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Recent Decisions

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point that the small stockholder deserves protection, and though these two boards are doing marvelously there is still a need for more improvement on this particular point.

As to the non-applicability of the statute of limitations on actions that may be brought before these two Commissions, the author places this feature of the Commissions next in importance to the investigatory feature peculiar to these two Commissions. After a few choice sentences which set the particular situation out the author goes through countless cases bearing directly upon this point.

Compensation of counsel is the next of the subdivisions to consider. The question which is presented and which is the crux of the matter is who is to pay for the action — the corporation or the complainant stockholder; and moreover, if the complainant stockholder is successful can the corporation be held for the fee of the complainant stockholder's attorney. The latest case in New York brought the following comment from the Commission: "Compensation for counsel fees for a successful action before a Commission may be sought for in an independent action in the state courts."

With a hopeful eye to the future the author concludes that the small stockholders need not be taken as a pawn for the large combinations, if only the proper authorities will face the situation and remedy it.

Norbert S. Wleklinski.

RECENT DECISIONS

BINDING EFFECT OF PUBLICATION OF NOTICE TO BONDHOLDERS — CONTRACTS — OFFER AND ACCEPTANCE.—*R. E. Crummer & Co. v. Nuveen, et al.* Circuit Court of Appeals, Seventh Circuit, Feb. 8, 1945, 147 Fed. (2d) 3.—This cause of action arises under a contract between R. E. Crummer & Co., the plaintiff and appellant, and the John Nuveen Company, defendant and appellee.

The original bill of complaint alleged that on the 25th day of November and the 29th day of November, 1941, the defendants desiring to buy certain bonds at par, caused publication of a notice in a daily and weekly paper. At the time of said publication, the plaintiff was the owner and holder of $458,829.00 of said bonds dated June 1st, 1940 and due June 1st, 1970. The complaint further alleged that defendants had arranged with the Manufacturers' Bank of New York to deposit the funds necessary to cover all such bonds presented for payment pursuant to the terms of the notice. The plaintiff in reliance on the notice delivered its bonds to said bank on the 11th day of December, 1941, but the bank refused to pay the principal amount as provided by the

notice, which forced the plaintiff to sell to other parties at a lesser sum, suffering thereby damage to the extent of $35,000.00.

Defendants moved for and obtained a dismissal in the lower court on the grounds that the advertisement was merely a solicitation for offers to sell the bonds, and not an offer to purchase them, and that if it was an offer, it had lapsed according to the reasonable time for acceptance doctrine.

On appeal the Circuit Court of Appeals held that while it is true that an offer lapses by expiration of time when no time is fixed for acceptance, this doctrine does not apply when the parties treat the offer as continuing in force. "An offer remains in force as long as it is treated by both parties as being in force, even though what would otherwise be a reasonable time elapsed."

As for the question whether an advertisement constitutes an offer, or a solicitation for offers, the court said that it was first necessary to distinguish a general offer from a general invitation to make an offer, and upon doing so if the offer made by means of advertisements, circulars and the like shows an intent to assume legal liability thereby, such offer on acceptance forms a contract. This intention in turn is drawn from the facts and circumstances of each particular case. It was decided that the meaning of an offer, if doubtful, to purchase certain county bonds at par and "interest to December 1st" was not an issue to be decided as a matter of law on a motion to dismiss a bondholder's complaint for damages for breach of contract, but rather a question of fact for the jury. The judgment of the lower court in dismissing the complaint on motion of the defendants, was then declared erroneous, and judgment was reversed and the cause remanded for further proceedings.

John F. Power.

LIMITATIONS OF ACTIONS — ARMY AND NAVY.—Blazejowski v. Stadnicki, ... Mass. ....., 58 N. E. (2d) 164, December 6, 1944.—A recent case, particularly interesting because of the issues involved, was *Blazejowski v. Stadnicki* in which the application of a statute of limitations as applied when the defendant was in military service was questioned. Defendant, while on active military service, injured the plaintiff by hitting the latter with an automobile. The plaintiff, a civilian, subsequently brought an action in tort against the defendant. The defendant meantime had procured a discharge from the army and for a defense pleaded the statute of limitations as the plaintiff had not brought his action within one year from the time that the cause of action accrued as the Massachusetts law requires.

It was the contention of the defendant that since the plaintiff had not prosecuted his suit within the time allowed by Massachusett's statutes he was barred by the statute of limitations. Or perhaps more simply the question resolved itself into the query whether by reason of the Soldier's and Sailor's Civil Relief Act of 1940, amended in 1942, the period of military service should be included in computing the time for bringing action under the state statute of limitation.

Section 205 of the Soldier's and Sailor's Civil Relief Act of 1940 reads: "The period of military service shall not be included in computing any period * * * limited by any law * * * for the bringing of any action or proceeding in any court * * * by or against any person in military service, or by or against his heirs, executors, administrators, or assigns, * * *" Since the enactment was one of a remedial nature it is clear that it should be construed liberally in favor of the rights of the persons engaged in military service. The defendant's contention, however, went much further and was that only the persons in military service had the right to invoke the provisions of the statute and toll the statute of limitations. He argued that a civilian could not use the facts of a defendant's military service to the prejudice of the defendant. He contended that only the persons in military service could invoke the provisions of the act to stop the statute of limitations and relied upon the avowed purpose of the legislation that the Civil Relief Act should be construed liberally in favor of those in military service.

The lower court found for the plaintiff and the Supreme Court of Massachusetts affirmed the lower tribunal's decision and said: "If this wording, which is clear and unambiguous and not doubtful, is to be whittled down by judicial interpretation to comprise only those actions in which a party in military service chooses to rely upon or plead the fact of such service, we think that such implied exception should be declared by the court finally empowered to pass upon the scope of acts of Congress."

The Court held that the time of military service of the defendant should *not* be included in computing the time for bringing actions under the state law and held that the provisions of the federal statute were not inapplicable when the plaintiff in action computes time for bringing an action against a defendant who has been in military service.

Francis J. Paulson.

TELEPHONES AND TELEGRAPHS — LEGALITY OF SPECIAL TOLL CHARGES BY HOTELS.—*Ambassador Inc. Washington Annapolis Hotel Company, David A. Baer and Robert Scholz a partnership et al., Appelants v. The United States of America, American Telephone and Telegraph Company, et al.*—Decided May 21st, 1945 [65 S. Ct. .....].

—This action was instituted at the request of the FCC in the District of Columbia Federal Court. The complaint asks and the Court below has granted an injunction which forbids the appellants to make charges against their guests in connection with any interstate or foreign message toll service to or from their premises other than the toll charges of the telephone companies and applicable federal taxes. The prohibition is based on a provision to that effect in the tariff filed by the telephone companies. Evidence being limited by stipulation to one hotel, the Shoreham, as being typical.

In these hotels as in many others service charges are placed on guest bills for toll charge calls made through the connection for which the hotel is responsible. The hotel has a PBX board that has a number of trunk lines running through it and also connection with all the rooms. The standard method is followed in charging of these tolls. The hotel receives the notations and pay the charges. These in turn are placed on the guest's bill but in addition certain service charges are added in order that the hotel may recoup cost of extra service as well as cost of the rental charges on equipment.

Investigation disclosed that these charges in excess of the actual amount varied but were on the average, 10 cents for calls under a dollar, and a certain percentage after a dollar, with a maximum, generally of three dollars.

The FCC instituted proceedings in 1942 for a clarification of this procedure and questioned whether these charges appeared in the tariffs filed with the Commission. It was determined then that the FCC does have the right to investigate charges of this kind and since that time (Dec. 1943) have been working on the case.

As a means of establishing these procedures correctly the Telephone companies filed a tariff provision with the FCC on the basis that the Hotels were agents of the A. T. and T. *et al.,* and also averred in the filing that these extra charges were not to be made on the service of the telephone companies to the hotels.

The lower court sustained the validity of the tariffs filed by the telephone companies and the Hotels appealed. In part the Supreme Court by Mr. Justice Jackson said: "It is clear that the charges being made in this case violate the regulation. The charges made are not based on the service rendered by the hotel but vary in accordance with the toll charge made by the Telephone companies for communications services. . . . It is sufficient to say that the relation is one which the statute contemplates shall be governed by reasonable regulations initiated by the telephone company but subject to the approval and review of the FCC. . . . We hold the injunction was properly issued and the judgment below is affirmed."

John D. O'Neill.

WAR — CONSCIENTIOUS OBJECTORS UNDER THE SELECTIVE SERVICE ACT.—*Brooks v. United States,* 147 F. (2d) 134 (1945). Dist. Ct.— The appellant appeals from a conviction for violation of the Selective Training and Service Act of 1940. Appellant, a citizen of the United States, was duly registered and classified 4E, as a conscientious objector, by his local board. Having passed a physical and mental examination, he was ordered to report for transportation to Civilian Public Service Camp No. 111 at Mancos, Colorado. He refused to report and so notified his local board. For this action he was indicted, tried, convicted, and sentenced.

The Court held: "The federal government in the exercise of its undoubted power to raise and maintain armed forces for the protection of the country could have disregarded the appellant's conscientious scruples and conscripted him for any miliary service for which he was mentally and physically fit." It was further maintained that since the government had respected his conscientious objections by exempting him from combat service, they had a right to force appellant to perform some work of national importance, as the appellant was able to perform under reasonable rules and regulations.

The court concluded by saying that although the appellant's liberty would be restricted by assignment to the Civilian Service Camp, there was no unlawful infringing on any of appellant's rights. The conviction was consequently affirmed.

Arthur M. Diamond.

STATEMENT OF THE OWNERSHIP, MANAGEMENT, CIRCULATION, ETC., REQUIRED BY THE ACT OF CONGRESS OF AUGUST 24, 1912.

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State of Indiana } ss.
St. Joseph County }

Before me, a Notary Public in and for the State and County aforesaid, personally appeared David S. Landis, who having been duly sworn according to law, deposes and says that he is Editor-in-Chief of the Notre Dame Lawyer and that the following is, to the best of his knowledge and belief, a true statement of the ownership, management, etc. of the aforesaid publication for the date shown in the above caption, required by the Act of August 24, 1912, embodied in Section 411, Postal Laws and Regulations, printed on the reverse of this form, to-wit:

1. That the names and addresses of the publisher, editors, managing editors, and business manager are:

Publisher—College of Law of the University of Notre Dame, Notre Dame, Ind.

Editor-in-Chief—David S. Landis, Notre Dame, Indiana.

Business Manager—Eugene C. Wohlhorn, Notre Dame, Indiana.

2. That the owner is: The University of Notre Dame, Notre Dame, Indiana.

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3. That the known bondholders, mortgagees, and other security holders owning or holding one per cent or more of total amount of bonds, mortgages, or other securities are: None.

DAVID S. LANDIS,
Editor.

State of Indiana } ss.
St. Joseph County }

Subscribed and sworn to before me this 14th day of July, 1945.

LOIS WRIGHT,
Notary Public.

[SEAL]

My commission will expire June 28, 1948.