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Abstracts of Recent Cases

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Torts — Automobiles — Degree of Care

In an action for damages by the owner of an automobile against the owner of a tractor-trailer, arising out of an intersectional collision which occurred when the tractor-trailer and automobile, both of which were proceeding in the same direction, attempted a right turn at an intersection, judgment was rendered for defendant and plaintiff appealed. *Held,* the court did not err in declining to give the automobile owner's requested instruction upon the size, weight, and lack of maneuverability of the tractor-trailer predicated upon the theory that a higher degree of care is required of operators of large and unwieldy motor vehicles. *Lemons v. Maryland Chicken Processors, Inc.,* 164 A.2d 703 (Md. 1960).

A recent case in point decided by the Supreme Court of North Carolina held that the drivers of tractor-trailers have the positive duty to operate the vehicles at all times with due care and caution. *Hill v. Carolina Freight Carriers, Inc.,* 235 N.C. 705, 71 S.E.2d 133 (1952). This appears to be the better view. Some cases hold that a driver of an automobile is under a duty to use a high degree of care. *Becker v. Clemons,* 295 S.W.2d 203 (Mo. App. 1956). However, the courts in using these expressions may, in the absence of statute imposing such degree of care, be understood as referring to the standard of reasonable care under the existing conditions, rather than intending to assert a general rule requiring more care than is reasonable and necessary. 60 C.J.S. *Motor Vehicles* § 247 (1949).

No West Virginia cases dealing with the degree of care required by an operator of a tractor-trailer were found. In a recent case wherein the defendant was operating a truck, the West Virginia court held that nothing relieves a motorist from the exercise of reasonable care under all the circumstances. *Somerville v. Dellosa,* 133 W. Va. 435, 56 S.E.2d 756 (1949).

Evidence — Extradition — Judicial Notice

In proceedings to extradite the accused, a former Greek citizen, for the alleged crime of embezzlement in Greece, *held,* the federal district court could not take judicial notice of the laws of Greece fixing jurisdiction in a Greek court over a case against the accused. *In the Matter of Mylonas,* 187 F. Supp. 716 (N.D. Ala. 1960).

The holding in the principal case is consistent with the common law practice in the federal courts and in the majority of the state courts of refusing to take judicial notice of the laws of foreign countries. *Molina v. Sovereign Camp,* 6 F.R.D. 385 (1947). McCORMICK, EVIDENCE § 326 (1954). However, the federal courts are not unanimous in holding that judicial notice of foreign laws will be refused. *Fianza Cia Nav. S. A. v. Benz,* 178 F. Supp. 243 (1958). By statute in West Virginia, state courts shall take judicial notice of the laws of another state or country. W. VA. CODE, ch. 57, art. 1, § 4 (Michie 1955). No cases were found in which the West Virginia court has construed the judicial notice statute with regard to the laws of foreign countries, nor were any federal cases, construing the West Virginia law, found on point. It is to be noted that a federal court will judicially notice foreign law when the courts of the state in which it sits would do so. *Murphy v. Bankers Commercial Corp.,* 203 F.2d 645 (2d Cir. 1953).

Evidence — State Wiretapping — Federal Injunctions in State Prosecutions

The accused in criminal proceedings in a New York state court sought to enjoin the district attorney and city police commissioner from divulging the existence or contents of tapped telephone communications, and to enjoin the introduction at his trial of all evidence obtained as a result of the wiretaps. *Held,* even though testimony of officers and agents as to actual telephone conversations intercepted would, in a state prosecution in New York, constitute divulgence in violation of the express prohibition of federal law, the accused was not entitled to injunctive relief in federal court. *Pugach v. Sullivan,* 180 F. Supp. 66 (S.D.N.Y. 1960).

The real controversy in the law of wiretapping is whether law enforcement officers should be allowed to tap. The Supreme Court held, in *Wolf v. Colorado,* 338 U.S. 25 (1949), that evidence illegally seized by state officers may be admitted in the state courts without violating guaranties of the United States Constitution. The Communications Act of 1934, 47 U.S.C. §§ 501, 605 (1946), made the interception and divulgence of telecommunications a federal crime and a basis for a civil action for damages.

Since many states have allowed state officers to testify in prosecutions regarding communications received by forbidden inter-

ceptions, defendants have sought federal injunctions against such testimony. In *Steffanelli v. Minard,* 342 U.S. 117 (1951), the Supreme Court held that a federal court should not enjoin the use of evidence in a state prosecution, even though it was obtained by a state officer by an unreasonable search and seizure. See Comment, 63 W. VA. L. REV. 56 (1960). On writ of certiorari, the Supreme Court has affirmed the judgment in the principal case. *Pugach v. Dollinger,* 29 U.S.L. WEEK 4247 (U.S. Feb. 27, 1961). Of significance in the decision was the strong dissent of Mr. Justice Douglas.

Attorney's Fees — Administrative Agencies — Judicial Proceedings to Review Administrative Decision

Pursuant to agreement fixing their contingent fee at forty percent of recovery, attorneys appealed to the District Court of the United States for the Southern District of West Virginia for reversal of a decision of the Secretary of Health, Education and Welfare denying their client disability benefits under provisions of the Social Security Act. Upon the Secretary's motion, the cause was remanded to him for further administrative action and ultimately he granted the relief sought. Under the Social Security Act, 42 U.S.C. § 406 (1947), the Secretary has the sole jurisdiction to pass on the amount of fees charged by attorneys for services rendered in the administrative proceedings before the Secretary. Petitioners, wanting to avoid the violation of any federal statute or regulation, submitted to the district court the question of their right to collect the contingent fee, which amounted to $630. *Held,* the statute limits the jurisdiction of the Secretary in fixing maximum fees to proceedings *before the Secretary.* Neither the statute nor the regulations attempt to govern fees which may be charged by an attorney in representing his client in judicial proceedings to review a decision of the Secretary. *Sheppard v. Fleming,* 189 F. Supp. 571 (S.D. W.Va. 1960).

The holding in this case should be of interest to lawyers everywhere. The Secretary has promulgated regulations providing that a fee not greater than ten dollars may be charged by attorneys representing social security claimants, unless the attorney is authorized, upon filing of a petition, to receive a maximum fee in excess of ten dollars. As a result of these regulations, claimants frequently en-

counter difficulties in obtaining the services of a lawyer. This decision enunciates the doctrine that the regulation of fees by the Secretary is not controlling in the district court in an action to review the decision of the Secretary.

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