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Bankruptcy - Claims against and Distribution of Estate - Priority - Wages Due to Workmen

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RECENT CASES

BANKRUPTCY — CLAIMS AGAINST AND DISTRIBUTION OF ESTATE — PRIORITY — WAGES DUE TO WORKMEN. — Trustees for union welfare fund which provided fringe benefits for union members assert a claim for second priority in bankruptcy proceedings for amounts due the fund from bankrupt employer, according to collective bargaining agreements. The trustees retained legal title, and were in exclusive control of the fund, which consisted of contributions by the employer of $8 per month, per full time employee. The priority asserted is for wages due to workmen.[1] On certiorari, the United States Supreme Court *held,* three justices dissenting, that the claim should be disallowed. *United States v. Embassy Restaurant, Inc.,* 79 Sup. Ct. 554 (1959).

The majority relied upon the historically strict construction of the wage priority section of the Bankruptcy Act in disallowing the claim.[2] Premised upon the broad purpose of the act which is to bring about an equitable distribution of the bankrupt's estate,[3] with order of preference shown clearly by statute, the court referred to the previous amendments, stating, "If it had wished to include contributions, Congress could easily have included them at any of these times." Previous decisions have favored congressional rather than judicial expansion of the term wages to include contributions.[4]

The court reasoned that personal claims by the workmen under the wage priority would necessarily share the priority with claims awarded the fund, and the contingent and deferred[5] nature of the workmen's rights in the fund would defeat the purpose of the priority,[6] which is to give special protection in a limited amount to workmen that depend upon their wages for sustenance.[7]

The dissenting judges relied upon the decision in *Shropshire, Woodliff & Co. v. Bush*[8] to prove the assignment character of the trustee's claim. In contrast to the fact situation of the *Shropshire* case, where payments made directly to workmen, and later assigned were held to be valid, the payments in the instant case were never due workmen personally, and thus were not assignable.[9]

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1. 11 U.S.C. § 104(a)(2) (Supp. 5 1952) provides; "(a) The debts to have priority, in advance of the payment of dividends to creditors, and to be paid in full out of bankrupt estates, and the order of payments shall be . . . (2) wages . . . not to exceed $600 to each claimant, which have been earned within three months before the date of the commencement of the proceeding, due to workmen, servants, clerks, or traveling or city salesmen on salary or commission basis, whole or part time, whether or not selling exclusively for the bankrupt . . . ."

2. *In re* Paradise, 36 F. Supp. 974 (S.D.N.Y. 1941); *In re* Goldman Store, Inc. 3 F. Supp. 936 (W.D.La. 1933); *In re* Quackenbush, 259 F. 599 (D.N.J. 1919).

3. Kuehner v. Irving Trust Co., 299 U.S. 451 (1937); Straton v. New, 283 U.S. 319 (1931); R. C. Taylor Trust, 280 U.S. 224 (1930).

4. In the Matter of Victory Apparel Mfg. Corp., 154 F. Supp. 819 (D.N.J. 1957); *In re* Sleep, 141 F. Supp. 467 (S.D.N.Y. 1956); See *In re* Paradise, 36 F. Supp. 974 (S.D.N.Y. 1941); *Cf., In re* Estey, 6 F. Supp. 570 (S.D.N.Y. 1934).

5. *In re* Sleep, 141 F. Supp. 467 (S.D.N.Y. 1956).

6. See generally, 42 Minn. L. Rev. 295 (1957).

7. Blessing v. Blanchard, 223 F. 35 (9th Cir. 1915); *In re* Sleep, 141 F. Supp. 467 (S.D.N.Y. 1956); *In re* Paradise, 36 F. Supp. 974 (S.D.N.Y. 1941); *Cf., In re* Estey, 6 F. Supp. 570 (S.D.N.Y. 1934).

8. 204 U.S. 186 (1906) (Wages were due workmen, and assigned. The court held the right of priority in a wage claim was a right attaching to the debt, not to the person or the original creditor, and allowed the assignment).

9. In the Matter of Victory Apparel Mfg. Corp., 154 F. Supp. 819 (D.N.J. 1957); *In re* Sleep, 141 F. Supp. 467 (S.D.N.Y. 1956); *In re* Brassel, 135 F. Supp. 827 (N.D.N.Y. 1955).

It must be remembered that the contest is not between labor and management, but between creditors of the bankrupt,[10] and strict construction of the priority by the courts, leaving expansion of the term "wages due to workmen" to Congress would seem to afford the best protection for the interests of all creditors.

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CONFLICT OF LAWS — PUBLIC POLICY — EFFECT OF PUBLIC POLICY OF THE FORUM ON FOREIGN CONTRACTS. — Proceeding for judgment of condemnation against the corporate-employer of husband against whom plaintiff had obtained a decree of separate maintenance. The defendants, husband and corporate-employer, entered into a contract in Illinois providing for the payment of salary in advance. Contracts for advance payments of salary, even to avoid garnishment, are legal in the state of Illinois. The United States District Court *held* that, under the District of Columbia Code, advance payments of salary for the purpose of avoiding garnishment were void and contrary to local public policy. Plaintiff was awarded judgment for one months salary paid to husband. *Welch v. Welch*, 166 F.Supp. 539 (D.C. 1958).

As a general rule, the law of the situs of a contract will be applied in the forum to the exclusion of the law of the forum.[1] There is a recognized exception to this broad principle in cases where the application of the law of the situs would contravene the established public policy of the forum.[2] In such a case, it may be conceded, that the courts of the forum are at liberty either to decline to assume jurisdiction over the controversy[3] or, while assuming jurisdiction and declining to apply the foreign law, to apply their own law. As between the States of the Union the question arises whether the court may decline to apply the law of the situs, because its application would violate local public policy, and apply the law of the forum; the domestic court would thus recognize and enforce rights and obligations, arising affirmatively or defensively,[4] which did not exist under the foreign law.

Some writers, working on the premise that foreign rights and obligations ordinarily should be enforced, have said that the public policy doctrine is to be narrowly confined, particularly when applied among the states.[5] A leading judi-

10. See Nathanson v. NLRB, 344 U.S. 28 (1952).

1. Gaston, Williams & Wigmore v. Warner, 260 U.S. 201 (1922); Chamblee v. J. B. Colt Co., 31 Ga. App. 34, 119 S.E. 438 (1923); Pope v. Hanke, 155 Ill. 617, 40 N.E. 839 (1894); Douglas County State Bank v. Sutherland, 52 N.D. 617, 204 N.W. 683 (1925). There is also authority to the effect that the law of the place of performance or the law intended by the parties governs. See Beale, *What Law Governs the Validity of a Contract*, 23 Harv. L. Rev. 1 (1909).

2. Union Trust Co. v. Grosman, 245 U.S. 412 (1918); Bond v. Hume, 243 U.S. 15 (1917); Continental Supply Co. v. Syndicate Trust Co., 52 N.D. 209, 202 N.W. 404 (1924). Federal Courts will follow the public policy of the state in which it is sitting. See Angel v. Bullington, 330 U.S. 183 (1947); Griffin v. McCoach, 313 U.S. 498 (1941).

3. See Goodrich, *Conflict of Laws* § 11 (3d ed. 1949); 3 Beale *Conflict of Laws* § 612.1 (1935); Restatement, Conflict of Laws § 612 (1934).

4. See Welch v. Welch, 166 F.Supp. 539 (D.C. 1958), where the rendition of a judgment on the merits deprived the defendant of a defense which would have been good in Illinois.

5. See Goodrich, *Public Policy in the Law of Conflicts*, 36 W. Va. L. Q. 156, 170-71 (1930). "To refuse local effect to a foreign claim when the claimed right arises in a foreign country is unfortunate. As among the States of our Union it is absurd. We have a common law, a common language, a common national government. Our differences may be dear to us but they are all minor in their nature." See also Strumberg, *Conflicts of Laws*, 171, 198-99, 278 (2d ed. 1951); Beach, *Enforcement of Vested Rights*,