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Officers—Disqualifications for Office—Conviction of Felony

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has seldom been applied to injuries sustained on public streets or highways.²¹ Compensation is denied in this situation on the theory that the risk or hazard is not increased as a result of the employment²² — the general public bearing the same risk — and because the employee is free from the employer's control.²³ West Virginia permits recovery in this situation on the theory that the act is a necessary one and thus incidental to the employment.²⁴ This, however, is true of the physical acts of agents, and yet, in the situation under consideration, it is well settled that the principal is not responsible.²⁵ Indeed, the result of the instant case appears desirable, for special liability under the statute must cease at some point and the point fixed by this case is a predictable one. It affords the employee protection *qua* employee; it does not impose upon the employer an unusual responsibility based upon a relationship which has ceased.

—EDWARD S. BOCK, JR.

OFFICERS — DISQUALIFICATION FOR OFFICE — CONVICTION OF FELONY. — The relator was duly elected to the office of constable. By a writ of mandamus he seeks to compel the county court of Raleigh County to permit him to qualify for office. He had previously been convicted of two felonies and had served his terms

he had finished his day's work and while he was walking along the tracks on the railroad premises where according to the known custom he intended to catch a train on which he and other of the employees were allowed to ride home.); *Bountiful Brick Co. v. Giles*, 176 U. S. 154, 48 S. Ct. 221 (1928); *In re Sundine*, 218 Mass. 216, 105 N. E. 433 (1914); *Starr Piano Co. v. Industrial Accident Commission*, 181 Cal. 433, 184 Pac. 860 (1919); *Procaccino v. Horton and Son*, 95 Conn. 408, 111 Atl. 594 (1920).

²¹ *State ex rel Gallet v. Clearwater Timber Co.*, 47 Idaho 295, 274 Pac. 802 (1929) (Employee driving his own automobile was fatally injured at a public crossing of a railroad. Recovery denied.); *N. K. Fairbank Co. v. Industrial Commission*, 285 Ill. 11, 120 N. E. 457 (1918); *Paulauskis' Case*, 126 Me. 32, 135 Atl. 824 (1927); *Reed v. Bliss and V. A. Lumber Co.*, 225 Mich. 164, 196 N. W. 420 (1923); *Harris v. Henry Cheney Hammer Co.*, 221 App. Div. 199, 223 N. Y. Supp. 738 (1927); *Dellepiani v. Industrial Accident Commission*, 211 Cal. 430, 295 Pac. 826 (1931); *contra: Cudahy Packing Co. v. Parramore*, 263 U. S. 418, 44 S. Ct. 153 (1923).

²² *State ex rel. Gallet v. Clearwater Timber Co.*, and cases cited, *supra* n. 11.

²³ Judge Hatcher's dissent in *Canoy v. State Compensation Commissioner*, 170 S. E. 184 (W. Va. 1933).

²⁴ *Canoy v. State Compensation Commissioner*, *supra* n. 13; *Cudahy Packing Co. v. Parramore*, *supra* n. 11; *Barnett v. Britling Cafeteria Co.*, 225 Ala. 462, 143 So. 813 (1932); *Kent v. Virginia-Carolina Chem. Co.*, *supra* n. 6.

²⁵ *Singer Manufacturing Co. v. Rahn*, 132 U. S. 518, 10 S. Ct. 175 (1889) (A master is liable to third persons injured by an act of his servant which is incidental to the employment.).

in the penitentiary. The county court alleges that the relator is thus disqualified by the statute which provides that "No person convicted of . . . felony shall, while such conviction remains unreversed, be elected . . . to any office." *Held*: Relator was entitled to post bond, take oath, and qualify for office. *Webb v. County Court of Raleigh County*.¹

A general policy prohibiting persons who have been convicted of felony or infamous crime, from holding offices of public trust and confidence has been expressed in many constitutions² and statutes.³ The West Virginia provisions while differing in phraseology do not appear different in purpose. This purpose, as announced by a majority of courts, is to insure, as far as possible, public confidence in the integrity of public officers — for it was "never intended that a public office should be contaminated by the presence of a convicted felon".⁴ Thus the statutes make conviction necessary to disqualification.⁵ But the conviction must be of a crime committed within the state unless the statute specifically provides otherwise,⁶ in which case, a conviction in a sister state, in the federal courts, or even in a foreign country

¹ 168 S. E. 760 (W. Va. 1933).

² W. Va. Const., art. 6, § 14, "No person who has been, or hereafter shall be convicted of bribery, perjury, or other infamous crimes, shall be eligible to a seat in the Legislature." Wis. Const., art. XIII, § 3. "No person convicted of an infamous crime in any court within the United States . . . shall be eligible to any office of trust, profit or honor in this state." *Accord*: Va. Const., § 32; Miss. Const., § 241; Ind. Const., art. II, § 6; Penn. Const., art. IX, § 3.

³ W. VA. REV. CODE (1931) c. 6, art. 5, § 5. "No person convicted of treason, felony, or bribery in any election, before any court in or out of this State, shall, while such conviction remains unreversed, be elected or appointed to any office under the laws of this State; and, if any person, while holding such office, be so convicted, the office shall be thereby vacated." *Accord*: VA. GEN. LAWS (1923) §§ 4495, 4497; OHIO GEN. CODE (1932) §§ 12390, 12391; MASS. GEN. LAWS (1921) c. 279, § 30; IND. ANN. STAT. (Burns, 1926) §§ 7610, 11607; ILL. REV. STAT. (Smith-Hurd, 1929) c. 38, § 587; FLA. COMP. LAWS (1927) § 458.

⁴ *Comm. v. Fugate*, 2 Leigh 724 (Va. 1830); *State v. Levi*, 109 W. Va. 277, 153 S. E. 587 (1930); *In re Advisory Opinion*, 31 Fla. 1, 12 So. 114, 18 L. R. A. 594 (1893); *McKinney v. Horton*, 151 Cal. 711, 91 Pac. 598 (1907).

⁵ *In re Advisory Opinion*, *supra* n. 4; *Gray v. Seitz*, 162 Ind. 1, 69 N. E. 456 (1904).

⁶ *Logan v. United States*, 144 U. S. 263, 12 S. Ct. 617 (1892). "At common law and on general principles of jurisprudence, when not controlled by express statute giving effect within the state which enacts in to a conviction and sentence in another state, such convictions and sentences can have no effect, by way of penalty or of personal disabilities or disqualification beyond the limits of the state in which judgment is rendered." *Accord*: *State v. McDonald*, 164 Miss. 405, 145 So. 508 (1933); *Cf. State v. Du Bose*, 88 Tenn. 753, 13 S. W. 1088 (1890).

will disqualify.⁷ The apparent policy of the *Webb* case,⁸ however, is that the serving of sentence obliterates the offense. When a criminal serves his sentence and returns to society he must be given the widest opportunity for vocational readjustment. This policy is, perhaps, justified by the great increase in statutory felonies embracing many acts which would have been only misdemeanors at common law and would not have disqualified the actor from holding office. This, however, is argument for the change of our legislative policy rather than for a new judicial interpretation of the word "reversed".⁹ To enforce this policy as the court has done by saying that a prisoner has "reversed" his conviction by serving his sentence only increases our already burdensome load of legal subtleties. In judicial usage "reversed" means the setting aside, annulling, or vacating an order or judgment.¹⁰ Strictly, it may even be doubted whether a pardon will remove the disqualification created by a conviction.¹¹ In short, unless the legislature only meant that a person convicted of a felony should not hold public office while in the penitentiary, the interpretation placed upon the statute by the *Webb* case is spurious.¹²

—R. E. HAGBERG.

PROHIBITION — EQUITABLE CLEAN HANDS DOCTRINE AS A GROUND FOR DENIAL OF THE WRIT. — In a recent case, A sued B before a magistrate for money paid for a tract of land. B filed a statutory affidavit stating that the title to the land would come into question, which would deprive the magistrate of further jurisdiction if not met by a sufficient counter affidavit. In his affidavit, B failed to disclose that to his knowledge the title to the land had been adjudicated in a former equity suit. A filed an insufficient counter affidavit, and the justice, after hearing

⁷ *Crampton v. O'Mara*, 193 Ind. 551, 139 N. E. 360 (1923). Writ of error dismissed, 267 U. S. 575, 45 S. Ct. 230 (1924).

⁸ *Supra* n. 1.

⁹ See, Horack, *In the Name of Legislative Intention* (1932) 38 W. VA. L. Q. 119.

¹⁰ WORDS AND PHRASES, p. 6211.

¹¹ *Morgan v. Vance*, 4 Bush. 323 (Ky. 1868). *Cf. Donham v. Gross*, 210 Cal. 190, 290 Pac. 884 (1930).

¹² Pound, *Spurious Interpretation* (1907) 7 COL. L. REV. 379, 381; Radin, *Statutory Interpretation* (1930) 43 HARV. L. REV. 863; Landis, *A Note on Statutory Interpretation* (1930) 43 HARV. L. REV. 886.