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Constitutional Law--Bankruptcy--Vehicle and Traffic Law--Revocation of License (Reitz v. Mealy, Commissioner of Motor Vehicles, 314 U.S. 33 (1941))

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behalf of the employee, as trustee of the beneficiary, where there was a breach of the union contract.[13] An employee under contract, if discharged before termination without cause, may recover damages up to the date of termination.[14] Obviously, where the union contract is for two years and discharge is dependent on conditions precedent, the employees must be kept for two years if these conditions are not present and ought to recover damages if discharged before. Damages were recovered when an employer discharged an employee before presenting the case to the Arbitration Board as agreed upon with the union, although there was no definite period for the duration of the contract.[15] Likewise, where two weeks' notice was required before discharge and it was not given, recovery was had for this period.[16] As the dissenting opinion stated, the recitals were plainly for the benefit of the employees, and the plaintiff should have based his action on this theory. The plaintiff should have amended his complaint, asking recovery as a beneficiary, and he would have undoubtedly been allowed to go to trial to determine whether the conditions for dismissal were present.

L. S.

CONSTITUTIONAL LAW—BANKRUPTCY—VEHICLE AND TRAFFIC LAW—REVOCATION OF LICENSE.—This is a suit to restrain appellee (defendant) from enforcing a suspension of the appellant's operator's license. The complaint alleges that the order suspending the license was issued May 29, 1940, pursuant to Section 94-b of the Vehicle and Traffic Law of New York,[1] upon receipt by the appellee from

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[13] Barth v. Addie Co., 271 N. Y. 31, 2 N. E. (2d) 34 (1936).

[14] Denniston v. Finnegan, 174 App. Div. 8, 160 N. Y. Supp. 5 (4th Dep't 1916); Cottone v. Murray's, 138 App. Div. 874, 123 N. Y. Supp. 420 (1st Dep't 1910).

[15] Moore v. Illinois Central Ry., 180 Miss. 276, 176 So. 593 (1937).

[16] *See* note 14, *supra.*

[1] This section, when originally added to the article (L. 1929, c. 695), and despite subsequent amendments (L. 1930, c. 398; L. 1931, c. 669; L. 1934, c. 438), provided, in part, for the suspension of the operator's license and registration certificate of any person against whom a judgment was obtained because of injury to person or property sustained through the operation of a motor vehicle if said judgment was not satisfied within fifteen days after certification of the judgment, its finality and non-payment, to the commissioner of motor vehicles by the county clerk. It directed the commissioner to suspend the license for three years, unless the judgment be satisfied or discharged in the meantime, *except by a discharge in bankruptcy.* (Italics mine.) On May 4, 1936 the section was amended (L. 1936, cc. 293, 448, 771) and a proviso added that upon the creditor's written consent, the debtor might be allowed a license and registration for six months from date of such consent, and thereafter until the consent was revoked in writing, if debtor gave proof of his financial ability to respond in damages. On May 31, 1939 (L. 1939, c. 618) a

the clerk of the Supreme Court of Albany County of a transcript of a judgment accompanied by evidence of its finality and non-payment. Said judgment was rendered against appellant in the sum of $5,138.25 in an action to recover damages for personal injuries caused by appellant's operation of an automobile. It is further alleged that appellant was adjudicated a bankrupt on June 21, 1940 and it is admitted that the judgment debt was proveable and discharged.[2] The complaint charges that Section 94-b violates the "due process" clause of the Fourteenth Amendment of the Federal Constitution [3] and is rendered void by Section 17 of the Bankruptcy Act.[4] Upon the hearing of a motion based upon the bill and answer, the injunction was denied and the bill dismissed.[5] *Held,* affirmed.[6] Section 94-b does not conflict with Bankruptcy Act Section 17, nor does it violate the Fourteenth Amendment. It is merely an enforcement of permissible state policy pertaining to the safety of its citizens.[7] *Reitz* v. *Mealy, Commissioner of Motor Vehicles,* 314 U. S. 33, 62 Sup. Ct. 24 (1941).

The statute in question was not designed as a benefit to the judgment-creditor merely, but to enforce a public policy, *viz.,* irresponsible drivers shall not injure other persons with impunity. The effect of the statute makes the license privilege a form of protection against damage to the public inflicted through licensee's negligence.[8] It does not inflict a deprivation of rights without "due process of law" and is, therefore, not obnoxious to the Fourteenth Amendment. This view has been favored in prior decisions of New York and foreign courts.[9] Appellant's contention that Section 17 of the Bank-

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further amendment made it the duty of the county clerk to certify the judgment only *upon the written demand of the creditor or his attorney.* (Italics mine.)

(N. Y. VEHICLE AND TRAFFIC LAW § 94 has been repealed and superseded by N. Y. MOTOR VEHICLE SAFETY-RESPONSIBILITY ACT [L. 1941, c. 872, § 1, eff. Jan. 1, 1942]. Section 94-b, under consideration in the instant case, is now found in §§ 94-b, 94-c, 94-g, 94-h, 94-i.)

[2] The appearance of judgments, arising out of automobile accidents, among individual bankrupts' schedules of liabilities has been common. CAUSES OF BUSINESS FAILURES OF INDIVIDUALS IN NEW JERSEY IN 1929–1930, U. S. Dep't of Commerce, Don. Comm. Series No. 54, pp. 25, 26 (1931); CAUSES OF COMMERCIAL BANKRUPTCIES, *id.,* No. 69, pp. 14–16 (1932); CAUSES OF BANKRUPTCIES AMONG CONSUMERS, *id.,* No. 82, pp. 14, 15 (1933). *See also* Lewis v. Roberts, 267 U. S. 467, 45 Sup. Ct. 357 (1925).

[3] U. S. CONST. Amend. 14.

[4] 11 U. S. C. § 35; 11 U. S. C. A. § 35.

[5] 34 F. Supp. 532 (N. D. N. Y. 1940).

[6] Mr. Justice ROBERTS delivered the opinion of the Court. Mr. Justice BLACK, Mr. Justice BYRNES and Mr. Justice JACKSON dissented with Mr. Justice DOUGLAS.

[7] *Cf.* Sproles v. Binford, 286 U. S. 374, 388–389, 52 Sup. Ct. 581 (1932); Standard Oil Co. v. Marysville, 279 U. S. 582, 586, 49 Sup. Ct. 430 (1929); Morris v. Duby, 274 U. S. 135, 47 Sup. Ct. 548 (1927).

[8] Munz v. Harnett, 6 F. Supp. 158 (S. D. N. Y. 1933).

[9] Munz v. Harnett, 6 F. Supp. 158 (S. D. N. Y. 1933); State v. Price, 49 Ariz. 19, 63 P. (2d) 653, 108 A. L. R. 1156 (1937); Multer v. State Road

ruptcy Act is violated presents a more forceful argument. In New York, the decisional law is conflicting.[10] The Court reaffirms the position taken by the district court that it need not pass upon the validity of the 1936 and 1939 amendments upon the theory that the 1939 amendment was not retroactive and the judgment should or would have been certified to the commissioner prior to the effective date of said amendment; the question of the constitutionality of the 1936 amendment is tactfully avoided on the ground that the judgment-creditor did not seek to invoke it. It is well-settled that questions of constitutionality are not undertaken unless unavoidable.[11] The doctrine, however, must have its reasonable limitations and courts should not essay a studied attempt to avoid delicate issues of constitutional controversy when to do so would be to quit the realm of realism. *Lex plus laudatur quando ratione probatur.* The sound dissenting opinion of Mr. Justice DOUGLAS evinces an awareness of the practical effect of the 1939 amendment which should not have escaped the comment of the Court's majority opinion.[12] It seems inescapable that the 1939 amendment has provided the judgment-creditor with a formidable and effective weapon with which to coerce payment from the bankrupt-debtor. The amendment gives such creditor the arbitrary power to enforce payment of a debt which has been discharged as a proveable debt in bankruptcy proceedings and thereby would seem to contravene the purpose of the Bankruptcy Act.[13] The problem lends itself aptly to legislative amendment.[14]

The Court's contention that the ultimate decision would be unchanged even should the amendments be declared unconstitutional[15]

Comm., 119 W. Va. 312, 193 S. E. 549, 194 S. E. 270 (1937); Garford Trucking, Inc. v. Hoffman, 114 N. J. L. 522, 177 Atl. 882 (1935); Sheehan v. Division of Motor Vehicles, 140 Cal. App. 200, 35 P. (2d) 359 (1934); Watson v. Division of Motor Vehicles, 212 Cal. 279, 298 Pac. 481 (1931); Opinion of the Justices, 251 Mass. 617, 147 N. E. 680 (1925); 5 AM. JUR. 593, § 158; 108 A. L. R. 1162.

[10] *See In re* Perkins, 3 F. Supp. 697 (N. D. N. Y. 1933) holding that N. Y. VEHICLE AND TRAFFIC LAW § 94-b defeats the purpose of the Bankruptcy Act and is therefore invalid. *Contra:* Munz v. Harnett, 6 F. Supp. 158 (S. D. N. Y. 1933) holding that § 94-b is not violative of either the Fourteenth Amendment or Bankruptcy Act § 17 because a discharge in bankruptcy is not a satisfaction of the debt, but only a bar to its collection.

[11] 16 C. J. S. § 94.

[12] The view of the dissenting opinion is ably defended in Justice COOPER'S dissenting opinion in the district court, 34 F. Supp. 532, 535.

[13] Congress envisioned for the adjudicated bankrupt "a new opportunity in life and a clear field for future effort, unhampered by the pressure and discouragement of pre-existing debt". Local Loan Co. v. Hunt, 292 U. S. 234, 244, 54 Sup. Ct. 695, 699 (1934).

[14] As to the curative effect, if any, of the new statute (L. 1941, c. 872, § 1, eff. Jan. 1, 1942) see, particularly, § 94-g.

[15] New York favors the rule that an unconstitutional amendment does not invalidate the entire statute, but the unconstitutional amendment is *brutum fulmen* and drops out as though never passed. People *ex rel.* Alpha Portland Cement Co. v. Knapp, 230 N. Y. 48, 129 N. E. 202 (1920); People v. C. Klinck Packing Co., 214 N. Y. 121, 108 N. E. 278 (1915); *In re* Markland, 203 N. Y. 158, 96 N. E. 427 (1911). *See* VEHICLE AND TRAFFIC LAW § 94-nn (added

is necessarily *obiter dictum.* The decision is noteworthy insofar as it declines to follow the rule of *In re Perkins*[16] but rather lends judicial weight to the precedent of *Munz* v. *Harnett.*[17]

M. F.

CONSTITUTIONAL LAW—DUE PROCESS AND EQUAL PROTECTION —LICENSE FOR MASSAGE OPERATORS.—The plaintiffs, Jenny Wormsen and Dagmar Larsen-Bak, have applied for an order directing the Commissioner of Licenses of New York City to accept their applications and to permit them to take the prescribed examination for massage operators. Plaintiffs allege that they filed proper applications for licenses in November, 1940, and that these applications complied with all the rules and regulations relating to such. On March 21, 1941, the applications were denied on the sole ground that the applicants had not been citizens of the United States for at least two years.[1] When the applications were filed the Administrative Code provided that the granting of licenses as massage operators is limited to citizens or to those who have regularly declared their intention to become citizens.[2] Before the applications had been accepted, the Administrative Code was amended to restrict the granting of licenses to those who had been citizens two years.[3] Petitioners urge that such a provision is an arbitrary, unreasonable and discriminatory exercise of police power, violative of the Constitution of the United States and the State of New York.[4] *Held,* application granted. *Wormsen, et al.* v. *Moss,* 177 Misc. 19, 29 N. Y. S. (2d) 798 (1941).

A person's business or occupation is property within the constitutional provisions as to due process of law.[5] The guaranty of due

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L. 1941, c. 872, § 1, eff. Jan. 1, 1942) which, no doubt, was influenced by the decisions in the *Reitz* and *Perkins* cases.

[16] 3 F. Supp. 697 (N. D. N. Y. 1933).

[17] 6 F. Supp. 158 (S. D. N. Y. 1933).

[1] Petitioner Wormsen had acquired citizenship in February, 1941, and petitioner Larsen-Bak had been examined for admission to citizenship in May, 1941, and was awaiting her final papers at the time of trial.

[2] ADMINISTRATIVE CODE § 773a—1.0.

[3] ADMINISTRATIVE CODE § B32—195.0, as amended by Loc. Laws 1941, No. 15 and § 773a—1.0.

[4] U. S. CONST. AMEND. XIV, § 1. "* * * nor shall any State deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

N. Y. CONST. art. I, §§ 6, 11. "No person shall be deprived of life, liberty, or property without due process of law." "No person shall be denied the equal protection of the laws of this state or any subdivision thereof."

[5] Angelopoulos v. Battorff, 76 Cal. App. 621, 245 Pac. 447 (1926); Lasdon v. Hallihan, 377 Ill. 187, 36 N. E. (2d) 227 (1941); Bogni v. Perotti, 224 Mass. 152, 112 N. E. 853 (1916); Sinquefield v. Valentine, 159 Miss. 144, 132 So. 81 (1931).