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Recent Cases

RECENT CASES

BILLS AND NOTES: CHECKS—NON DELIVERY—ESTOPPEL

A recent case of first impression in Pennsylvania, in the law of negotiable interests, is *Weiner vs. The Pennsylvania Company for Insurance on Lives and Granting Annuities,* 160 Pa. Super. 320 (1947), 51 A. 2d 385.

Plaintiff was a depositor of defendant bank for years. She signed her name to a check drawn on defendant bank. Except for her signature, nothing else appeared thereon. The check was stolen and completed by filling in the amount of $250, the date, and the name of a fictitious payee. The defendant paid the check to the fictitious payee, who properly indorsed it. Plaintiff sued defendant for the amount thus paid.

The nearest approach to this precise problem, before the Pennsylvania courts prior to this case, was *Thomas Robb vs. The Pennsylvania Company for Insurance on Lives and Granting Annuities,* 186 Pa. 456 (1898). In that case the plaintiff depositor had a rubber stamp facsimile made of his signature, but did not disclose that fact to the defendant bank. The stamp was stolen from his possession, and used by the thief to cash a check. Plaintiff brought suit to recover the amount paid to the thief.

The majority view assumed that this use of the rubber stamp was a forgery, and that consequently plaintiff should recover unless his negligent custody of the stamp, by which the thief was enabled to get possession thereof, estopped him. Since the jury's verdict for plaintiff absolved him of negligence, judgment to plaintiff was affirmed.

The dissenting view proceeded on the basis that the check was *not* a forgery, for although the plaintiff did not affix the stamp to the check, it was impossible to tell that it had not been done by him, and he did not tell the bank of its existence so that they could be on guard against its clandestine use. Consequently, since the signature of plaintiff was genuine, the loss was due, not to the failure of the bank to distinguish the genuine signature, but to the crime of the thief. One of two innocent persons must suffer, and the loss should fall upon him whose act made the loss possible.

The majority did not controvert this statement of the law by the dissent, but denied its application to the facts of the case, since by their view, the signature was a forgery, rather than genuine.

In the *Weiner* case, the facts are incontrovertibly those decided by the dissenting opinion of the *Robb* case. The signature of the drawer was genuine, the blanks were filled in (no alteration), and the check had no evidence on its face that delivery wasn't intended.

The Court had three theories from which to choose:

(1) A strict and literal construction of section 15 of the Negotiable Instruments Law, which provides, "Where an incomplete instrument has not been delivered it will not, if completed and negotiated, without authority, be a valid contract in the hands of any holder, as against any person whose signature was placed thereon before delivery"; or

(2) Contrasting or balancing the negligence between the drawer and the bank, the ultimate fact of liability (and hence the estoppel) to be determined by the jury; or

(3) As between two innocent parties, the bank and the depositor, liability should be borne by the one who made the loss possible (estoppel in pais).

The Court rejected the first theory for two reasons:

(1) The drawee bank is not a "holder" within the provisions of section 15, because it takes the instrument at and for payment, rather than *prior* to presentment for payment; and

(2) Since checks are *required* to be paid by the drawee bank, while the discount or purchase of notes is not obligatory, the construction of section 15 as it relates to checks ought to be less literal and strict, even though it does apply to both notes and checks.

The second theory was likewise rejected for two reasons:

(1) While in theory the jury determines whether there should be an estoppel, in practice it may consider the financial, rather than the legal, responsibility; and

(2) The estoppel itself should be for the court under the facts found, and not for the jury.

The third theory, the one asserted by the dissenting opinion in the *Robb* case, on the assumption that the signature therein was genuine, was the one adopted by the court, thus giving judgment to the defendant.

TOM H. BIETSCH

BILLS AND NOTES: CHECKS — INDORSEMENT — NON DELIVERY — HOLDER IN DUE COURSE

In *Gimbel Bros. vs. Hymowitz,* 160 Pa. Super. 327 (1947), 51 A. 2d 389, the drawer of a check brought it to defendant's store and gave it in payment for some goods. Defendant indorsed the check in blank and placed it on a desk while he went to another office to telephone the drawee and determine whether the check was good. The drawer picked the check up and took it to plaintiff's store, where he introduced a confederate as Hymowitz, the indorser, and plaintiff cashed the check. This action was against defendent as indorser and he defended on the ground of non-delivery. The Superior Court held that this defense was not available to the defendant. Judge Arnold states that the question is apparently an open one in Pennsylvania, and then sets two reasons for the decision.

One basis is Sec. 16 N. I. L., Act 1901, P. L. 194, which state that where an instrument is in the hands of a holder in due course, a valid delivery by all parties prior to him is conclusively presumed. The Court determined that the plaintiff qualified as a holder in due coure and then applied the terms of the statute literally. This was the majority rule at common law according to 8 Corpus Juris 757, although there were apparently no cases in Pennsylvania prior to 1901. In *First National Bank of Hooversville vs. Cauffiel,* 300 Pa. 175 (1930), the same section of the statute was applied to hold the guarantor of a promissory note liable where he defended by saying that the note had been stolen before delivery.

The maxim that "as between two innocent parties, liability should be borne by the one who made the loss possible", is given as the Court's second reason for the decision. This maxim has been the basis for a long line of decisions in Pennsylvania, beginning with *President etc., of Merchant's Bank vs. President etc., of Bank of United States,* 4 Rawle 318 (1833). The effect of the rule is to raise an estoppel in pais and bar the defendant from proving a particular defense. It will even operate in some cases to bar the defense of non-delivery of an incomplete instrument. *Weiner vs. Pennsylvania Company for Insurance,* 160 Pa. Super. 320 (1947).

In this case the Superior Court construed a section of the Negotiable Instruments Law apparently as it was intended by the drafters of the Uniform Law, and in this particular situation the statutory rule was buttressed by a common law maxim of long standing in Pennsylvania.

HARRY L. WILCOX.

CONSTITUTIONAL LAW: DUE PROCESS — FREEDOM OF RELIGION — USE OF PUBLIC FUNDS FOR TRANSPORTATION OF PAROCHIAL SCHOOL STUDENTS

The First Amendment to the Federal Constitution provides, "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof . . ." The most recent case involving the interpretation of this guaranty of religious freedom is *Everson vs. Board of Education of Ewing Township,* —— U. S. ——, 91 L. Ed. 472, 67 S. Ct. 504 (1947).

A New Jersey Statute authorizes school districts to make rules and contracts for transportation of children to and from schools, public and otherwise, so long as the school is not operated for profit. Pursuant to the statute, the school district by resolution authorized reimbursement to parents for transportation expenses of their children to and from school on public busses. The resolution named two public high schools—Trenton and Pennington High Schools, "and Catholic Schools" as those to which attending pupils would be entitled to reimbursement.

Plaintiff, as a district taxpayer, attacked the statute and the resolution as first, a violation of due process, and second, a violation of the Constitutional guaranty of freedom of religion. Both contentions were struck down by a divided court, the majority opinion by Justice Black, and dissents by Justices Jackson and Rutledge and concurred in by Justices Frankfurter and Burton.

The violation of due process argument was summarily disposed of by the Court on the ground that education, whether in public or parochial schools, serves a public purpose, and that providing the means necessary to that end is a matter within the discretion of the New Jersey Legislature, as here, the tax-raised funds are used to pay the bus fares of all school children, including those who attend parochial schools.

The second contention—that the reimbursement amounted to a subsidy for the education of Catholic children, and hence an indirect governmental aid in the establishment of religion—is the principal argument. Both the majority and the dissenters recognized that the Constitutional guaranty of freedom of religion was the logical development of European and Colonial religious oppressions, and that the true meaning of religious freedom in the United States is a complete separation of State from Religion, in which the State maintains complete neutrality and neither aids nor hinders any religion whatever.

The point of difference between the majority and the dissenters is whether or not the payment of bus fares to and from school is in fact an aid in the establishment of religion. The majority holds that so long as the payments are made impartially with respect to religion it is not such an aid, but merely the per-

formance of the duty of the school district to secure the education of its children in accredited schools, public or parochial. It is to be noted that it was not contended that children were prevented either by the statute or by the action of the school district from attending religious, non-Catholic schools.

The dissenters point to the decision in *Pierce vs. Society of Sisters,* 268 U. S. 510, 45 S. Ct. 571, 69 L. Ed. 1070, in which state neutrality in matters of religion permitted the establishment of parochial schools, so long as they met the requisite scholastic standards, at a time when all predominant local sentiment would have forbidden Catholics the right to maintain such schools. It is not denied that an additional burden is imposed here on those attending the parochial schools, but any governmental aid in lessening the burden of transportation cost is an abridgement of complete state neutrality. "The great condition of religious liberty is that it be maintained free from sustenance, as also from other interferences, by the state."

It would appear that by sustaining the payment of bus fares of children attending public and parochial schools, the Supreme Court has extended the rule in *Cochran vs. Louisiana State Board of Education,* 281 U. S. 370, 50 S. Ct. 335, 74 L. Ed. 913, where the power of a state to levy taxes to supply free school books to children of the state was held not to constitute taking private property for a private purpose even though the books were distributed to pupils in public or private, sectarian or non-sectarian schools.

Thus, under the facts of the *Cochran* and the *Everson* cases the program of the religious school is furthered, either by the distribution of free books or by the transportation of some students who otherwise would not be able to attend. It is submitted that this constitutes aid not only for the religious school but also for the institution sponsoring it and to that extent an infringement of the complete separation of Church and State which all agree is guaranteed by the First Amendment. .

JAMES R. HUMER.

CONSTITUTIONAL LAW: POLICE POWERS — OLEOMARGARINE — LICENSE FEES

In the recent case of *Flynn et. al. vs. Horst et al.,* 356 Pa. 20 (1947), 51 A 2d 54, Section 2 of the Act of May 29, 1901, P. L. 327 as amended by the Act of June 5, 1913, P. L. 412, which imposed license fees of $500 upon wholesale dealers in oleomargarine and $100 upon retail dealers of oleomargarine, was declared unconstitutional and void as it was an abuse by the legislature of the police power of the state in violation of the 14th Amendment of the United States Constitution.

This was a bill brought by a wholesale grocer and three retail grocers to test the constitutionality of the Act of 1901, P. L. 327 as amended. The case went to hearing on the overrment by the plaintiffs in the bill that the oleomargarine law was an arbitrary and unreasonable interference with business and imposed harsh and unreasonable restrictions upon a lawful occupation, and therefore constituted an abuse of the police power, in violation of the 14th amendment of the Constitution of the United States because the fees imposed were far in excess of the costs of issuing the licenses and policing the business. The answer denied this averrment and on testiinony the following facts were proved: (a) In the biennium from 1931-33 total cash from oleomargarine licenses received was $649,768.29 and the amount expended by the Pennsylvania Department of Agriculture for the enforcement of all the statutes, a total of 32, under its supervision was $337,189.22; (b) For the biennium 1943-45, the amount received from oleomargarine licenses was $1,121,763.18 with $239,802.32 being expended for enforcement of all laws by the Department; (c) In 1939 there were 33,799 retail grocers in Pennsylvania of whom 3767 held retail licenses; 1259 wholesale grocers, of whom 24 held licenses; and no manufacturers' licenses were issued from 1931 to the present time; (d) In 1946, 5171 retail licenses and 46 wholesale licenses were issued; (f) Oleomargarine is a pure, wholesome, and nutritive article of food, and is made from ingredients which have the above mentioned characteristics.

Of these facts the judge in the lower court defined the issue involved as "whether the license fees of $100 per year for retailers and $500 per year for wholesalers, of margarine, have a reasonable relation to the amount of money necessary to be expanded for the enforcement of the oleomargarine statute." The judge found for the plaintiffs which decree was affirmed by Chief Justice Maxey in the Supreme Court.

In 1885 the Pennsylvania Legislature enacted a statute the effect of which was to prohibit oleomargarine from being manufactured or sold within the geographical limits of the Commonwealth. In *Schollenberger vs. Pennsylvania,*

171 U. S. 1, the United States Supreme Court held the Act invalid to the extent that it prohibited to introducion of oleomargarine from another state and its sale in the original package. Justice Peckham declared, "It may be admitted that oleomargarine, in the course of manufacture, may sometimes be adulterated by dishonest manufacturers with articles that may become injurious to health. Yet, we deny the right of a state to absolutely prohibit the introduction within its borders of an article of commerce which is not adulterated, and which in its pure state is healthful. The bad article may be prohibited, but not the pure and healthy one."

After the passage of the Oleomargarine Act of 1901, the Federal Congress passed a law which curtailed the "original package" doctrine as applied to oleomargarine and permitted it to become subject to state regulation for taxation purposes immediately upon its introduction into the state. Such was the status of the law on the subject until the case under consideration.

In affirming the decree, the Supreme Court cited with approval the cases referred to by the lower court in determination of the constitutional question. In *Powell vs. Commonwealth,* 114 Pa. 265, it was stated: "The license fees exacted by the Act in question must be sustained, if at all, under a proper exercise of the police power. But while it is for the Legislature to determine in the first instance what laws and regulations are needed to carry out these ends, the courts may determine whether the regulations have some reasonable relation to these ends." In *Whites' Appeal,* 287 Pa. 259, the Court stated: "While the tribunal to determine the proper exercise is in the first instance the Legislature, the ultimate decision rests with the courts. If, after an investigation, there is doubt as to whether the statute is enacted for a recognized object, or if, conceding its purpose, its exercise goes too far, it then becomes the judicial duty to declare the given exercise of the police power invalid. The Legislature may not under the guise of protecting the public interests, arbitrarily interfere with private business, or impose unusual and unnecessary restrictions upon lawful occupations. In other words, its determination as to what is a proper exercise of its police power is not final or conclusive, but is subject to the supervision of the courts."

The Commonwealth contended that (1) the Act imposed a tax rather than a license fee, and (2) that the statute had been in effect for 46 years without being questioned by the public thus showing a clear legislative intent thet the excess of fees should be used by the Commonwealth for general expenses. In refusing to sustain the first contention the lower court stated, "The money is earmarked by the statute for the enforcement of the law, which is the special function of license fees and there is not a syllable elsewhere in the Act which would indicate that the legislature intended it to be a tax measure." The court quoted 37 Corpus Juris, Section 9, at page 171 as concerns the distinction be-

tween a property tax and a license tax: "If it is clearly a property tax, it will be so regarded, even though nominally or in form it is a license or occupation tax; on the other hand, if the tax is levied upon persons on account of their business, it will be construed as a license or occupation tax, even though it is graduate according to the property used in such business, or on the gross receipts of the business." The answer to the second contention was predicated on the decisions as found in *Commonwealth vs. Hazen,* 207 Pa. 52, which declared an Act unconstitutional after it had been on the books for 32 years; *In Re Orkney Street,* 194 Pa. 425 ,after 33 years; and *Kucker vs. Sunlight Oil & Gas Co.,* 230 Pa. 528, in which the court declared, "While a court should hesitate to declare a statute unconstitutional until clearly satisfied of its invalidity, and where it has been on the statute books for many years the hesitation should be all the greater, yet, if such an Act is plainly in conflict with the organic law of the state, old age cannot give it life, and when the issue of constitutionality is properly raised, it must be declared void."

The rsult of this decision has been to take the effectiveness from the statute and to bring the problem to the attention of the present Legislature to openly declare what the present public policy on the issue shall be in light of changing economic circumstances as effects the food situation of the citizens of this Commonwealth. Two bills are in the process of being introduced at this session, one to repeal the Act entirely and the other to alter the amounts of the license fees to conform to the standards requisite to complying with a legitimate exercise of the police powers.

What the law will be should be determined by the time this discussion is published and the writer believes that in fairness to business, to the food consuming public who are hindered considerably by a shortage of fat content products, and in view of the fact that oleomargarine is under the control of the Federal Government pursuant to the Federal Food, Drug, and Cosmetic Act of 1938 as amended, the Penna. Legislature should repeal the Act entirely.

HOWARD R. MILLER.

DOMESTIC RELATIONS: DEEDS OF MARRIED WOMEN WITHOUT HUSBAND'S JOINDER — VOID OR VOIDABLE?

The case of *Haines Trust,* 365 Pa. 10 (1947), 56 A. 2d 692, reminds us again that, until either the legislature completes its evolutionary abolition of the common law disabilities of married women, or the courts produce a well-defined rule, the effect of a deed of a married woman without the joinder of her husband will be uncertain.

Petitioner, Ella E. Wister Haines, had executed, acknowledged, and delivered a deed of trust for her own use for life, with the remainder to her children. Her husband had not joined in the deed. The subject matter of the trust was petitioner's remainder interest in the estate of her father, Wister, the equitable life tenancy in that estate being in her mother. The purpose of the trust was to protect the property from the importunities of petitioner's husband. Mrs. Wister died shortly after the death of Mr. Haines. The necessity for the trust having ceased, petitioner sued for its termination, basing her claim on the invalidity of the deed due to the non-joinder of her husband. The lower court dismissed the petition on the ground that the deed of trust was not void, but voidable, and that petitioner had ratified it by failing to repudiate it in a proceeding by the trustees of the Wister trust, of which petitioner had due notice, which culminated in a decree for distribution to the Haines trustees of the proceeds from the sale of real estate which the Wister trustees had made under a testamentary power.

On petitioner's appeal, the Supreme Court, in an opinion by Justice Jones, in which were reviewed the prior decisions as to the effect of the separate deed of a married woman, said, "But regardless of whether the deed of a married woman, without the joinder of her husband, is void or voidable, there is no evidence of a ratification by Mrs. Haines." The Court took the view that the failure to repudiate the deed in a proceeding in which only personalty was involved could not operate as a ratification of the deed so far as it purported to convey title to real estate. The lower court's dismissal was accordingly reversed, and petitioner was enabled to repudiate the deed to the extent that real estate was involved.

Under the view taken by the Court, it was unnecessary to adopt any rule as to the voidability of the deed. Yet, in view of the fact that such deeds have been given varying effects in the decisions, and that the court had these decisions in mind while preparing it's opinion (as is clearly indicated by its reference to them), the statement quoted is tantamount to a refusal to subscribe to any view, and is therefore significant.

For many years there was no indication that the deed of a married woman in which her husband had not joined was anything but void. One of the most unequivocal expressions of this rule is found in *Buchanan vs. Hazzard,* 95 Pa.

24 (1880): "Nothing is better settled than that a deed by a married woman without joining her husband is absolutely void, and evidence of the husband's verbal assent could not help the matter . . . . *nor can she be estopped by any subsequent act or ratification. Nothing but a new deed, duly executed and acknowledged, could avail.*" (Italics supplied).

The tenor of the decisions was abruptly changed in 1896 in the case of *Jourdan vs. Dean,* 175 Pa. 599, at 617, in which it was held that the deed was not void, but voidable, and that the receipt of the purchase money by the woman after the death of her husband had worked a ratification and redelivery of the deed and thereby prevented either her or her heirs from denying its validity. The Court based its decision on several prior cases holding that where a married woman's deed was ineffective due to an improper acknowledgement or lack of acknowledgement, it could be ratified by the acts of the woman after the death of her husband. *Share vs. Anderson,* 7 S & R 43 (1821); *Jourdan vs. Jourdan,* 9 S & R 268 (1823); *Brown vs. Bennett,* 75 Pa. 420 (1874). It distinguished the prior cases which held that the non-joinder of the husband rendered the deed absolutely void in that they had all involved purported acts of ratification done *during* the husband's lifetime.

The decision is open to the objection that it is one thing to say that it is possible for a woman, after her marriage has terminated, to ratify her deed made during marriage which was inoperative because of an impropriety in the acknowledgement, a requisite imposed to protect *her,* and it is quite another thing to say that it is possible for her to ratify a deed which was inoperative because of the non-joinder of her husband, a requisite imposed to protect both *him and her.*

But whether or not the decision of *Jourdan vs. Dean* was sound, it has never been reversed. Indeed, in 1902, the Superior Court, in *Simon's Estate,* 20 Pa. Super 450, at 469, held that a woman who had executed a deed without her husband's joinder could ratify the deed, either expressly or impliedly, after she had subsequently been declared a femme sole trader, and that her failure to repudiate the deed in a partition proceeding in which she was a party and in which was involved the land which was the subject matter of the deed constituted an implied ratification. And in a more recent case, *Merz vs. Brady,* 311 Pa. 181 (1933), in which the separate deed of the wife was declared void at the suit of the husband, the Court abstained from asserting the absolute invalidity of the deed and limited itself to the expression that the grantee of such a deed gets "no valid title."

It would not have been irregular, therefore, for the Supreme Court, in reversing the decree of the lower court in the Haines case, to have admitted that the rule applied by the lower court was a correct one, but inapplicable to the case under consideration. Instead, the court said, in effect, that the rule was inapplicable, *even if* correct, thus impliedly reserving its ruling on the correctness of the rule until it is again litigated.

Regardless of the ultimate fate of the rule of *Jourdan vs. Dean,* the position of the grantee of a deed of a married woman in which her husband has not joined, is most precarious. As against the husband, or one claiming under the husband where he has survived the wife, the grantee can claim no title. No indication has been given that the deed is subject to ratification by the husband either during or after the marriage. The grantee's one chance of obtaining title under the deed depends on the existence of two factors: (1) the termination of the marriage during the lifetime of the wife, and (2) the subsequent ratification of the deed by the woman, either expressed or implied. It may well be that the language in *Haines Trust* indicates that the Court would not be reluctant to deprive the grantee of this one chance and revert to the rule that the separate deed of a married woman is absolutely void.

DANIEL KNITTLE

UNEMPLOYMENT COMPENSATION: EFFECT OF UNION MEMBERSHIP — "GOOD CAUSE" FOR REFUSING OFFER OF SUITABLE WORK?

Attention has again been directed to the decisions of the Superior and Supreme Courts of Pennsylvania in *Barclay White Co. et al v. U. C. Board of Review and John Seifing* 159 Pa. Super. 94, and 356 Pa. 43 (1947), 50 A. 336 by the filing of a petition for certiorari to the United States Supreme Court.

This case arose under Section 4 (t) and 402 (a) of the Unemployment Compensation Law, Act of December 5, 1936, P. L. (1937) 2897, as amended, (43 PS Section 753 and 802) which provide in part that a claimant shall be disqualified for receiving compensation if *"without good cause"* he refuses an offer of suitable work. Both the Superior and Supreme Courts, however, considered also Section 3 of the statute, entitled "Declaration of Public Policy", which states that the purpose of the law is to provide benefits for "involuntary unemployment" to those who are unemployed "through no fault of their own." The facts in the case were that claimant, a member of the United Brotherhood of Carpenters and Joiners of America, an affiliate of the American Federation of Labor, refused an offer of work in a non-union establishment at $1.20 an hour because, pursuant to the by-laws of the "Metropolitan District Council" (an intermediate union organization between the local and the parent organizations, composed of delegates from the local union), he would have been suspended or expelled from his union had he accepted work at wages lower than the union scale of $1.58 an hour. It also appeared that loss of union membership in this case would have resulted in loss of death benefits payable by the union which claimant had accumulated over a period of 30 years' union membership. Further, there was no question as to claimant's having refused the offer in good faith for the reasons stated.

The State claims agency denied the claim and, on appeal, a Referee of the Board of Review affirmed the disallowance. On further appeal the Board proper reversed the Referee and awarded benefits. A previous employer of the claimant then appealed the case to the Superior Court, (under a peculiar provision of the statute the Board of Review which decided the case then became a party defendant in the appeal proceedings) and the Superior Court affirmed the Board's award. On special allocatur the Supreme Court reversed the decision of the Superior Court. Petition for certiorari to the United States Supreme Court has now been filed by the claimant.

The issue on which the case turned was not whether the work offered was "suitable work" within the meaning of the statute; claimant raised no personal objections to the offered employment. The question was whether claimant had "good cause" within the meaning of the law for refusing an offer of suitable

work. In answering this question in the affirmative the Superior Court (per Reno, J.) reasoned as follows:

(1) "It is . . . the settled policy of the State to encourage unions, to throw around them the protection of law, and the maintenance of their membership has become a matter of direct concern to the public welfare." The Court cited: Pennsylvania Labor Relations Act of June 1, 1937, P. L. 1168; Labor Anti-Injunction Act of June 2, 1937, P. L. 1198; *United Retail Employes of America v. W. T. Grant Co.* 341 Pa. 70.

(2) "The power to punish members who work for less than the prevailing union rate, or who work with nonunion workmen, if it is not the veritable sine qua non of the labor movement at least lies very near to its heart, and is of itself very essential. It is the keystone of labor's organic legal structure, the efficacious implement by which a union achieves unity, so essential to the attainment of its objectives. Without it a union would be a pallid, impotent entity, its by-laws mere fustian, and its objectives unrealizable. To be effective the by-laws must be more than mere written threats, they must be enforced impartially and judiciously. And by weight of authority, including *Coppage v. Kansas,* 236 U. S. 1, 35 S. Ct. 240, a rule of a labor union forbidding its members to work with nonunion men or with members of a rival organization is valid."

(3) The union by-law providing that wage rates for union members should be those established by the union was "enforceable as a reasonable and lawful regulation."

(4) "The bundle of rights which membership in a union confers upon its members . . . among them, the privilege of engaging in collective bargaining, the interest in sick and death benefits, and the opportunity to obtain and retain work within the member's trade at union rates . . . are property, so valuable and so thoroughly established in law that equity will restrain its impairment. *Heasley v. Operative Plasterers and Cement Finishers International Association,* 324 Pa. 257, 188 A. 206. . . . The loss of union status and its attendant consequences is a substantial and irreparable harm, so declared by our Supreme Court apart from and before the enactment of the Unemployment Compensation Law."

The Superior Court, stating that "good cause" means "outside pressures" and "necessitous circumstances' 'which "compel and justify" a refusal of work, concluded that claimant, obliged to decide between the referred employment and the loss of his union membership, acted under "the pressure of real not imaginery, substantial not trifling, reasonable not whimsical circumstances", that these compelled claimant's decision to refuse the referral and that he therefore acted with "good cause" with the meaning of the statute.

The Supreme Court in reversing the Superior Court emphasized that the controlling test of "good cause' 'and eligibility is whether or not the claimant's unemployment is "involuntary". The Court then stated: "By what stretch of the imagination could it be said that such a person is *involuntarily* unemployed? Claimant entered into membership in his union *of his own volition* because he felt that his best financial interest would be served thereby. His union had adopted by-laws prohibiting its members from working at less than the rate established by it, with non-union members, and on non-union jobs under penalty of fine, suspension or expulsion. If claimant desires to retain his membership, he is bound by those by-laws, for as between himself and the union such by-laws are not unreasonable, and they are quite efficacious in achieving union unity, so essential to the attainment of its objectives. No one can properly question the fact that a worker who joins a union and abides by its lawful rules, regulations and by-laws is within his legal rights. However, when such union member is unemployed because he refuses to acept a referral . . . rather than be fined, suspended or expelled from membership by the union, he is not *involuntarily* unemployed, but rather out of work through his own choosing."

It will be observed that under both decisions the determinations of the existence of "good cause" and "involuntary unemployment" are practically one and the same. The Supreme Court decision is not altogether clear as to the theory and implications of the conclusion that claimant refused the offer voluntarily without good cause. The decision seems to say that if a person voluntarily joins and adheres to a union any reasonable condition imposed by the union shall be deemed to have been voluntarily self-imposed by the individual member himself. The Court made no reference to any theory of agency or delegation of authority by the member to the union officers who adopted the by-laws and threatened his expulsion; apparently the voluntary association with the union alone has the effect of giving the member a share, unwilling perhaps, in the "volition" of any lawful measure adopted by the union. Quaere: How high in the echelon of union organization are the rules and measures adopted by union officers "binding" upon the member in his relations with others? In the instant case the by-laws and threats of enforcement emanated from an intermediate organization in which claimant had no direct voting privileges. What of measures taken by officers of the parent union, or affiliates? If the certorari is allowed it will be interesting to see whether the United States Supreme Court sustains this theory of original or shared volition. Organized labor is, of course, mightily interested in the ultimate determination of this question since upon it hinges not only the eligibility of union claimants who refuse work in non-union shops but also the status of a union member who becomes unemployed because of a strike called by officers of his union, although he personally did not participate in the dispute and did not "choose" to become unemployed.

RICHARD H. WAGNER