

joint tenancy. The word 'or' negatives the idea of a joint tenancy. *Morristown Trust Co. v. Capstick*, 90 E. 25, 106 A. 926."

It is submitted, therefore, that the deposit in question was not a joint tenancy.

The determination in the principal case that Mr. and Mrs. Steinmetz "each stood in the relation of agent or trustee for the other to the extent of the other's interest in the joint funds" is beyond the scope of this comment.

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**Bankruptcy—Effect of Discharge—Power of State to Suspend Automobile License on Debtor's Failure to Satisfy Judgment Which Has Been Discharged.**—Judgment was entered against appellant, truck-driver, because of personal injuries caused by his operation of a motor vehicle. Judgment was not satisfied. Pursuant to a New York statute, appellee-Commissioner of Motor Vehicles suspended appellant's chauffeur's license at the instance of the judgment creditor.<sup>1</sup> Subsequently, appellant filed

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1. New York State Vehicle and Traffic Law, Section 94b (New York Laws, 1931, ch. 669). This statute provided for suspension of the operator's and registration licenses of any person if a judgment against him for injury to person or property resulting from the operation of a motor car be not paid within fifteen days, upon certification of the judgment, its finality and non-payment, to the Commissioner of Motor Vehicles by the court clerk. It directed the Commissioner to suspend the license for three years unless, in the meantime, the judgment be satisfied or discharged, *except by a discharge in bankruptcy*. The suspension to persist after the expiration of the three years or satisfaction of the judgment, until the licensee gives proof of his ability to respond in damages by the procurement of insurance, the giving of a bond, or the posting of a deposit (Section 94c). The court clerk was required to certify to the Commissioner any such judgment unappealed and unsatisfied for fifteen days after entry.

In 1936 it was provided by an amendatory act that if the creditor consents in writing, the debtor may be allowed a license and registration for six months from the date of such consent and thereafter until

voluntary petition in bankruptcy. This judgment which was dischargeable, was duly scheduled. In an action to restrain appellee from enforcing license suspension, appellant claimed *inter alia* that the statute conflicted with the Bankruptcy Act by providing creditor with the means for collecting a debt dischargeable in bankruptcy. Injunction was denied and the bill dismissed by a Statutory District Court of Three Judges.<sup>2</sup> Appeal to the United States Supreme Court by which time appellant had been granted a discharge in bankruptcy. *Held*: statute not in derogation of the Bankruptcy Act but an enforcement of permissible state policy touching highway safety. The 1936 and 1939 amendments, if invalid, were severable and statute would stand as a complete act without them. Therefore, District Court properly abstained from considering their constitutionality since under the original statute license would have been suspended and creditor did not exercise his rights under the 1936 amendment. *Reitz v. Mealey, Commissioner of Motor Vehicles*, 314 U.S. 33, 62 S. Ct. 24; 86 L. Ed. 8 (1941).<sup>3</sup>

It is within the power of a state "to prescribe the conditions under which the privilege of operating an automobile on the public highways may be exercised"<sup>4</sup> and to "prescribe uniform regulations adapted to promote safety upon its highways."<sup>5</sup> The power to deprive "a person of a license to operate a motor vehicle until he has satisfied a prior judgment against him in an action for damages resulting from the

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the consent is revoked in writing, if proof of ability to respond to damages is furnished (New York Laws, 1936, ch. 448).

In 1939 a further amendment made it the duty of the court clerk to certify the judgment *only upon written demand of the creditor or his attorney*. (New York Laws, 1939, ch. 618).

See also note 27, *infra*, regarding reenactment of the statute in 1941 (New York Laws, 1941, ch. 872).

2. *Reitz v. Mealey, Commissioner of Motor Vehicles*, 34 F. Supp. 532 (Stat. D.C., N.D. N.Y. 1940), 43 Am. Bankr. Rep. (NS) 434.

3. *Reitz v. Mealey, Commissioner of Motor Vehicles*, 314 U.S. 33, 62 S. Ct. 24, 86 L. Ed. 8 (1941), four justices dissenting. A prior judgment of affirmance, 313 U.S. 542, 61 S. Ct. 841, 85 L. Ed. 1510 (1941), was vacated and petition for rehearing granted in 313 U.S. 597, 61 S. Ct. 1084, 85 L. Ed. 1550 (1941).

4. 5 AM. JUR. 593.

5. *Morris v. DUBY*, 274 U.S. 135, 47 S. Ct. 548, 71 L. Ed. 966 (1927).

operation of a motor vehicle is generally sustained."<sup>6</sup> In providing that a discharge of the judgment in bankruptcy would not be considered a discharge within the terms of the law, the New York statute was *sui generis*.<sup>7</sup> That statute, however, was a valid exercise of the police power<sup>8</sup> and did not contravene the Bankruptcy Act.<sup>9</sup> Its primary purpose was to promote safety on the highways.<sup>10</sup> While it may have exerted an influence on the debtor to satisfy the judgment in order to recover or keep his license, that was a collateral effect, was in no way within the creditor's control and operated automatically against all in the same class, *i.e.*, drivers against whom judgments remained unsatisfied.<sup>11</sup>

It is to the statute as amended that objection is directed. First, the creditor was given power to lift the license suspension by consent in writing.<sup>12</sup> Then, the clerk of the court rendering the judgment was

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6. AM. JUR., *supra*, note 4. State *ex rel.* Sullivan v. Price, 63 P. 2d 653 (Ariz. 1937); Watson v. Div. of Motor Vehicles, 212 Cal. 279, 298 P. 481 (1931); Commonwealth v. Funk, 186 A. 65 (Pa. 1936); Opinion of the Justices, 251 Mass. 617, 147 N.E. 680 (1925).

7. 43 YALE L. J. 344 (1933): "Statutes of this type have been enacted in at least thirteen other states. . . . Only the New York statute provides that a bankruptcy discharge shall have no effect upon its operation."

8. Munz v. Harnett, 6 F. Supp. 158 (D.C. S.D. N.Y. 1933): "The means adopted by the legislature have a reasonable, substantial relation to the end in view, public safety on the highway, which is the equivalent to saying that the act is a valid exercise of the police power." The statute considered in this case was the original act without the later amendments; the decision overruled, *In re Perkins*, 3 F. Supp. 697 (D.C. N.D. N.Y. 1933) which held that the federal bankruptcy law was supreme over Section 94b of the New York Laws.

9. Munz v. Harnett, *supra*, note 8.

10. Munz v. Harnett, *supra*, note 8: "The New York legislature may well have considered that such a regulation would have a tendency to reduce casualties on the roads by making owners and operators of automobiles exercise greater care than formerly in order to prevent the entry of such judgments against them."

11. Under the original act it was mandatory on the clerk of the court rendering the judgment to certify it to the Commissioner (New York Vehicle and Traffic Law, Section 94b; New York Laws, 1931, ch. 669).

12. New York Laws, 1936, ch. 448, *supra*, note 1.

required to certify it *only upon the written demand of the judgment creditor or his attorney*.<sup>13</sup>

Thus, it is the creditor who decides whether steps shall be taken to suspend the debtor's license or, once suspended, to reinstate it. Now, any power or control in the Commissioner of Motor Vehicles who was previously charged with suspending debtor's license automatically in order to advance the public interest, is not exercised until the creditor takes some affirmative action. Furthermore, mandamus will lie at the creditor's instance to compel certification of the judgment by the court clerk and suspension of the license by the Commissioner.<sup>14</sup> Despite discharge of the claim in bankruptcy,<sup>15</sup> the creditor "still holds a club over his debtor's head. The state has given him a remedy which survives bankruptcy. If the bankrupt refuses to pay his discharged debt, the creditor will see to it that his driver's license is suspended. If, however, the bankrupt will pay up, the creditor will refrain."<sup>16</sup> Where the debtor's occupation requires him to operate a motor vehicle, as here, the practical effects of creditor's leverage cannot be over-emphasized.<sup>17</sup> It is not merely the privilege of driving an automobile which is subjected to the creditor's bargaining power but debtor's means of earning a livelihood, as well. The bankrupt is denied "a new opportunity in life and a clear field for future effort, unhampered by the

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13. New York Laws, 1939, ch. 618, *supra*, note 1.

14. *Jones v. Harnett*, 247 App. Div. 7, 286 N.Y.S. 220 (1936), *aff'd* 271 N.Y. 626, 3 N.E. 2d 455 (1936) (mandamus will lie to compel suspension).

15. Bankruptcy Act, Sections 17, 63 (11 U.S.C. 35, 103).

16. Dissent, *Reitz v. Mealey*, Com. etc., *supra*, note 3.

17. Dissent, *Reitz v. Mealey*, Com. etc., *supra*, note 2 (p. 537): "If terms are not made, the judgment creditor makes written demand on the clerk of the court and the latter is required to forward immediately to the Commissioner a certified copy of the judgment. The Commissioner must thereupon suspend the judgment debtor's license. Immediately upon coming to terms with the judgment debtor, the judgment creditor by written consent requires the Commissioner to revoke the suspension for six months. At the end of six months, if terms are not complied with, suspension again ensues. If terms are complied with no suspension takes place at all. This consent to operate may cover the whole three years period."

pressure and discouragement of pre-existing debt"<sup>18</sup> for which he entered bankruptcy. Not only has he surrendered his assets but he must now forfeit his job unless he comes to terms with the creditor. If he does not, the likelihood of his obtaining a fresh start appears remote especially when the one vocation in which we may assume he has any experience is closed to him.

The public policy which was paramount in the original enactment was the basis for holding that it did not conflict with the Bankruptcy Act.<sup>19</sup> That policy, however, was abdicated in favor of the creditor's private interest.<sup>20</sup> Accepting the view that the original statute "would have a tendency to reduce casualties on the roads by making owners and operators of automobiles exercise greater care than formerly in order to prevent the entry of such judgments against them,"<sup>21</sup> can it be said that the law as amended seeks the same end? Or, do "the means adopted by the legislature have a reasonable, substantial relation to the end in view, public safety on the highway"? We think not. By relieving the state's administrative officer of his once automatic duty and by vesting such power and control in the judgment creditor, we view the law to be practically and primarily for the latter's benefit. Nor are the present means reasonably and substantially related to obtaining safety on the highway when these means are an unlawful delegation of the police power.<sup>23</sup>

The situation presented by this case may be compared with those in which a state court in proceedings supplementary to execution on a judgment will order the debtor to pay the amount of the judgment.

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18. *Local Loan Co. v. Hunt*, 292 U.S. 234, 244, 54 S. Ct. 695, 699, 78 L. Ed. 1230, 93 A.L.R. 195 (1934).

19. *Munz v. Harnett*, *supra*, note 8.

20. Dissent, *Reitz v. Mealey, Com. etc.*, *supra*, note 2 (p. 537), the Commissioner of Motor Vehicles is made "a disguised collection agent for the judgment creditor. *All public policy of protection for the public is eliminated.*"

21. *Munz v. Harnett*, *supra*, note 8.

22. *Munz v. Harnett*, *supra*, note 8.

23. "The police power of a state cannot be delegated to private persons." 12 C.J. 421. *Atlantic Coast Line Ry. Co. v. Goldsboro*, 232 U.S. 548, 558, 34 S. Ct. 364, 58 L. Ed. 721 (1914); *Chicago and A.R.R. Co. v. Traubarger*, 238 U.S. 67, 77, 35 S. Ct. 678, 59 L. Ed. 1204 (1915).

On disobeying the order, the debtor is adjudged guilty of contempt and fined, the fine being ordered paid to the creditor. The power of the state court to impose the fine is not impaired by intervening adjudication of the debtor as a bankrupt.<sup>24</sup> "Even though the judgment is one dischargeable in bankruptcy and the enforcement of the fine may have the effect of compelling payments on account of the judgment, such effect is only a collateral one and the bankruptcy court has no power to interfere."<sup>25</sup> It is submitted that there are vital distinctions between these two cases. In the one involving contempt of a state court's order, the matter is in the control of the court, the debtor's conduct contumacious and the compulsion to pay the judgment collateral. In a case under the amended New York statute, however, the entire control is in a private person, the debtor has committed no offense against a court and the compulsion to satisfy the judgment is primary and direct.<sup>26</sup>

It was held unnecessary to decide the validity of the 1939 amendment because under the old law it was mandatory on the court clerk to certify the judgment. Therefore, it was reasoned, even if that amendment be void, the statute being severable, the judgment would have been certified if the court clerk performed his duty. The validity of the 1936 amendment was not considered because the creditor did not exercise his rights under it. It is submitted that this attitude overlooks the fact that this bankrupt was deprived of his license as the result of an act of his judgment creditor. With the issue thus squarely presented, the court should have passed upon the constitutionality of the amendment under which the creditor acted and should have stricken it down. Since the 1936 amendment contained the same disability, it too should have been declared unconstitutional. It appears that the doctrine of judicial self-limitation has been carried too far.<sup>27</sup>

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24. GLENN, LIQUIDATION (1935) Sec. 369, p. 524; *Spalding v. New York*, 4 How. (U.S.) 21, 11 L. Ed. 858 (1846); *In re Koronsky* (C.C.A. 2d, 1909) 170 F. 719; *People ex rel. Otterstedt v. Sheriff of Kings County* (D.C. E.D. N.Y. 1913) 206 F. 566; *In re Metz* (C.C.A. 2d, 1925) 6 F. 2d 962.

25. *Munz v. Harnett*, *supra*, note 8.

26. *Reitz v. Mealey*, Com. etc., *supra*, note 2.

27. *Ashwander v. Tennessee Valley Authority* (concurring opinion