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Recent Developments

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Recent Developments

CRIMINAL LAW — Abduction Of A Female Under The Age Of Eighteen For The Purpose Of Marriage. *State v. Camp,* 67 Wash. 357, 407 P.2d 824 (1965). In March, 1963, the defendant, who was then forty-four years old, became engaged to a seventeen year old girl. The girl was a junior-high school dropout and worked part-time as a bookkeeper in the defendant's home. Her parents had allowed the two to become engaged, but refused permission for marriage until the girl reached eighteen.[1] In April, 1963, the two were married and promptly informed her parents of what they had done. The girl's parents complained to the local authorities, and the defendant was charged with abduction. Subsequently, the parents petitioned the court to dismiss the charge. The trial judge refused their petition, and the defendant was convicted of abduction and sentenced to ten years in the state penitentiary.[2] The Supreme Court of Washington affirmed, stating that the subsequent consent of the parents to the marriage was immaterial. By statute the trial judge could, at his discretion and in the furtherance of justice, refuse to dismiss the prosecution.

Washington is one of a limited number of states having an abduction statute which expressly prohibits the taking of an underage female for the purpose of marriage without the consent of her parents or legal guardians.[3] These statutes apparently are aimed at preventing what is often an unsuccessful union. They also attempt, perhaps, to discourage those rascals who seek to entice young heiresses into marriage for the obvious monetary benefit. The latter is not a common problem in this century, but it did form the impetus for many of these laws.[4]

Statutory definitions of abduction generally set forth some specific purpose as an essential element of the crime. Examples include abduc-

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1. REV. CODE WASH. ANN. § 26.04.210 (Supp. 1965) requires parental consent for the marriage of a female under eighteen.

2. REV. CODE WASH. ANN. § 9.79.050 (1961) provides in part:

> (1) Abduction. Every person who . . . shall take a female under the age of eighteen years for the purpose of prostitution, of sexual intercourse, or without the consent of her father, mother, guardian or other person having legal charge of her person, for the purpose of marriage . . . shall be guilty of abduction and punished by imprisonment in the state penitentiary for not more than ten years or by a fine of not more than one thousand dollars, or both.

On appeal, the sentence was suspended upon the condition that the defendant serve one year in jail and that he have no contact whatsoever with his wife during that year. State v. Camp, 67 Wash. 357, 407 P.2d 825, 826 (1965).

3. See, *e.g.*, MASS. ANN. LAWS ch. 272, § 81 (1956) (under 16); MICH. STAT. ANN. § 28:203 (1962) (under 16); N.J. STAT. ANN. 2A:86-3 (1953) (under 18); N.Y. PENAL LAW § 70 (taking of female under 18 years prohibited); TEXAS PENAL CODE ANN. art. 1180 (1961) (under 14).

4. PERKINS, CRIMINAL LAW 96-97 (1957).

tion for unlawful sexual intercourse, prostitution, concubinage or cohabitation. The Maryland Abduction Statute prohibits the enticement, persuasion or forcible abduction of any female under the age of eighteen for the purposes of "prostitution, fornication or concubinage."[5] This law does not expressly prohibit the taking of such a girl for the purpose of marriage without the consent of her parents or guardians. It is usually held that a conviction under an abduction statute requires evidence clearly showing not only a taking within the meaning of the statute, but also a taking for a purpose specified in the statute.[6] It appears, therefore, that the defendant here could not have been convicted of the crime of abduction in Maryland.

Maryland does have other statutes, however, which could affect this area. One statute states that a person who takes or detains a female unlawfully against her will, with the intent to compel her by force, threats, persuasions, menace or duress to marry him, is guilty of pandering.[7] Obviously, this does not directly apply to the facts in *Camp,* although it could quite arguably be the basis of prosecution in similar situations.[8] Further, any person who knowingly makes a material false statement to procure, or to assist any other person to procure, any license or marriage ceremony in violation of the marriage laws is guilty of and punishable for perjury.[9] A successful abduction and marriage without the consent of the underage female's parents or guardians could probably be prosecuted under this statute. Whether the state would prosecute in such cases must rightfully depend upon the authorities and their determination of the degree of danger to the public interest.[10]

It would appear that the parents in this case would have had little chance of obtaining a dismissal *nolle prosequi* in Maryland after withdrawal of their complaint. Aside from a possible constitutional power in the governor,[11] the discretion not to prosecute appears reserved solely for the state prosecutor. Since there are no Maryland statutes, the common law would prevail, and the court would have no power to enter a *nolle prosequi* to a good indictment or to dismiss a criminal prosecution except at the instance of the prosecutor.[12]

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5. MD. CODE ANN. art. 27, § 1 (1957).

6. Commonwealth v. Bresnahan, 255 Mass. 144, 150 N.E. 882 (1926); Commonwealth v. Nickerson, 5 Allen (Mass.) 518 (1862). See generally Annot., 77 A.L.R. 322 (1932).

7. MD. CODE ANN. art. 27, § 426 (1957).

8. There have been no appeals under this specific section of the statute. The pandering law is generally used to curb prostitution on Baltimore's "Block". See Mazer v. State, 231 Md. 40, 188 A.2d 552 (1962). The state might encounter some difficulty with the requirement of a taking "against her will." The circumstances of the girl's age, intelligence and social maturity could bring the defendant within the statute under unusual circumstances.

9. MD. CODE ANN. art. 27, §§ 9-11 (1957).

10. State v. Camp, 67 Wash. 357, 407 P.2d 824 (1965).

11. MD. CONST. art. II, § 20. The governor clearly has the power to grant reprieves and pardons and remit fines and forfeitures. The power to grant a *nolle prosequi* is not affirmatively given, although it could be implied from the language in this section.

12. Commonwealth v. Condiff, 149 Ky. 37, 147 S.W. 767 (1912); State v. Frazier, 52 La. App. 1305, 27 So. 799 (1900). See Annot., 69 A.L.R. 240 (1930).

LANDLORD AND TENANT — Retaliatory Eviction-Right To Inform Of Housing Code Violations. *Habib v. Edwards,* Civil No. LT 75895-65, D.C. Ct. Gen. Sess., Landlord & Tenant Branch, Oct. 28, 1965; 34 U.S.L. WEEK 2242. Defendant tenant complained to the District of Columbia housing authorities of housing code violations by his landlord. The landlord retaliated by bringing eviction proceedings against the tenant. The District of Columbia Landlord and Tenant Court, per Judge Harold M. Green, in an unreported memorandum opinion set aside a default judgment in favor of the landlord and ruled that the United States Constitution prohibits any party from interfering with a citizen's right to inform the government of violations of the law.[1] The case then came up for jury trial, but the court refused evidence of the landlord's motive and granted a directed verdict for the landlord.[2] The tenant then moved for a stay pending appeal,[3] which was subsequently granted by a per curiam order of the District of Columbia Circuit Court of Appeals.[4] This appeal is now pending.

In a similar case, *Tarver v. G & C Construction Corp.*,[5] a United States District Court held that an eviction for complaining to local health authorities constituted a violation of the constitutional right of the tenant to petition for a redress of grievances. The court reasoned that state action violative of the fourteenth amendment would result from enforcement by a court of an eviction order instituted in retaliation for the tenant's act of disclosure. Judge Green, however, rejected the reasoning of *Tarver* and refused to base his ruling on any specific article or amendment of the Constitution. Instead, he felt that a tenant had a broad constitutional right to inform the authorities and be free from retaliation for such disclosure.

In *In re Quarles,*[6] the Supreme Court said:

> The right of a citizen informing of a violation of law, like the right of a prisoner in custody upon a charge of such violation, to be protected against lawless violence does not depend upon any amendment of the Constitution, but arises out of the creation and establishment by the Constitution, itself, of a national government, permanent and supreme within its sphere of action.[7]

Relying on this principle, Judge Green concluded that the court should not allow itself to be used as a vehicle to assist the landlord in depriving the tenant of his constitutional rights. It is notable that Judge Green's reasoning has been clearly approved by Judge Wright of the

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1. Habib v. Edwards, Civil No. LT 75895-65, D.C. Ct. Gen. Sess., Landlord & Tenant Branch, Oct. 28, 1965.
2. *Id.* (Nov. 18, 1965).
3. The motion was initially denied in the Municipal Court of Appeals of the District of Columbia, Civil No. 3957, 1965 Term.
4. Edwards v. Habib, No. 19812, D.C. Cir., Dec. 3, 1965.
5. Civil No. 64-2945, S.D. N.Y., Nov. 9, 1964 (unreported decision).
6. 158 U.S. 532 (1895).
7. *Id.* at 536. *Accord,* Motes v. U.S., 178 U.S. 458 (1900); Roviaro v. U.S., 353 U.S. 53 (1957).

District of Columbia Circuit Court of Appeals in a concurring opinion to the per curiam order of that court.[8]

The *Tarver* and *Habib* cases illustrate one aspect of the plight of the slum tenant.[9] With the growing awareness of the problems of the poor on the part of governmental agencies and the public generally, it can be expected that cases similar to these will appear in greater numbers in the near future.

TORTS — Limitations On Actions In Medical Malpractice Cases. *Waldman v. Rohrbaugh,* 241 Md. 137, 215 A.2d 825 (1966). On June 16, 1961, defendant performed an operation upon plaintiff for a fracture of the ankle. For an unspecified time thereafter, defendant continued to treat plaintiff for this injury. On September 2, 1964, plaintiff filed his complaint, alleging (1) malpractice in the conduct of the operation; and (2) malpractice during the post-operative treatment. Defendant filed a plea of limitations.[1] The trial court granted defendant's motion for a judgment on the pleadings on the ground that the statute of limitations barred the action.

The Court of Appeals of Maryland held that the trial court erred in entering this judgment, since the Maryland Rules do not provide for judgment on the pleadings. The court then went on to state that, as a matter of substantive law, the general rule in Maryland is that the statute of limitations on causes of action begins to run from the date of the alleged wrong, not from the date of its discovery. However, in many medical malpractice cases, the lay victim does not become cognizant of injury until after limitations have run. Consequently, the court stated that two exceptions to the general rule have evolved in some states in medical malpractice cases. First, where the doctor-patient relationship is terminated immediately after the alleged injurious act, *i.e.*, where there is no continuing treatment, the statute begins to run only when the patient discovers, or reasonably should have discovered, the injury. Second, where there is continuing treatment, the court said, "[T]he cause of action . . . accrues at the end of the treatment . . . , unless the patient *sooner* knew or reasonably should have

8. See note 4, *supra.*

9. For an enlightening article dealing with the problems of slum housing, see Schoshinski, *Remedies of the Indigent Tenant: Proposal for Change,* 54 GEO. L.J. 519, especially 541-52 (1966). See also Note, 12 How. L.J. 137 (1966).

1. See MD. CODE ANN. art. 57, § 1 (1964) : "All actions . . . on the case . . . actions of debt on simple contract, . . . all actions for trespass for injuries to real or personal property . . . shall be commenced . . . within three years from the time the cause of action accrued. . . ."

See also McClees v. Cohen, 158 Md. 60, 148 Atl. 124 (1930), where the court determined that the negligent extraction of wrong teeth was either an action as trespass, case or contract and was, therefore, within the three-year limitations on actions. Only 17 states have statutes of limitations expressly applicable to medical malpractice actions. See generally LOUISELL & WILLIAMS, TRIAL OF MEDICAL MALPRACTICE CASES ¶ 13.01, at n.1 (2d ed. 1965).

known of the injury or harm, in which case the statute would start to run with actual or constructive knowledge."[2]

Some reservations must be entered in respect to the latter exception. Although it apparently embraces the facts of the principal case,[3] it poses a basic problem when considered in conjunction with the first exception. This, of course, is that an injury may remain undiscovered for considerably longer than three years after the end of continuing treatment.[4] The court did not specifically address itself to this difficulty. It did, however, examine and restate with approval an earlier Maryland case, *Hahn v. Claybrook*,[5] and held, "The right of action for injury or damage from malpractice may accrue when the patient knows or should know he has suffered injury or damage."[6] This proposition does not limit recovery to cases where discovery was made before the end of treatment.[7] Thus, on the basis of *Hahn*, the statute might begin to run whenever the patient discovers, or reasonably should have discovered, the injury, irrespective of the time of the act or the end of treatment.

There are two conflicting basic policies in this area: (1) protection of the doctor from stale lawsuits; and (2) protection of the patient from physicians whose negligence may not become evident within the statutory period of limitations.[8] If there is agreement that, for purposes of limitations, the time of the act is not controlling where the patient does not until later discover his injury, there is no reason to attach

2. 241 Md. at 142, 215 A.2d at 828 (emphasis added). The end of treatment has been employed as the point in time from which the statute of limitations runs in two situations: (1) where no specific act can be isolated from a course of treatment as the time of injury; (2) in some states, in cases where the injury is clearly determinable, but is followed by subsequent treatment of the injury or by continuation of the treatment from which the injury initially arose. See LOUISELL & WILLIAMS, *op. cit. supra* note 1, ¶ 13.06, at 369, and ¶ 13.08, at 371.

3. Counsel for plaintiff informed the REVIEW that both the end of treatment and the discovery of injury occurred after September 2, 1961, *i.e.*, within three years of the filing of the complaint.

4. The Supreme Court has recognized that some injuries are "inherently unknowable." Urie v. Thompson, 337 U.S. 163, 169 (1949). There, a three-year limitation on actions under the Federal Employers' Liability Act did not bar an employee's action for contraction of silicosis over 30 years, where the action was brought within three years of his discovery of the disease.

5. 130 Md. 179, 100 Atl. 83 (1917).

6. Waldman v. Rohrbaugh, 241 Md. 137, 145, 215 A.2d 825, 830 (1966).

7. This conflict may be explained by the facts of Hahn v. Claybrook, 130 Md. 179, 100 Atl. 83 (1917). There, from 1904 through 1910, defendant prescribed argentum oxide for plaintiff. In 1908, plaintiff began to notice a gray-blue discoloration of certain parts of her body, symptomatic of a condition known as argyria. Plaintiff did not file her complaint until 1915. The court held that plaintiff was barred by the three-year statute, since "when she began to be discolored that showed an injury . . . of which she had a right to complain . . . and the statute began to run from the time of the discovery of the alleged injury. . . ." 130 Md. at 187, 100 Atl. at 86. The *Hahn* case is, therefore, a situation of discovery "sooner" than the end of treatment. The language quoted *supra* is dictum, however persuasive, to the extent that it is relied upon as authority for the application of the discovery principle to situations of discovery later than the end of treatment.

8. See Lindquist v. Mullens, 45 Wash. 2d 675, 277 P.2d 724 (1954) (dissenting opinion).

similarly inordinate significance to the time of the end of treatment. The time of reasonable discovery principle is the better rule,[9] and it should not be affected by such arbitrary fixed times as the act itself or the end of treatment.

Since the court acknowledges that the principal case could be disposed of on procedural grounds, its reasoning on the substantive law is dictum. Moreover, since not only the discovery of the injury but also the end of treatment apparently occurred within three years of the filing of the complaint, the case does not clearly decide that the time of reasonable discovery principle will be applied in Maryland in situations of discovery after, as well as before, the end of treatment.

TRADE REGULATION — Presently Injured Private Party Has Cause Of Action For Treble Damages For Violation Of Section 7 Of Clayton Act. *Julius M. Ames Co. v. Bostitch, Inc.*, 240 F. Supp. 521 (S.D.N.Y. 1965). Bostitch, the largest manufacturer of metal fastening devices in the United States, acquired the stock of Calwire, Inc., a manufacturer of industrial pneumatic nailing tools, nails and staples. Plaintiffs were independent distributors for Calwire's holding company, Calnail, Inc. As a result of Bostitch's acquisition, plaintiffs' distributorships were cancelled. Plaintiffs brought a private antitrust action, seeking treble damages and a divestiture decree, charging that defendant had violated section 1 of the Sherman Act[1] and section 7 of the Clayton Act.[2] Defendant moved under Rule 12(b)(6) to dismiss the Clayton Act charge on the ground that the complaint failed to state a claim.

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9. Only a few states have genuinely embraced the discovery principle. Alabama and Connecticut have adopted it by statute, but only with extensive qualifications. See ALA. CODE ANN. tit. 7, § 25(1) (Supp. 1955) (generally, two years from act; but, if not discovered within that time, then within six months of discovery, but not more than six years after the act); and CONN. GEN. STAT. § 52-584 (1958) (one year from act or from actual or constructive discovery, but not more than three years after the act). See, *e.g.*, Hemingway v. Waxler, 128 Cal. App. 2d 68, 274 P.2d 699 (1954) (in action against doctor for improper diagnosis of fractured leg, limitation began to run when plaintiff was informed that leg was fractured); Costa v. Regents of the Univ. of Cal., 116 Cal. App. 2d 445, 254 P.2d 85 (1953) (in action against hospital and certain doctors for improper diagnosis and treatment of cancer, limitation does not begin to run until actual or constructive discovery); City of Miami v. Brooks, 70 So. 2d 306 (Fla. 1954) (in action for overdose of x-ray treatment, limitation does not begin to run until notice of the consequences of the alleged negligence); Billings v. Sisters of Mercy of Idaho, 86 Idaho 485, 389 P.2d 224 (1964) (in action for negligent failure to remove gauze sponge after operation, cause of action does not accrue until patient actually or constructively learns of the presence of the foreign object in his body); Perrin v. Rodriguez, 153 So. 555 (La. App. 1934) (not necessary for defendant doctor to have had knowledge of his own wrongful act in order for statute, under the fraudulent concealment theory, to be tolled until plaintiff's discovery). See generally Annot., 80 A.L.R.2d 368 (1961).

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1. 26 Stat. 209 (1890), as amended, 15 U.S.C. § 1 (1964).

2. 38 Stat. 731 (1914) (now 64 Stat. 1125 (1950)), 15 U.S.C. § 18 (1964).

Section 7 of the Clayton Act[3] prohibits the acquisition by one corporation of the stock of another when the effect "may be substantially to lessen competition, or to tend to create a monopoly," in "any line of commerce in any section of the country." Section 4[4] of the act provides a right to sue for treble damages to anyone injured by a violation of any of the antitrust laws. Defendant claimed that a section 4 recovery could not be obtained as a result of a section 7 violation and based its contention on three decisions[5] which apparently prohibited such a recovery. These cases rested on the ground that any damages claimed for a section 7 acquisition would be merely speculative, since the violation occurs at the moment of acquisition, but the injury will not occur until the future, when competition is actually lessened. In the principal case, however, plaintiffs had already lost their distributorships. Consequently, the court denied defendant's motion to dismiss and held that since plaintiffs are presently injured — their damages are in no way speculative — they can state a claim for treble damages under section 4.

In recent years the private antitrust suit for treble damages has begun to flourish.[6] Prior to 1940, there were only ten successful treble damage recoveries.[7] Today there are many, and often the recovery exceeds a million dollars.[8] Such extensive recovery has caused comment to the effect that the threefold recovery should be discretionary for incipient violations rather than mandatory,[9] but generally the right to recover treble damages is strongly favored as an effective means of enforcing the antitrust laws.[10] Even so, the availability of the remedy

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3. *Ibid.*

4. 38 Stat. 731 (1914), 15 U.S.C. § 15 (1963).

5. Highland Supply Corp. v. Reynolds Metals Co., 329 F.2d 725 (8th Cir. 1964) (dictum); Bailey's Bakery, Ltd. v. Continental Baking Co., 235 F. Supp. 705 (D. Hawaii 1964); Gottesman v. General Motors Corp., 221 F. Supp. 488 (S.D.N.Y. 1963) (pretrial order), *leave to appeal denied,* Misc. No. 1959 (2d Cir., Jan. 24, 1964), *cert. denied,* 379 U.S. 882 (1964).

6. See Barber, *Private Enforcement of the Antitrust Laws: The Robinson-Patman Experience,* 30 GEO. WASH. L. REV. 181, 182 (1961); Clark, *The Treble Damage Bonanza: New Doctrines of Damages in Private Antitrust Suits,* 52 MICH. L. REV. 363 (1954); Wham, *What Every Lawyer Should Know About Treble Damage Suits,* 43 ILL. B.J. 108 (1954); Note, 64 COLUM. L. REV. 597, 599 (1964).

7. Story Parchment Co. v. Paterson Parchment Paper Co., 282 U.S. 555 (1931); Eastman Kodak v. Southern Photo Materials Co., 273 U.S. 359 (1927); Thomsen v. Cayser, 243 U.S. 66 (1917); Lawler v. Loewe, 235 U.S. 522 (1915); Chattanooga Foundry & Pipe Works v. Atlanta, 203 U.S. 390 (1906); Montague & Co. v. Lowry, 193 U.S. 38 (1904); Connecticut Importing Co. v. Frankfort Distilleries, Inc., 101 F.2d 79 (2d Cir. 1939); American Can Co. v. Ladoga Canning Co., 44 F.2d 763 (7th Cir. 1930); William H. Rankin Co. v. Associated Bill Posters, 42 F.2d 152 (2d Cir. 1930); Straus v. Victor Talking Machine Co., 297 Fed. 791 (2d Cir. 1924).

8. *E.g.,* Twentieth Century Fox Film Corp. v. Brookside Theatre Corp., 194 F.2d 846 (8th Cir. 1952); Milwaukee Towne Corp. v. Lowe's, Inc., 190 F.2d 561 (7th Cir. 1951); Sablosky v. Paramount Film Distrib. Corp., 137 F. Supp. 929 (E.D. Pa. 1955). See also Eastern R.R. Presidents Conf. v. Noerr Motor Freight, Inc., 365 U.S. 127 (1961), where the Supreme Court reversed a judgment for $652,074 plus $200,000 in fees, and Eagle Lion Studios, Inc. v. Loew's, Inc., 358 U.S. 100 (1958), where the court affirmed the dismissal of a suit for $15 million. In the principal case, each of the two plaintiffs sued for $1,800,000.

9. See ATT'Y GEN. NAT'L COMM. ANTITRUST REP. 379 (1955).

10. See Loevinger, *Private Action — The Strongest Pillar of Antitrust,* appearing in HOFFMAN, ANTITRUST LAW AND TECHNIQUES 373, 384 (1963); McConnell, *The Treble Damage Issue: A Strong Dissent,* 50 NW. U.L. REV. 342 (1955).

for a section 7 violation has been somewhat questionable,[11] although the statute makes no mention of an exception.[12] The principal case is the first to expressly decide the question favorably to the party seeking the threefold recovery.[13]

UNEMPLOYMENT COMPENSATION — "Voluntarily Unemployed" Held To Include Relinquishment Of Employment Based On Collective Bargaining Agreement. *Department of Labor & Indus. v. Unemployment Compensation Bd. of Review,* 418 Pa. 471, 211 A.2d 463 (1965). Claimants left work pursuant to a collective bargaining agreement which provided that senior employees would be employed until their gross earnings received from the employer since January of the year of employment amounted to five thousand dollars. These employees were then laid off for the remainder of the year, being replaced by junior employees. This is commonly known as a "work sharing" plan.[1] The Pennsylvania Supreme Court held that since claimants had agreed to the collective bargaining agreement through their union bargaining agents, they had "voluntarily" left work and were therefore ineligible for unemployment benefits under the Pennsylvania Unemployment Compensation Law.[2] The rationale of the court's decision was that the program of planned unemployment created by the collective bargaining agreement was not the type of unemployment the statute was designed to alleviate.[3] By equating the statutory phrase "involuntary unemployment" with the phrase "through

11. See cases cited note 5 *supra. But see* Merge Foreign Car Div., Inc. v. Chrysler Corp., 1960 CCH Trade Cas. 76688 (W.D. Pa. 1960) and Ozdoba v. Verney Brunswick Mills, Inc., 152 F. Supp. 136 (S.D.N.Y. 1956), where private complaints for Section 7 violations were upheld against motions to dismiss without question as to the availability of the treble damage remedy.

12. For discussion as to probable Congressional intent, see Note, 64 COLUM. L. REV. 597, 600–01 (1964). See also Minnesota Mining & Mfg. Co. v. New Jersey Wood Finishing Co., 381 U.S. 311 (1964), where the Court held that an FTC merger proceeding suspends the time limit on a related treble damage action.

13. For discussion of the principal case and the cases cited note 5 *supra,* see BNA ANTITRUST & TRADE REG. REP. No. 227, B-1 (Nov. 16, 1965).

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1. See generally Note, *Unemployment Insurance and Current Unemployment Problems: Work Sharing — An Answer,* 16 LAB. L.J. 243 (1965).

2. PA. STAT. ANN. tit. 43, § 802 (1964) provides, "[A]n employee shall be ineligible for compensation for any week— . . . (b)(1) In which his unemployment is due to voluntarily leaving work without cause. . . ."

3. The guidelines set forth in the Pennsylvania statute's declaration of public policy state, "The Legislature, therefore, declares that in its considered judgment the public good and the general welfare of the citizens of this Commonwealth require the exercise of the police powers . . . for the compulsory setting aside of unemployment reserves *to be used for the benefit of persons unemployed through no fault of their own.*" PA. STAT. ANN. tit. 43, § 752 (1964) (emphasis added).

no fault of their own," the court felt that the statute referred not to unemployment arranged, agreed upon and sanctioned by the employer and employee, but rather to unemployment dependent upon the uncertainties of the economic climate.[4] Furthermore, the court felt the statute was not designed to "be used as an integral part of an employer-employee contract which is deliberately designed to provide the employer with a readily available labor force"[5] at the expense of the other contributors to the unemployment fund.

In different circumstances, it has been held, even by the Pennsylvania Supreme Court,[6] that unemployment pursuant to a collective bargaining agreement is "involuntary." The employee is considered to be entitled to benefits under unemployment compensation laws on the rationale that the "involuntariness" is to be determined at the time of the relinquishment of employment, and not at the time of acceptance of the collective bargaining agreement.[7] These courts have rejected the agency approach by limiting the application of voluntary-quit provisions to separations where the decision to remain employed lay with the employee alone. However, even under such different circumstances, some courts hold that any relinquishment of employment pursuant to a collective bargaining agreement is "voluntary,"[8] adhering to an agency theory.

The issue in the instant case has not been decided by the Court of Appeals of Maryland,[9] but the Maryland Unemployment Compensation Law is similar to Pennsylvania in that it also requires that the unemployment be "involuntary."[10]

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4. *Contra,* Pacific Maritime Ass'n v. California Unemployment Ins. App. Bd., 236 Adv. Cal. App. 348, 45 Cal. Rptr. 892 (1965), noted in 18 STAN. L. REV. 756 (1966).

5. Department of Labor & Indus. v. Unemployment Compensation Bd. of Review, 418 Pa. 471, 211 A.2d 463, 469 (1965).

6. Gianfelice Unemployment Compensation Case, 396 Pa. 545, 153 A.2d 906 (1959) (retirement agreement); Smith v. Unemployment Compensation Bd. of Review, 396 Pa. 557, 154 A.2d 492 (1959) (agreement requiring leave of absence for pregnancy).

7. Douglas Aircraft Co. v. California Unemployment Ins. App. Bd., 180 Cal. App. 2d 636, 4 Cal. Rptr. 723 (1960) (agreement requiring leave of absence for pregnancy); O'Donnell v. Unemployment Compensation Comm'n, 166 A.2d 720 (Del. 1961) (intra-union bumping agreement); Campbell Soup Co. v. Board of Review, 13 N.J. 431, 100 A.2d 287 (1953) (agreement requiring retirement with pension at age 65); Myerson v. Board of Review, 43 N.J. Super. 196, 128 A.2d 15 (1957) (agreement requiring leave of absence for pregnancy).

8. *Compare* Marcum v. Ohio Match Co., 212 N.E.2d 425 (Ohio 1965) (employee, retired under a compulsory retirement provision which was part of collective bargaining agreement, deemed ineligible for unemployment compensation benefits) *with* St. Joe Paper Co. v. Gautreaux, 180 So. 2d 668 (Fla. Dist. Ct. App. 1965) (employee, retired under a similar pension program, deemed not to have voluntarily left his employment and thus held qualified for unemployment benefits). See I. M. Dach Underwear Co. v. Michigan Employment Security Comm'n, 347 Mich. 465, 80 N.W.2d 193 (1956) (unpaid vacation shut-down agreement); Bergseth v. Zinmaster Baking Co., 252 Minn. 63, 89 N.W.2d 172 (1958) (retirement agreement); *In re* Malaspina's Claim, 309 N.Y. 413, 131 N.E.2d 709 (1956) (failure to join union). See generally 44 VA. L. REV. 1343, 1346 (1958).

9. The question of whether unemployment, pursuant to a collective bargaining agreement, is "voluntary" was raised in Celanese Corp. v. Bartlett, 200 Md. 397, 90 A.2d 208 (1952), but was not decided because the employer did not press the point before the Unemployment Compensation Board.

10. MD. CODE ANN. art. 95A, § 6(a) (1957). *Compare* the Pennsylvania declaration of policy, *supra* note 3, *with* the Maryland Declaration of Policy, MD. CODE ANN. art. 95A, § 2 (1957).