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Other Cases—Religious Associations

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a prior employer to escape from contribution merely because a claimant's wages increased after leaving the former employ.

But the dissenters[47] strongly contended that:

1. The statute in its terms does not compel apportionment of the award among employers.[48]
2. None of the decisions which have authorized *pro rata* division on the basis of contributory causation prevent a claimant from recovering the entire award from the latest employer if earlier employers, for any reason, are unable to contribute.
3. Even if, as the majority concluded, § 15(6) was drafted with reference to a single accident involving but one employer, the reasons for extending it to cover successive accidents are compelling.

The dissent suggested that the purpose of the enactment of § 15(6) was to limit an employer's contingent liability, *i. e.*, to ensure that the employer may not be charged if the reduced earnings after the accident exceed the earnings before the injury occurred; therefore:

> . . . it is not less likely to have been the legislative intention to preclude such a consequence if in after years the claimant, while working for somebody else in an era when prevailing wage rates are disproportionate to those existing when he was in the former employ, sustains an aggravation of the previous condition while working for another.[49]

While an award solely against the latest employer appears to penalize him *vis-à-vis* prior employers whose earlier accidents are found to have contributed to the present disability, it is arguable that this apparent inequity is outweighed by the cogency of the dissent in the instant case.

XIII. Other Cases

Religious Associations

The Congregational Christian Churches of the United States and the Evangelical and Reformed Church proposed to unite under the name of the United Church of Christ. The General Council of the former organization after a lengthy study, endorsed the union. Over seventy per cent of its member churches, who voted on the

47. Van Voorhis, J., with Lewis, Ch. J., concurring.
48. Workmen's Compensation Law § 15 (5), (7).
49. *Supra*, note 45 at 306, 121 N. E. 2d at 237.

proposal, approved. Plaintiff church opposed the union and sought legal relief by means of a declaratory judgment[1] that General Council had no authority to consummate the union, and for injunctive relief to restrain the union and to restrain General Council from mingling its funds and assets with those of another denomination. Special Term granted the requested relief, but the Appellate Division reversed on the law and facts, and dismissed the complaint. The Court of Appeals, in *Cadman Memorial Congregational Society v. Kenyon,*[2] affirmed the dismissal.

No ecclesiastical question was presented, since both parties admitted there was no power by which the General Council could compel non-assenting churches to join the union or impose upon them a change in doctrine.[3] Neither funds and properties held by the Cadman Church, nor funds held by the General Council and its agencies under express trusts, *e. g.* pension funds, were threatened.

The remaining issue involved the plaintiff's alleged beneficial interest in general funds belonging to various boards and agencies operating under the General Council. Plaintiff had contributed substantial amounts to these latter groups on a voluntary basis. The court restated the rule that such voluntary, unrestricted contributions for general religious purposes created no proprietory or beneficial interest which the donor could enforce in a court of law.[4] Moreover, a binding declaration of rights may be issued only when all parties who are interested in, or who might be affected by the enforcement of such rights are made parties to the suit.[5] In the instant case none of the boards or agencies, many incorporated in different jurisdictions, were joined.[6]

Judge Froessel dissenting, agreed that the relief granted by Special Term was far too broad. He would not, however, dismiss the complaint, because he believed a declaratory judgment between the two parties in the suit would clearly settle some legal rights, namely the right to prevent the funds contributed by the plaintiffs

1. C. P. A. § 473.

2. 306 N. Y. 151, 116 N. E. 2d 481 (1954).

3. See *Watson v. Jones,* 13 Wall. 679 (U. S. 1871); *Trustees of Presbytery of New York v. Westminister Presbyterian Church of West Twenty Third Street,* 222 N. Y. 305, 118 N. E. 800 (1918).

4. *Compare Williams v. Williams,* 8 N. Y. 525 (1853), *and Bird v. Merklee,* 144 N. Y. 544, 39 N. E. 645, (1895), *with St. Joseph's Hospital v. Bennett,* 281 N. Y. 115, 22 N. E. 2d 305 (1939).

5. C. P. A. § 193; *Manhattan Storage & Warehouse Co. v. Movers & Warehousemen's Ass'n of Greater New York,* 289 N. Y. 82, 43 N. E. 2d 820 (1942); 1 ANDERSON, DECLARATORY JUDGMENTS, § 130 (2d ed. 1951).

6. The court declined to accept the assertion of plaintiff that these agencies had no separate status because their boards of trustees, officers and administrators were controlled and supervised by the General Council.

to the General Council and its agencies from being expended for functions not authorized by their respective charters and constitutions as they existed at the date of the court's decree.

It is highly gratifying to observe that the three courts who dealt with this case realized the effect their judgment would have, not only upon the parties to the suit, but also to the entire structure of a distinguished Protestant sect. The facts of the controversy were reviewed extensively in an attempt to do justice to all the conflicting interests.

Court of Claims Act

In *Cimo v. State,*[7] claimant asked leave to file a claim for damage to her real property, occasioned by a change of grade in front of said property, in connection with a grade crossing elimination structure instituted by the defendant. She conceded that the claim was not filed within the six month period specified in the Grade Crossing Elimination Act which gave rise to her cause of action,[8] but claimed that the more general provisions of the Court of Claims Act[9] enabled her to take advantage of the discretionary two year statute of limitations contained therein.[10] The Court of Appeals, affirming the Appellate Division's reversal of the Court of Claims, held (6-1), that the claim was barred by the six month statute of limitations in the specific statute giving rise to her cause of action.[11]

The court pointed out that the claimant could advance only two arguments in her favor. The first would necessitate the finding that claims such as hers were governed by two statutes of limitation: one of six months and another of two years. It is obvious that the Legislature could not intend such duality.

The second form of reasoning is that the time limitations in the earlier, specific statute were repealed, by implication, by the general provisions of the Court of Claims Act. Repeal by implication is not favored and will be decreed only where a clear intent appears to effect that purpose.[12] The court pointed out unless

7. 306 N. Y. 143, 116 N. E. 2d 290 (1954).
8. L. 1928, Chap. 678. McK. Unconsol. Laws § 7906.
9. Court of Claims Act § 10 (4), (5).
10. *Id.* § 10 (5).
11. At Common law no such damages were recoverable. *Conklin v. New York, O. & W. R. Co.,* 102 N. Y. 109, 6 N. E. 663 (1886). *Heiser v. Mayor etc. of New York,* 104 N. Y. 68, 9 N. E. 866 (1887).
12. *City of New York v. Maltbie,* 274 N. Y. 90, 97, 8 N. E. 2d 289, 292 (1937); *Mority v. United Brethrens Church,* 269 N. Y. 125, 133, 199 N. E. 29, 31 (1935).