RECENT CASES

Bankruptcy—Power of State to Suspend Driving License of Bankrupt for Failure to Pay Negligence Judgment—[Federal].—A judgment had been recovered against the plaintiff for damages arising out of his negligent operation of an automobile. The judgment creditor sought to have the plaintiff's driving license revoked under a New York statute[1] which provided that when a judgment is recovered against any person for damages arising out of the negligent operation of a motor vehicle and remains outstanding for more than fifteen days after it becomes final, the clerk of the court in which the judgment is entered shall, upon written demand of the creditor or his attorney, forward a copy of such unsatisfied judgment to the commissioner of motor vehicles who shall thereupon suspend the judgment debtor's driving license. Having been duly adjudicated a bankrupt (although a discharge had not yet been granted), the judgment being scheduled as a provable debt, the plaintiff sought to enjoin the commissioner of motor vehicles from suspending his license on the grounds that the statute violated the Fourteenth Amendment and conflicted with the National Bankruptcy Act. *Held*, that the statute is a valid exercise of the police power and does not conflict with the Bankruptcy Act. Injunction denied. *Reitz v. Mealey*.[2]

The present statute is the result of several revisions. The original statute provided for the automatic suspension of the driving license of any negligent driver against whom a judgment remained outstanding fifteen days after it became final.[3] The license was to remain suspended until the judgment was discharged or satisfied,[4] except by discharge in bankruptcy. A second condition for restoration of the license was a showing by the negligent driver of financial responsibility for any accident that might occur in the future.[5] The latter provision has survived the several amendments of the statute.

In 1936 the statute was amended to provide that the license was to remain suspended for three years at most, and that written consent of the creditor within that time with a showing of future financial responsibility by the debtor, should result in a restoration of the license for a period of six months and thereafter until the creditor revoked

[1] N.Y. Cons. Laws (Baldwin, Supp. 1940) c. 71, § 94-b.

[2] 34 F. Supp. 532 (N.Y. 1940). This statement of the holding of the majority of the special three-judge court may be too broad. Ibid., at 535. But cf. dissenting opinion. Ibid., at 539.

[3] N.Y.L. 1929, c. 695, § 94-b.

[4] Ibid. Payments sufficient to qualify as satisfaction for the purpose of this section are $5,000 to one person injured in one accident, $10,000 to more than one person injured in the same accident, and $1,000 for property damage arising out of a single accident. N.Y. Cons. Laws (Baldwin, Supp. 1940) c. 71, § 94-b.

[5] Proof could be made by producing an insurance policy or a surety bond, or by depositing cash or collateral with the Department of Taxation and Finance. These provisions remain in force. N.Y. Cons. Laws (Baldwin, 1938 and Supp. 1940) c. 71, § 94-c.

Similar statutes are found in other states. See, e.g., N.J. Rev. Stat. (1937) tit. 39, c. 6, § 1 et seq.; N.C. Code Ann. (Michie, 1939) § 2621(112) et seq.; Cal. Vehicle Code (Deering, 1937) § 410 et seq.

his consent.[6] The amendment of 1939 made the initial suspension of the license dependent on the judgment creditor's written demand, on receipt of which the clerk of court was required to forward a copy of the judgment to the commissioner of motor vehicles, who thereupon suspended the debtor's license.[7]

The original statute may be regarded as an exercise of the police power for the protection of travelers on the highways.[8] Because it operated to suspend the licenses of all negligent drivers who did not promptly pay judgments, and because it required proof of future financial responsibility, it was reasonably designed to induce careful driving and to assure compensation in case of liability. The 1936 amendment revealed a trend toward creditor relief by giving the creditor power to allow the restoration of the debtor's license. Under the original statute, of course, the creditor had the power to allow relicense by voluntarily entering a complete satisfaction on the record. But under the amendment the creditor's consent, which could be revoked after six months, could more easily be used to enforce payment by making relicense conditional upon the debtor's compliance with the terms of an agreement. The 1939 amendment indicated a further intention to aid creditors by making initial deprivation of the license dependent on the creditor's action.[9] Since the provision for future financial responsibility is operative only after the license has been revoked, and since unpaid judgment creditors need not invoke the provisions of the statute, the purpose of the statute to secure financial responsibility and safety for travelers on the highways, is supplemented by a purpose to assist particular tort creditors.

If the statute is designed for creditor relief, it appears to conflict with the Bankruptcy Act when applied to judgment debtors discharged in bankruptcy.[10] Judgments arising from the negligent operation of motor vehicles are dischargeable in bankruptcy and cannot be classified by a state as debts arising from "wilful and malicious" torts which are not dischargeable under the terms of the Bankruptcy Act.[11] The fact of discharge, however, should not prevent a state from effectuating against a bankrupt a legitimate policy other than the payment of a discharged debt.[12] Thus the original statute,

[6] N.Y.L. 1936, c. 771. [7] N.Y.L. 1939, c. 618.

[8] Munz v. Harnett, 6 F. Supp. 158 (N.Y. 1933); Jones v. Harnett, 247 App. Div. 7, 10, 286 N.Y. Supp. 220, 224 (1936), aff'd 271 N.Y. 626, 3 N.E. (2d) 455 (1936); cf. Hendrick v. Maryland, 235 U.S. 610, 622 (1915); Opinion of the Justices, 251 Mass. 569, 147 N.E. 681 (1925).

[9] As interpreted, the statute provides that unless the creditor makes a written demand on the clerk of the court, the latter cannot act. Reitz v. Mealey, 34 F. Supp. 532, 534 (N.Y. 1940). But cf. ibid., at 535.

[10] Note that the debtor had not yet been discharged in the instant case.

[11] In re Phillips, 298 Fed. 135 (D.C. Ohio 1924); Ely v. O'Dell, 146 Wash. 667, 264 Pac. 715 (1928). But cf. In re Cote, 93 Vt. 10, 106 Atl. 519 (1918). See Bankruptcy Act, § 17, 30 Stat. 550 (1898), 11 U.S.C.A. § 35 (1927 and Supp. 1940).

[12] Cf. Munz v. Harnett, 6 F. Supp. 158 (N.Y. 1933); Jones v. Harnett, 247 App. Div. 7, 10, 286 N.Y. Supp. 220, 224 (1936), aff'd 271 N.Y. 626, 3 N.E. (2d) 455 (1936). A similar argument supports state taxation or police measures which incidentally interfere with interstate commerce. Susquehanna Power Co. v. State Tax Com'n, 283 U.S. 291 (1931); Hendrick v. Maryland, 235 U.S. 610 (1915); Kane v. New Jersey, 242 U.S. 160 (1916). Cf. also Spaulding v. New York, 4 How. (U.S.) 21, 36 (1846); In re Koronsky, 170 Fed. 719 (C.C.A. 2d 1909); People v. Sheriff of Kings County, 206 Fed. 566 (D.C.N.Y. 1913); In re Spagat, 4 F. Supp. 926 (N.Y. 1933). But cf. In re Hicks, 133 Fed. 739 (D.C. N.Y. 1905), expressly disapproved of in the instant case.

which sought to secure safety on the highways and financial responsibility for the future was held not to conflict with the policy of the Bankruptcy Act.[13] Since the 1936 and the 1939 amendments appear to have modified the purpose of the statute, it now seems invalid insofar as it may be used to compel payment by bankrupts of discharged debts. But even in the case of bankrupts, it would seem that an unpaid judgment, followed by a creditor's invocation of the remedy given by the statute, might be made the occasion for requiring insurance or other provision for future financial responsibility on the part of the judgment debtor. A bankrupt's driving license should then be restored upon his giving the statutory security for any future accidents. In order to prevent the creditor from using his power to compel the debtor to prove future financial responsibility as a means of forcing a bankrupt to pay a negligence judgment, the statute could be limited in application to situations in which the creditor has invoked his statutory remedies before the debtor has petitioned in bankruptcy.

If, however, the statute is still to be viewed as an exercise of the police power to protect all who travel on the highways by assuring careful driving and financial responsibility, it may be attacked on the ground that legislative power is delegated to private persons. Adequate standards guiding the exercise of the power must be provided by the legislature, except in cases of certain local or group activities where other safeguards are provided to protect minorities.[14] Since many travelers may be affected by the creditor's decision, a standard indicating the conditions upon which the negligent driver's license is to be revoked is arguably necessary. Furthermore, because the creditor is permitted to exercise uncontrolled discretion, it may also be argued that due process is violated.[15] Finally, just as if such power were granted to an administrative officer, it seems that equal protection is denied.[16]

On the other hand, however, the statute does not give the creditor power over a

[13] Munz v. Harnett, 6 F. Supp. 158 (N.Y. 1933), noted in 34 Col. L. Rev. 555 (1934) and 47 Harv. L. Rev. 870 (1934); cf. In re Perkins, 3 F. Supp. 697 (N.Y. 1933), noted in 43 Yale L. J. 344 (1933) and 19 Corn. L. Q. 278 (1934).

[14] Panama Refining Co. v. Ryan, 293 U.S. 388 (1935); Eubank v. Richmond, 226 U.S. 137, 143–44 (1912); Tilford v. Belknap, 126 Ky. 244, 251, 103 S.W. 289, 291 (1907); Locke's Appeal, 72 Pa. 491 (1873); Cleveland v. Watertown, 222 N.Y. 159, 118 N.E. 500 (1917). But compare Carter v. Carter Coal Co., 298 U.S. 238 (1936), with Old Dearborn Distributing Co. v. Seagram-Distillers Corp., 299 U.S. 183 (1936). See Delegation of Governmental Powers to Private Groups, 32 Col. L. Rev. 80 (1932), and Delegation of Power to Private Parties, 37 Col. L. Rev. 447 (1937), where the authorities are collected and the doctrines discussed at length. See also Jaffe, Law-Making by Private Groups, 51 Harv. L. Rev. 201, 247–53 (1937), where it is suggested that courts should be slow to use the conceptualistic "delegation" formula to strike down any legislation which can otherwise be supported as a reasonable means of securing efficient administration.

[15] Eubank v. Richmond, 226 U.S. 137 (1912); State v. Roberge, 278 U.S. 116 (1928); cf. Yick Wo v. Hopkins, 118 U.S. 356 (1886). It is a well-known principle that a man may not constitutionally judge a case in which he has a direct pecuniary interest. Tumey v. Ohio, 273 U.S. 510 (1927); Rich. v. Chicago, 59 Ill. 286 (1871).

[16] Cf. Thompson v. Smith, 155 Va. 367, 154 S.E. 579 (1930); Opinion of the Justices, 251 Mass. 617, 147 N.E. 680 (1925); Watson v. Division of Motor Vehicles, 212 Cal. 279, 298 Pac. 481 (1931); Garford Trucking, Inc. v. Hoffman, 114 N.J.L. 522, 177 Atl. 882 (1935); State v. Price, 49 Ariz. 19, 63 P. (2d) 653 (1937); Nulter v. State Road Com'n, 119 W. Va. 312, 193 S.E. 549 (1937).

class of debtors; it merely empowers him to determine whether or not his debtor's driving license should be suspended. This power may be used by the creditor as a remedy analagous to those given by statutes providing for supplementary proceedings to enforce judgments.[17] The difficulty of enforcing judgments in metropolitan areas may necessitate such additional remedies.

Further justification for the 1939 amendment may be found in the fact that prior to 1939 the clerk of the court was burdened with unnecessary work in transmitting to the commissioner of motor vehicles copies of all judgments unpaid after fifteen days. It is only in cases in which the creditor is unable to collect his judgment without resort to such procedure that the clerk's action is necessary under the amended act. Furthermore, it may be that the clerk (under the original act) acted only under pressure from the creditor, so that no substantial change resulted from the amendment.

Corporations—Recovery in Derivative Suit by Minority Stockholders of Subsidiary for Breach of Fiduciary Duty by Parent—Adequacy of Relief—[New York].—In 1927 Standard Oil Company of Indiana acquired a controlling interest in Pan American Petroleum & Transport Company, thereafter operating Pan American as a subsidiary. The Blausteins own twenty per cent of the stock and are directors and officers of Pan American. In 1931 and 1932 Indiana caused Pan American to dispose of its domestic crude reserves and pipe lines and its foreign producing properties. The problems raised by the fact that Pan American was no longer an integrated company led to negotiations between Pan American and the Blausteins and Indiana, culminating in an agreement (in 1933) which provided that Pan American was again to become an integrated company. By this agreement Pan American was to construct a large amount of new refining capacity, and Indiana was to assist its subsidiary in securing sufficient producing properties.[1]

In 1937 the Blausteins instituted a derivative suit against the other directors of Pan American and Indiana (as its majority and dominant stockholder), charging fraud, conspiracy, waste, negligence, and breach of trust. Also joined as defendants were the Standard Oil Company (New Jersey) and its president, on the theory that they knowingly participated in and profited from the alleged breaches of fiduciary duty, and that they conspired with the other defendants to secure benefits from transactions involving Pan American. Although not suing on the agreement, the plaintiffs treated the contract as setting a standard of fiduciary conduct, which they allege was broken by Indiana in four ways: (1) Pan American was prevented from acquiring producing resources at the same time that Indiana, through a subsidiary, was leasing such properties and selling to Pan American at a substantial profit most of the crude oil so obtained; (2) Indiana defeated a proposal for building a pipe line from the oil fields to the new refinery, arranging instead for transportation of the oil over two existing pipe lines, one owned by an Indiana subsidiary and the other by a New Jersey subsidiary; (3) although the 1933 agreement inferentially provided for a Pan American purchasing

[17] N.Y. Civ. Prac. Ann. (Cahill, 1937 and Supp. 1940) § 773 et seq.

[1] By 1929 Indiana had acquired over ninety per cent of the Pan American stock. The 1933 agreement provided for a reorganization which gave Indiana seventy per cent and the Blausteins twenty-eight per cent of the Pan American stock. In 1938 the ratios were again altered to seventy-eight per cent for Indiana and twenty per cent for the Blausteins.