Buffalo Law Review

Volume 2 | Number 1 Article 26

12-1-1952

Contracts—Interpretation

Maynard Schaus

Thus, whether or no a bona fide dispute exists is a question of law for the courts.[62]

Jurisdiction of the court to determine whether a dispute is frivolous or not is not provided for in section 1449 of the Civil Practice Act. The language of the arbitration clause in the instant case would seem broad enough to include such issues.

Interpretation

In *Moeller v. Associated Hospital Service*[63] the plaintiff sought to recover for hospital expenses under a "Blue Cross" hospital insurance policy issued by the defendant. The policy expressly excluded for coverage hospital service "provided for under any compensation law . . ." The plaintiff had been injured in the course of employment, and his hospital bills were paid by his employer's compensation carrier. Thereafter, the plaintiff began suit against the third party tort-feasor which resulted in a settlement. The compensation carrier enforced its lien upon the settlement for the amount paid upon plaintiff's compensation claim.[64]

The present action was submitted to the Appellate Division upon an agreed statement of facts. The plaintiff contends that his hospital expenses were not within the meaning of the exclusion clause of the policy. The Appellate Division allowed recovery upon the ground that when the compensation carrier was reimbursed, it no longer provided hospital service under the compensation statutes, since by reimbursement the services were actually "provided" by someone else.[65] The Court of Appeals, three judges dissenting, found that the hospital services were provided for by the Workmen's Compensation Law since the "plaintiff never lost the protection of the Statute with respect to hospital services."[66] The majority also found that any other construction

62. *Matter of General Elec. Co. (United Elec. Radio & Mach. Workers)*, 300 N. Y. 262, 90 N. E. 2d 181 (1949).

63. 304 N. Y. 73, 106 N. E. 2d 16 (1952).

64. N. Y. WORKMEN'S COMP. LAW §29 (1). This section gives the carrier a lien on the proceeds of any settlement to the extent of the amount of compensation provided and goes on to state that any recovery shall be deemed for the benefit of the carrier.

65. 278 App. Div. 723, 103 N. Y. S. 2d 116 (3rd Dep't 1951).

66. The court stated: "If he did not prevail in the third-party action, he nevertheless retained the benefits of the hospital expenses furnished by the employer's insurance carrier; if he did prevail, he likewise retained these benefits, but the third-party wrongdoer, *not plaintiff*, had to reimburse the carrier. While plaintiff was entitled to sue for these expenses, it was on behalf of the carrier, and the law gave the carrier a lien therefor. He could never recover these medical expenses for himself; they belonged under the statute to the carrier." 304 N. Y. at 75, 106 N. E. 2d at 17.

would be unnatural and could only lead to increased premiums for policy holders. The dissent found that the hospital services were actually provided for *ultimately* by the common law of negligence and not by the Workmen's Compensation Statute, and that the clear meaning of the exclusion clause showed that the intent of the parties was to relieve the insurer from liability *only* when the Compensation Law was the ultimate source of liability. The dissent was also of the opinion that the majority had ignored the rule that uncertain words in an insurance policy are to be construed most strongly against the insurer.

A recent Michigan case has reached a similar result where the policy excluded from coverage persons to whom "benefits are payable" under any workmen's compensation law.[67]

V. Criminal Law

During the course of its last session, the Court was confronted with various appeals in the field of criminal law, which ran the gamut from jurisdiction over the subject matter to the post-trial relief of writ of error *coram nobis*. Several of the decisions rendered are noteworthy for their clarifying effect on certain obscure areas of the criminal law, while others are important because they serve to establish a new and positive stand by the Court on questions previously considered well settled. Unfortunately, however, the Court, in some of its decisions, has succeeded in settling the appeals without deciding in any helpful manner the issues which the appeals had framed.

Venue

The case of *Murtagh v. Leibowitz*[1] occupies a high position in the field of clarifying decisions. Under the common law it was required, in general, that all offenses should be inquired into, as well as tried, in the county in which they were committed.[2] A defect developed, in that if the alleged act was committed partly in one county and partly in another, *neither* county had jurisdiction.[3] The legislature has now provided, however, by §134 of the Code of Criminal Procedure that "When a crime is committed partly in one county and partly in another, or the acts or effects

67. *Bonney v. Citizen's Mut. Auto Ins. Co.*, 333 Mich. 436, 53 N. W. 2d 321 (1952).

1. 303 N. Y. 311, 101 N. E. 2d 753 (1951).

2. *People v. Mitchell*, 168 N. Y. 604, 61 N. E. 182 (1901).

3. See *People v. Vario*, 165 Misc. 842, 2 N. Y. S. 2d 611 (Co. Ct. 1938).