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Constitutional Law — Uniform Law To Secure Attendance Of Witnesses Sustained. *People of the State of New York v. O'Neill, 79 S. Ct. 564 (1959).* Plaintiff, a citizen of Illinois, traveled to Florida to attend a convention. While in Florida, plaintiff was served with a summons requiring him to appear at a hearing held pursuant to the provisions of Florida's "Uniform Law to Secure the Attendance of Witnesses From Within or Without a State in Criminal Proceedings" [F.S.A. § 942.01-942.06] to determine whether plaintiff was to be given into the custody of New York authorities and transported to New York to testify in a grand jury proceeding in that state, in response to a request from New York under the Act. Affirming the trial court ruling refusing New York's request, the Supreme Court of Florida held that the uniform act on its face violated the Privileges and Immunities Clauses of Article IV, Section 2 and the Fourteenth Amendment of the United States Constitution. Granting certiorari because of the constitutional doubt thrown upon the Uniform Act (adopted in 42 states and Puerto Rico), the Supreme Court of the United States held that the Act did not violate either provision. Declining to express an opinion on whether or not the absence of any provision for bail in the Act constituted a denial of due process, because this was not made a basis for the decision below and was not clearly before the Court, the majority opinion rejected the contention raised by the dissenting opinions of Justices Douglas and Black that the right of freedom of movement of a United States citizen was violated by the statute and that the states could not extradite witnesses without a specific grant of authority to do so. They found the Act to be "within the unrestricted area of action left to the States by the Constitution," and that there had been no showing of discrimination within the prohibition of the privileges and immunities clause, or arbitrariness or unreasonableness to bring the condemnation of due process.

As pointed out by the majority opinion, no witness need be transported to the requesting state under the terms of the statute unless the transporting state finds that "the witness is material and necessary; that the trip to the requesting state would not involve hardship to the witness; that the laws of the requesting State and States through

which the witness must travel grant him immunity from arrest and the service of civil and criminal process" [568]. In addition to these requirements the witness must receive ten cents a mile to and from the requesting state and five dollars a day for every day he is required to travel and attend as a witness.

Maryland has adopted the Uniform Act with one notable difference, i.e., the Maryland Act contains an additional provision specifically admitting the witness to bail. 3 MD. CODE (1957) Article 27, Sections 617-623, with Sections 618(c) and 619(a) admitting witnesses to bail. The Act has not yet been construed in Maryland

Corporations — What Constitutes Doing Business. *MacInnes v. Fontainebleau Hotel Corp., 257 F. 2d 832 (2nd Cir., 1958).* Defendant Florida hotel corporation maintained an office in New York for the purpose of receiving and forwarding reservation requests, distributing brochures, and answering inquiries. Defendant maintained three employees in its New York office, kept an inactive bank account and advertised itself as defendant's New York reservation office. Plaintiff instituted a slander suit against defendant with service on this New York "office." The Court of Appeals for the Second Circuit set aside the service on the ground that defendant was not doing business in New York. The court distinguished the instant case from those cases where "traveling salesmen take orders for interstate delivery and use office space in other states as headquarters for their operations" [834]. The court laid emphasis on the nature of defendant's business and refused " 'to impute the idea of locality to a corporation, except by virtue of those acts which realize its purposes' " [834]. Here all the facilities of the defendant were confined to the Miami Beach area. As the court pointed out, none had been or could be brought to New York State by out-of-state delivery.

For cases in this area see *Wiederhorn v. The Sands, Inc.*, 142 F. Supp. 448 (S.D. N.Y. 1956), and *Miller v. Surf Properties, Inc.*, 4 N.Y. 2d 475, 176 N.Y.S. 2d 318, 151 N.E. 2d 874 (1958). There are no Maryland cases directly in point. Note 2 MD. CODE (1957) Art. 23, § 88 for a list of activities not considered as intrastate business of a corporation. Also see 1 Md. L. Rev. 165 (1936) and 3 Md. L. Rev. 35 (1938), and distinguish cases when jurisdiction rests on doing of a single act and is limited to causes of action related thereto,

McGee v. International Life Ins. Co., 355 U.S. 220 (1957). *Cf: Erlanger Mills v. Cohoes Fiber Mills*, 239 F. 2d 502 (4th Cir. 1956); 17 Md. L. Rev. 140 (1957).

Evidence — Fingerprints Taken During Illegal Arrest. *Bynum v. United States, 262 F. 2d 465 (D.C. Cir. 1959).* Defendant was arrested when he came voluntarily to a police station to inquire about his brother who was being detained at the station. Defendant was arrested without a warrant and without, as the Court of Appeals later found, any probable cause for believing that he had committed a felony. Defendant's fingerprints were taken during the booking procedure at the police station. Subsequent to this defendant was indicted and tried for robbery at which trial the fingerprints thus taken were used against him.

The Court of Appeals reversed the conviction and held that under the Fourth Amendment fingerprints taken during an illegal arrest were inadmissible in evidence against the defendant. The Court based its decision on those cases which have held that an article taken from one's person during an illegal arrest is not admissible in evidence against him. *United States v. Di Re*, 332 U.S. 581 (1948); *Bolt v. United States*, 2 F. 2d 922 (D.C. Cir. 1924); and also upon those cases which have held inadmissible statements obtained from an accused during an illegal detention. *Upshaw v. United States*, 335 U.S. 410 (1948). The fact that accused's fingerprints were available from F.B.I. files or even could have been taken during the trial did not affect the admissibility of those taken illegally.

In Maryland the use of illegally obtained evidence is permitted where the offense charged is the commission of a felony. However, the Bouse Act, 4 MD. CODE (1957) Article 35, Section 5 prohibits the use of evidence procured through an illegal search in the trial of most misdemeanors.

In *Freedman v. State*, 195 Md. 275, 73 A. 2d 476 (1950) where an arrest and search without warrant was made, the evidence was held to be admissible on the ground that the officers had reasonable grounds to believe that the accused had been engaged in the commission of a felony. See 16 Md. L. Rev. 240 (1956) and 2 Md. L. Rev. 147 (1938).

Evidence — Wife's Compellability To Testify Against Husband. *Wyatt v. United States, 263 F. 2d 304 (5th Cir. 1959).* Defendant husband was convicted under the Mann

Act, 18 U.S.C.A. (1951) § 2421 of knowingly transporting a woman (whom he later married) in interstate commerce for the purpose of prostitution. At the trial, the woman the defendant was accused of transporting, claimed as his wife the privilege not to testify against him. The lower court refused to recognize the privilege and defendant's wife was compelled to testify against him.

The Court of Appeals held the lower court's refusal to recognize any privilege on the part of the wife not to testify against her husband was justified under the circumstances since no such privilege exists in cases where the husband has been charged with committing an offense against the person of his wife. The Court pointed out that this exception to the rule that a wife cannot be forced to testify against her husband, has existed since at least 1631 when it was recognized in *Lord Audley's Trial,* 3 How. St. Tr. 401 (1631). The Court further distinguished the recent Supreme Court case of *Hawkins v. United States,* 79 S. Ct. 136 (1958) by noting that in the Hawkins case the wife was not the victim of the husband's actions as she was in the present case.

See 15 Md. L. Rev. 16 (1955) for discussion of Maryland cases in this area.

Insurance — Double Recovery. *Kopp v. Home Mutual Insurance Co., 6 Wis. 2d 53, 94 N.W. 2d 224 (1959).* Plaintiff-insured took out accident insurance with medical payment coverage with defendant, and was also a member of the Blue Cross Hospital Benefit Plan. After sustaining accidental injuries and incurring hospitalization expenses which were paid by Blue Cross, plaintiff submitted a claim for such hospital expenses to defendant. Defendant refused to pay, not because the plaintiff would be recovering twice for the same expense, but on the ground that plaintiff never actually incurred any hospital expense, since under the Blue Cross plan an affiliated hospital is obligated to furnish a member with hospitalization services and then look to Blue Cross for reimbursement. The appellate court in allowing the claim concluded that since insured's policy with defendant did not state "who" was to incur the expense in order for plaintiff to be able to recover, the defendant was under a contractual duty to pay for medical and hospital services supplied to the plaintiff whether or not he suffered financial loss. The Court considered the lack of specific designation an ambiguity and construed it against the insurer.

Price Discrimination — Consignment Sales. *Ludwig v. American Greetings Corp., 264 F. 2d 286 (6th Cir. 1959).* Defendant-manufacturer of greeting cards was charged with violating Section 2(b) of the Robinson-Patman Act, 15 U.S.C.A. (1951) § 13(b) by allegedly injuring the business of a competing wholesaler through the placing of such wholesaler's former retail customers on a consignment basis for the purpose of inducing them to transfer their business to defendant. In reversing the District Court, the Court of Appeals held that the acts alleged constituted a prima facie case of indirect price discrimination under Section 2(a) of the Robinson-Patman Act. The Court also ruled that although the plaintiff might have a cause of action for unfair competition, this type of remedy was not an exclusive one but was one concurrent with plaintiff's cause of action under the Robinson-Patman Act. In so holding, the Court upheld the right of a competitor to bring such action, as well as a customer who has been discriminated against.

See *Moore v. Mead's Fine Bread Co.*, 348 U.S. 115, 118 (1954), *Mandeville Farms v. Sugar Co.*, 334 U.S. 219, 236 (1948), *Central Ice Cream Co. v. Golden Rod Ice Cream Co.*, 257 F. 2d 417, 418 (7th Cir. 1958), *Fitch v. Kentucky-Tennessee Light & Power Co.*, 136 F. 2d 12, 149 A.L.R. 650 (6th Cir. 1943).

Social Security — Termination Of Old Age Benefits. *Nestor v. Folsom, 169 F. Supp. 922 (D.C. D.C. 1959).* Plaintiff alien, who was engaged in employment covered by the Social Security Act from 1936 to 1955, applied and received an award of old age benefits of $55.60 per month effective November, 1955. In July, 1956 plaintiff was deported to Bulgaria pursuant to provisions of the Immigration and Nationality Act, Section 241 (a) (1), 8 U.S.C.A. (1953) § 1251 a (1) and the Bureau of Old Age and Survivors Insurance of the Department of Health, Education, and Welfare was notified by the Attorney General of the United States of plaintiff's deportation. The Bureau immediately suspended the payment of old age benefits to plaintiff pursuant to Section 202 (n) of the Social Security Act, 42 U.S.C.A. (1957) § 402 (n), which authorizes the "termination of benefits upon the deportation of the primary beneficiary." Upon a petition to the District Court for statutory review, the Court held Section 202 (n) of the Social Security Act unconstitutional as a denial of due process

of law under the fifth amendment. The Court concluded that the basic nature of old age benefits render them property rights which once accrued cannot be taken away without due process of law. The Court relied heavily upon *Steinberg v. United States,* 163 F. Supp. 590, 596 (Ct. Cl. 1958) where it was stated:

> "If I am correct in saying that the retired pay is not a pension or a gratuity, but is compensation for services already rendered, then I think an employee's right to this retired pay does become vested at the time of retirement."

If this view is correct, Congress has taken this vested right without due process of law."

A statement in *Ewing v. Gardner,* 185 F. 2d 781, 784 (6th Cir. 1950) was also relied upon: "The right of the wage earner to the primary benefit is not a gratuity, but is a property right which can be enforced by court action."

For a holding that Social Security benefits do not constitute property rights see *Roston v. Folsom,* 158 F. Supp. 112, 120 (E.D. N.Y. 1957) which decision the present court recognized to be in conflict with its holding.

An appeal is pending in the principal case.

Taxation — Involuntary Conversion. *Steuart Brothers v. Commissioner of Internal Rev., 261 F. 2d 580 (4th Cir. 1958).* Taxpayer-plaintiff brought suit seeking to avail itself of the non-recognition of gain benefits resulting from an involuntary conversion into similar property provided for under I.R.C. 1939, Section 112 (f), 26 U.S.C.A. (1955) § 112. Taxpayer, who had been in the real estate investment business in Washington, D. C. for a number of years, purchased certain land in Washington for investment purposes. Shortly after acquiring this land plaintiff bound itself contractually to build two buildings to be leased, one as a grocery store and one as a warehouse. Subsequent to this undertaking but before any buildings were constructed, the land on which the buildings were to be built was condemned and taxpayer received a condemnation award of $425,000. This sum represented a gain of $349,058.54 to plaintiff. With the proceeds of the award plaintiff purchased other real estate for investment. The new properties were primarily utilized for usages of the automobile business, i.e., an automobile showroom, a repair shop, a garage service station, a service station for cabs, and a parking lot for an automobile dealer.

The Tax Court in disallowing the non-recognition of gain decided that taxpayer had not converted this gain into property which was similar or related in use to the property converted. The Court of Appeals reversed holding that the taxpayer was entitled to the non-recognition of gains benefit since "the original real estate was held by it for investment purposes and the proceeds of the condemnation were reinvested in real estate of the same general class" [584]. The Court distinguished the present case from other decisions which held subsequent uses of property to be dissimilar by noting that in the present case the taxpayer itself was not in possession and did not itself use the new properties for any purpose. Instead taxpayer simply held the newly acquired properties for investment purposes which was exactly the use it made of the condemned properties. The current version of the 1954 CODE (§ 1033 (g)) added by the Technical Amendments Act of 1958 clearly requires the same result that the Court reached here through liberal judicial construction of the 1939 Code.

Taxation — Payments To Widow. *Bounds v. United States, 262 F. 2d 876 (4th Cir. 1958).* Plaintiff-taxpayer, widow of a corporation president, brought an action to recover income taxes paid by her. Plaintiff received in 1952, $20,000 from her deceased husband's corporation, "as recognition in part of the great contribution made by George C. Bounds, . . . and, as additional compensation for services rendered to the Corporation by George C. Bounds during his lifetime, ..." This payment was listed on the corporation's books as compensation to an officer's widow and as a business expense on its tax return. Despite the board of Directors' labeling of the payment as "additional compensation" and despite the corporation's treatment of the payment as a business expense, the Court of Appeals in reversing the District Court held such payment constituted a non-taxable gift to the taxpayer.

The Court of Appeals noted that of the two separate payments of benefits which were made at plaintiff's husband's death, $5,000 accrued salary was made to the husband's estate whereas the $20,000 payment was made directly to the widow. The Court also pointed out the absence of any long-range payment plan, the presence of which in many cases has been responsible for having the payment declared compensation.

Recognizing the trend of judicial decisions holding similar payments to be gifts, the Commissioner in an Information Release on August 25, 1958 announced that the Internal Revenue Service would not litigate under the 1939 Internal Revenue Code, 26 U.S.C.A. § 22, "cases involving the taxability of voluntary payments to widows by their deceased husbands' employers 'unless there is clear evidence that they were intended as compensation for services, or where the payments may be considered as dividends.'" The government announced in oral argument in the present case that this action was being pressed in spite of the announced policy of the Commissioner because this litigation was commenced prior to August, 1958, the date of the information release [834]. The Court questioned both the logic and justice of the Government's attempt to exclude this taxpayer from the benefit of the Government's new policy.

The Court indicated that cases of this character that arise under the 1954 Code will be affected by the new wording in Section 101 (b).