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Recent Developments

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CONSTITUTIONAL LAW — Provision in Shoplifting Statute Declared in Violation of Maryland Constitution. *Getz and Getz v. Hutzlers, Inc.* (Sup. Ct. of Balto. City, June 8, 1965), The Daily Record, June 15, 1965, p. 2, col. 6. Plaintiffs, in a suit based on alleged false imprisonment and slander by employees of defendant, filed a motion under Maryland Rule 502 alleging that a provision of the Maryland Shoplifting Statute,[1] which defines the crime of shoplifting and specifies the penalties therefor, was in violation of the Maryland Constitution.[2] The provision in question creates a qualified immunity from civil liability for false imprisonment or arrest.[3] The Superior Court of Baltimore City ruled that the statute was void for non-compliance with the Maryland Constitution, because it was foreign to the subject matter stated in the title ("Shoplifting") and because it was not mentioned in the title in any way.

The legislative titling provision of the Maryland Constitution has been the source of a great deal of litigation.[4] The objectives of the constitutional requirement are to prevent the combining of two or more separate subjects in the same act, to notify the members of the legislature of the contents of the bills before them, and to inform the citizens of proposed legislation.[5] The Maryland Court of Appeals has broadly interpreted this provision for many years,[6] but has, on occasion, found

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1. MD. CODE ANN. art. 27, § 551A (1964 Supp.). See Kerr, *Shoplifting and the Law of Arrest: A Problem in Effective Social Legislation,* 19 MD. L. REV. 28 (1959), for a discussion of the necessity for a shoplifting statute in Maryland.

2. MD. CONST. art. III, § 29, provides that "every Law enacted by the General Assembly shall embrace but one subject, and that shall be described in its title." Plaintiffs' contention was based on this section.

3. A merchant, agent or employee of the merchant, who detains or causes the arrest of any person shall not be held civilly liable for detention, slander, malicious prosecution, false imprisonment or false arrest . . . provided that . . . the merchant, agent or employee of the merchant, had at the time of such detention or arrest probable cause to believe that the person committed the crime of shoplifting. . . .

MD. CODE ANN. art. 27, § 551A(c) (1964 Supp.).

4. See Everstine, *Titles of Legislative Acts,* 9 MD. L. REV. 197 (1948).

5. Leonardo v. County Commissioners, 214 Md. 287, 298, 134 A.2d 284, 289 (1957). See Everstine, *supra* note 4.

6. See, *e.g.,* Beshore v. Town of Bel Air, 237 Md. 398, 206 A.2d 678 (1965); Hitchins v. Cumberland, 177 Md. 72, 8 A.2d 626 (1939); Crouse v. State, 130 Md. 364, 100 Atl. 361 (1917); and County Commissioners of Dorchester Co. v. Meekins, 50 Md. 28 (1878).

In *Beshore,* the Maryland Court of Appeals ruled that a town resolution providing for both annexation and zoning of a tract of land was valid, even though zoning was not mentioned in the title, because the fixing of zoning requirements was a proper circumstance and condition of newly annexed land, and therefore was germane to the subject.

The *Hitchins* case held that an act entitled, "An Act to authorize . . . to issue bonds . . . and to use the proceeds thereof for the purpose of paying expenses incident to the construction of a Cross-Town Water Line" was sufficient, although the Act

some statutes to be void.[7] The court has consistently applied a general presumption which favors the validity of a statute[8] and has also applied a specific presumption that in order for a statute to be declared void because of a defect in the title, it must be clear that there is something in the body of the act that is entirely foreign to the subject matter described in the title.[9]

A great number of states have provisions in their constitutions similar to the section of the Maryland Constitution discussed in the principal case.[10] Most courts have interpreted the titling requirements liberally[11] and have adopted rules quite similar to those applied by the Maryland Court of Appeals, affording every presumption in favor of the validity of the statute in question. However, statutes have also been declared void in a number of states on account of defective titles.[12]

In the present case, the Baltimore Court recognized the rule followed in Maryland, but felt that the provision in question was so foreign to the subject matter stated in the title ("Shoplifting") that it must be declared void. The Court pointed out that the Shoplifting Statute was a criminal statute, there being no indication in the title that a provision creating immunity from civil liability was included.

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itself authorized the proceeds of the bonds to be used, not only for paying of such expenses, but also for the other necessary purposes affecting the water supply of the city.

In *Crouse* the court felt that the title, "providing for the creation by popular vote of anti-saloon territory within Carroll County . . ." was not inconsistent with the provisions in the body of the act calling for the submission of the question to the voters of the *whole* county.

Finally, in *Meekins* the court upheld an act entitled ". . . to repeal sections 89 and 90 . . . , title 'Dorchester County,' sub-title 'County Commissioners'" even though it consisted of twenty-one sections providing for the redistricting of the county, the appointment of a Treasurer of the county, the appointment of collectors of the county, and the delegation of duties and powers to the Treasurer of the county.

7. See, *e.g.*, Culp v. Commissioners of Chestertown, 154 Md. 620, 141 Atl. 410 (1928) (where the court held that an act entitled "An act to provide for construction of curbs . . . and to levy an annual tax for the payment of such bonds [issued to pay for the construction]" was invalid because it failed to refer to the provision of the act that part of the cost of certain pavements should be paid by adjoining property owners); United Rys. & Electric Co. of Baltimore v. Mayor and City Council of Baltimore, 121 Md. 552, 88 Atl. 617 (1913) (where the court felt that an act requiring the Railways Company, on improved streets, to repave between their tracks was unconstitutional because the title simply described the two statutes as empowering Baltimore City to create a paving commission); Painter v. Mattfeldt, 119 Md. 466, 87 Atl. 413 (1912) (where the court stated that an act relating to good roads in Baltimore County, which by its title apparently limited the cost to one and a half million dollars, while in fact unable to involve and burden the county with costs largely in excess of that sum, was therefore unconstitutional and void).

8. See Baltimore Transit Company v. Metropolitan Transit Authority, 232 Md. 509, 194 A.2d 643 (1963); Allied American Mutual Fire Insurance Company v. Commissioner of Motor Vehicles, 219 Md. 607, 150 A.2d 421 (1958).

9. Warren v. Board of Appeals, 226 Md. 1, 172 A.2d 124 (1960).

10. For a list of the states which have such provisions, see Ruud, *No Law Shall Embrace More Than One Subject*, 42 MINN. L. REV. 389, 453 (1958).

11. See, *e.g.*, People v. Osterveen, 154 Cal. App. 2d 620, 316 P.2d 390 (1957); Green v. City of Mt. Pleasant, 131 N.W.2d 5 (Iowa 1964); Hall v. Calhoun County Bd., 373 Mich. 642, 130 N.W.2d 373 (1964); State v. Weindorf, 361 S.W.2d 806 (Mo. 1962); Tompkins v. District Boundary Bd., 180 Ore. 339, 177 P.2d 416 (1947); State v. The Praetorians, 143 Tex. 565, 186 S.W.2d 973 (1945). See also, Ruud, *supra* note 10.

12. See, *e.g.*, State v. City of Wichita, 184 Kan. 196, 335 P.2d 786 (1959); Feagin v. Texas, 166 Tex. Crim. 3, 310 S.W.2d 99 (1957).

CRIMINAL LAW — Gideon v. Wainwright Applied Retroactively in Maryland. *Manning v. State,* 237 Md. 349, 206 A.2d 563 (1965). Petitioner Manning was tried and convicted of various offenses in the Municipal Court of Baltimore City and sentenced to a term of imprisonment totalling five years. At his trial, petitioner was neither advised of his right to counsel nor was he given assistance of counsel. Under the then prevailing rule of *Betts v. Brady,*[1] a criminal defendant in a state court was not denied due process of law when not represented by counsel unless the trial was "offensive to the common and fundamental ideas of fairness and right."[2] Subsequent to petitioner's conviction, the Supreme Court decided *Gideon v. Wainwright,*[3] which overruled the *Betts* case and made absolute a defendant's right to counsel in a "serious" state prosecution. Petitioner consequently sought relief under the Maryland Post Conviction Procedure Act.[4] The Criminal Court of Baltimore City held that petitioner's election to waive a jury trial and not to appeal constituted a waiver of his right to counsel even under *Gideon,*[5] and that Maryland Rule 719, requiring that a defendant be advised of his right to counsel and that counsel be appointed for indigent defendants if they so elect when the "offense charged is one for which the maximum punishment is death, or imprisonment for six months or more, or a fine of $500 or more, or both . . .",[6] did not apply to Municipal Court proceedings. The Maryland Court of Appeals reversed, applying Maryland Rule 719 to the Municipal Court proceeding and applying *Gideon* retroactively to vacate petitioner's convictions.

The Maryland Court of Appeals did not discuss the legal-philosophical considerations in the case.[7] Foremost in their eyes was the fact that the Supreme Court had overruled *Betts v. Brady* in a habeas corpus case collaterally attacking a conviction, rather than in a case before it on direct appeal. Thus, the principle announced in *Gideon* was applied retroactively in that very case. That particular argument has also been persuasive in other courts which have applied *Gideon*

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1. 316 U.S. 455 (1942).

2. *Id.* at 473.

3. 372 U.S. 335 (1963).

4. MD. CODE ANN. art. 27, § 645-A (1957).

5. On appeal, however, the state conceded that petitioner had not intelligently waived his right to counsel in accordance with the criteria for waiver set down in Carnley v. Cochran, 369 U.S. 506, at 516 (1962): "Presuming waiver from a silent record is impermissible. The record must show . . . that an accused was offered counsel but intelligently and understandingly rejected the offer. Anything less is not waiver."

6. MD. R. PROC. 719.

7. *Cf.* Linkletter v. Walker, 381 U.S. 618, 85 S. Ct. 1731, 1734 (1965). The Supreme Court here found no philosophical barrier to the prospective overruling only of Wolf v. Colorado, 338 U.S. 25 (1949) by Mapp v. Ohio, 367 U.S. 643 (1961), and rejected Blackstone's traditional view that a court does not pronounce new law, but "discovers" and expands already existing law. The Court instead adopted the more modern Austinian approach that judges make law "interstitially by filling in with judicial interpretation the vague, indefinite, or generic statutory or common law terms that alone are but empty crevices of the law."

retroactively.[8] Secondly, the Supreme Court did not say in its opinion whether *Gideon* was to be applied retroactively. The Maryland Court felt that this was an exceptionally meaningful omission since twenty-two states submitted an amicus brief which requested that the decision be given only prospective application. The Court's third ground for holding *Gideon* retroactive was that the Supreme Court had remanded to state courts by per curiam opinion over forty cases in which the accused was not given the assistance of counsel. Most of these cases were pre-*Gideon* convictions.[9]

These remands, coupled with the decision of *Doughty v. Maxwell,*[10] have convinced state and federal courts that the Supreme Court intended *Gideon* to be applied retroactively.[11] By holding *Gideon* retroactive, the Maryland Court of Appeals has followed the overwhelming weight of authority, for with rare exception, *Gideon* has been given retrospective application.[12]

CRIMINAL LAW — Felony-Murder — Responsibility for the Death of Co-Felon. *People v. Washington,* 44 Cal. Rptr. 442, 402 P.2d 130 (1965). Defendant was convicted[1] of the murder of his co-felon under the felony-murder rule.[2] While defendant was in an-

8. U.S. *ex rel.* Craig v. Meyers, 329 F.2d 856 (3d Cir. 1964); Barnes v. State, 169 So. 2d 313 (1964); Janiec v. State, 85 N.J. Super. 68, 203 A.2d 727 (1964).

9. See, *e.g.,* Jordan v. Wiman, 273 Ala. 709, 142 So. 2d 679 (1962), *remanded,* 372 U.S. 780 (1963); Picklesimer v. Wainwright, 148 So. 2d 283 (Fla. 1962), *remanded,* 375 U.S. 2 (1963); Patterson v. State, 227 Md. 194, 175 A.2d 746, *remanded,* 372 U.S. 776 (1963); Gainer v. Pennsylvania, 196 Pa. Super. 578, 176 A.2d 177 (1962), *remanded,* 372 U.S. 768 (1963). See generally, Note, 61 MICH. L. REV. 219, 272 (1962); and Annot., 93 A.L.R.2d 747, 750 (1964); Note, 25 U. PITT. L. REV. 719, 736 (1964).

10. Doughty was accused of rape and convicted without assistance of counsel. In a habeas corpus proceeding before the Supreme Court of Ohio, it was held that Doughty waived his right to counsel by pleading guilty. The Supreme Court granted certiorari and, per curiam, remanded *Doughty* in the "light of *Gideon v. Wainwright.*" On remand, the Ohio Court refused to apply *Gideon,* distinguishing it by the fact that Gideon had requested counsel. The Supreme Court granted certiorari and reversed. 173 Ohio St. 407, 183 N.E.2d 368 (1962), *remanded,* 372 U.S. 781 (1963), *relief den.,* 175 Ohio St. 46, 191 N.E.2d 727 (1963), *reversed,* 376 U.S. 202 (1963).

11. See, *e.g.,* Durocher v. La Vallee, 330 F.2d 303 (2d Cir.), *cert. den.,* 337 U.S. 998 (1964); Palumbo v. New Jersey, 334 F.2d 524 (3d Cir. 1964).

12. See, *e.g.,* Geather v. State, 165 So. 2d 229 (Fla. 1964); *In re* Plamer, 371 Mich. 656, 124 N.W.2d 773 (1963); People v. Callahan, 19 A.D.2d 585, 240 N.Y.S. 460 (1963); State *ex rel.* May v. Boles, 139 S.E.2d 177 (W. Va. 1964). See U.S. v. Reincke, 333 F.2d 608 (2d Cir. 1964), and the concurring opinion of Judge Sobeloff in Jones v. Cunningham, 319 F.2d 1 (4th Cir. 1963). *Contra,* Authur v. People, 393 P.2d 371 (1964). The court held in this case that a reading of *Gideon* indicates its application is to be prospective rather than retrospective. See also Craig v. Banmiller, 410 Pa. 584, 189 A.2d 875, *rev'd,* McCray v. Rundle, 415 Pa. 65, 202 A.2d 303 (1964).

1. People v. Washington, 40 Cal. Rptr. 791 (2d Dist. Ct. App. 1964), noted in 33 FORDHAM L. REV. 721 (1965), 16 HASTINGS L.J. 620 (1965), 10 VILL. L. REV. 579 (1965).

2. As established by statute, CAL. PENAL CODE ANN. § 189 (1955). Maryland's statute is substantially the same, MD. CODE ANN. art. 27, §§ 407, 408, 410 & 411 (1957).

other room, looting the gas station's safe, his co-felon entered an adjacent room with pistol in hand and was fatally wounded by the owner of the gas station. On appeal, the conviction was reversed,[3] the court holding that "for a defendant to be guilty of murder under the felony-murder rule the act of killing must be committed by the defendant or by his accomplice acting in furtherance of their common design."[4]

Cases involving extension of the felony-murder rule to situations in which the deceased was killed by someone other than the defendant have provoked much discussion,[5] especially those cases holding contrary to the instant case.[6] While the commentators generally agree that the felony-murder rule should be limited as in the instant case, the case law has been slow to adopt this view due to strict interpretation of felony-murder statutes,[7] which typically state that "[*a*]*ll* murder . . . committed in the perpetration or attempt to perpetrate . . . robbery . . . is murder of the first degree."[8]

Judicial extension of the felony-murder rule, as in *Commonwealth v. Thomas*,[9] *People v. Harrison*[10] and the lower court decision of the instant case,[11] has been avoided in some states by changing the law.[12] England has abolished the felony-murder rule,[13] and the Model Penal Code has replaced it with a rebuttable presumption of malice.[14]

While Maryland accepts the felony-murder rule,[15] the question of its extension as in the instant case has not come before the Court of Appeals. Extension of the felony-murder rule has been considered in a lower Maryland court, where the court held that the defendant's plea that the fatal shot came from the gun of the victim's fellow officer set up a valid defense to the charge.[16]

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3. People v. Washington, 44 Cal. Rptr. 442, 402 P.2d 130 (1965).

4. *Id.* at 446, 402 P.2d at 134.

5. See, *e.g.*, Cadmus, *The Beginning and End of Attempts and Felonies Under The Felony-Murder Doctrine*, 51 DICK. L. REV. 12 (1946); Hitchler, *The Killer and His Victim in Felony-Murder Cases*, 53 DICK. L. REV. 3 (1948); Morris, *The Felon's Responsibility for the Lethal Acts of Others*, 105 U. PA. L. REV. 50 (1956); Packer, *The Case for Revision of the Penal Code*, 13 STAN. L. REV. 252 at 259 (1961); Note, 1961 DUKE L.J. 614.

6. *E.g.*, People v. Washington, 40 Cal. Rptr. 791 (2d Dist. Ct. App. 1964), reversed by instant case; People v. Podolski, 332 Mich. 508, 52 N.W.2d 201 (1952), *distinguished in* People v. Austin, 370 Mich. 12, 120 N.W.2d 766 (1963); Commonwealth v. Thomas, 382 Pa. 639, 117 A.2d 204 (1955), noted in 16 MD. L. REV. 249 (1956), *overruled by* Commonwealth v. Redline, 391 Pa. 486, 137 A.2d 472 (1958), noted in 18 MD. L. REV. 169 (1958).

7. See, *e.g.*, dissent in People v. Washington, 44 Cal. Rptr. 442, 447–51, 402 P.2d 130, 135–39 (1965).

8. CAL. PENAL CODE ANN. § 189 (1955).

9. 382 Pa. 639, 117 A.2d 204 (1955).

10. 176 Cal. App. 2d 330, 1 Cal. Rptr. 414 (1959).

11. People v. Washington, 40 Cal. Rptr. 791 (2d Dist. Ct. App. 1964).

12. *E.g.*, N.Y. PENAL LAW § 1044 (1909); WISC. STAT. ANN. § 940.03 (1956).

13. English Homicide Act, 1957, 5 & 6 Eliz. II, c. 11, §1.

14. MODEL PENAL CODE § 201.2 (Tent. Draft No. 9, 1959).

15. See MD. CODE ANN. art. 27, §§ 407, 408, 410 & 411 (1957), applied, *e.g.*, in Oakley v. State, 238 Md. 48, 207 A.2d 472 (1965); Buettner v. State, 233 Md. 235, 196 A.2d 465 (1964); Stevens v. State, 232 Md. 33, 192 A.2d 73 (1963).

16. State v. Biggue, Criminal Court of Balto. City No. 2191 (July 25, 1938), noted in 16 MD. L. REV. 249, at 257, in which the defendant was involved in a gun battle with two guards during an attempted robbery.

In reversing the lower court's conviction in the noted case the Supreme Court of California joins a growing minority of states which limit the application of the felony-murder rule to cases other than those in which the accused's co-felon is killed by a victim of the felony.[17]

LABOR LAW — State Court Not Preempted From Awarding Damages For Libel Arising Out Of Labor Dispute. *Meyer v. Joint Council 53, Int'l. Brotherhood of Teamsters,* 416 Pa. 401, 206 A. 2d 382 (1965). Plaintiffs were leaders of a labor organization which was attempting to oust the defendant local unions as collective bargaining representatives for certain employees. One week before the NLRB representation election was held, the defendants stated in their union newspaper that the plaintiffs had been individually convicted of one or more of a list of crimes which included rape, robbery, and manslaughter. The plaintiffs sued in the state court seeking damages for libel. The defendants raised a preliminary objection by contending that the state court's jurisdiction was preempted by Section 7 or 8 of the National Labor Relations Act. The trial court dismissed this objection, and the defendants appealed. In affirming the lower court's ruling, the Supreme Court of Pennsylvania relied on *San Diego Bldg. Trades Council v. Garmon.*[1] In that case, the Supreme Court of the United States said that, "Congress has entrusted administration of the labor policy for the Nation to a centralized administrative agency [NLRB], armed with its own procedures, and equipped with its specialized knowledge and cumulative experience. . . ."[2] To fulfill Congress' intent to develop a uniform national labor policy, state jurisdiction must yield to the exclusive authority of the NLRB when the activity is arguably subject to Section 7 or 8[3] of the National Labor Relations

17. Butler v. People, 125 Ill. 641, 18 N.E. 338 (1888); Commonwealth v. Moore, 121 Ky. 97, 88 S.W. 1085 (1905); Commonwealth v. Balliro, ____ Mass. ____, 209 N.E.2d 308 (1965); Commonwealth v. Campbell, 7 Allen (89 Mass.) 541 (1863); People v. Austin, 370 Mich. 12, 120 N.W.2d 766 (1963); Commonwealth v. Redline, 391 Pa. 486, 137 A.2d 472 (1958); State v. Oxendine, 187 N.C. 658, 122 S.E. 568 (1924). See generally Annot., 12 A.L.R.2d 210 (1950).

1. 359 U.S. 236 (1959). The activity involved was peaceful picketing. The Supreme Court found no "compelling state interest" and held that the state court lacked jurisdiction to award damages for conduct constituting a tortious unfair labor practice under state law.

2. *Id.*, at 242.

3. "Employees shall have the right to self-organization, to form, join, or assist labor organizations . . . and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection. . . ." 49 Stat. 452, as amended, 29 U.S.C.A. § 157.

Section 8 states what acts do or do not constitute an unfair labor practice and defines collective bargaining. The particular sub-section which was in issue here is 8(c) which states: "The expressing of any views, argument, or opinion, or the dissemination thereof, whether in written, printed, graphic, or visual form, shall not constitute, or be evidence of an unfair labor practice under any of the provisions of this subchapter, if such expression contains no threat of reprisal or force or promise of benefit." 49 Stat. 452, as amended, 29 U.S.C.A. § 158(c).

Act. However, in clarifying previous cases which had allowed state courts to award damages for tortious activities marked by violence and imminent threats to the public order,[4] the Court established that there is an exception to the theory of preemption based on the principle that "the compelling state interest, in the scheme of our Federalism, in the maintenance of domestic peace is not overridden in the absence of clearly expressed congressional direction."[5] Applying the principles of *Garmon,* the Pennsylvania court held that the state had a "compelling state interest" in providing a "peaceful forum" to which libelled individuals could bring their claims. Despite the fact that the claims arise out of a labor dispute, they are not to be ignored where the tortious activity alleged was only of "peripheral concern"[6] to the NLRA.

Other courts, when considering whether state jurisdiction over a libel arising out of a labor dispute is preempted by the National Labor Relations Act, have used the *Garmon* rule to arrive at the opposite result. Some have found preemption without considering the exceptions in the *Garmon* rule,[7] while others have considered these exceptions but have found that no "compelling state interest" exists[8] or that the libel was more than a peripheral concern of the NLRB.[9] In determining whether a "compelling state interest" exists, the courts have felt that violence or the threat of violence is a necessary requirement under the *Garmon* rule;[10] the principal case expressly rejects such a narrow interpretation.[11]

The Maryland courts have not yet been confronted with the question of preemption in an action for damages for libel arising out of a

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4. International Union, United Automobile, Aircraft and Agricultural Implement Workers, etc. v. Russell, 356 U.S. 634 (1958) (damages for union's malicious interference with employee's lawful occupation); United Construction Workers, etc. v. Labernum Const. Corp., 347 U.S. 656 (1954) (damages for union's agents threatening and intimidating contractor's officers and employees so that contractor was unable to continue with construction projects).

5. 359 U.S. 236, at 247; the Court also established that the states were not preempted from the power to regulate "where the activity regulated was a merely peripheral concern of the Labor Management Relations Act." *Id.* at 243.

6. An activity is of "peripheral concern" where the particular activity is not central to the interest protected by the NLRB — that of insuring an employee's right of free choice. Few cases concerning libel have discussed "peripheral concern," but those which have discussed it have reached a conclusion opposite to that of the principal case. *Infra* note 9.

7. Troidl v. Keough, 254 N.Y.S.2d 240 (1964); Schnell Tool & Die Corp. v. United Steel Workers of America, 200 N.E.2d 727 (Ohio C.P. 1964).

8. Linn v. United Plant Guard Workers of America, 337 F.2d 68 (6th Cir. 1964); Inland Air Conditioning & Refrigeration Contractors Ass'n, Inc. v. Bergan, 57 L.R.R.M. 2296 (Cal. Super. Ct. 1964); Blum v. International Ass'n of Machinists, 42 N.J. 389, 201 A.2d 46 (1964).

9. Blum v. International Ass'n of Machinists, 42 N.J. 389, 201 A.2d 46 (1964); *Cf.* Chauffeurs, Teamsters Local 150, IBT v. Superior Ct., 39 Cal. Rep. 590 (Cal. Dist. Ct. App. 1964) (court refused to grant an injunction against the libel).

10. See cases cited, *supra* note 7; see Merrifield, *Federal-State Jurisdiction in Labor Relations Law,* 29 GEO. WASH. L. REV. 318, 338 (1960).

11. 206 A.2d 382, 385, n.10; the court cites California Dump Truck Owners Ass'n v. Joint Council of Teamsters, 49 L.R.R.M. 2932, (Cal. Super. Ct. 1962), as in accord with their holding, 206 A.2d at 385, n.9; however, the California court pointed out that they were not bound by the *Garmon* rule since the alleged libel was not related to a labor dispute. 49 L.R.R.M. 2932, at 2933.

labor dispute. However, the Court of Appeals has held that the state court has jurisdiction over a tort action by an employer to recover damages from the union for physical and economic injuries to the employer's business, where the tortious acts involved were an imminent threat to public order.[12]

PUBLIC ACCOMMODATIONS — Establishments Covered by Civil Rights Act of 1964. *Cuevas v. Sdrales,* 344 F.2d 1019 (10th Cir. 1965). *Pinkney v. Meloy, 241* F. Supp. *943* (N.D. Fla. 1965). In *Cuevas,* a Negro sought injunctive relief under the Civil Rights Act of 1964[1] to restrain a tavern operator from refusing to serve him. The tavern served primarily beer and did not serve meals or other food. The District Court dismissed the action and the Circuit Court, on appeal, affirmed, holding that beer was not food within the meaning of the act and therefore the tavern, at which no food was sold, was not a place of public accommodation within the meaning of the act.[2]

Title II of the Civil Rights Act of 1964 lists as covered places "any restaurant, cafeteria, lunchroom, lunch counter, soda fountain, or other facility principally engaged in selling food for consumption on the premises" whose operations affect commerce.[3] Such establishments as restaurants and department store lunch counters and tearooms have been held to fall within its scope.[4] It was the intention of Congress, however, that bars and taverns should not be considered places of public accommodation, and the principal case interprets the act in this manner.[5] In Maryland, the 1963 Maryland Public Accommodations Act covers establishments serving food, but specifically exempts those bars and taverns which are primarily devoted to the sale of alcoholic beverages.[6]

In *Meloy,* Negro plaintiffs brought an action under Title II of the Civil Rights Act of 1964 against defendant barber who refused them service. Defendant's shop consisted of leased space in the basement of a hotel, and the chairs were in turn leased to independent barbers. The hotel was a place of public accommodation as defined by the act, and the barbershop held itself out as available to hotel patrons, although 95% of the barbershop patrons were local residents. The District Court found that the barbershop was also a place of public accommodation, and ruled that the proportion of local to transient customers was not a criterion for coverage by the act.

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12. See Solo Cup Co. v. International Brotherhood of Pulp, Sulphite and Paper Mill Workers AFL-CIO, 237 Md. 143, 205 A.2d 213 (1964).

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1. 78 Stat. 241 (1964), 42 U.S.C. § 2000a (1964).

2. *Accord,* Tyson v. Cazes, 238 F. Supp. 937, 942 (D. La. 1965).

3. 42 U.S.C. § 2000a(b)(2).

4. Katzenbach v. McClung, 379 U.S. 294 (1964) (restaurant); Hamm v. City of Rock Hill, 379 U.S. 306 (1964) (lunch counter and tearoom in department store).

5. 344 F.2d 1019, 1021–23.

6. MD. CODE ANN. art. 49B, §§ 11, 12 (Supp. 1964).

The Civil Rights Act of 1964 includes within its definition of public accommodations, "any inn, hotel, motel, or other establishment which provides lodging to transient guests."[7] The definition also includes "any establishment which is physically located within the premises of any establishment otherwise covered by this subsection, . . . which holds itself out as serving patrons of such covered establishment."[8] Although all barbershops were not intended to be covered by the act, its legislative history clearly shows that hotel barbershops, such as in the principal case, were intended to be within its scope.[9]

SERVICE OF PROCESS — Constitutionality of Maryland Substitute Service Statute. *Gkiafis v. Steamship Yiosonas,* 342 F.2d 546 (4th Cir. 1965). Charles Gkiafis, a Greek seaman, allegedly suffered an injury while serving aboard the steamship Yiosonas in the Port of Baltimore on September 5, 1961. Gkiafis subsequently sued the Yiosonas and its owner, a Panamanian corporation. Jurisdiction over the shipowner was obtained by substitute service of process on the State Department of Assessments and Taxation.[1] The shipowner filed a motion to quash service of process and dismiss the libel contending, *inter alia,* that the Maryland statute[2] which provides for substituted service is unconstitutional. The defendant argued that the procedure provided by the statute was not reasonably calculated to insure notice to him, since there was no requirement for filing a return receipt for the registered letter of notification sent to him. The trial court upheld the constitutionality of the statute but granted the shipowner's motion to quash process on other grounds. The Fourth Circuit, on appeal, held the Maryland substitute service statute constitutional.

The general rule as to the validity of substitute service statutes is that the form of service provided for by the statute must be reasonably calculated to give notice of the suit to the foreign corporation.[3] Securing a return receipt from the foreign corporation and filing the receipt with the court is not a prerequisite; it is only one of the possible provisions which may be adopted.[4] The statute involved in the instant case required that notice of the suit be sent to the defendant by registered mail by an agency of the State of Maryland. The Fourth Circuit cited an earlier court decision which indicated that there was no reason to presume the State agency would not perform the duty imposed upon it, and that therefore the statute was reasonably calculated to give notice of the suit to the foreign corporation.[5]

7. 42 U.S.C. § 2000a(b)(1).
8. 42 U.S.C. § 2000a(b)(4).
9. 241 F. Supp. 943, 946–47. See generally Sanders, *The Civil Rights Act of 1964,* 27 TEXAS B.J. 931, 1016 (1964); Recent Statute, 78 HARV. L. REV. 684, 687 (1965).

1. Pursuant to MD. CODE ANN. art. 23, § 92(b) (1957).
2. MD. CODE ANN. art. 23, §§ 97 & 98 (1957).
3. See Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306 (1950); International Shoe Co. v. State of Washington, 326 U.S. 310 (1945); Wuchter v. Pizzuti, 276 U.S. 13, 19 (1928); RESTATEMENT, JUDGMENTS § 30, comment e (1942).
4. Speir v. Robert C. Herd & Co., 189 F. Supp. 432, 434 (D. Md. 1960).
5. *Id.* at 435.

Early decisions dealing with the constitutionality of state statutes providing for substitute service of process on foreign corporations are in conflict.[6] A Nevada statute which did not require the Secretary of State to forward to the defendant notice of the constructive service was held unconstitutional,[7] while a similar Oklahoma statute was held constitutional.[8] There is dictum in a Virginia case to the effect that even if there had been no provision in the statute requiring the Secretary of the Commonwealth to forward notice to a foreign corporation, the statute would still have been held constitutional.[9] A California statute which did not require the Secretary of State to notify the foreign corporation was held constitutional in a state court;[10] however, a federal court later held the California statute unconstitutional.[11]

The constitutionality of the Maryland substitute service statute had been passed on twice previously. A state *nisi prius* opinion held the statute unconstitutional;[12] however, a Federal District Court subsequently held the statute constitutional.[13] Apparently, the present decision closes the question.

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6. See Annot., 89 A.L.R. 658 (1934).

7. King Tonopah Mining Co. v. Lynch, 232 Fed. 485 (D. Nev. 1916).

8. Kaw Boiler Works v. Frymyer, 100 Okla. 81, 227 Pac. 453 (1924).

9. American Ry. Exp. Co. v. Fleishman, Morris & Co., 149 Va. 200, 141 S.E. 253, 258 (1928).

10. Olender v. Crystalline Mining Co., 149 Cal. 482, 86 Pac. 1082 (1906).

11. Knapp v. Bullock Tractor Co., 242 Fed. 543 (D. Cal. 1917).

12. Sheet Metal Fabricators, Inc. v. Newcomb Detroid Co., Baltimore City Court, Docket 91, p. 849 (1957).

13. Speir v. Robert C. Herd & Co., 189 F. Supp. 432 (D. Md. 1960).