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Recent Decisions

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Bankruptcy Act — Creditor Can Obtain Review Of Referee's Decision On Trustee's Objection Where Trustee Fails To Seek Review. *In re Madway,* 179 F. Supp. 400 (D.C. Pa. 1959). The Federal District Court, in affirming the referee's decision to discharge bankrupt, approved an individual creditor's right to have the referee's decision reviewed when the trustee failed to appeal. The referee had discharged the voluntary bankrupts from their debts and the trustee filed objections on the grounds that the bankrupts had failed to explain satisfactorily their loss of assets, 11 U.S.C.A. (1953) Sec. 32 (c) (7). A hearing was held and the referee affirmed the discharge. A Certificate of Review was taken by a creditor to the District Court, seeking reversal of the referee's decision. The Court *held* that although the Bankruptcy Act authorizes a trustee to object, 11 U.S.C.A. (1953) Sec. 32 (b), this does not take away the right of an individual creditor independently to oppose the discharge before the referee or to obtain a Certificate of Review. Although there has been no case specifically granting review to a creditor where only the trustee had protested originally and failed to appeal, this Court construed the trustee's power of objection as not intending to limit the jurisdiction of the District Court, but rather to provide a means for speedy review in addition to the creditor's right.

In similar circumstances the Courts have reviewed charges of fraud made by a petitioning creditor. In *In re Fergus Falls Woolen Mills Co.,* 41 F. Supp. 355, 359 (D.C. Minn., 1941), the Court said:

> "Where the trustee fails to contest doubtful claims, or apparently invalid claims, the creditors are not compelled to sit idly by and do nothing about it. It is the privilege and right of creditors who have filed claims in the proceeding to petition the Court for a review of a referee's order, where it is apparent that there is grave question as to the validity of such order, and the creditors may do this, even though no request has been made upon the trustee to do so."

2 COLLIER ON BANKRUPTCY (14th Ed., 1959 Supp.) Sec. 39.19 cites the *Fergus Falls* case, and maintains that it is *contra* better authority.

Conflict Of Laws — Effect Of Foreign Ex Parte Divorce On Prior Maryland Separation Alimony Decree. *Gregg v. Gregg, 220 Md. 578, 155 A. 2d 500 (1959).* Wife obtained a judicial separation in Maryland in 1951, and husband was ordered to pay $38 per month permanent alimony. In wife's instant suit to recover accrued alimony, husband contended he was under no duty to pay until a divorce *ex parte* obtained by him in Nevada in 1953 was declared invalid. The Maryland Court of Appeals, after finding the Nevada divorce decree invalid due to the lack of jurisdiction over husband, *held* that defendant was liable for past alimony and declared him to be in contempt of the 1951 alimony order.

In *Brewster v. Brewster,* 207 Md. 193, 114 A. 2d 53 (1954), the Maryland Court of Appeals allowed a wife to recover for past due alimony after finding an Arkansas *a vinculo* divorce decree obtained *ex parte* by husband to be invalid due to lack of jurisdiction of the Arkansas court. The Court stated that a Maryland court may inquire into the question of domicile where the recognition of a foreign divorce, obtained without personal appearance of the adverse party, is involved. Maryland courts will recognize *ex parte* divorces obtained in foreign courts where the plaintiff's spouse has complied with the domicile requirements of the other state, but such foreign decree will be subject to collateral attack in Maryland if the former court lacked jurisdiction over plaintiff.

It would appear from the language of the Court that if the Nevada decree had been valid, the husband would not have been in contempt of the Maryland alimony decree. In *Johnson v. Johnson,* 202 Md. 547, 97 A. 2d 330 (1952), certiorari denied 346 U. S. 874 (1952), a divorce *a vinculo* obtained by the husband in Florida, in which wife appeared, ended husband's duty to pay alimony under a Maryland decree *a mensa* granted to wife prior to the Florida divorce. For further discussion, see Note, *And Now That You Have Your Divorce, Where Do You Stand?* 10 Md. L. Rev. 256 (1949).

Criminal Law — Involuntary Manslaughter Conviction Affirmed Against Joy Racer. *Commonwealth v. Root, 156 A. 2d 895 (Pa. Super. Ct. 1959).* Defendant's conviction of involuntary manslaughter by automobile arose out of a race between defendant and decedent where decedent, in trying to pass defendant, collided head-on with a truck. The Superior Court of Pennsylvania, in affirming

the conviction, *held* that defendant's racing was the proximate cause of decedent's death despite the absence of contact between the defendant's car and either of the colliding vehicles. Regardless of decedent's own recklessness, if the defendant's act was one of the substantial causes of decedent's death the defendant would be guilty

In *State v. Fair,* 209 S.C. 439, 40 S.E. 2d 634, 636 (1946) in circumstances similar to the principal case, the Court *held* that if the defendant and another motorist were racing, "the act of each . . . is, in legal contemplation, the act of both" so as to warrant the defendant's conviction of manslaughter. Although no Maryland case in point has been found, the Maryland Court of Appeals in *Duren v. State,* 203 Md. 584, 102 A. 2d 277 (1954), indicated that speed and lack of control are sufficient grounds to sustain the proximate cause requirement for the defendant's conviction of involuntary manslaughter by automobile even if the victim's negligence is a concurrent cause. But Maryland has not resolved the question whether one driver's speed can be the proximate cause of another driver's death where there is no contact between them.

See 99 A.L.R. 756; 8 BLASHFIELD, CYCLOPEDIA OF AUTOMOBILE LAW AND PRACTICE (Perm. ed. 1951), Sec. 5351. Also Note, *Manslaughter by Automobile,* 18 Md. L. Rev. 144 (1958).

Estoppel — Corporate Officer Estopped From Claiming Ownership Of Property In Himself When By His Conduct He Has Represented It As Corporate Property. *Solomon's Marina Inc., et al v. Rogers,* 221 Md. 194, 156 A. 2d 432 (1959). The defendant, a major stockholder, director, and officer of the plaintiff corporation, sold the corporation a boat on credit, with no date set for payment of the purchase price. Four years later, the purchase price being still unpaid, the defendant repossessed the boat. Thereupon the corporation brought an action of replevin to recover the boat from the defendant. By authorization of the defendant and the other directors the boat had been listed as an asset and the unpaid purchase price as a liability on the corporation's balance sheets which were made part of circulars offering common stock and convertible debentures for sale to the public, the corporation realizing approximately $400,000 from these sales. In reversing the trial court's decision that passage of title was conditioned upon payment of the purchase price, the Court of Appeals *held* that one who has induced another to deal with a corpora-

tion of which he is a stockholder, director and officer by representing that the corporation is the owner of certain property, is precluded from denying the truth of the representation and from setting up ownership in himself when the other has relied on this inducement to his detriment. Where purchasers of stock and debentures of the corporation relied on the representation they were entitled to have the boat be part of the corporate assets.

The Court, in so holding, followed a long line of Maryland decisions, beginning with *Rodgers v. John,* 131 Md. 455, 105 A. 549 (1917), which have applied the doctrine of equitable estoppel. For recent cases following this doctrine, see *Fitch v. Double "U" Sales Corp.,* 212 Md. 324, 128 A. 2d 427 (1957), *Johnson Lumber Co. v. Magruder,* 220 Md. 440, 147 A. 2d 208 (1958), and *Liberty Mutual Insurance Co. v. American Automobile Insurance Co.,* 220 Md. 497, 154 A. 2d 826 (1959). See generally 3 FLETCHER, PRIVATE CORPORATIONS (5th Ed.) Sec. 854, and 3 POMEROY, EQUITY JURISPRUDENCE (5th Ed.) Sec. 804.

Evidence — A Wife's Statement To Fellow Conspirator Is Admissible At Trial Of Conspirator-Husband. *Commonwealth v. Garrison, 157 A. 2d 75 (Pa. 1959).* Defendant, his wife and three others joined in a burglary conspiracy which resulted in the death of the burglary victim. At defendant's trial one of the conspirators was allowed to testify that defendant's wife had suggested to him that the victim's house was a good place for a burglary. Defendant contended on appeal that this testimony violated the Pennsylvania statute:

> "Nor shall husband and wife be competent or permitted to testify against each other. . . ." 28 PURDON'S PENNA. STAT. ANNOTATED § 317.

The Supreme Court of Pennsylvania *held* (5-2), that the testimony was properly admitted, in spite of the statute, since the wife did not testify and the information she gave the testifying conspirator did not refer to the husband. A dissent claimed the majority allowed the very thing the statute prohibited because the statutory prohibition extends beyond testimony in court to extra-judicial admissions "from the mouth of the wife" (79).

Wigmore is in accord with the dissent:

> ". . . it would seem that the *hearsay declarations* by the wife or husband, such as would be receivable under

> some exception to the Hearsay Rule, should be excluded when offered against the other spouse." 8 WIGMORE, EVIDENCE (3rd ed. 1940) Sec. 2233.

Cases in accord with the dissent are, *Taylor v. State*, 220 Ark. 953, 251 S.W. 2d 588 (1952) and *Seymour v. State*, 210 Ga. 21, 77 S.E. 2d 519 (1953).

Allied with the majority is *United States v. Winfree*, 170 F. Supp. 659 (D.C. 1959), where extra-judicial statements made to Internal Revenue officers by defendant's wife were admissible even though the wife would not have been allowed to testify in court against the husband.

A witness-spouse is competent to testify in Maryland, 4 MD. CODE (1957) Art. 35, Sec. 4, but the statute contains no words of compulsion and the power to compel a spouse to testify is open to question. See Moser, *Compellability of One Spouse to Testify Against the Other In Criminal Cases*, 15 Md. L. Rev. 16 (1955).

Evidence — Maryland Statute On Admissibility Of Criminal Conviction Limited In Scope. *Gray v. State*, 221 Md. 286, 157 A. 2d 261 (1960). Defendant and two others were convicted of armed robbery. Defendant alone appealed and upon his conviction being reversed, a new trial was granted. In the second trial, the State produced testimony to the effect that one of defendant's co-indictees was sentenced to confinement for ten years for the armed robbery. The lower court, in convicting defendant, allowed this testimony on the basis of 4 MD. CODE (1957) Art. 35, Sec. 11, which states: "If any person . . . charged with committing any crime is found guilty thereof, such fact shall be admissible . . . in any proceeding . . . in which another person . . . shall be charged with committing the same crime. . . ." The Court of Appeals, in reversing the lower court, *held* the admission of this evidence was improper since the statute was intended to apply only where a person is convicted of a crime which is predicated on the act of a single person, and subsequently another person is charged with the same crime. The purpose of such a statute is to prevent the possibility of two persons being convicted for a crime that only one could have committed. In the instant case, however, the crime was predicated on an offense by joint actors, and the disputed evidence tended to establish defendant's guilt on the basis of his co-indictee's conviction.

The instant case is the first construction of this unique Maryland statute. No other jurisdiction appears to have a

similar one. The Court recognized the general rule that where two or more persons are jointly indicted for the same crime and are tried separately, the conviction or acquittal of one is inadmissible against the other. 2 WHARTON, CRIMINAL EVIDENCE (12th Ed.) § 439; *Hunter v. State,* 193 Md. 596, 603, 69 A. 2d 505 (1949). The Court then applied the reasoning in *Rogan v. B. & O. R.R. Co.,* 188 Md. 44, 53, 52 A. 2d 261 (1947), ". . . if the language of a statute is open to either of two constructions, the court should adopt that construction which will best tend to make the statute effectual and produce the most beneficial results."

See 48 A.L.R. 2d 1016 and 1 WIGMORE, EVIDENCE (3rd Ed.), Sec. 142.

Mechanic's Lien — Notice To Resident Agent Of Corporation Effective. *Jakenjo, Inc. v. Blizzard,* 221 Md. 46, 155 A. 2d 661 (1959). Where a mechanics' lien claimant mailed a registered letter to the corporation containing notice of intention to claim a lien, the letter being returned unclaimed, and subsequently he mailed a registered letter containing the same notice to the resident agent of the corporation, the Court of Appeals *held* that the notice to the resident agent was effective.

The defendant corporation contended that the only authority of a resident agent is to accept service of process. The court disagreed, relying on 2 Md. Code (1957) Art. 23, Sec. 99, which provides in part: "Any notice required by law to be served upon any corporation . . . by personal service upon a resident agent or other agent or officer of such corporation, may be served upon such corporation in the manner provided in § 97 of this article . . ." Sec. 97 provides for substituted service upon the State Department of Assessments and Taxation (successor of the State Tax Commission). The Court drew the implication from Sec. 99 that under Maryland law a resident agent has authority to receive statutory notices as well as legal process.

Taxation — A Church Parking Lot Is Not Exempt. *Second Church of Christ Scien. v. City of Philadelphia, 157 A. 2d 54 (Pa. 1959).* City real estate taxes were levied on parking lots of two churches, contiguous to the church buildings, and used by the congregations attending services. Claiming that a parking lot is necessary in this modern age for the fulfillment of the church's purpose as a place of worship, the churches sought relief under the

Pennsylvania tax exemption to churches and the grounds "thereto annexed for the occupancy and enjoyment of the same." In denying relief the Pennsylvania Supreme Court *held* that the exemption extends only to the actual place of worship and the grounds required for ingress, egress, light and air, and that parking is an adjunctive use of the grounds having no actual connection with the worship.

Although demanding that the exemptions be strictly construed, Maryland grants tax immunity to places of public worship, parsonages, and "the grounds appurtenant" thereto and "necessary for the respective uses thereof." 7 MD. CODE (1957) Art. 81, Sec. 9(4). The Maryland Court of Appeals, while stressing the "necessary" proviso, has granted immunity to thirty-five acres on which a tabernacle, parsonage, and living facilities for communicants were constructed to sustain an annual ten-week summer religious program. *Morning Cheer v. Co. Com'rs.*, 194 Md. 441, 71 A. 2d 255 (1950). In contrast, a similar Pennsylvania case exempted only the chapel and other sites consecrated to worship. *Layman's Week-End Retreat League v. Butler*, 83 Pa. Super. Ct. 1, 134 A.L.R. 1185 (1924).

While noting that Maryland gives a less stringent interpretation to its exemption statute than Pennsylvania, and recognizing that some courts frown upon the strict interpretation clauses of tax exemption statutes favoring religious and charitable groups, *Kemp v. Pillar of Fire*, 94 Colo. 41, 27 P. 2d 1036, 1037 (1933); *Trustees of Phillips Exeter Academy v. Exeter*, 90 N.H. 472, 27 A. 2d 569 (1940), apparently a distinction is properly drawn between what is convenient for the congregation and what is neccessary for religious worship. See *Congregational Union of Cleveland v. Zangerle*, 138 Ohio St. 246, 34 N.E. 2d 201, 202 (1941). A church parking lot is immune where the statute exempts property required for "convenient" use. *Immanuel Presbyterian Church v. Payne*, 90 Cal. App. 176, 265 P. 547 (1928). The cases are collected in 168 A.L.R. 1222, 1253.