Maryland Law Review

Volume 20 | Issue 1 Article 10

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Attachment — Government Levy On State Employee's Earnings. *Sims v. U.S., 359 U.S. 108 (1959).* Levies were served on the petitioner, State Auditor of West Virginia, seizing the accrued salaries of three employees of the state government. Petitioner refused to recognize the levies and paid the accrued salaries to the delinquent taxpayers. The District Court held him personally liable for the amount paid. The Court of Appeals for the Fourth Circuit affirmed, and the Supreme Court, relying on Secs. 6331 and 6332 of the 1954 Internal Revenue Code, in turn affirmed, pointing out that Sec. 6331 was passed to make levies available against the unpaid salaries of federal employees as well as other taxpayers, including state employees. The Court also referred to Sec. 301.6331-1(a)(4)(ii) of the Treasury Regulations, which declares Sec. 6331 authorizes levies on accrued salaries of employees of a state in order to enforce collection of any federal tax. By a West Virginia statute, the state auditor is empowered and obligated to deduct withholding tax as required by the government. Another statute allows garnishments to be served upon him to sequester salaries of state employees. In that such act empowered the Auditor to control the disposition of funds and since his acts defeated the government's valid levy, the Court reasoned that he was a person "obligated with respect to" the salaries under Sec. 6332(a) and thus could be held personally liable.

Annotated Code of Maryland (1957), Art. 9, Sec. 10 states, "Any kind of property or credits belonging to the defendant, in the plaintiff's own hands, or *in the hands of anyone else,* may be attached; . . ." (Emphasis supplied.) Notwithstanding this broad provision it has been consistently held that funds in the hands of a public officer, governmental or municipal corporation cannot be attached, the predominant reason being the great public inconvenience which would result in taking officials from their duties to entertain such actions. See *Hughes v. Svboda,* 168 Md. 440, 178 A. 108 (1935), and *Attachment — Public Institutions as Garnishee,* 1 Md. L. Rev. 172 (1937). In view of the *Sims* case, however, it would seem that the federal government can levy on the salaries of Maryland's state, county, and municipal employees under Sec. 6332 of the Internal Revenue Code. As to state employees, the State

Comptroller would seem to be the person who could be held responsible for compliance with such levy. See Maryland Constitution, Art. VI, and 2 Md. Code (1957), Art. 19.

Constitutional Law — Bible Reading And Prayer Recital In Public Schools. *Engel v. Vitale, 191 N.Y.S. 2d 453 (1959).* In a lengthy and exhaustive opinion which treated the constitutions of both New York and United States, New York State Judge Meyer held that a school board resolution which *directed* the recital of the following prayer during morning exercises was invalid: "Almighty God, we acknowledge our dependence upon Thee, and we beg Thy blessings upon us, our parents, our teachers and our Country." The Court concluded that while the Board could authorize, it could not require, the saying of the prayer in question. Moreover, if it does authorize such a prayer, "it must bring the authorization to the attention of the parents of children in the schools, establish a procedure for excusing non-participants not only from saying the prayer but from the room, if they so elect, and take affirmative steps to protect the religious freedom of both non-participants and participants".

Approximately one month later, United States Circuit Judge Biggs for a 3-judge federal District Court in Philadelphia, *Schempp v. School Dist. of Abington Township, Pa.*, 177 F. Supp. 398 (D.C. Pa. 1959), *held* unconstitutional a Pennsylvania statute which provided for the reading, at the opening of each school day, of at least ten verses from the Holy Bible without comment, accompanied by an established practice of reciting the Lord's Prayer, in conjunction with the Bible reading. The Court, in enjoining enforcement of the statute stated that it violated the proscription of the First Amendment as applied to the states through the Fourteenth Amendment, in that it both provided for an establishment of religion and interferred with the free exercise of religion, reasoning: (1) that the Holy Bible was a Christian document and therefore the daily reading of it, operating upon the receptive minds of children, aided and preferred the Christian religion and consequently interferred with the free exercise of religion; (2) that teachers could be discharged for failure to conduct the ceremonies in their class; (3) that school attendance was mandatory upon children, and accordingly that participation in this religious ceremony was compulsory even though not, as such, required by statute.

An effort to have the issue resolved by the Supreme Court on facts closely related to those of the *Schempp* case failed in *Doremus v. Board of Education,* 342 U.S. 429 (1952), for want of sufficient interest of the complaining party when suit was brought by a parent, as such, and as a taxpayer. The Court ruled that, as a parent, his standing ceased when his child graduated from the school in question, and that as a taxpayer he had not sufficiently shown the directness of interest required to litigate a constitutional issue.

No dispute of this nature has reached the Maryland Court of Appeals. The State Board of Education has promulgated no rules concerning morning exercises, but it appears that in a number of Maryland classrooms, morning exercises involving the reading of passages from the Holy Bible and/or recital of the Lord's Prayer or others of a like nature are conducted. It would seem that generally, the participation or attendance is voluntary, at least in the sense of being left to the decision of the children involved or their parents if objection to participation is raised.

Corporations — Dissenting Stockholder's Right To "The Fair Value" Of His Stock. *Warren v. Baltimore Transit Co., 220 Md. 478, 154 A. 2d 796 (1959).* Appellant, a preferred shareholder, objected to the recapitalization of the Baltimore Transit Company in 1953, and sought to recover the "fair market value" of his stock under 2 Md. Code (1957), Art. 23, Sec. 73. The lower court affirmed the report of appraisers, which set a value of $32.50 a share on the appellant's stock in the Baltimore Transit Company. The appraisers had valued the stock as a proportionate interest in a going concern, considering such factors as market value and prospective earnings as well as asset values. Appellant stockholder contended for a valuation of around $85 a share on the theory that the law required the appraisers to postulate a liquidation of the corporation and to determine what the net asset value of the stock would be on such a liquidation. Appellant relied heavily upon *American General Corporation v. Camp,* 171 Md. 629, 637, 190 A. 225 (1936), wherein the Court of Appeals refused to establish a uniform rule for all "fair value" controversies, but in that instance recognized that ". . . it is logical and consistent to infer that the fair value of such stock to a dissenting owner is its intrinsic value on a liquidation. . . ." The Court of Appeals, *affirmed* the *American General* case, holding that "fair value" of the appellant's

stock was to be ". . . valued as an interest in a continuing enterprise with whatever benefits and liabilities as to value its preferred status affords it. . . ." In so holding the Court joined Maryland with New York, Delaware, Ohio and the general weight of authority. In addition, whether consciously or not, this decision effectively quiets the fears expressed by an early Maryland Law Review author who commented on the *American General* case in 1937 saying, "If the Court of Appeals has laid down for the future the rule that asset value in liquidation is controlling, it seems to run contra to the better reasoned text writers and authorities * * * Viewed in its long-range aspects, the decision *(American General)* will be unfortunate only if commissioners appointed in future cases regard the opinion as laying down an instruction that 'asset value in liquidation' is a conclusive minimum . . . .", Note — *Appraisal of Shares of Dissenting Stockholders in Consolidation — American General Corporation v. Camp, et al.*, 1 Md. L. Rev. 338, 346 (1937). See also *Fletcher*, CYCLOPEDIA OF CORPORATIONS (1943), Vol. 13, Sec. 5899, BALLANTINE ON CORPORATIONS (1946), Sec. 299, and *Brune*, MARYLAND CORPORATE LAW AND PRACTICE (1953), Sec. 317.

Evidence — Improper Denial By The Trial Court Of A Witness' Claim Of Privilege Cannot Be Taken Advantage Of By A Party. *Butz v. State, 221 Md. 68, 156 A. 2d 423 (1959).* At defendant's burglary trial, a witness was advised by the defendant's counsel that any further testimony on her part might tend to incriminate her. The witness thereafter claimed the privilege against self-incrimination, but when the State, with concurrence of the trial judge, granted the witness immunity, the trial judge informed her that she must testify. The witness complied, without objection, and the defendant was subsequently convicted. The defendant appealed, relying chiefly on *Chesapeake Club v. State*, 63 Md. 446 (1885), and a footnote to that case in MCCORMICK, EVIDENCE (1954), Sec. 73, n. 8, indicating that Maryland follows the minority view that a defendant in a criminal case is entitled to a new trial whenever material evidence of a witness is admitted in violation of a privilege of the witness.

The Court of Appeals affirmed, stating that the trial judge was in error in granting immunity to the witness, but *holding* that since the privilege belongs to the witness and not the defendant, material testimony given by the

witness, even though his claim of privilege has been improperly denied, was admissible against the defendant and the error in denying the privilege was not a valid ground of appeal by the defendant. The Court declined to follow the *Chesapeake Club* case and aligned Maryland with the great weight of authority, with only Massachusetts apparently *contra* (*Com. v. Kimball,* 24 Pick. 366 (1827)). See generally, WIGMORE, EVIDENCE (3rd ed. 1940), Sec. 2270; MCCORMICK, EVIDENCE (1954), Sec. 73; and SELECTED WRITINGS ON EVIDENCE AND TRIAL (1957), 190.

Labor Law — States Pre-Empted From Awarding Damages Resulting From Peaceful Picketing. *San Diego Building Trades Council, Etc. v. Garmon, 359 U.S. 236 (1959).* After the National Labor Relations Board declined jurisdiction, presumably for budgetary reasons, of employer's representative proceedings for injunction of, and damages arising from, union's peaceful picketing, the California Supreme Court awarded damages and granted the injunction on the theory that the picketing constituted a tort under state law [45 Cal. 2d 657, 291 P. 2d 1 (1955)]. The Supreme Court set aside the injunction, 353 U.S. 26 and when, on remand, the California Court sustained the award for damages [42 Cal. 2d 595, 320 P. 2d 473 (1958)]. The Supreme Court again granted certiorari to consider the damage award. Stating that when activities are either protected or prohibited by the Taft-Hartley Act, the states are deprived of jurisdiction, the Court in this instance *held* that the state court lacked jurisdiction to award the employer damages for peaceful picketing by the union, as such activity, even if not clearly protected or prohibited, was arguably within the scope of the Taft-Hartley Act and therefore pre-empted by Federal Authority. The decision is a specific application of the ruling in *Guss v. Utah Labor Relations Board,* 353 U.S. 1 (1957), noted, 18 Md. L. Rev. 50 (decided simultaneously with the first Garmon decision), where the Supreme Court, faced with a question of state action in a labor dispute where the N.L.R.B. declined jurisdiction for policy reasons, *held* that the failure of the N.L.R.B. to assume jurisdiction did not give the States power over activities that they would otherwise be pre-empted from regulating.

The Court stressed specifically the danger of state interference with national policy and federal uniformity, but pointed out that when a state's interest is so urgent to re-

quire action in situations marked by violence and intimidation, the state courts are not asked to yield to federal authority, *International Union, United Automobile Workers v. Russell,* 356 U.S. 634 (1958); *United Construction Workers v. Laburnum Construction Corp.,* 347 U.S. 656 (1954). A concurring opinion by four members of the Court urged that if past nonviolent tortious conduct was "clearly" unprotected by Taft-Hartley, the *Laburnum* and *Russell* decisions should allow state courts to award damages, and should not be construed solely as cases of violence allowing state action. See Note, *Pre-emption and Non-regulation — The No Man's Land of Labor Relations,* 18 Md. L. Rev. 50 (1958).

It should be observed that Section 701 of the recently adopted Labor-Management Reform Act, (86 Congress S. 1555, Pub. L. 86-257), amends N.L.R. Sec. 14, by adding sub-paragraph (c)(2), 29 U.S.C.A. § 164, so as to indicate that nothing in the Act shall preclude States from assuming jurisdiction over labor disputes over which N.L.R.B. declines to exercise jurisdiction, which would seem to open the door to State action that was closed by the *Guss* and companion cases, 353 U.S. 1 (1957).

Libel And Slander — No Recovery Where Plaintiff Unable To Prove Application Of Defamatory Words To Himself. *Cohn v. Brecher, 192 N.Y.S. 2d 877 (1959).* Plaintiff and two other employees, being confronted by their employer, were told that they would be fired if some missing money was not returned. Looking directly at plaintiff, defendant said, "One of you is a crook". The N.Y. Supreme Court *held,* in dismissing plaintiff's complaint, that where defamatory language is directed to a small group, indefinitely or impersonally referring to only one of the group, one can only recover if he can prove the application of the language to himself. The fact that defendant looked at plaintiff when he spoke was too speculative a basis to permit the conclusion that the words were directed to the latter.

The principal case can be supported by dictum in *Shutter Bar Co. v. Zimmerman,* 110 Md. 313, 318, 73 A. 19 (1909), where the Court of Appeals said:

> "In order to maintain an action for libel or slander it must appear that the defamatory words refer to some ascertained or ascertainable person, and that person must be the plaintiff."

On the other hand, plaintiff may be able to recover if the facts and circumstances unequivocably show that he was the object of the defamatory language, despite the absence of a specific reference to his name. *Harmon v. Liss,* 116 A. 2d 693, 695 (D.C. Mun. App. 1955). For a further digest of related material, see annotation in 91 A.L.R. 1161, or 33 AM. JUR., Libel & Slander, Sec. 89; RESTATEMENT OF TORTS, Sec. 564.

Workmen's Compensation — Mental Disability Unaccompanied By Physical Injury Not Compensable. *Chernin v. Progress Service Co., 192 N.Y.S. 2d 758 (1959).* A taxi driver struck a pedestrian who had darted in front of his cab. Although he sustained no physical injuries, the taxi driver became quite excited and abusive after police questioning. Claimant taxi driver continued working for a month after the accident, but was subsequently admitted to Bellevue Hospital suffering from a severe emotional strain.

The N.Y. Supreme Court, Appellate Division, *held* that claimant could not recover compensation for his mental disability, unaccompanied by physical injury, which followed but did not result from the accident. The accident, at most, had aggrevated a dormant repressed schizophrenia.

In *Bramble v. Shields,* 146 Md. 494, 127 A. 44 (1925), the only Maryland compensation case dealing with mental disability, the Court of Appeals allowed recovery to an employee who was suffering from a neurosis that resulted from a physical injury, on the grounds that the ultimate mental disability was directly attributable to the accidental injury that arose out of and in the course of employment. In view of Maryland's "accidental means" requirement (*Kelly-Springfield Co. v. Daniels,* 199 Md. 156, 85 A. 2d 795 (1951)), such a disease apparently would not be compensable under the present statute, 8 Md. Code (1957), Art. 101, Sec. 67.6, if unaccompanied by a physical injury.

See *City Ice and Fuel Division v. Smith,* 56 S. 2d 329 (Fla., 1952) in accord with the *Chernin* case, but *Bailey v. American General Insurance Co.,* 154 Tex. 430, 279 S.W. 2d 315 (1955), and *Simon v. R.H.H. Steel Laundry,* 25 N.J. Super. 50, 95 A. 2d 446 (1953), are apparently contra.