and the hospital appealed. The Appellate

Division of the Supreme Court reversed (286 App. Div. 783, 146 N. Y. S. 2d 548). On appeal, *held,* reversed. The New York rule that non-proprietary hospitals are exempt from liability for negligent acts or omissions of physicians and nurses in their professional medical capacities [*Schloendorff v. Society of New York Hosp.*, 211 N. Y. 125, 105 N. E. 92 (1914)], does not apply to non-professional employees such as this technician, though performing a "medical act".

The Maryland rule gives much broader immunity and denies any recovery against a hospital even by a paying patient. In resisting an attempt to liberalize this rule, the Court of Appeals in *Howard v. South Balto. Gen. Hosp.*, 191 Md. 617, 62 A. 2d 574 (1948), held that, whatever the merits of the argument as an original proposition, the court was bound by prior decisions and the fact that the legislature in 1947 had refused to enact a statute to prevent the pleading of the immunity. The legislature enacted instead Md. Code (1951), Art. 48A, Sec. 82, which has been interpreted in *Gorman v. St. Paul Fire and Marine Insurance Co.*, 210 Md. 1, 121 A. 2d 812 (1956), noted in 17 Md. L. Rev. 159 (1957), *supra,* to mean that a hospital carrying liability insurance is estopped to assert its immunity to the extent of the collectible insurance. The general subject is discussed in 25 A. L. R. 29 which notes at page 160 that the leading case in Maryland, *Perry v. House of Refuge,* 63 Md. 20 (1885), was decided on the authority of *Heriot's Hospital v. Ross,* 12 Cl. & Fin. 507, 8 Eng. Rep. 1508 (1846), which had already been repudiated on that point in England. For the trend in this area in another jurisdiction, see *Avellone v. St. John's Hospital,* 165 Oh. St. 467, 135 N. E. 2d 410 (1956).

Torts — Release Under Uniform Contribution Among Tortfeasors Act Reduces Excess Verdicts And Discharges Verdicts Smaller Than Voluntary Settlements. *Daugherty v. Hershberger, 126 A. 2d 730 (Pa., 1956).* A, B and C, were involved in a three-car collision. A and his six passengers negotiated settlements of their claims against C which were approved by the court. Pursuant to the settlements, the claimants executed releases in favor of C in accordance with the Uniform Contribution Among Tortfeasors Act (12 P. S. Sec. 2082 *et seq.*), discharging C and providing that the damages recoverable against all other tortfeasors were reduced to the extent of C's pro-rata share, *i.e.*, 50%. Suits were then instituted by claimants against B, the joint tortfeasor. The cases were consolidated, and resulted in a

total verdict $1,780.01 less than C's settlement, the individual claimants receiving amounts from $1,220.23 more than the settlement to $3,000 less. B moved to compel reduction of the excess verdicts by half and to compel discharge of the remainder. The claimants contended that the releases to C provided for a reduction of the damages recoverable against others only to the extent of 50% *of such damages,* irrespective of the amounts recovered by settlement. The lower court agreed, but on appeal, *held,* reversed. Under section 4 of the Uniform Act, B is entitled to a reduction of the excess verdicts by 50% and discharge or satisfaction of the remainder. At common law an injured party could have but one satisfaction for an injury, and a release in consideration of satisfaction by one tortfeasor released all others liable for the same injury. The Uniform Act merely enables an injured party to settle with one or more, and, subject to the act, retain his right of recourse against the remaining tortfeasors for additional compensation. One of the six justices dissented on grounds that B, the tortfeasor, was benefiting by C's generosity or miscalculation and that the holding of the majority would discourage claimants from settling.

The Uniform Act was adopted in Maryland in 1941, [Md. Code (1951) Art. 50, Sec. 20 *et seq.*], but this is the first case in which a court of last resort in Maryland or elsewhere has been called upon to interpret the reduction clause of section 4 (Sec. 23) in a case of this type. In *Maryland Lumber Co. v. White,* 205 Md. 180, 107 A. 2d 73 (1954), involving an order of satisfaction for which one tortfeasor, who was *prima facie* liable, had paid $400.00, the Court of Appeals noted at page 199: "Before the statute, the appellees would have been entitled to only one satisfaction for the tort, even though two or more parties might have contributed to causing their loss, and this rule is not changed by the statute relating to contributions." The court held (p. 200) that the order of satisfaction was a release within the meaning of Section 23 and that ". . . the claim against the other tortfeasor should be reduced by the amount of the consideration paid for the order of satisfaction." (Presumably the $400 was less than 50% of the claim).