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Recent Decisions

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ing that at common law would bar his recovery in a negligence case, creates civil liability. Since the "hit and run" statutes of other states are, in the main, the same as the one we have considered, it is safe to say that they would also meet the requirements of the test set out by the Restatement. Thus, it may be seen that the duty to aid one imperiled thru his own fault or thru the non-tortious act of one person, which at common law bound in conscience only, now has as its sanction not only criminal punishment but civil liability as well.

Wm. Lee O'Malley.

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RECENT DECISIONS

Colleges and Universities—Writ of Mandamus—Reinstatement of Expelled Student.—This is a bill in equity wherein the plaintiff charges that she was expelled from school without any reason and without a hearing; that while she was a student she was subjected to criticism, unfair discrimination and that defendants maliciously concocted schemes and devised false charges against her. The purpose of the school was to furnish instruction in law for women only. The facts found by the master, referred to; that the plaintiff was making improper use of knowledge acquired in the law school. The plaintiff ordered coal to be delivered to her home, she ordered groceries and other articles and she brought groundless actions for malicious prosecution and slander against the chief of police of the city. These matters were brought to her attention by the school. She expressed herself to the effect that she would not pay for them as they were necessities and that her husband should pay for them; that she regarded some of them as involuntary Christmas presents from her husband. The facts show she was living apart from her husband under a temporary order and was receiving sixty-four dollars a month for support. From the master's finding, "He finds that the plaintiff is a woman of unusual mental attainments and fully capable of clearly understanding the character and quality of her acts; that her communications of these episodes to her fellow students in the manner in which she communicated them and her boast to fellow students that legal principles learned in the law school had enabled her to get groceries free, coal free and involuntary Christmas presents from her husband, and all her conduct in relation thereto, are not justified in fact by any explanation . . . or by any evidence . . . that the lawsuits . . . were 'apparently groundless and could not have been brought in good faith, good conscience or good judgment.'" Held, that the continued presence of the plaintiff at the law school would be subversive of the discipline of the school: would tend to cast a shadow upon the reputation of the school and would affect its good principles and high ideals. White v. Portia Law School, 174 N. E. 187 (Mass. 1931).

"The discretion with which school authorities are clothed with respect to the discipline, management, and government of the institution committed to their supervision is in the nature of a judicial discretion and the adoption and enforcement by them of a rule, falling within the general scope of their discretion, can afford no basis for an action for damages against them, unless the rule, or the manner in which it is enforced, is so palpably unreasonable, arbitrary, and oppressive as to give rise to an inference of malice." Englehardt v. Serena, 300 S. W. 268 (Mo. 1928); State v. White, 82 Ind. 278, 42 Am. Rep. 492, 11 C. J. 997 note 44 (1882); Kablitz v. Western Reserve University, 21 Ohio Crl. Ct. R. 144, 11 O. C. D. 515 (1901). Lying in the course of a disciplinary investigation: Goldstein v. New York University, 78 N. Y. S. 739, 76 App. Div. 80, 12 N. Y. Ann. Cas. 128 (1902); John B. Stetson University v. Hunt, 88 Fla. 510, 102 So.
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637 (1925). Use of cosmetics: 

Pugsley v. Sellmeyer, 158 Ark. 247, 250 S. W. 538 (1923); 


Female student smoking in public and acts of indiscretion in public: 

Tanton v. McKenney, 226 Mich. 245, 197 N. W. 510, 33 A. L. R. 1175 (1924); 


The Supreme Court of Indiana formulates the question: "Is the rule or regulation, for the government of the pupils . . . a valid and reasonable exercise of the discretionary power conferred by law upon the governing authorities of such corporation?" State ex. rel. Andrew v. Webber, 108 Ind. 31, 35, 8 N. E. 708, 58 Am. Rep. 30 (1886). A writ of mandamus will never issue to merely gratify vanity or curiosity; nor will it be granted unless it is shown that the person otherwise will be deprived of something that is of substantial benefit to him. North v. Illinois University, 137 Ill. 296, 27 N. E. 54 (1891). In Commonwealth v. McCauley, 2 Pa. Co. Ct. R. 459 (1886), it was held that the court will order reinstatement where the student had no proper hearing or trial. In Anthony v. Syracuse University, 223 N. Y. S. 796, 130 Misc. Rep. 249 (1927), the court held that a rule providing that "the right, to require the withdrawal of any student at any time for any reason deemed sufficient to it, and no reason for requiring such withdrawal need be given" was void. In State v. Clapp, 81 Mont. 200, 263 Pac. 433 (1928), the court in considering these two cases said, "... we are impelled to the conclusion that to hold to the rule laid down in Commonwealth v. McCauley, and seemingly approved in Anthony v. Syracuse University, would lead to a wholly impractical and unworkable situation." However, the New York case was reversed by the Appellate Division in Anthony v. Syracuse University, 231 N. Y. S. 435, 224 App. Div. 487 (1928), and the Pennsylvania case was followed by In Re Dunn, 9 Pa. Co. Ct. 417 (1890), and it was held that a student could not compel reinstatement because of no hearing where he failed to apply for one. Gleason v. University of Minnesota, 104 Minn. 359, 116 N. W. 650 (1908), is distinguished from the cases in consideration. "College authorities stand in loco parentis concerning the physical and moral welfare and mental training of the pupils. . . . the courts are not disposed to interfere . . . " Golt v. Berea College, 156 Ky. 376, 161 S. W. 204, 51 L. R. A. (N. S.) 17 (1913); State ex rel. Dresser v. District Board of School District No. 1, 135 Wis. 619, 116 N. W. 232, 16 L. R. A. (N. S.) 730, 128 Am. St. Rep. 1050 (1908). The school has a right to enforce rules and regulations to preserve itself and if necessary may dismiss undesirable students. Wilson v. Board of Education, 233 Ill. 464, 84 N. E. 697, 15 L. R. A. (N. S.) 1136, 13 Ann. Cas. 330 (1908). 

Joseph Stodola.

Equity—Injunction—Prevention of Enforcement of Criminal Statute.—

The plaintiffs are the owners as tenants in common of a building in Boston. The ground floor of the building is vacant, but the second floor is rented by the Neptune Athletic Club. The defendants are the Police Commissioner of Boston, the Superintendent of Police of the City, the Captain of division four of the Police Department, the Police Sergeant of this division, and a Police Officer. The plaintiff asked that the defendants be restrained from entering upon the plaintiffs' premises without due authority of law and from instituting groundless action against the plaintiffs for the purpose of wrongfully obtaining warrants with which to enter upon the premises; also, that they be enjoined from damaging the building of the plaintiff. The master found that the defendants had on a number of occasions searched the premises sometimes with warrants, and at other times without. It was found that on several occasions the defendant police sergeant had broken the doors and also had on another occasion damaged a wall settle in the building. The case came up on a reservation by the presiding justice of the Supreme Judicial Court of Suffolk County, Massachusetts, and the court here held, that equity will not interfere to prevent enforcement of a criminal statute unless it appears that the
statute is unconstitutional and that interference by a court of equity is necessary to protect property rights. *Harmon v. Commissioner of Police of Boston*, 174 N. E. 198 (Mass. 1931).

Ordinarily equity will not interfere with the conduct of police officers in the performance of their public duties. In the performance of this duty a large discretion belongs to them, with which a court of equity will generally not interfere. *Am. Steel and Wire Co. of N. J. v. Davis*, 261 Fed. 800 (U. S. D. C. Ohio 1919); *Pavilion Ice Rink v. O'Brien*, 212 Pac. 631 (Cal. App. 1922); *Joyner v. Hammond*, 199 Iowa 919, 200 N. W. 571 (1924). In *City of Louisville v. Loughner*, 209 Ky. 299, 272 S. W. 748 (1925), an injunction was allowed to restrain police from breaking up an assembly and an unobjectional speech by the complainant. In *Pure Mints Co. v. Labarre*, 96 N. J. Eq. 186, 125 Atl. 105 (1924), an injunction did not lie where slot machines were seized and confiscated. In *Delaney v. Flood*, 183 N. Y. 323, 76 N. E. 209 (1906), the court refused to enjoin the police from stationing officers outside of a place suspected of being a disorderly house. In *Randolph v. Kessler*, 93 Kan. 32, 147 Pac. 1132 (1915), the police had raided the premises of the plaintiff three times, twice without warrants, and further raids were contemplated; the plaintiff contended that his place was a rooming house and that further raids would destroy his business. In *Hygrade Provision Co. v. Sherman*, 260 U. S. 497, 69 L. Ed. 402 (1924), Justice Sutherland said, "The general rule is that equity will not interfere to prevent the enforcement of a criminal statute even though unconstitutional. *Packard v. Banton*, 264 U. S. 140, 68 L. Ed. 596, 44 Sup. Ct. Rep. 257 (1923); *In Re Sawyer*, 124 U. S. 200, 209, 31 L. Ed. 402, 405, 406, 8 Sup. Ct. Rep. 482 (1888); *Davis and F. Mfg. Co. v. Los Angeles*, 189 U. S. 207, 217, 47 L. Ed. 778, 780, 23 Sup. Ct. Rep. 498 (1902)." But appellants seek to bring themselves within an exception to the general rule, namely that a court of equity will interfere to prevent criminal prosecutions under an unconstitutional statute when that is necessary to effectually protect property rights. *Packard v. Banton, supra*; *Terrace v. Thompson*, 263 U. S. 197, 214, 68 L. Ed. 255, 273, 44 Sup. Ct. Rep. 15 (1923). That these bills disclose such a case of threatened actual and imminent injury as to come within the exception is not beyond doubt. But upon a liberal view of the decisions of this court (see *Kennington v. Palmer*, 255 U. S. 100, 65 L. Ed. 528, 41 Sup. Ct. Rep. 303, and cases referred to in footnote), we accept the conclusion of the lower court, based on the decisions of this court; that if the statutes under review are unconstitutional, appellants are entitled to equitable relief; and pass to a consideration of the constitutional questions." For a further discussion of the power of equity to enjoin a criminal statute see Cain, *Extension of Equity Jurisdiction*, 6 NOTRE DAME L. 145: "And in the exercise of its restraining jurisdiction, courts of equity may issue injunctions . . . to prevent executive officers of a state from enforcing a legislative act which is plainly unconstitutional and void, and affects a large number of people in the enjoyment of their property." In *Shuman v. Gilbert*, 118 N. E. 254 (Mass. 1918), the complainants were merchants who displayed their goods in hotel rooms. Defendant, the police chief, kept hararessing them for failure to procure a license. Complainants sought to have them enjoined. The court discussed this type of equitable action and held, "The statement of the law in England has been made rather broadly that there is no jurisdiction in equity (at all events since the abolition of the Court of the Star Chamber, which exercised a jurisdiction of so-called criminal equity) to enjoin prosecution for crime. Saull v. Browne, L. R. 10 Ch. 64; Kerr v. Corp. of Preston, 6 Ch. D. 463, 466. See also *Grand Junction Waterworks Co. v. Hampton Urban Dist. Council* [1898] 2 Ch. 331, 341; *Merrick v. Liverpool Corp.* [1910] 2 Ch. 449, 460-462. But there seems to be a caution about saying that circumstances may not arise authorizing a close approach to such jurisdiction. Lord Aukland v. Westminster Local Board of Works, L. R. 7 Ch. 597; *Burgyes v. Att'y Gen.* [1911] 2 Ch. 139, 156-157. It was said in *Truax v. Raich*, 239 U. S. 33, 57, 58, 36 Sup. Ct. Rep. 7, 9 (60 L. Ed. 131, L. R. A. 1916 D. 545, Ann. Cas. 1917 B. 283): "It is also settled that, while a court of equity, generally speaking, has "no jurisdiction over the prosecution, the punishment or the pardon of crimes or misdemeanors" (In *Re Sawyer*, 124
U. S. 200, 210 [8 Sup. Ct. 482, 31 L. Ed. 402]), a distinction obtains, and equitable jurisdiction exists to restrain criminal prosecutions under unconstitutional enactments, when the prevention of such prosecutions is essential to the safeguarding of rights of property.' It may be seen from this that there is a harmony among both English and United States authorities on the jurisdiction of equity in enjoining criminal statutes.

Kenneth J. Konop.

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Error Without Prejudice Rule.—The lengths to which some judges will go in applying the rule of "Error without prejudice" is well illustrated in the dissenting opinion of Judge Rose in the Nebraska case of Cooper v. State, 234 N. W. 406, decided January 16, 1931. The defendant, Cooper, had been convicted of forgery, and was unquestionably guilty, but the majority of the court reversed the conviction on the ground that the special assistant prosecuting attorney was guilty of such gross misconduct in his argument to the jury that the defendant had not had a fair trial. The case is interesting as showing what particular kind of argument it was that resulted in a reversal of the conviction. It is the sort of argument frequently resorted to by ambitious prosecutors, who have no adequate sense of fairness in conducting criminal trials. We copy from the argument, to which timely, repeated objection was made by counsel for the defendant:

"This man came in here and he needed cash, and so Bob digs down in his pocket, this man that is working for a hundred dollars a month, understand, and, my gracious! he has unlimited cash. You could tell that by the clothes he wore up here. I wear the same suit all week, and he comes in with a fine brown suit on Monday and the next day a suit of dark blue. Mrs. Cooper takes the stand, and she has furs on, a fine coat and dress. He is ready with everything on this hundred dollars a month. And so Bob.'

"You are going to say 'Bob Cooper, you are guilty on count one; Bob Cooper you are guilty on count two; Bob Cooper, you are guilty on three and four and five and six, or else you are going to publish to all the people in this court room and to Bob Cooper's neighbors around there in that county that Fred Sherman, that fine old gentleman, committed perjury from the witness stand, that Frank Havlovic committed perjury from this witness stand, that Louis Skrdia, who is one of Bob Cooper's best friends, committed perjury from this witness stand, and that George Vana, another friend, committed perjury from that witness stand or that William Kreuscher committed perjury from that witness stand—one of the most infamous crimes that a man can commit. Now, take your choice, gentlemen, convict Bob Cooper who has been plainly shown guilty by this evidence, or convict these innocent men, among the very salt, the very best we have in Saline county, of testifying falsely under oath from this witness stand.'"

To the repeated objections to such inflammatory language made by counsel for the defendant, the trial court made weak, evasive rulings, almost of approval. This resulted in the reversal of the conviction, but the dissenting judge, while not approving such argument, nevertheless thought the conviction should stand, because the defendant was unquestionably guilty of the crime charged, and, in support of his dissent, quoted the Nebraska statute, which is similar to that of many other states, as follows:

"No judgment shall be set aside, or new trial granted, or judgment rendered, in any criminal case on the grounds of misdirection of the jury, or the improper admission, or rejection of evidence, or for error as to any matter of pleading or procedure, if the supreme court, after an examination of the entire cause, shall consider that no substantial miscarriage of justice has actually occurred.' Comp. St. 1929, 29-2308."
The dissenting judge holds that, since the defendant was guilty, there was "no miscarriage of justice" in the obvious fact that he had not had a fair trial. Carried to its logical limits, this view would seem to justify trial by mob frenzy, provided only that the right man was hanged.

William M. Cain.

EXECUTIONS—EQUITABLE INTERESTS IN REAL ESTATE.—E. L. Lang, owner in fee simple of the premises in question, executed a land contract for sale of premises to Catherine and Albert Ross who in turn executed a land contract to the defendant M. Jacobs. On July 12th, 1926, after M. Jacobs had entered into possession of premises, The Fridley Co., obtained a judgment against him for $204.45 and the premises were levied upon. In October, 1926, Lang obtained a judgment against M. Jacobs for $405.60 and another execution was levied upon the real estate. In September, 1924, Catherine and Albert Ross assigned their interest in the premises, under land contract with Jacobs, to T. S. Culp. In 1926 Lang executed and delivered to Culp a warranty deed subject to the rights of Jacobs. On November 20th, 1926, Culp executed and delivered a deed to Rae Jacobs, wife of defendant, and then Rae and M. Jacobs executed and delivered their mortgage deed on premises, for $4,398.27, which was the amount due on land contract between Jacobs and Catherine and Albert Ross. The mortgage was filed and recorded on January 18th, 1927. The lower court found that at the time the judgments and levies were made against the defendant, M. Jacobs, he was the owner of a legal vested interest by virtue of the said land contract, and therefore the liens of Lang and the Fridley Company were valid. Also that Culp was the owner of a fee simple in the premises subject to the land contract of M. Jacobs, and that the conveyance of Culp to Rae Jacobs was fraudulent in that it conveyed the legal interest in the premises and is subject to the judgment lien. The court further found that the liens were the first and best liens on the vested and legal interest of M. Jacobs in premises in the proportion that the amount M. Jacobs had paid under the contract of November 20th, 1926, and that the mortgage executed by Rae Jacobs to Culp is a just lien upon that portion of the premises not covered by the judgment liens, and in no manner affect the interest of the judgment creditors. The question on appeal was whether a judgment lien attached to an equitable interest in the real estate of a judgment debtor. Held, that equitable interests in real estate are not subject to levy and sale upon execution under the provisions of Section 11655, OHIO GEN. CODE, as amended in 111 OHIO LAWS, p. 366. The court said that the method of reaching equitable interests and applying the same to the satisfaction of a judgment is provided by Section 11760 et seq. of the GENERAL CODE. Culp v. Jacobs, 174 N. E. 242 (Ohio 1930).

At common law land itself was not subject to execution, but by the statute of WESTMINSTER 2, 12 Edw. I. C. 18, and that of 5 Geo. II. C. 7, this restriction was removed. EXECUTIONS, 7 AM. AND ENG. ENCY. OF LAW, p. 127. Now by statute, applicable to England and the colonies of Great Britain, the whole of the debtor's estate is subject to be taken in execution and sold for the payment of his debts. EXECUTIONS, 23 C. J. Sec. 63. The general rule in this country now is that every interest of the debtor in land is bound by the lien of judgment and is subject to sale on execution. EXECUTIONS, 23 C. J. Sec. 64. Accord: Gordon v. Hillman, 182 Pac. 574 (Wash. 1919). Contra: Maynard v. Thompson, 234 S. W. 959 (Ky. 1921); Eldredge v. MILL Ditch Co., 177 Pac. 939 (Ore. 1919).

While there is a conflict of authority as to whether the estate of a beneficiary of a resulting trust can be taken on execution, under the Act of 29 CHARLES II, the majority hold that it can. FREEMAN ON EXECUTIONS, § 189.

At common law the interest of a mortgagee is a vested legal interest but it is not subject to sale on execution. FREEMAN ON EXECUTIONS, § 184.
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The mortgagor's interest at common law is a mere equity and is not subject to levy. In equity the general rule in the United States is that the mortgagor's interest may be sold in executions, § 190. The court in principal case said that "the method of reaching equitable interests and applying the same to the satisfaction of a judgment is provided by section 11760 et seq. General Code."

James W. Halligan.

LAW PROHIBITING HIGH SCHOOL FRATERNITIES HELD VALID.—In Steele v. Sexton, 234 N. W. 436, decided January 7, 1931, the Michigan Supreme Court sustained the constitutional validity of an act of the legislature prohibiting high school fraternities, and providing for withholding of high school credits and graduate diploma for violation thereof. Three of the judges dissented.

Verne Steele, Jr., by his next friend as relator, brought the suit in mandamus against the Superintendent of the Public Schools of the city of Lansing to compel him to issue a diploma. It was admitted that young Steele had become a member of a student fraternity styled "Phi Epsilon" while attending the high school, and had thereby brought himself within the prohibition of the statute; but he contended that the act was invalid. The grounds of his contention were as follows:

1. That the subject matter of the act was not germane to the title thereof.
2. That the penalty for violation constituted "cruel and unusual punishment," within the meaning of the constitution.
3. That the relator was deprived of "liberty" without due process of law.
4. That relator was deprived of "property" without due process of law.
5. That relator is denied the "equal protection of the laws."

The court disposed of all these contentions adversely to relator. In considering the first, the court quoted the title of the act as follows:

"Every such fraternity, sorority, and secret society as herein defined is declared an obstruction to education, inimical to the public welfare, and illegal."

The court then pointed out that the relator had not been deprived of education in the high school, for he had been permitted to take the course, but was only denied credits for the last semester and a graduate diploma. This denial the court held to be a proper measure of discipline, and then uses this language:

"Plaintiff joined the fraternity in defiance of law, exhibits no contrition, and wants his will, and not the law, to prevail. Loss of right to school credits and a graduate's diploma, based upon a wilful violation of the statute, does not, by any stretch of imagination, constitute cruel and unusual punishment."

In writing the dissenting opinion, Judge Potter says:

"If this legislation is valid, then it is competent to provide by law that students in our colleges and universities shall not belong to the Masons, Knights of Columbus, Odd Fellows, Elks, or any other secret fraternal society; to say by legislative declaration that those who attend the Methodist, Catholic, Presbyterian, Congregational, or other churches may not be given credit for studies pursued in the public schools, or may not attend them at all, or become graduated therefrom; to declare that those who attend a Sunday school maintained by any of these or any other religious organizations shall not be entitled to the ordinary benefits of our public institutions."

It appears that similar statutes have been upheld in Illinois, Mississippi, Washington, Iowa and California. And the Mississippi statute was upheld by the Supreme Court of the United States, in Waugh v. University of Mississippi, 237 U. S. 589, 35 S. Ct. 720, in which that court said:

"It is said that the fraternity to which complainant belongs is a moral and of itself a disciplinary force. This need not be denied. But whether such membership makes against discipline was for the state of Mississippi to determine. It is to be remembered that the University of Mississippi was established by the state, and is under the control of the state, and the enactment of the statute may have been induced by the opinion that membership in the prohibited societies divided the attention of the students, and distracted from that singleness of purpose which the state desired to exist in its public educational institutions."

William M. Cain.
The plaintiff, a resident of the city of Boston, was employed by the E. A. Ab-
bott Company, at its place of business in Boston, to go to Cornish, New Hamp-
shire, to work as a carpenter. While working in New Hampshire, the plaintiff
cut himself with an axe and was incapacitated for two weeks and five days. A
claim adjuster of the insurer called upon him and paid him $42.50 for his lost
time and $14.00 for medical attendance. The employee plaintiff, then signed a
common law release. Subsequently there was a recurrence of the injury, and the
plaintiff asked for compensation under the Massachusetts Workmen's Compen-
sation Act. The insurer insisted that the employee is bound by the release and
that he cannot recover under the Act. The reviewing board made an award in
favor of the plaintiff and an appeal was taken to the Supreme Judicial Court.

Held, an employee contracting in a state for work to be done outside of the
state, and who is injured while so occupied, can recover under the Workmen's
Compensation Act of the state where he contracted for his employment. Mc-

The Workmen's Compensation Act of Massachusetts was passed in 1911 and
took effect in 1912. In re Gould, 215 Mass. 480, 102, N. E. 693 (1914), was the
first case decided under this act in regard to the extra-territorial jurisdiction con-
firmed upon the courts of Massachusetts by the act. In this case the parties in
interest were residents of the State of Massachusetts and had accepted the pro-
visions of the compensation law of the state. The death of the employee oc-
curred in New York. The industrial accident board of the state found that the
insurance company had been paid by the employer for insuring all injuries re-
ceived by its employees in the course of their employment, whether within or
without the Commonwealth. The Supreme Court, however, declined to accept
this fact as binding, and held that the scope of the law itself must determine;
and from a consideration of all its terms it was decided that the law had no
effect as to injuries received outside the state and that the company was not
liable in the case in hand. The court in giving its reason for the rule says, "These
various acts, although having certain features in common, nevertheless differ
widely in many essential aspects. Some are compulsory. Some prohibit contracts
for a different form of compensation, and make criminal under severe penalties
failure to comply with their terms. Some provide for strict state insurance, while
others do not. The amount of compensation afforded and the circumstances under
which it is to be awarded differ. The diversity of public policy already manifested
between the several states is considerable. To say that such acts are intended to
operate on injuries received outside the several states enacting them would give
rise to many difficult questions of conflict of laws .... It would require a
large dependence upon the comity of other states in enforcing our act and in re-
fraining from enforcing their own as to a subject which commonly is wholly
under the control of the several states, and with which, it has been pointed out,
a substantial number have already manifested a purpose to deal by a new and
special legislation. No court of any sister state, so far as we are aware, has had
occasion to pass upon the precise questions here presented." However, Section
3 of St. 1927, c. 309, amended G. L. c. 152 § 26 and made it read as follows:
"If an employee who has not given notice of his claim of common law right of
action, under section twenty-four, or who has given such notice and has waived
the same, receives a personal injury arising out of and in the course of his em-
ployment .... whether within or without the commonwealth, he shall be paid
compensation by the insurer, as hereinafter provided, if his employer is an in-
sured person at the time of the injury; provided, that as to an injury occurring
without the commonwealth he has not given notice of his claim of rights of
action under the laws of the jurisdiction wherein such injury occurs or has
given such notice and has waived it." Pedersoli's Case, 169 N. E. 427 (Mass. 1930),
settled the law under this amended statute and held that an employee who makes
a contract of employment in this state with a Massachusetts employer to do work outside the commonwealth, and while so occupied is injured, can recover under the Workmen's Compensation Act. The instant case reaffirms this rule.

Where an accident occurred in the State of New Jersey, the contract of employment having been made beyond its borders, recovery under the New Jersey law was allowed on the ground that it covers all accidents occurring within the state unless rejected. *American Radiator Co. v. Rogge*, 92 Ad. 85 (N. J. 1914). However, where an employer hired an employee outside the state to do work outside its borders, the New York Supreme Court held that the law does not apply. *Gardner v. Horseheads Construction Co.*, 156 N. Y. S. 899 (1916). Some of the more important decisions holding that the contract of employment follows the employee into other states wherever he goes in its performance are: *Industrial Commission v. Aetna Life Ins. Co.*, 174 Pac. 589 (Col. 1918); *Kennerson v. Thames Towboat Co.*, 94 Atl. 372 (Conn. 1915); *Grimnell v. Wilkinson*, 98 Atl. 103 (R. I. 1916); *State ex rel. Chambers v. District Court*, 166 N. W. 185 (Minn. 1918); *Gooding v. Ott*, 87 S. E. 862 (W. Va. 1916); and *Rounsaville v. Central R. Co.*, 94 Atl. 392 (N. J. 1915). The Colorado decision above, being decided upon the theory that otherwise an employer would be burdened with the duty of insuring under the law of each separate state into which his employee might go in the performance of his contract. See *Anderson v. Miller Scrap Iron Co.*, 170 N. W. 275 (Wis. 1919) where the court says: "We do not regard the liability of the employer under the workmen's compensation act merely as a substitute for the common law liability of the employer." The court further decided that to put injuries occurring within the state boundaries in one class and those occurring without in another would open the way to a continuation of both the old and the new system and the legislative purpose of the Compensation Act would not be accomplished.

*Kenneth Konop.*

**RECENT DECISIONS**

RELIGIOUS SOCIETIES—AUTHORITY, RIGHTS, PRIVILEGES—PRINCIPAL AND AGENT—ECCLESIASTICAL RELATION.—Appellants were subcontractors of the Woodland Construction Co., who were under contract let by Cardinal Dougherty for the construction of a church. The Woodland Construction Co. went into financial difficulties and appellants threatened to stop work. The parish priest, for whose parish the church was being erected, informed appellants that there was money with which to pay for the work. The priest also acted in ordering alterations, inspected the work and was generally prominent in and about the construction work. The priest had no authority. *Held,* an Ecclesiastical relationship of itself does not set up a legal relation on which to base liability for acts of one for the other. *Reifsnyder v. Dougherty*, 152 Atl. 98 (Pa. 1930).

The situation does not present a legal difficulty when the proper understanding is taken of the relation of the civil law to that of the Ecclesiastical law. In *The King v. Legislative Committee of the Church Assembly* [1928] 1 K. B. 411 the court says, "The powers which are conferred by Parliament upon the church assembly are powers to initiate legislation. No doubt measures which the church assembly prepares and puts forward, if approved by Parliament, and receiving the Royal assent, will, as statutes, affect the rights of subjects, but it appears to me that Parliament has not conferred upon the church assembly any powers to determine questions affecting the rights of subjects." It must be understood that the Church of England is part of the government. In *Northwaite v. Bennett*, 2 C. & M. 316, 149 Eng. Rep. 781 (1834), if a churchwarden orders repairs to the church and pledges the credit of his co-churchwardens without the authority, he does so subjecting himself to individual liability. Churchwardens, incorporated by statute, cannot bind future successors on contract unless it is expressly stated
that payment shall come out of the parish fund only. *Purnivall v. Coombs*, 5 Man. & G. 756, 134 Eng. Rep. 756 (1843). Where an act of Parliament assessed church property for improvements, the churchwardens were held personally liable and could not avail themselves of a plea of no funds since they could reimburse themselves by assessing a rate upon the congregation. *Hopkinson v. Puncher*, 3 Ex. 95, 154 Eng. Rep. 771 (1848). These decisions fall in line with the general proposition that a court of civil law will not take jurisdiction over ecclesiastical matter until it concerns a property right. The situation is the same in the United States. In the case of *White Lick Quarterly Meeting v. White Lick Quarterly Meeting*, 89 Ind. 136 (1883), cited in *Church of Christ of Long Beach v. Harper*, 256 Pac. 478 (Cal. 1927), it is said on page 151: "... where a civil right depends upon some matter pertaining to ecclesiastical affairs, the civil tribunal tries the civil right, and nothing more, taking the ecclesiastical decisions, out of which the civil right has arisen, as it finds them, and accepting those decisions as matters adjudicated by another jurisdiction."

To the same effect is *Shannon v. Frost*, 3 B. Mon. 253 (Ky. 1842). *Ferraria v. Vasconcellos*, 31 Ill. 25 (1863), adopts and approves of the language of the Kentucky court. The jurisdiction of a civil court to adjudge any ecclesiastical matter must result as an incident thereof, with regards to some property right. *State (Livingston) v. Trinity Church in Trenton*, 45 N. J. Law 230 (1883); *Nance v. Busby*, 91 Tenn. 303, 18 S. W. 874, 15 L. R. A. 801 (1892); *Prickett v. Wells*, 117 Mo. 502, 24 S. W. 52 (1893); *Wheelock v. First Presbyterian Church*, 119 Cal. 477, 51 Pac. 841 (1897); *O'Donovan v. Clatard*, 97 Ind. 421 (1884). The decisions of ecclesiastical courts are, like those in other judicial tribunals, final. *German Reformed Church v. Seibert*, 3 Pa. St. 282, 291 (1846).

When viewing the divisions of the church in its activities, the church is to be regulated by its own rules as to doctrine, government, and worship. *Lawer v. Clipperly*, 7 Paige 281 (N. Y. 1838); *Leahy v. Williams*, 141 Mass. 345, 6 N. E. 78 (1890). Where a pastor was the treasurer of an incorporated church, and acted in excess of his authority for a number of years, the church was estopped from denying his authority since by their conduct they permitted such unauthorized acts of the treasurer. *Martin v. St. Aloysious Church*, 38 R. I. 339, 95 Atl. 768 (1914). The following decision must be distinguished as the theory of estoppel does not enter. Where the by-laws provided management should be in the trustees and the pastor, although chairman of said trustees, contracted on behalf of the church without authority, it was held he had no such right and it could not be said as a matter of law that defendant ratified unauthorized contract of pastor with the plaintiff. *C. A. Dodge Co. v. Western Ave. Tabernacle Baptist Church*, 247 Mass. 330, 142 N. E. 64 (1924). An authorized agency from a bishop to a pastor terminates when the act is done and a new pastor paying interest on an obligation created by an unauthorized extension of the old permit, supposing such to be a valid obligation, does not ratify such an act. *First National Bank v. St. John's Church Windber*, 296 Pa. 467, 146 A. 102 (1929). Although a clergyman was authorized to solicit subscriptions, he has no authority to collect them. *Methodist Episcopal Church v. Sherman*, 36 Wis. 404 (1874). When a court speaks of the jurisdiction of the civil court touching ecclesiastical matter, the court means that as far as the matter pertain to or touch upon discipline, acts of faith, etc., the ecclesiastical judicial tribunals have the power to hear and finally determine such controversy but as soon as a property arises out of the transaction, then such matter does not fall under the ecclesiastical consideration of discipline but it falls under the relation of persons under the civil law, to the effect that civil law shall apply and extend over the controversy as long as it does not invade or attempt to invade the domain of purely church affairs *Lawer v. Clipperly*, supra; *Wardens of Church of St. Louis v. Blanc*, 8 Rob. 51 (La. 1844); *Cooper v. McKenna*, 124 Mass. 284, 26 Am. Rep. 667 (1878); *Martin v. St. Aloysious Church*, supra; *C. A. Dodge Co. v. Western Ave. Tab. Bap. Church*, supra; *First Nat'l Bk. v. St. John's Church Windber*, supra; *Watson v. Jones*, 13 Wall. 679, (Ky. 1872); *Rouland J. Gonzales v. Roman Catholic Archbishop of Manila*, 74 L. Ed. 131 (1929).

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