

Federal Court Dismisses Rent Law Test Suit

Request for Injunction to Restrain Swann From Enforcing Statute Held Beyond Its Jurisdiction

Judge Manton Dissents Says Threatened Prosecution Is Sufficient to Ask for Equitable Relief

The case of the Marcus Brown Holding Company, a New Jersey corporation, against Arnold Pollak, a tenant, and Edward Swann, as District Attorney, which was argued October 26 before Judge Manton, Mack and Hand in the United States District Court, for the purpose of testing the constitutionality of the rent laws of October, 1920, was dismissed yesterday because it was not within the jurisdiction of the court.

Pollak had a lease from the complainant's assignor on an apartment in 215 West Ninety-first Street. His annual rental was \$1,500, commencing with the 1st day of October, 1918, and terminating on September 10, 1920. He alleged that prior to the expiration of the lease he had not been notified by the landlord of the property executed a lease to a third person at a rental of \$2,300. He said he had not been given an opportunity to renew his lease at the increased rental. His efforts to obtain other accommodations, he said, were futile. He invoked the new laws to prevent his ouster from the apartment upon his offer of payment of a reasonable rental.

The Marcus Brown Company said the legislation under which Pollak sought protection was unconstitutional, and that the company was entitled to possession of the premises also sought to restrain Mr. Swann from protecting Pollak.

Two Opinions Filed

Two opinions were filed in the case. The main decision was written by Judge Hand and concurred in by Judge Mack. This decision dismissed the motion to the effect that the threatened Pollak as a trespasser and the District Attorney from enforcing the rent laws. Judge Manton filed a dissenting opinion to the effect that the threatened prosecution for continuous acts which would constitute crimes under the criminal statutes was sufficient to ask for equitable relief if the statute held to be unconstitutional. However, in view of the authorities in the Supreme court, as well as in the Circuit Court, of the propriety of such a decision, he said he felt constrained to dissent.

At the hearing of the case the defendant asked for dismissal of the case because the amount in controversy did not equal more than \$3,000 above interests and costs.

Judge Hand said: "In no aspect does it seem to me that the case is within our jurisdiction. As there can be no amendment which will cure the defect, the dismissal will be without any right to plead over."

Question of Constitutionality

The motion to dismiss necessarily would raise the question of the constitutionality of the emergency legislation, even though we were to hold that there was no jurisdiction in equity. Nor could the bill be amended under Section 274-A of the Judicial Code and, at last, as to Pollak, proceed as an action in ejectment.

"We should, therefore, feel obliged to pass on the merits of the contention were it not for a defect, absolute so far as we can see, in our substantive jurisdiction, which is that the amount in controversy does not equal \$3,000 above interests and costs. The formal allegation to that effect does not, of course, bind us when the bill of declaration contradicts it."

"There is, possibly, at stake in this controversy nothing more than the Brown Company's loss by Pollak's continued occupation for twenty-five months; because, after that time, the moratorium, so to speak, expires, and all landlords may reenter."

Takes Up Swann's Case

"The Brown Company itself asserts that the value of the term for that time will be \$2,300. If the reasonable rent which Pollak must pay is not less than \$1,600, the plaintiff's loss will be \$1,458.33. It is not and probably cannot be alleged that the reasonable rent was less, and, in any case, Pollak is content to go on at the old rent. If it be urged that the plaintiff will also lose rent under the lease to the third person for seven months after November 3, 1920, that answer is that no one can say that the possession, which the plaintiff will have, will not be worth as much as \$2,300 at that time."

"To this the plaintiff answers that it is the value of the right which it seeks to protect, which controls. That rule has generally application and applies here too. But the right to be protected is not the fee of the apartment, but possession during the operation of the statute."

"As to the proposed trespass of Mr. Swann, there are two answers: First, it does not appear that Mr. Swann has threatened six prosecutions, or, indeed, anything more than a single one. Second, in any event, the proposed prosecution is confessedly only to prevent the plaintiff from disturbing Pollak and in protecting Pollak's holding over. The plaintiff's right to be protected remains as before, except the possession, which he must leave in Pollak's hands for twenty-five months."

"At the argument J. A. Seidman represented the Brown Holding Company, David Podell the defendant Pollak and John Caldwell Myers the defendant Swann. Samuel A. Berger appeared in behalf of Attorney General Swann."



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U. S. Inquires Into Fate of Relief Legion Head

California Reported to Have Been Executed by French in Armenia

WASHINGTON, Nov. 13.—An inquiry was dispatched to-day by the State Department to Admiral Bristol, American Commissioner at Constantinople, and to Ambassador Wallace at Paris, for information on the reported execution by the French of Captain John Shismanian, of Fresno, Calif., who commanded the Armenian Relief Legion at Adena, Turkey. Secretary Colby said. A report that Shismanian had been hanged by the French was received by Near East Relief officials at San Francisco.

Information also is being sought by the State Department about the reported arrest of Jewish relief workers by the Soviet authorities in Moscow. Secretary Colby explained to-day that relief work was being seriously pursued by Jewish workers in Russia and that such well known Americans as Eugene Fischer, of Chicago; Abram I. Elkus and Louis Marshall, of New York, and others.

Hotel St. Regis in Panic When Gravy Causes Fire

Traffic on Fifth Avenue Is Blocked by a Slight Kitchen Blaze

Ten perfectly good turkeys, garnished with olives and mushrooms, were being served in the huge ovens of the Hotel St. Regis, at Fifth Avenue and Fifty-fifth Street, last night, when an innocent looking pot of spiced gravy that was bubbling overhead suddenly burst into a white-robed cocoon of flames. The flames reached to the ceiling of the kitchen, forgetting that it was hot, and in a second's time it went clattering to the tiled floor, the burning grease trickling slowly into the ovens beneath.

There was a slight combustion, and a minute later the ovens were a sheet of flame. This spread quickly into the chimney, where soot and other grease had congregated, and burned rapidly to the roof, eighteen stories above the ground.

Two alarms were turned in, which brought "Smoky" Joe Martin and a score of apparatus, and five minutes after the sizzling gravy had ceased to sizzle traffic for ten blocks on either side of the hotel was blocked, while hundreds of frightened guests were running hither and yon in smoke-filled corridors.

While the damage was trifling, the excitement was intense, and for hours the hotel was busily engaged in reassuring persons that no danger existed.

A fire extinguisher in the hands of a battalion chief extinguished the blaze. The turkeys, however, were burned to cinders.

Motorists to Lose Licenses if They're Caught Stealing Apples

BOSTON, Nov. 13.—Motorists caught stealing fruit or garden truck will lose their licenses and registration certificates, Frank A. Goodwin, State Registrar of Motor Vehicles, said to-day, in taking that action in the case of Peabody Lane convicted of stealing apples in Wakefield.

Mr. Goodwin said District Attorney Nathan A. Taft of Middlesex County had called his attention to numerous complaints that owners of cars had been using them in orchard and garden raids.

361 Imperiled As Ships Crash Coming Up Bay

Spanish Passenger Boat Is Rammed by Freighter and Both Vessels Are Ripped by an Unusual Accident

Liner Beached in Safety

Captain's Prompt Action in Driving His Craft Ashore Prevents Certain Disaster

The steamship Montserrat, of the Spanish Line, from Cadiz with 361 passengers on board, was rammed amidships on the starboard side yesterday by the inbound Mallory Line freighter San Marcos, from Galveston, but was beached in time to save herself and those aboard.

The collision, which occurred about 8:40 a. m., in clear weather, is one of those inexplicable crashes that frequently happen when vessels are maneuvering in restricted fairways.

Neither the master nor agents of the Montserrat nor the master or owners of the San Marcos would give their versions of the mishap, each side being content to have the matter adjusted by a court in admiralty. The officers and agents of both vessels will prepare a report and give testimony when the suit is ready for trial.

Both on Way Up Bay

Both vessels were on their way up the bay from Quarantine when they came together. Immigration and customs officials were on board the Spanish vessel examining the travelers, who were to be later discharged on Pier 8, East River.

With little or no warning the sharp prow of the Galveston freighter crashed at right angles into the midship section of the Spaniard, whose steel plates crumpled like paper. Amid a cloud of sparks caused by the friction of the crash the San Marcos bounded back, her stem twisted and buckled over about four feet. Both vessels were cut below as well as above the waterline and a flood of water poured into the rents in both vessels.

The forward bulkhead of the San Marcos saved her from being and a hasty survey showed she could be taken up to her pier in the North River with safety. She stood by for a while to give assistance to the Montserrat, but this was not necessary. Captain Muslera, master of the Montserrat, and one of the veterans of the Spanish line, was exceedingly calm after the crash. He realized that his vessel could not long keep afloat, as there was a fresh sea of water in her hold. Signaling the engine-room to full speed ahead, he put his helm over and headed his vessel straight for the Brooklyn shore. Within a few minutes she had steamed over the mud and water and ploughed into the mud of Forty-second Street, South Brooklyn.

No Panic on Liner

It was all done so quickly that passengers had not time to become greatly alarmed. Manuel Pinaro, a Spaniard, of the second cabin, twenty-four years old, was the only person aboard the Montserrat who was injured. Thinking the vessel was about to sink, he jumped from the main deck to a tugboat that had come by to give assistance and he was severely bruised. The tug took him to Ellis Island, where his bruises were treated.

The Montserrat's passengers were later taken off in a lighter and landed at Pier 8, East River. The steamer passengers were taken to Ellis Island and the cabin passengers, who were released by the immigration officials, were permitted to go to hotels in the city. Sixty of the passengers who are in transit will wait at this port for another steamship that will take them to Havana and Mexico.

The Montserrat will have to be lightered before entering drydock and will probably be out of service for a month. It was said that the San Marcos can be repaired without going into drydock.

Sale of Antiquary Collections

A collection of antiques, comprising the stocks of two old antiquary shops at Southampton, L. I., and Lenox, Mass., is on view at the Plaza Art Rooms, 5 East Fifty-ninth Street, prepared for its dispersal at auction, beginning Wednesday afternoon. One of the features is an Empire suite. There is a set of Flemish tapestry panels, a group of Dutch marquetry desks and an assemblage of early American and Waterford glass.

Governor Smith Issues Thanksgiving Day Call

Designates Thursday, November 25, as Day of Prayers for Blessings of Last Year

ALBANY, Nov. 13.—Governor Smith to-day issued a proclamation designating Thursday, November 25, as Thanksgiving Day. The text follows: "In accordance with a well established custom and for the purpose of devoting to prayer the grateful remembrance of the year that has just passed, and for the purpose of expressing our gratitude to the Father of our country and our people, we have established a Thanksgiving Day. The long history of our country suggests that we were singled out from among the nations of the earth for special care and special guidance by Divine Providence. Almighty God gave America to us, therefore, to the grateful remembrance of the year that has just passed, and for the purpose of expressing our gratitude to the Father of our country and our people, we have established a Thanksgiving Day. The long history of our country suggests that we were singled out from among the nations of the earth for special care and special guidance by Divine Providence. 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