Master and Servant—Fraud in the Inducement of an Employment Contract—Effect Under Federal Employers' Liability Act

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the state. These men inflicted severe punishment and even death on those falling within their grasp and a desperate remedy was needed. It was to punish and suppress such combinations and conspiracies that the act was passed. State v. Bingham, 42 W. Va. 234, 24 S.E. 883 (1896); State v. Porter, 25 W. Va. 685 (1885).

The crime of conspiracy is complete with the unlawful combination and is punishable whether or not the contemplated crime is consummated. United States v. Bayer, 331 U.S. 532 (1947). The real purpose of such a statute, then, is to make punishable such unlawful confederations. It is unfortunate that West Virginia's conspiracy statute is of such a nature as to prevent its full use in the punishment of a conspiracy to murder where the murder is also charged, without constituting former jeopardy in a later prosecution for the same murder.

Forest Jackson Bowman

Master and Servant—Fraud in the Inducement of an Employment Contract—Effect Under Federal Employers' Liability Act

P brought an action under the Federal Employers' Liability Act, 45 U.S.C. §§ 51 - 60 (1952), to recover for injuries caused by D's negligence. D contended that P was not entitled to recover because D had hired P in reliance on P's false representations concerning his physical condition. Therefore, P was not an "employee" within the meaning of the statute. The trial court's action in directing a verdict for D was sustained by the West Virginia Supreme Court of Appeals and the United States Supreme Court granted certiorari. Held, reversed. To facilitate congressional policy expressed in the act, the word "employee" must be interpreted in its ordinary meaning, and generally, the status of employees who gain their position by fraud must be recognized for the purposes of the act. Still v. Norfolk & W. Ry., 82 Sup. Ct. 148 (1961).

In the instant case, the Supreme Court has limited the doctrine established by Minneapolis St. P. & S. Ste. M. Ry. v. Rock, 279 U. S. 410 (1929), to the "precise facts" of that case, and employees guilty of the precise kind of fraud perpetrated in that case may be barred from recovering under the Federal Employers' Liability Act. The purpose of this comment is to discuss the effects of the limitation of that doctrine.
The plaintiff in the *Rock* case had applied for a railroad switchman's job and was rejected as physically unfit. He re-applied under an assumed name, arranged for another man to take the required physical examination in his place, and was subsequently hired. One year later he was injured because of the railroad's negligence. His physical defects were not a contributing cause of the injury. It was held that, because of his fraud, plaintiff was not an employee of the railroad and the employment contract was void. From this decision the principle was established that any false representation made by a worker to induce a railroad to enter into an employment contract will subsequently serve as a bar to an action for damages under the Federal Employers' Liability Act.

The *Rock* doctrine began to be limited within three years after the decision. The Supreme Court refused to apply the rule in *Minneapolis, St. P. & S. Ste. M. Ry. v. Borum*, 286 U.S. 447 (1932). Borum had misrepresented his age to gain employment. The Court found no evidence that Borum's false statements substantially affected the examining surgeon's conclusion that he was in good health, and allowed him to recover.

Some courts adopted an exception to circumvent the doctrine. In *Phillips v. Southern Pac. R.R.*, 14 Cal. App.2d 454, 58 P.2d 688 (1936), the court recognized the *Rock* holding but urged that the better rule is that fraud does not prevent recovery unless a causal connection between the injuries and the fraud can be shown. The same exception is relied on in *Eresafe v. New York, N. H. & H. R.R.*, 250 F.2d 619 (2d Cir. 1957), and *White v. Thompson*, 181 Kan. 485, 312 P.2d 612 (1957). In the principal case the Supreme Court indicates that this distinction is entirely artificial because there was no causal connection between fraud and injury in the *Rock* case.

Courts have refused to apply the *Rock* doctrine in other fact situations. For example, misrepresentation as to former place of employment was held not sufficient fraud to bar an action for damages in *Qualls v. Atchison T. & S. F. R.R.*, 112 Cal.App. 7, 296 Pac. 645 (1931), and misrepresentations as to injuries received while working for a former employer was no bar to an action for damages in *Dawson v. Texas & P. R.R.*, 123 Tex. 191, 70 S.W.2d 392, (1934), *cert. denied*, 293 U.S. 580 (1934). See generally, *Still v. Norfolk & W. Ry.*, supra at 152; Annot., 136 A.L.R. 1124 (1942).
The few cases found where the *Rock* decision was actually followed all concern facts in which the employee misrepresented his physical condition. In *Spicer v. Pennsylvania R.R.*, 196 F.Supp. 679 (E.D. Pa. 1961), decided approximately four months prior to the principal case, the court granted defendant's motion to amend his answer and raise a defense based on false statements in plaintiff's employment contract, stating it was a "... well recognized defense in actions under the Federal Employers' Liability Act." Cases with similar holdings are: *Southern Pac. Ry. v. Libbey*, 199 F.2d 341 (9th Cir. 1952); *Talarowski v. Pennsylvania R.R.*, 135 F. Supp. 503 (D. Del. 1955); *Clark v. Union Pac. R.R.*, 70 Idaho 70, 211 P.2d 402 (1949); *Fort Worth & D. C. R.R. v. Griffeth*, 27 S.W.2d 351 (Tex. Civ. App. 1930).

Another criticism of the *Rock* doctrine is that it had the effect of creating an exception to the general rule of contract law that fraud in the formation of a contract, which does not reach the factum of the contract, renders it voidable, but not void. *Laughter v. Powell*, 219 N.C. 689, 14 S.E.2d 826 (1941). In *Sass v. Crawford*, 89 S.W. 656 (Ind. Terr. Ct. App. 1905), a case involving fraud reaching the factum of the contract, the court stated that the fraud rendered the contract absolutely void in respect to the guilty party and that "... it is available to him for no purpose." Also, the defrauded party must elect either damages or rescission of the contract which remains valid until avoided. It then becomes void "ab initio." *Yost v. Seigrfried*, 234 S.W.2d 231 (Mo. Ct. App. 1950); 17 C.J.S. *Contracts* § 166 (1939). Avoidance of the contract by the defrauded party, however, does not retroactively dissolve the master-servant relationship which existed while the contract was in force to bar recovery under the Federal Employers' Liability Act. *Payne v. Daugherty*, 283 F. 353 (8th Cir. 1922); *Laughter v. Powell*, supra. The cases interpreting the *Rock* doctrine have not involved fraud reaching the factum of the contract, but the court in *Newkirk v. Los Angeles J. Ry.*, 21 Cal.2d 308, 131 P.2d 535 (1942), where *Rock* is distinguished on the ground that the plaintiff was never employed by the railroad because his employment application had been previously rejected, seems to imply that fraud reaching the factum of the contract occurred in the *Rock* case.

The basis for the *Rock* decision is grounded entirely on public policy. The purpose of the decision was to ensure the safety of the traveling public by discouraging physically unfit persons from
falsifying employment applications to obtain jobs in violation of railroad safety requirements. The Rock doctrine might never have arisen if the fraud perpetrated by Rock had not been so outrageous as to shock the sensibility of the Supreme Court. Minneapolis St. P. & Ste. M. Ry. v. Rock, supra; Minneapolis, St. P. & S. Ste. M. Ry. v. Borum, supra. Despite the public protection basis for the doctrine it has been urged that application of the doctrine will have no effect in deterring job applicants from making false statements to gain employment. Merrill, Misrepresentation to Secure Employment, 14 Minn. L. Rev. 646 (1930).

It is clear that the Rock doctrine actually has had little effect in advancing the public policy which it was intended to support. Evidence of this failure can be found in the many cases which have arisen since the Rock decision where fraud in the employment contract has been introduced as a defense. The decision has failed to provide an adequate standard for the courts to follow when applying the provisions of the Federal Employers' Liability Act and has served only to confuse the application of a clear policy stated by Congress in that act.

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Sales—Additional Responsibility of Manufacturers—New Car Sales

P purchased a new car from a dealer which was destroyed by fire ten days after purchase. P contended that it was caused by faulty wiring and sued both the dealer and the manufacturer for the damage to the car. The lower court directed a verdict for both Ds, but the Supreme Court of Iowa held that in spite of an express warranty which limited liability, the case could go to the jury against both Ds on an implied warranty theory. State Farm Mut. Ins. Co. v. Anderson-Weber, Inc., 110 N.W.2d 449 (Iowa 1961).

This recent case illustrates a line of decisions which gives the purchaser of a new automobile some protection from the common law doctrine of “caveat emptor.” Many car dealers are selling new cars with a uniform warranty and disclaimer which gives a purchaser very little protection against mechanical defects. This line of cases disregards the disclaimer and gives the purchaser the right to sue on an implied warranty theory.

From a position of almost total immunity from suit the manufacturer now finds himself in quite a different position. It was origi-