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Miscellaneous—Sovereign Immunity

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tariness in claimant's having his employment terminated was involved there. Discharge was not certain to result from his act. In the instant case it was completely within the power of the claimant that he should or should not pay his dues, and his voluntary choice of the latter necessarily meant that discharge would follow.

Sovereign Immunity

In *Glassman v. Glassman,*[20] plaintiff brought an action to set aside a conveyance made by a judgment-debtor to the New York State Employees Retirement System,[21] such conveyance rendering the judgment-debtor insolvent. The Court held that even though the doctrine of sovereign immunity bars suits against the state and its agencies, the doctrine will not be applied where, as here, the state or governmental unit, although named as a defendant, is not an actual or interested adverse party, and the suit is, therefore, not a suit against the state.

The doctrine of sovereign immunity in modern times serves to protect the state against interference with the performance of its governmental functions and preserve its control over state funds, property and instrumentalities.[22] In New York, the remedy whereby individuals with claims against the state may seek redress has taken the form of a legislative waiver of the state's "immunity from liability."[23] Such suits must, however, be brought in the Court of Claims.[24]

The New York State Employees Retirement System is "a state instrumentality clothed with sovereign immunity."[25] The immunity of a state agency is in no way affected by the lack of any other remedy[26] or by the fact that the agency is endowed with the powers and privileges of a corporation.[27]

The nature of the creditor's recovery in the instant case brought under Section 273 of the New York Debtor and Creditor Law is to levy upon such property "which he is entitled to treat as belonging to the debtor, albeit the title is ostensibly lodged elsewhere."[28] The Retirement System is a party in the instant

20. 309 N.Y. 436, 131 N.E. 2d 721 (1955).
21. N. Y. CIVIL SERVICE LAW §50 et seq.
22. *U. S. v. Lee,* 106 U.S. 196 (1882).
23. N. Y. COURT OF CLAIMS ACT §8.
24. id.
25. *Glassman v. Glassman,* 309 N.Y. 436,438 131 N.E. 2d 721,724 (1955).
26. *Psaty v. Duryea,* 306 N.Y. 413,419,420, 118 N.E. 2d 584,587,588 (1954); *Buckles v. State of New York,* 221 N.Y. 418, 423,424, 117 N.E. 811, 812,813 (1917).
27. *Breen v. Mortgage Commission of State of New York,* 285 N.Y. 425,430, 35 N.E. 2d 25,27 (1941).
28. *Hearn 45 St. Corp. v. Jano,* 283 N.Y. 139,142, 27 N.E. 2d 814,816 (1940).

case merely because of the procedural requirement for setting aside the fraudulent conveyance that the transferee be joined as a necessary party.[29]

The only parties actually interested as a result of the litigation are plaintiff and the judgment-debtor defendant. The Retirement System is in a position similar to a stakeholder with nothing to lose or gain. If it retains the funds, it is obliged to return them eventually to the defendant. By losing the funds in this action it is merely relieved of that obligation.

Thus where the state or its agencies are merely joined as necessary parties with no actual or adverse interest in the litigation, the doctrine of sovereign immunity does not bar such suit.

Labor Law—Payment of Wages

In *People v. Vetri*[30] the defendant employer discontinued business and failed to make payments for accrued vacations, provided for in a collective bargaining agreement, to six of his employees. The Court held, reversing the Appellate Division,[31] that these were not wages as contemplated by the Labor[32] and Penal[33] laws which require the payment of weekly wages by an employer.

The Court felt that the law was not intended to include fringe benefits found in present day collective bargaining agreements, which were relatively foreign to per diem hirings at the time of the original enactment of the statute in 1890. Its purpose was to assure prompt payment of daily wages to those employees in a subordinate capacity, who depended upon their earnings for support on a per diem rather than on a salary basis.[34] It is also recognized that a violation of section 196 of the Labor Law is malum prohibitum, not malum in se, and as such the statute should be strictly construed.[35]

By recent amendments[36] to section 71 of the Stock Corporation Law and section 22 of the Debtor and Creditor Law, the Legislature defined "wages" as

29. N. Y. DEBTOR AND CREDITOR LAW §278.
30. 309 N.Y. 401, 131 N.E. 2d 568 (1955).
31. 285 App. Div. 1089, 141 N.Y.S 2d 505 (2d Dep't 1955).
32. N. Y. LABOR LAW §196(2) Every person carrying on a business by lease or otherwise . . . shall pay weekly to each employee, the wages earned to a day not more than six days prior to the date of such payment.
33. N. Y. PENAL LAW §1272 Each person . . . who does not pay the wages of all his . . . employees in accordance with the provisions of the labor law is . . . guilty of a misdemeanor.
34. *Erie R.R. v. Williams*, 199 N.Y. 108,92 N.E. 404 (1910), *aff'd.* 233 U.S. 685 (1913).
35. *People v. Taylor*, 192 N.Y. 398, 85 N.E. 759 (1908),
36. N. Y. Sess. Laws, 1952, c. 794.