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Cases Noted

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APPEAL AND ERROR

TRIAL TACTICS — MENTION OF INSURANCE COVERAGE — *Powell v. Goforth*, 188 So. 2d 766 (Ala. 1966). — Appellee passenger was injured while riding on one of appellant's buses. Appellant's counsel during cross-examination of one of appellee's witnesses introduced into evidence, for impeachment purposes, a statement signed by the witness. The court held that it is not prejudicial error on re-direct examination to show that the statement was prepared by a representative of the appellant's insurance carrier.

In so holding and extending to insurance companies the Alabama rule that when a conflict between a witness' testimony at trial and a signed, prepared out-of-court statement is pointed out by the defendant, the party in whose behalf the statement was prepared may be revealed to the jury, the court rejected the time-honored rule that the matter of insurance coverage can never be mentioned at trial.

ATTORNEY AND CLIENT

DISBARMENT — EMBEZZLEMENT OF CLIENT'S FUNDS — *In re Quimby*, 359 F.2d 257 (D.C. Cir. 1966). — Appellant, an attorney who had practiced law for more than forty years, appropriated funds from the estates of two incompetents whom he represented. When the appropriation was discovered, appellant repaid the money with interest. He was disbarred by the district court.

On appeal, appellant pointed to his long years of service in the legal profession and contended that disbarment was designed to protect the public from those unfit or unreliable to practice law. The court held, however, that "when a member of the bar is found to have betrayed his high trust by embezzling funds entrusted to him, disbarment should follow as a matter of course. . . . Only the most stringent of extenuating circumstances would justify a lesser disciplinary action . . . such as suspension which implies the likelihood that at some future time the court may again be willing to hold out the embezzler as an officer of the court worthy of clients' trust."

AUTOMOBILES

CONTROL AND REGULATION — INJURIES TO HIGHWAYS — *Kruck v. Needles*, 144 N.W.2d 296 (Iowa 1966). — Plaintiff's prior successful action for a declaratory judgment that the state statute prohibiting metal protuberances from snow tires was void for vagueness or unconstitutional as an unreasonable interference with interstate commerce was reversed on appeal, the court holding that the statute was clear on its face and was not ambiguous. Indicating that the lower court erred in attempting to make the 1937 statute meet 1966 technological advances in snow tires by holding it vague and therefore unconstitutional, the court noted that it is the province of the legislature rather than the courts to pass upon the wisdom or advisability of a statute. In disposing of the contention that the statute was unconstitutional as an unreasonable interference with interstate commerce, the court distinguished the instant case from *Bibb v. Navajo Freight Lines, Inc.*, 359 U.S. 520 (1959), the plaintiff's primary support, by saying that the statute was reasonably designed to conserve the highway system of the state.

SAFETY RESPONSIBILITY ACT — DUE PROCESS — *Adams v. City of Pocatello*, 416 P.2d 46 (Idaho 1966). — Plaintiff petitioned for writ of habeas corpus because of being confined in defendant's jail for driving while his license was suspended. The Idaho Safety Responsibility Act required petitioner, an uninsured motorist, to deposit four hundred dollars, the computed damage in plaintiff's recent auto collision, as security to satisfy any possible judgment against him.

The majority of states have some kind of safety responsibility or financial responsibility law. These have been sustained in every jurisdiction when there is provided a judicial review of the license suspension and where there is a compelling public interest to justify the suspension before the hearing. The court held that equal protection of the law is not abridged although uninsured drivers are divided into various classes, since the groupings are reasonable and individuals within the same class are treated similarly.

BANKRUPTCY

REINCORPORATION AND REORGANIZATION — SETOFF — *In the Matter of Yale Express Sys., Inc.*, 362 F.2d 111 (2d Cir. 1966). — Contractual provisions bound Boston Insurance Company to act as surety for Yale Express System with reference to certain cargo damage claims. When financial reorganization proceedings involving Yale began, numerous damage claims were advanced against Boston by customers who owed Yale freight charges. Boston wanted the freight charges set off against the claims, but the reorganization court denied the request. Upon appeal, the circuit court ruled: (1) as surety, Boston was equitably entitled to the setoff; (2) if bankruptcy proceedings were involved, the right should be recognized; (3) by analogy to bankruptcy, the right is allowable in reorganization proceedings if the reorganization court, upon rehearing, finds that its objectives would not be impeded.

Previous cases dealing with the availability of equitable setoff to a surety whose principal is involved in reorganization have stated that section 68 of the Bankruptcy Act may give the right to setoff in a bankruptcy proceeding but that section 68 does not dictate that outcome in reorganization. After reviewing general suretyship law, the Bankruptcy Act, and past cases, the court adopted and restated the previous law, finding that the availability of a setoff would depend upon whether or not it would be compatible with the requirements of reorganization.

SUMMARY PROCEEDINGS — RECOVERY OF PROPERTY SUBJECT TO LIEN OR PLEDGE — *In re Wiltse Bros. Corp.*, 361 F.2d 295 (6th Cir. 1966). — Appellant sold steel angles to the bankrupt prior to the filing of the petition in bankruptcy. The angles were fabricated into steel pieces which were sold, free of liens and incumbrances, to a Minnesota corporation which affixed them to its real estate in Minnesota. Appellant had filed no lien against the steel pieces but subsequently filed a lien against the Minnesota real estate and commenced an action to foreclose in a Minnesota court. The bankruptcy court ordered the transfer of the lien rights from the Minnesota real estate to the proceeds from the sale of the steel pieces and enjoined the lienor from prosecuting its foreclosure suit. The court of appeals held that the bankruptcy court had summary jurisdiction to issue the order because it had acquired jurisdiction over both the lienor and the steel pieces prior to any state proceeding.

As a general rule a bankruptcy court has summary jurisdiction over

property in its possession, either actual or constructive. This court, however, extended this principle to cover a situation where a lienor under the court's jurisdiction seeks to impose a lien against real estate not within the court's possession but which is the situs of chattels sold free of liens and incumbrances by the receiver.

CONSTITUTIONAL LAW

DUE PROCESS — JURY SELECTION — *Billingsley v. Clayton*, 359 F.2d 13 (5th Cir. 1966). — Plaintiffs brought a class action against the members of the Jury Board of Jefferson County, Alabama, alleging that the Board's methods of selecting jurors constituted a systematic exclusion of qualified Negroes from juries in that county. Although the evidence tended to show that the nonwhite population of Jefferson County was twenty-nine percent of the total population and that this ratio was not proportionate to the number of nonwhites actually serving on juries, the district court denied plaintiff's prayer for a temporary injunction on the ground that such evidence was insufficient to support a finding of improper conduct or constitutional wrongdoing on the part of the Jury Board.

In affirming the district court's decision, the Fifth Circuit held that "minimal representation of the group claimed to have been excluded from a particular jury roll in comparison with their proportion of the population is a proper element of proof, but such proof standing alone does not constitute sufficient evidence of constitutional violation if it is adequately explained and is not long continued." The court also pointed out that the disparity appeared to have been the result of either a lack of interest in jury service or failure of the members of plaintiffs' class to avail themselves of the opportunities provided by the Jury Board.

HABEAS CORPUS — DELAY IN APPOINTING COUNSEL — *Timmons v. Peyton*, 360 F.2d 327 (4th Cir. 1966). — Defendant, who had a low mentality and a history of mental disorders, was accused of murdering one woman and wounding another. Shortly after he was arrested, he was committed to a mental institution where he remained for almost three months before he was adjudged competent to stand trial. Although defendant had requested counsel, none was appointed until three days before he was indicted by the grand jury. In addition, during the period of his commitment, the state's attorney was actively engaged in the preparation of defendant's prosecution.

In reversing the district court's denial of defendant's petition for habeas corpus, the Fourth Circuit held that he had been denied due process because of the failure to assign counsel to represent him during "critical pretrial proceedings which materially affected the outcome of his trial." Although the court was careful to point out that it did not recognize the right of an accused to have counsel present while his competency to stand trial is being determined, it was stated that "the preparation of the defense may not . . . be postponed indefinitely until the state has completed its case. . . . We think the preparation of his defense could and should have been allowed to proceed concurrently with the state's." Finally, the court stated that its position was supported by the fact that under Virginia law the defendant had the burden of proving his insanity.

SEARCH AND SEIZURE — WAIVER OR CONSENT — *United States v. Blalock*, 255 F. Supp. 268 (E.D. Pa. 1966). — Defendant was suspected of

robbing a bank which had recorded the serial numbers of some of the cash stolen. F.B.I. agents encountered defendant in his hotel lobby, questioned him, frisked him in the men's room, and then went to his room. The agents advised defendant of his right to counsel and to remain silent, but said nothing about his right to insist on a search warrant. Then with defendant's permission, they searched the room without a warrant and discovered marked money which was the subject of a motion to suppress. The court held that this search was illegal.

In other areas of constitutional law an accused can intelligently waive his rights. The same is true in the area of search and seizure. The government argued that the defendant's consent to the search was a waiver of his rights. However, the court found that while this may have been a waiver, it was not an intelligent one in that the defendant was uninformed of his rights. The court stated that it would not be an undue burden to require the agents to inform the accused of his right to demand a search warrant.

CRIMINAL LAW

CONFESSIONS — ILLEGALLY OBTAINED CONFESSIONS — *People v. Crenshaw*, 50 Cal. Rptr. 429 (Ct. App. 1966). — Defendant appealed from a conviction for procuring. He had been arrested after complainant made a report which identified defendant, described his pink Cadillac, and made criminal charges against him. Statements made by defendant at his initial interrogation were introduced in evidence. The court held that the accusatory stage had been reached when the statements were taken and that failure to advise defendant of his constitutional rights at the start of the interrogation made them inadmissible. Judge Fleming dissented saying that the first few questions following arrest are only investigatory.

DEFENSE — CONDONATION AND SETTLEMENT — *State v. Davis*, 188 So. 2d 24 (Fla. Ct. App. 1966). — In a case of first impression in the state, the Florida appellate court upheld the validity of an agreement made between the defendant and an assistant state attorney to the effect that the defendant should take a polygraph test. The parties agreed that if the test indicated that the defendant was telling the truth, the state would dismiss the charges against him, but if the test showed that he was lying, the defendant would plead guilty to manslaughter. The court distinguished the instant case from those in which immunity is promised an admittedly guilty person, such immunity being a prohibition against sentencing rather than prosecution.

In affirming the granting of the defendant's motion to quash the indictment, the court followed decisions of West Virginia, Louisiana, and New Jersey which have granted similar motions under similar situations, their rationale being that a promise of immunity made by a prosecutor with court approval is a pledge of public faith, and one that should not be lightly disregarded.

EVIDENCE — OTHER OFFENSES AS EVIDENCE OF THE OFFENSE CHARGED — *United States v. Kirkpatrick*, 361 F.2d 866 (6th Cir. 1966). — Defendant, an employee of the Farmers and Merchants Bank of Williamsburg, Ohio, was convicted on four counts arising under 18 U.S.C. § 1005, which provides criminal sanctions for making false entries in books with intent to defraud a federally insured banking institution. Over a seventeen-month

period, the defendant withheld deposits from customer accounts, subsequently substituting false deposit slips.

The court held that evidence of similar transactions, although not specified in the bill of particulars or included in the indictment, was admissible to show criminal intent in the form of a plan or scheme to defraud and to show the absence of mistake or accident.

EXAMINATION OF JUROR DURING PRELIMINARY PROCEEDINGS ON HEARING OF MOTIONS — *C.R. Lowdermilk v. State*, 186 So. 2d 816 (Fla. Ct. App. 1966). — Defendant Lowdermilk, charged, tried, and found guilty of grand larceny, conspiracy to commit grand larceny, bribery, conspiracy to commit bribery, and conspiracy to accept unauthorized compensation, appealed his conviction, claiming that the judge erred in holding an examination of a juror without the defendant's presence. The court of appeals, in reversing defendant't conviction and granting a new trial, held that a judge, receiving a telephone call from a juror informing him of an attempted bribe, cannot inquire of that juror whether the attempted bribe would influence his independent judgment without the presence of the defendant and his counsel, since by statute any examination of a juror must be made in their presence.

INSANITY — PSYCHIATRIC EXAMINATION — *State v. Olson*, 143 N.W.2d 69 (Minn. 1966). — Petitioner, charged on two counts of first degree murder pleaded not guilty by reason of insanity. The trial court, on motion of the state, entered its order requiring a pretrial psychiatric examination of the defendant to determine his sanity at the time of the commission of the alleged offenses. Defense attorneys petitioned for a writ of prohibition, contending that such an order violated the defendant's privilege against self-incrimination and that the district court did not have inherent power to order such an examination in the absence of any state statutes regulating the procedure.

The supreme court, in granting the writ, held that although statements made by an accused to the examining psychiatrist would be admissible under proper insructions limiting such evidence to the determination of insanity, the possibility is great that a jury would use that testimony in a determination of guilt. This being the case, the order for a pretrial examination would compel the petitioner to carry on conversations against his will, contrary to the provisions of the fifth amendment.

JURISDICTION OF JUVENILE COURT — QUESTIONING OF MINOR DEFENDANT — *Harrison v. United States*, 359 F.2d 214 (D.C. Cir. 1966). — Defendants were convicted of a felony murder. At trial, defendant Harrison argued that his confession was inadmissible under *Harling v. United States*, 295 F.2d 161 (D.C. Cir. 1961). In that case, the District of Columbia Court of Appeals had held that the government was barred from using against an accused in a criminal trial a confession officially obtained from him when he was a juvenile detained under the jurisdiction of the juvenile court.

On appeal, the court distinguished *Harling* on its facts and held that its application to Harrison's case would be "absurd." On rehearing, however, the court held that *Harling* was controlling, that the jurisdiction of the juvenile court was exclusive from the time the offense was committed, and that the absence of a waiver of jurisdiction by that court before the formal confession was elicited made it inadmissible.

PLEADING — NOLO CONTENDERE — *People v. Franchi*, 142 N.W.2d 881 (Mich. Ct. App. 1966). — Appellant, charged with larceny, was arraigned before a magistrate and without benefit of counsel entered a plea of not guilty. Appellant was again arraigned on June 30 of the same year, again without benefit of counsel and upon request his plea was changed from not guilty to *nolo contendere*. Subsequently, appellant was sentenced to serve in the state penitentiary.

On appeal the conviction was reversed and a new trial ordered, the court holding that it is improper for a court to accept a plea of *nolo contendere* to a felony charge carrying a possible prison sentence and to treat such a plea as a guilty plea. Reasoning that since the only authority for the use of a plea of *nolo contendere* is an attorney general's opinion suggesting its use in misdemeanors not requiring a prison sentence and that the state statutes mention no plea of *nolo contendere*, the court determined that there is no good reason for recognizing a plea which is neither a plea of guilty or of not guilty.

PUBLIC DRUNKENNESS — CHRONIC ALCOHOLISM AS A DEFENSE — *Easter v. District of Columbia*, 361 F.2d 50 (D.C. Cir. 1966). — Defendant was convicted of violating a District of Columbia statute prohibiting public drunkenness. His defense was that he was a chronic alcoholic, but the court found this unpersuasive.

In reversing both the conviction and its affirmance by the court of appeals, the circuit court of appeals held that the act of Congress embodied in the D.C. Code indicated that the statute in question was not intended to apply to chronic alcoholics who have "lost the power of self-control in the use of intoxicating beverages." The court also stated that even in the absence of the legislative history of the statute, which clearly supported its finding, reversal would be required because "one who is a chronic alcoholic cannot have the *mens rea* necessary to be held responsible criminally for being drunk in public."

SEARCH AND SEIZURE — EVIDENCE WRONGFULLY OBTAINED — *Hajdu v. State*, 189 So. 2d 230 (Fla. Ct. App. 1966). — Defendant was convicted of engaging in the practice of medicine while not holding a license from the State Board of Medical Examiners. Evidence was presented at trial by a state-board-employed private detective who had overheard statements made by defendant to an employee of the detective by way of an electronic transmitter planted in the employee's purse. Defendant objected and appealed on the grounds that such evidence was obtained in violation of his state and federal constitutional rights. In reversing defendant's conviction, the Florida court held that the use of information obtained by a person outside the defendant's apartment by use of such devices constituted a violation of the right of privacy preserved by the fourth amendment.

The court refused to recognize the distinction previously drawn by the United States Supreme Court holdings that a trespass or breaking of the close by using electronic devices is contrary to the fourth amendment, whereas when the close is not broken no violation occurs; instead, it asserted that both types of intrusion constitute invasions of privacy.

SEARCH AND SEIZURE — HOSPITAL AS A PUBLIC PLACE — *State v. Turner*, 416 P.2d 409 (Ariz. 1966). — Defendant, accused of assault with intent to murder, sought to suppress, on the basis of an unreasonable search and seizure, the introduction of a bullet removed from his head. In affirming the lower court's conviction, it was held that the bullet imbedded in the de-

fendant, who had voluntarily appeared at the hospital for treatment, was not the product of a search.

Arizona had previously held that the guarantee against search and seizure did not apply to public places, and the court in this case extended the rule to hospital waiting rooms, despite the physician-patient relationship, because the evidence was in plain view.

DIVERSITY

UNITED STATES COURT — JURISDICTION AND POWER IN GENERAL — *Akron Co. v. Fidelity Gen. Ins. Co.*, 7 Ohio Misc. 287 (N.D. Ohio 1966). Plaintiff sued in federal court under diversity of citizenship to recover against insurance policies issued by the defendant, an unauthorized foreign insurer under Ohio law. Plaintiff moved to strike defendant's answer because of failure to comply with OHIO REV. CODE § 3901.18 which requires the posting of some form of security by a foreign insurer before filing any pleading. Defendant claimed that this provision was procedural and not binding in the federal court. It was held that since the questioned provision did not conflict with the federal rules and would substantially affect the outcome of the case, the provision was substantive and therefore binding.

DIVORCE

ACCESS TO CHILD BY PARENT DEPRIVED OF CUSTODY — COURT DISCRETION — *Reardon v. Reardon*, 416 P.2d 571 (Ariz. Ct. App. 1966). — Defendant husband petitioned the court for a modification of an absolute divorce decree which granted his wife custody of the children but was silent as to visitation rights. The court of appeals in a case of first impression held that the trial court was vested with the discretion to limit the visitation rights of a parent. The lower court's ruling that the minor children of divorced parents would be benefited by conditioning the father's visitation privileges upon payment of support was thus affirmed.

A division of authority exists in the United States as to whether the courts have the authority to enter this type of order, since many jurisdictions regard parental visitations as a right, not a privilege. The Arizona court rested its denial of visitation upon the theory that a recalcitrant and irresponsible father is not to be overindulged in the preservation of this privilege while refusing to discharge his obligation of support.

HEALTH

REGULATIONS AND OFFENSES — CONSTITUTIONALITY OF REGULATIONS — *Grossman v. Baumgartner*, 17 N.Y.2d 345, 218 N.E.2d 259, 271 N.Y.S. 2d 195 (1966). — Plaintiffs, prior to the enactment of a prohibiting provision in New York City's health code, had been engaged in the business of tattooing. A section of the health code, passed in 1961, stated that tattooing could be performed only by doctors for medical reasons. Plaintiffs sought to have this section declared unconstitutional. At the trial the defendants offered evidence showing that there was a connection between tattooing and the disease of hepatitis and that regulation of laymen conducting tattooing parlors would be ineffective to curb the disease.

The court upheld the section of the health code as valid since the Board of Health had not acted arbitrarily or capriciously in attempting to regulate matters concerning public health.

INSURANCE

ACCIDENT AND HEALTH — CONDITIONS COVERED — *Bartulis v. Metropolitan Life Ins. Co.*, 218 N.E.2d 225 (Ill. Ct. App. 1966). — Plaintiff, a certificate holder of the defendant company, was injured in an automobile accident and received out-patient hospital treatment while the policy was still in effect. After the policy had expired, however, plaintiff incurred hospitalization expenses and underwent surgery. The terms of the policy covered hospitalization and surgical expenses incurred by "any Certificate-holder while insured." The circuit court held that plaintiff could recover for his hospitalization expenses, and the insurance company appealed. The appellate court determined the controlling issue to be whether expenses incurred after termination as a result of injuries sustained prior to termination were within the terms of the contract or, if such expenses were not so contained, whether public policy and justice nevertheless required that liability attach. The court answered both questions in the negative and reversed for the insurance company.

In its decision the appellate court recognized the well-established principle that the rule of liberal construction of insurance contracts in favor of the insured is subservient to rules of reasonable construction and that the rule construing ambiguities strictly against the insurer must not pervert the plain meaning of the words so as to create an ambiguity when none in fact exists.

INTOXICATING LIQUORS

POWER TO CONTROL TRAFFIC — CONCURRENT AND CONFLICTING REGULATIONS BY STATE AND MUNICIPALITY — *City of Canton v. Imperial Bowling Lanes, Inc.*, 7 Ohio Misc. 292 (Munic. Ct. Canton 1966). — Defendant, owner of bowling lanes and a restaurant, was licensed by the Liquor Department of Ohio to sell intoxicating beverages on the premises. Plaintiff, pursuant to a municipal ordinance, brought an action against the defendant for violation of a zoning restriction on the sale of intoxicants. No Ohio statute, or rule or regulation of the Board of Liquor Control refers to zoning regulations on liquor sales. The municipal court, in sustaining defendant's demurrer, held that the ordinance was in direct conflict with state law and was therefore unconstitutional.

The court applied the prevailing view that "the test is whether the ordinance permits or licenses that which the statute forbids and prohibits and vice versa." However, it is generally held that an ordinance declaring specific acts unlawful does not directly conflict with a statute which does not refer to those acts. The court's decision is upheld in a minority of jurisdictions.

JUDGMENT

RES JUDICATA — MASTER AND SERVANT — *Marange v. Marshall*, 402 S.W.2d 236 (Tex. Civ. App. 1966). — Plaintiff was involved in an automobile accident with the defendant, an employee of an automobile dealer, during the course of the defendant's employment. Plaintiff sued the employer and recovered damages. The money was paid into court, but plaintiff refused the money and sued defendant. The court held that plaintiff was barred from further recovery by the doctrine of *res judicata*.

The court recognized that the question was one of first impression in Texas but that at least ten other states had deemed such a situation to be *res judicata.* While a master and servant are not privies, as such, the doctrine of respondeat superior, the fact that both the master and servant can be sued in one action, the plaintiff's election to sue the employer, and the public policy against multiplicity of suits were sufficient reasons for the court to find that the doctrine of *res judicata* applies to the master-servant relationship.

LABOR RELATIONS

SECONDARY BOYCOTT — SUBSTANTIAL EVIDENCE — *Wells v. NLRB*, 361 F.2d 737 (6th Cir. 1966). — The business agent for the International Brotherhood of Electrical Workers began a campaign to force the general contractor of a building project to discharge the petitioner because he was not a union contractor. The agent met with representatives of the two other unions involved, and they visited the contractor and told him that the situation of having a non-union man on the job must cease. The contractor told his men that they could not continue working because there was a non-union electrician on the job and proceeded to solicit bids from union electricians.

The court held that there was substantial evidence to sustain the findings of the examiner in favor of petitioner. The court concluded that the union's agents conduct was threatening and coercive, with the objective of forcing the contractor to fire the petitioner and that these actions amounted to a secondary boycott within the meaning of section 8(b)(4)(i, ii) of the National Labor Relations Act.

NEGLIGENCE

NATURE AND ELEMENTS — ORDINARY AND REASONABLE CARE — *Mick v. Kroger Co.*, 218 N.E.2d 654 (Ill. Ct. App. 1966). — Plaintiff's judgment for personal injuries was affirmed on appeal, the Illinois Court of Appeals holding that, where one has customarily offered services to business invitees, ceasing to provide those services may under certain circumstances proximately cause personal injury and be a failure to exercise due care. For several years plaintiff had shopped at defendant's store where, as was a custom, carry-out service was provided for customers with heavy packages. Plaintiff had purchased several items and after passing through the checkout counter was told that she would have to manage as best she could with her thirty-pound package because there was no one present to help her carry the merchandise to her car. While carrying the package from the store plaintiff turned her ankle when stepping from a curb; the weight of the package carried her to the ground, and she suffered a broken foot.

The court held that under the circumstances the defendant owed a duty of due care to the shopper and that the jury's determination that the defendant had failed to protect the shopper from a reasonably foreseeable unreasonable risk of harm was justified by the existence of a custom of carrying such parcels for its customers.

PAUPERS

LOCAL AUTHORITIES — STATE PAUPERS — *Strat-O-Seal Mfg. Co. v. Scott*, 218 N.E.2d 227 (Ill. Ct. App. 1966). — Plaintiff taxpayers sought to

enjoin use of public funds for payment of public assistance to strikers and their families. The Illinois appellate court held that strikers and their families are eligible for aid under the Public Assistance Code, ILL. REV. STAT. ch. 23, § 401 (1963), since they are persons who are unable to maintain a decent and healthful standard of living for "unavoidable causes" and who do not refuse "suitable employment or training."

Behind the court's holding is its belief that economic need would not arise solely from participation in a strike and that the right to strike should not require giving up the right to assistance. The court justified its position, which is contrary to that maintained under the Unemployment Compensation Act, ILL. REV. STAT. ch. 48, § 434 (1965), by referring to contemporary administrative practices initiated sixteen years ago by an unpublished opinion of the state's attorney general. The legislature's tacit approval of the act's administration provided additional support for the court's position.

STATUTORY INTERPRETATION

CIVIL LIABILITY FOR OFFICIAL ACTS — COMMON LAW JUDICIAL IMMUNITY — *Bauers v. Heisel*, 361 F.2d 581 (3d Cir. 1966). — Plaintiff, after serving fifteen years of a sentence, brought suit for damages against the county prosecutor who had filed the original indictment, alleging deprivation of liberty and a denial of the right to a speedy trial because he was a juvenile when the offenses were committed. The court, in deciding the question of whether a prosecutor or other judicial officer is immune from suit under the Civil Rights Act of 1871, overruled precedent in order to grant the defendant immunity. The act provides for civil redress for an improper prosecution, but only if the officer has acted clearly outside of his jurisdiction.

The controlling law in the Third Circuit formerly afforded no immunity to judicial officers, on the theory that the act had abrogated common law protection. However, the court reinstated judicial immunity, following the well-settled principle that the common law is not derogated unless the statute expressly so states.