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Administrative Law—Tort Liability of Administrative Official

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THE COURT OF APPEALS, 1952-53 TERM

An interesting problem concerning the exclusiveness of the remedy was posed to the court in this term.⁴³ An employee sued his employer in a common law suit to recover damages for injuries he sustained due to a condition in him known as partially disabling silicosis, which condition, it was alleged, was caused by the defendant's negligence. The granting of defendant's motion to dismiss the complaint under Rules of Civil Procedure 106 and 107⁴⁴ was affirmed by the Court of Appeals.

Silicosis is on the list of occupational diseases for which compensation is payable, but the act specifically provides that compensation is payable for silicosis only when it results in total disability.⁴⁵ The plaintiff claimed the law does not bar this suit, and if the statute were so construed as setting up such a bar, it would be violative of the Fourteenth Amendment to the Federal Constitution as depriving him of any remedy.⁴⁶

On its merits the court holds that the Legislature did not intend the employee should recover possibly heavy damages in the partial stage, and also a later award for total disability.⁴⁷ However, what the court says is *dictum*. In essence the real holding is that a common law suit is not the proper way to test the constitutionality of the bar against such suits. A demurrer to the complaint defeats the plaintiff in his basic contention, right or wrong. Even if the bar should be unconstitutional, plaintiff would still not possess the right to recover damages at common law. The Act of 1935, which allowed recovery for partially disabling silicosis would then be relieved of its invalid amendment and would revive.⁴⁸ Plaintiff's sole remedy is a proceeding under the Workmen's Compensation Law, irrespective of the validity or invalidity of the provisions in question.⁴⁹

Tort Liability of Administrative Official

Generally, if an officer's duty is owing solely to the public, an aggrieved individual has no right of action against an officer for a breach thereof.⁵⁰ But a different public policy operates as to

43. *Cifolo v. General Electric Co.*, 305 N. Y. 209, 112 N. E. 2d 197 (1953).

44. On the grounds: (1) that certain parts of the various causes of action were barred by the lapse of time; (2) none of the counts contained facts sufficient to constitute a cause of action; (3) the court has no jurisdiction of any of the actions.

The court found it unnecessary to deal with the question as to the statute of limitations.

45. WORKMEN'S COMPENSATION LAW §5, subd. 2.

46. *New York Central R. R. v. White*, 243 U. S. 188 (1916).

47. See 2 LARSON, WORKMEN'S COMPENSATION LAW 141 (1952), for cases upholding statutes of other states denying a remedy for partial silicosis disability.

48. The court follows *Powers v. Porcelain Insulator Corp.*, 285 N. Y. 54, 32 N. E. 2d 790 (1951).

49. *Scherini v. Titanium Alloy Co.*, 286 N. Y. 531, 37 N. E. 2d 237 (1941).

50. *Larson v. Marsh*, 144 Neb. 664, 14 N. W. 2d 189, 192 (1944).

election officials. The citizen wrongfully deprived of the right to vote can sue for damages.⁵¹

Where a valid petition for nomination was arbitrarily declared invalid and the plaintiff's name was not put on the ballot, the Court of Appeals held a damage action would lie against the individual members of the election board.⁵² In reaching this decision the court followed *Frank v. Eaton*,⁵³ which also was authority for the proposition that plaintiff did not have to exhaust his statutory remedies by court review of the board's action.⁵⁴

Thus not only can a citizen, wrongfully deprived of his right to vote, sue, but also a candidate who has been deprived of his rights.⁵⁵ The bases for these decisions rest upon grounds of public policy, the importance of the personal rights involved, and the difficulty of vindicating them in any other way.⁵⁶

II. BUSINESS ASSOCIATIONS

Corporations

a. *Reimbursement of Corporate Officials*: Sections 63-68 of the General Corporation Law make up Art. 6-A which is concerned with reimbursement of litigation expenses of corporate officials. Section 63 does not concern us here; sections 65-68 are procedural; section 64 reads as follows: "Any person made a party to any action, suit or proceeding by reason of the fact that he . . . is or was a director, officer or employee of a corporation shall be entitled to have his reasonable expenses, including attorneys' fees, actually and necessarily incurred by him in connection with the defense of such action, suit or proceeding . . . assessed against the corporation . . . except in relation to matters as to which it shall be adjudged in such action, suit or proceeding that such officer, director or employee is liable for negligence or misconduct in the performance of his duties."

In *Schwarz v. General Aniline & Film Corp.*¹ a majority of the Court of Appeals interpreted the court-mandated reimbursement provisions of Art. 6-A as not applying to expenses incurred in a criminal prosecution.

51. *Goetcheus v. Matthewson*, 61 N. Y. 420 (1875).

52. *Schwartz v. Heffernan*, 304 N. Y. 474, 109 N. E. 2d 68 (1952).

53. 225 App. Div. 149, 231 N. Y. S. 477 (3d Dep't 1928).

54. ELECTION LAW § 330.

55. *Jaffarian v. Murphy*, 280 Mass. 402, 183 N. E. 110 (1932).

56. See Note, 153 A. L. R. 148; 29 C. J. S. Elections § 64 (1941).

1. 305 N. Y. 395, 113 N. E. 2d 533 (1953).