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Automobiles - Bankruptcy - Validity of Provisions in Motor Vehicles Financial Responsibility Act Denying Effect to Discharges in Bankruptcy

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RECENT CASES

AUTOMOBILES—BANKRUPTCY—VALIDITY OF PROVISIONS IN MOTOR VEHICLES FINANCIAL RESPONSIBILITY ACTS DENYING EFFECT TO DISCHARGES IN BANKRUPTCY.—A judgment had been obtained against plaintiff for negligently operating an automobile. After obtaining a discharge in bankruptcy, he applied for a driver's license. The Michigan Secretary of State refused the application, relying on a Michigan statute which provides, "A discharge in bankruptcy following the rendering of any such judgment shall not relieve the judgment debtor from any of the requirements" of the Motor Vehicles Financial Responsibility Act.[1] Plaintiff, applying for a writ of mandamus, contended the act was unconstitutional as an attempt to alter the Federal Bankruptcy Act.[2] It was *held* that the writ would not be granted. The discharge in bankruptcy did not end plaintiff's moral obligation to pay, and the state could require fulfillment of the moral obligation as a condition precedent to granting the license by virtue of its inherent power to regulate the use of the public highways.[3] *De Vries v. Alger*, 329 Mich. 68, 44 N.W.2d 872 (1950).

Earlier cases reached a contrary result,[4] holding that a state has no power to make exceptions to the operation of a discharge in bankruptcy. However, in 1941 the Supreme Court of the United States, four justices dissenting, held that such a provision was a valid means of enforcing a public policy aimed at eliminating financially irresponsible drivers from the highways, and thus not in derogation of the Bankruptcy Act.[5] This appears to be the sole exception which the courts have been willing to make to the operation of a discharge in bankruptcy. The usual result in such situations is illustrated by an early case[6] holding that a municipality which had enacted an ordinance allowing discharge of employees for failure to pay debts could not discharge a fireman who had obtained a discharge in

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[1] Mich. Pub. Acts, No. 300, § 513 (1949).

[2] 11 U.S.C.A. § 1 et seq.

[3] *Accord*, Munz v. Harnett, 6 F. Supp. 158 (S.D.N.Y. 1933) (discharge in bankruptcy is not satisfaction of a judgment, but only bars the creditor's remedies for collection) (statute specifically provided that discharge in bankruptcy should not satisfy judgment).

[4] *In re* Perkins, 3 F. Supp. 697 (N.D. N.Y. 1933) (denying plaintiff full effect of discharge in bankruptcy was in conflict with Bankruptcy Act, thus invalid) (discussed in 43 Yale LJ. 344); Ellis v. Rudy, 171 Md. 280, 289 Atl. 281 (1937) (not legislative intent to apply the law to judgment debtors who had been discharged in bankruptcy).

[5] Reitz v. Mealey, 314 U.S. 33 (1941) (due process not violated if state gives a plaintiff an additional means of enforcing payment of a judgment by dealing with the license and registration of the driver).

[6] *In re* Hicks, 133 Fed. 739 (N.D.N.Y. 1905).

bankruptcy. Statutes of the type found in the instant case[7] are subject to the criticism that, standing alone, they fail to give protection to the judgment creditor who has already been injured. North Dakota meets this situation by allowing recourse to an unsatisfied judgment fund when the judgment debtor has no resources with which to pay, and the judgment is more than $300.00 and less than $10,000.00.[8] Massachusetts has met the situation by requiring compulsory liability insurance of all drivers.[9] This method, however, is open to the objection that it amounts to a subsidization of insurance companies or represents an instance of the state itself going into the insurance business. Nevertheless, it would appear that the requirement of compulsory liability insurance offers greater protection, at least in the case of residents of the state, than an unsatisfied judgment fund, since there is no minimum amount which is not covered.

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CONSTITUTIONAL LAW—POLICE POWER OF MUNICIPALITY—VALIDITY OF ORDINANCE DECLARING DOOR-TO-DOOR SOLICITING A NUISANCE—Appellant, representing a national magazine subscription company in charge of a crew of solicitors, was sentenced and fined by appellee city for violation of a city ordinance declaring that the going in and upon private residences within the city by solicitors, peddlers, hawkers, itinerant merchants or transient vendors of merchandise without request or invitation, for the soliciting of orders or sale or disposal of their merchandise to be a misdemeanor and punishable as such. The Louisiana Supreme Court upheld the conviction and fine, whereupon appellant attacked the constitutionality of the ordinance in the United States Supreme Court. In finding the ordinance constitutional, over two dissents, the court *held* that it was not violative of due process, commerce clause or freedom of speech and press. While admitting that the knocker on the door is an invitation or license to attempt an entry, the court decided that frequent visits become a nuisance. *Breard v. City of Alexandria,* 71 S.Ct. 920 (1951).

Here involved is the ordinance commonly known in both lay and legal circles as the Green River ordinance because of its origin in Green River, Wyoming, in 1931. Its widespread adoption has produced a sharp conflict between the local police power and persons engaged in businesses which go directly to the prospective customer in his home. It represents a phase of the municipal police power which concededly is justified insofar as it relates to public health, morals,

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[7] N.D. Rev. Code c. 39-16 (Supp. 1949).
[8] N.D. Rev. Code c. 39-17 (Supp. 1949).
[9] Mass. Gen. Laws c. 90 (Tercent. ed. 1932).