Recent Decisions

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Recommended Citation

Available at: http://scholarship.law.nd.edu/ndlr/vol13/iss1/5
In conclusion, since the new Michigan tax has defined itself in a much greater extent than the others, a few observations about it would be well taken. The tax, for instance, exempts the consumer who has paid a sales tax in the state where the goods were purchased providing it is equal to the 3% "use" tax; but if it be less than 3% he must pay the difference.

It is an interesting problem to determine how this law will be enforced. How will the State determine the extent of such purchases. Although the law provides a $10 exemption per month to each consumer, who will furnish the information as to the value of his purchases? Although, on paper, the tax does not discriminate between consumers, yet, in its practicable application, it is difficult to see how purchases by small consumers will be detected and accounted for. The Legislature apparently either overlooked this or worded the Statute in this manner solely to quiet any howl about discrimination by the large consumers who will be affected by this Statute since it will be almost impossible for them to smuggle their purchases into the State.

Carl Doozan.

RECENT DECISIONS

ATTORNEY AND CLIENT—BAR INTEGRATION MOVEMENT.—A committee of lawyers of the Nebraska State Bar Association, appointed to investigate and report concerning the integration of the bar of the State of Nebraska, made its report to the Nebraska State Bar Association at its annual meeting in 1936, and the report was approved by the Association. The report provided for its submission to all members of the bar of the State and for the taking of a referendum by a vote thereon; and the result of the vote was that 595 members of the bar voted for bar integration by supreme court rule and 155 against. Thereupon the members of the Committee petitioned the Supreme Court of the State, praying that the bar of the State be integrated by supreme court rule. The court in a unanimous opinion, granted the petition. In re Integration of Nebraska State Bar Ass'n, 275 N. W. 265 (Neb. 1937).

Webster defines the word "integrate" as follows: "To form one whole; to make entire, to complete, to renew; to restore; to perfect." The essence of bar integration includes three factors: (1) Inclusion in the state bar association of every practitioner, in the equal contributions to expense of operation, and a form of organization which insures to every member equal rights in management; (2) The state bar must possess power to control admission; and (3) The state bar must possess power to impose discipline. 18 JOURNAL OF THE AMERICAN JUDICATURE SOCIETY 22.

The movement towards bar integration began when the American Judicature Society drafted a model act. 18 JOURNAL OF THE AMERICAN JUDICATURE SOCIETY 22. This model act became law in California, Nevada, Oklahoma and Arizona. A more condensed act, framed by the Conference of Delegates, became the model in Alabama, Idaho and New Mexico. 18 JOURNAL OF THE AMERICAN JUDICATURE SOCIETY 22.
The various states seeking to integrate their respective bars have proceeded along three routes: (1) By legislation; (2) Regimentation under supreme court rules; and (3) A so-called "Third Route to Bar Integration," which consists of an act of the legislature which declares that the supreme court shall have power to adopt rules which effect the organization and government of the bar, define the practice of law, establish rules of conduct and determine the qualifications for admission. 17 JOURNAL OF THE AMERICAN JUDICATURE SOCIETY 124. The third method is a combination of the first two.

The method of integration sanctioned by the court in the instant case is one of organization by rules of the Supreme Court of Nebraska, rather than incorporation through an act of the State Legislature. The Association proposed is said not to constitute a corporation in any real sense—no board of governors or officials with power of control over members or over professional conduct is provided for in the proposal. The Association does not have power to deal with admission to practice or power to regulate its own functions or power to limit the privileges of its members. Its disciplinary power is limited to the hearing of complaints and passing them on to the Supreme Court for prosecution, if the Court decides to take such action, at the expense of the Association. The Nebraska proposal is designed to eliminate the objectionable features in organizations in other states.

While the passage of the Nebraska act marks a forward step in the movement towards bar integration such progress has not been easy. The California Act which has served as a model for other states contains features which have made its adoption elsewhere difficult. Under the California Act a board of governors is set up with power to regulate and control the admission of those persons desiring to be admitted to the bar. Only members of the state bar are permitted to practice in the State. The board of governors operate in a manner similar to circuit court districts, there being one governor from each district, each member of the bar being privileged to vote for the governor of his particular district. Rules of professional conduct are adopted, subject to the approval of the Supreme Court, with the power in the board of suspension or disbarment for willful breaches of these rules. A hearing is provided for as well as a right of review. To help in the administration of adopted rules the Board may appoint local administrative units who investigate complaints in their jurisdiction and report thereon to the board of governors.

Michigan, in 1935, made an effort to pass an act modeled upon California's act, only to see the measure defeated by a narrow margin. Michigan subsequently passed a modified and shortened act, eliminating discussion of the power of the Legislature to create a corporate bar board by special act by not providing for any such incorporation. Hugus, An Integrated Bar, 43 W. VA. L. Q. 10.

Kentucky also experienced difficulty in an attempt to put the California plan into effect. Three attempts by the Kentucky Bar Association were necessary before the Legislature finally, in 1934, passed the act, after vigorous objections by those opposing it. An attack upon the constitutionality of the Kentucky Act on the grounds that the Court of Appeals had no jurisdiction to discipline or disbar an attorney, since the State Constitution gave it only appellate jurisdiction and not original jurisdiction, was not sustained by the Court; it was held that the Court possessed inherent power to deal with matters relating to attorneys and that the statute authorizing an original proceeding in the disciplining or disbarment of an attorney gave the court no power which it did not already possess. In Re Sparks, 267 Ky. 93, 101 S. W. (2d) 194 (1937); Commonwealth v. Harrington, 266 Ky. 41, 98 S. W. (2d) 53 (1936). Attorneys are officers of the court, argued those in opposition to integration as advocated by the California-inspired Kentucky plan. As officers of the court, they contended, the dignity
of the Supreme Court could only be upheld by placing in the Court authority to regulate its attorneys, such regulation being effected by the logical method of making the rules for such regulation a power of the Court. Even though the Kentucky Constitution contained no express provision for such regulation, pointed out the proponents of unconstitutionality, such authority is implied. As precedent, decisions rendered in Rhode Island, Missouri, Wisconsin, and Virginia were cited. Another ground of attack centered on the point that the Legislature, in substance was creating a corporation by special act. It will be noted that this objection cannot be raised in connection with the Nebraska Act since power of regulation is left in the Supreme Court of the State.

A third objection raised concerned the deprivation of the lawyer of a constitutional right by granting to a board of governors judicial power to pass upon admissions and disbarment. Again it should be noted that the Nebraska Act avoids this objection by not attempting to divorce regulation from the Supreme Court. The distinction, essentially, between the California-Kentucky plan and the Nebraska Act is that in the former the bar board acts substantially independently of the supreme court, while in the latter the bar board is merely acting as the agency of the supreme court. The California Act, while basically sound, had those features mentioned above which made its successful promotion extremely difficult in other states. It was only through the always tedious trial and error method, as noted in our discussion concerning Kentucky and Michigan, that what has been called for want of a better name "The Missouri Plan" emerged. The Missouri Plan recognized what the California Plan had not, namely, that "the essence of integration lay not so much in the power to control admission and impose discipline as in unitary membership and representative government." 20 JOURNAL OF THE AMERICAN JUDICATURE SOCIETY 202. Bar integration has been not a birth but an evolution following birth. For this reason, to mark progress towards bar integration from the compilation of the Missouri Plan is clearly misleading. As we have seen the Missouri Plan has been merely an outgrowth of skirmishes which developed a plan of expediency and necessity culminating in the Act passed by the Missouri Legislature. The Nebraska Act, in taking advantage of this outgrowth, points the way to successful integration in other states. That the movement is marching towards definite action is apparent when it is considered that attempts and reattempts are now being made in the following states: Arkansas, Georgia, Montana, Texas, Wisconsin, Wyoming, Massachusetts and New Jersey. Among those states that have successfully placed integration acts upon the statute books of their states are Missouri, California, Michigan, Nebraska, Nevada, Oklahoma, South Dakota, Utah, Mississippi, Arizona, North Carolina, Washington, Louisiana, Oregon, New Mexico, and Porto Rico. 20 JOURNAL OF THE AMERICAN JUDICATURE SOCIETY 202.

John J. Lechner.

TORTS—LIABILITY OF ICE HOCKEY RINK OWNER TO SPECTATOR FOR INJURIES—ASSUMPTION OF RISK.—Upon payment of admission to defendant's amphitheatre, plaintiff, who had never seen an ice hockey game before, was seated in the second row at the side of the rink by defendant's usher. There were wire screens along the ends of the rink where the goals were, but none where plaintiff was seated, nor were there any signs warning of the danger of flying pucks. Plaintiff recovered a verdict for damages sustained when she was struck by a puck which was driven off the playing surface. Held, on appeal, that it cannot be said as a matter of law that plaintiff had assumed the risks incident to the game. The determination of plaintiff's assumption of risk or of the defendant's negligence is for the jury. Shanney v. Boston Madison Square Corp., 5 N. E. (2d) 1 (Mass. 1936).
The instant case is a reassertion of the doctrine that the proprietor of a public amusement place must provide reasonably safe premises for invitees and business guests, (3 Cookey on Torts (4th ed.) 188; 3 Shearn & Redfield, Law of Negligence (6th ed) 704; Herrick v. Wixom, 121 Mich. 384, 80 N. W. 117, 81 N. W. 333 (1899) (proprietor of a show owes this duty even to a trespasser whose presence is known as one of a crowd of people)), and a rejection of the doctrine of the assumption of risk in cases where a spectator at a sporting event is injured by a flying missile incident to the game itself. Out of the welter of confused decisions the courts seem to agree that the proprietor need not be an insurer of the safety of his patrons to the extent of guarding against extraordinary risks which he could not foresee but need merely exercise reasonable care to make the place as safe as possible taking into account the contrivances necessarily used in the game. Edling v. Kansas City Baseball & Exhibition Co., 181 Mo. App. 327, 168 S. W. 908 (1914); Curtis v. Portland Baseball Club, 130 Ore. 93, 279 Pac. 277 (1929); King v. Ringling, 145 Mo. App. 285, 130 S. W. 482 (1910). Some courts have held in similar cases that the management has fulfilled its duty when it provides some screened-in seats, and that, as a matter of law, where the spectator chooses to sit in an unprotected seat in order to obtain an unobstructed view of the game, he assumes the risk of injury and is not entitled to get to the jury. Crane v. Kansas City Baseball & Exhibition Co., 168 Mo. App. 301, 153 S. W. 1076 (1913); Lorino v. New Orleans Baseball & Amusement Co., 16 La. App. 95, 133 So. 408 (1931); Kavanjan v. Seattle Baseball Club Ass'n, 105 Wash. 215, 177 Pac. 776, 181 Pac. 679 (1919) (four-to-three decision upon rehearing reversing decision that question of negligence was for the jury). (However, there is no such assumption of risk where spectator sitting in an unprotected seat is injured where several balls are flying about during practice near the stands instead of only one game going on. See Cincinnati Baseball Club v. Eno, 112 Ohio St. 175, 147 N. E. 86 (1925). Cf. Lorino v. New Orleans Baseball & Amusement Co., 16 La. App. 95, 133 So. 408 (1931) (plaintiff assumed risk even from practice balls)). The management need not provide screened seats for all who might possibly apply but only for those who it is reasonably anticipated may desire such protected seats. Brisson v. Minnesota Baseball & Athletic Ass'n, 185 Minn. 507, 240 N. W. 903 (1932).

The doctrine of assumption of risk, first enunciated in Priestly v. Fowler, 3 M. & W. 1, 7 L. J. Ex. 42, 150 Eng. Rep. 1030 (1837) (action by servant against master), is generally held to be the voluntary acquiescence by plaintiff in the risk which either was known or should have been known to him at the time of his injury. 5 C. J. 1412; Murphy v. Steeplechase Amusement Co., 250 N. Y. 479, 166 N. E. 173 (1920); Dahna v. Fun House Co., 204 Iowa 922, 216 N. W. 262 (1927); Easler v. Downie Amusement Co., 125 Me. 334, 133 Atl. 905 (1926); Herrick v. Wixom, 121 Mich. 384, 80 N. W. 117, 81 N. W. 333 (1899). (However, cf. Conrad v. Springfield Const. R. Co., 240 Ill. 12, 17, 88 N. E. 180 (1909) (doctrine of assumption of risk still applicable only to cases arising between master and servant)). In the instant case the defendant knew that pucks sometimes flew over the sidelines barrier, but a spectator who had never before seen a hockey game would not know this since the puck is generally lifted from the ice only when making a goal shot. Hence it would seem that the court was correct in not applying the doctrine of assumption of risk, since it is based on knowledge of the limitations of protection and the existence of such fact ought to be decided by the jury. Blakeley v. White Star Line, 154 Mich. 635, 118 N. W. 482 (1908). It may have made a difference if plaintiff, during the first few minutes of the game, had seen a puck fly over the sidelines barrier, and thereafter had had an opportunity to seek a safer seat. In the absence of such fact, the plaintiff can hardly be said to have assumed the risks of the game since it was reasonable to suppose that the management in providing these seats had taken