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Abstracts of Recent Cases

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respectable authority exists to the effect that the "full faith and credit clause will forbid one to question the jurisdiction of the court to render a judgment in a case in which he appeared and participated as a litigant." Citing *Davis v. Davis,* 305 U.S. 32 (1938); *Morrissey v. Morrissey,* 1 N.J. 448, 64 A.2d 209 (1949).

In conclusion, it would appear that the principal case could have been decided on the above basis as well as on the basis that the alimony under the Florida decree (if it was in fact alimony) which was chargeable to the estate of the husband could not create a lien on the real estate of the husband in West Virginia. However, in view of the apparent confusion existing in the Florida courts with regard to their position on the question of alimony existing beyond the death of the husband, the majority opinion in the principal case seems to lack the strength that is desired. It would appear that there are more than merely academic questions raised by the minority opinion.

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ABSTRACTS

Attorney and Client—Liability for Title Certification

P, title insurer, sued *D,* a title examining attorney, for damages sustained when various mortgages it had guaranteed as first mortgages, in reliance on *D's* certification of clear title, proved to be subordinate to other mortgages. *D* gave a signed certificate of personal examination when, in fact, he had relied on information obtained from an abstract company. *D* argued that this was customary procedure in the area. Federal district court entered judgment for the insurer. *Held,* affirmed, and case remanded for redetermination of damages. An attorney cannot be absolved of responsibility on the basis of custom. *Gleason v. Title Guarantee Co.,* 300 F.2d 813 (5th Cir. 1962).

An attorney employed to examine the title to real property must exercise reasonable care and skill and the failure to do so is negligence. Annot., 5 A.L.R. 1389 (1920). The attorney is not a guarantor. He merely undertakes to bring reasonable skill and diligence to the discharge of his duty, and he is not liable for errors of judgment or for mistakes on doubtful questions of law. 5 AM. JUR. *Attorneys at Law* § 132 (1936).

In the instant case the court pointed out that "lawyers have no prescriptive right to make knowingly false statements in the name of custom." Judge L. Hand once said that a calling "never may set its own tests. . . .Courts must in the end say what is required." *The T. J. Hooper,* 60 F.2d 737 (2d Cir. 1932). While not made in connection with title examinations, the principle stated is applicable in any situation where custom is suggested as a defense. See also *Texas & Pac. Ry. v. Behymer,* 189 U.S. 468 (1903); *Wabash Ry. v. McDaniels,* 107 U.S. 454 (1882); *Shandrew v. Chicago, St. P., M. & O. Ry.,* 142 F. 320 (8th Cir. 1905).

Bankruptcy—Rights of Secured Creditor Under Wage Earners' Plan

Debtor filed a petition for extension under Chapter XIII of the Bankruptcy Act, 11 U.S.C. § 1001 (1952), which was rejected by a secured creditor. The plan was confirmed over the rejection, and the creditor petitioned for reclamation of his security. This was denied on the grounds that possession was essential for the debtor's rehabilitation. The plan permitted the debtor to make smaller payments than had been provided for by the original contract. *Held,* reversed. A secured creditor who rejects a plan for extension of time is entitled either to his contract benefits or the return of his security. *In re Copes,* 206 F. Supp. 329 (D. Kan. 1962).

Chapter XIII of the Bankruptcy Act, entitled Wage-Earners' Plans, provides a means whereby wage earners of lower income groups may amortize their obligations under court supervision. Section 1014 provides that the court may "upon notice and *for cause shown,* enjoin or stay until final decree. . .any proceeding to enforce any lien upon the property of a debtor." (Emphasis added.)

In one case construing this section, the creditor was denied reclamation of security until final decree, but the court indicated that such would not be the case where the debtor does not have substantial equity and where the creditor has required strict observance of the terms of the contract. *In re Duncan,* 33 F. Supp. 997 (E.D. Va. 1940). See also *In re Clevenger,* 282 F.2d 756 (7th Cir. 1960).

It appears evident that a secured creditor should be prevented from enforcing a lien on property held by the debtor only where the debtor can show substantial cause why such lien should not be enforced. As the instant case indicates, if it appears that the creditor will not receive his contractual benefits, he should be allowed reclamation.

Workmen's Compensation—Compensable Injury

P suffered injuries as the result of an altercation with a fellow employee. From an order of the Workmen's Compensation Appeal Board denying compensation benefits, *P* appealed. *Held,* reversed. The claim is compensable since the reason for the altercation was a quarrel having its origin in the work. *Turner v. State Compensation Comm'r,* 126 S.E.2d 40 (W. Va. 1962).

The Workmen's Compensation Appeal Board denied compensation to the claimant in the principal case on the grounds that the case is indistinguishable from *Claytor v. State Compensation Comm'r,* 144 W. Va. 103, 106 S.E.2d 920 (1959). In the *Claytor* case the injury received by the claimant was precipitated by a purely personal matter between the two employees. The injury arose in the course of employment but did not result from the employment. The *Claytor* case is clearly distinguishable from the instant case and should not be controlling.

In the instant case, the injury to the claimant was found to have been received in the course of and resulting from the employment, and, since the claimant himself was not the aggressor, the case may justifiably be placed among those in which compensation should be granted.

Workmen's Compensation—Employee's Right to Sue a Negligent Co-employee

P, a civilian employee of the United States, brought suit against medical officers of the United States Air Force and a civilian doctor employed by the Air Force for injuries sustained as the result of alleged negligent surgery. Summary judgment was entered by the district court on the grounds that the Federal Employees' Compensation Act, 5 U.S.C. § 751 (1952), constituted an exclusive remedy against fellow employees. *Held, reversed.* In the absence of a specific provision to the contrary, the Federal Employees' Compensation Act does not abrogate the common law right of an employee to sue a negligent fellow employee. *Allman v. Hanley,* 302 F.2d 559 (5th Cir. 1962).

The West Virginia Workmen's Compensation Act makes the State of West Virginia and all governmental agencies and departments created by it subject to all the requirements of the act. W. VA. CODE ch. 23, art. 2, § 1 (Michie 1961).

Section 6 of the same chapter and article exempts any employer subject to the act from liability to respond in damages at common law or by statute for the injury or death of any employee provided the employer has fully complied with all the provisions of the act. Section 6a further provides that "the immunity from liability set out in the preceding section shall extend to every officer, manager, agent, representative or employee of such employer when he is acting in furtherance of the employer's business and does not inflict an injury with deliberate intention." See *Canterbury v. Valley Bell Dairy Co.*, 142 W. Va. 154, 95 S.E.2d 73 (1956).

Unlike the federal act, the West Virginia Workmen's Compensation Act does have a specific provision which bars an employee of the State of West Virginia, or of any other subscriber to the act, from suing a co-employee for negligently inflicted injuries.

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