RECENT CASES

Divorce—Abandonment—Military Service—On January 15, 1943, defendant husband abandoned plaintiff wife, stating that he was tired of her and never again would live with her. Three months later he was inducted into the United States Navy. Subsequently, while still in the service, but on liberty, he met her and told her that he had no change of heart and would not live with her should she be "the last woman on earth." In February of 1944, plaintiff instituted an action seeking divorce on the ground of one year's abandonment. The court dismissed her petition ruling that the absence of defendant from the plaintiff after the former's induction was not voluntary on his part. Upon appeal, reversing the judgment of the lower court, *held,* induction into the armed forces within a year after wilful desertion of a spouse does not necessarily preclude the granting of a divorce on the ground of one year's abandonment. *Graham v. Graham,* 299 Ky. 543, 186 S. W. (2d) 186 (1945).

An interesting situation which may become the subject of much future litigation and which is almost without precedent[1] appears in the instant case. Desertion, or abandonment, as a ground for divorce entails voluntary abandonment without cause plus intention to desert and to make such desertion permanent for the duration of the statutory period, together with the requirement that the abandonment must be against the will of the deserted spouse.[2] The defendant in the instant case abandoned the plaintiff against her will. His intention to abandon clearly remained the same while he was in the service. The case under discussion is unlike the line of cases in which courts uniformly have held that intervening insanity tolls the running of the period of desertion.[3] That holding is based on the theory that the deserting spouse, being non compos mentis, is denied the statutory period extended for the purpose of giving him that time to reconsider and reestablish marital relations. The effect of military service should be governed by analogy to principles which apply where the deserting spouse is imprisoned during the statutory period.[4] Cases of this kind, although not in full accord, tend to sustain the view that the time spent in prison is to be included in determining the duration of the abandonment.[5] It is not

1. For clearly analogous situations see Margulies v. Margulies, 92 N. J. Eq. 332, 112 Atl. 484 (1920); Mack v. Mack, 32 Del. Co. Rep. 246 (Pa. 1944); Dewell v. Dewell, 69 Pitts. L. J. 384 (Pa. 1920); Hutcheson v. Hutcheson, Legal Intelligencer, Oct. 23, 1945, p. 1, col. 1 (Fayette Co., Pa. 1945).

2. 2 SCHOULER, MARRIAGE, DIVORCE, SEPARATION AND DOMESTIC RELATIONS (6th ed. 1921) § 1615.

3. Messick v. Messick, 177 Ky. 337, 197 S. W. 792 (1908); Kirkpatrick v. Kirkpatrick, 81 Neb. 627, 116 N. W. 499 (1908); Gordon v. Gordon, 89 N. J. Eq. 535, 105 Atl. 242 (1918); Woodruff v. Woodruff, 215 N. C. 685, 3 S. E. (2d) 5 (1939); Little v. Little, 56 Pa. Super. 419 (1914); Wright v. Wright, 125 Va. 526, 99 S. E. 515 (1919).

4. The close analogy is drawn by virtue of the fact that physical restraint is the only element which could possibly toll the running of the statutory period of desertion.

5. Davis v. Davis, 102 Ky. 440, 43 S. W. 168 (1897); Hews v. Hews, 73 Mass. 279 (1856); Liberato v. Liberato, 38 A. (2d) 880 (N. H. 1944). *Contra:* Truman v. Truman, 6 Harr. 155, 171 Atl. 453 (Del. Super. 1934); Porritt v. Porritt, 18 Mich. 420 (1869); Hyland v. Hyland, 55 N. J. Eq. 35, 36 Atl. 270 (1896); Bechtel v. Bechtel, 18 Dist. 1076 (Pa. 1908) (flight from the jurisdiction to avoid arrest); Shannon v. Shannon, 7 Dist. 552 (Pa. 1898). It is consequential to take cognizance of the fact that in cases of imprisonment, even though the defendant was involuntarily restrained from rejoining the offended spouse, such restraint occurred as a result of past acts for which the punishment by imprisoning is inflicted and thus making the abandonment, to a certain extent, voluntary.

logical to conclude either that because the defendant was involuntarily inducted into the service his mind was more likely to change than not or that, by such induction, he was deprived of the necessary statutory period in which to change his mind. Wilfulness and obstinacy are conditions of the mind and, therefore, if constant for the statutory period after the original abandoning, physical restraint of the deserter should be immaterial. There is no apparent reason why the wife in this case should be forced to remain faithful to a husband who had deserted her and continues to remain aloof from her. If the purpose of the divorce statute is to be fulfilled, it certainly seems that the court acted wisely by extending controlling effect to the intention of the offending spouse.

Evidence—Admissibility of Hospital Records—Federal Shop Book Act—Plaintiff's insured was found dead in Walter Reed General Hospital under circumstances indicating possible suicide. Defendant, contesting a claim for double indemnity for accidental death, offered in evidence original hospital records tending to show decedent's suicidal state of mind. Included in the records were two neuropsychiatric reports in which decedent had stated he wanted to die, and also the psychiatrist's diagnosis of "psychoneurosis, hysteria, conversion type." On appeal, after rehearing, *held* (one justice dissenting), hospital records based on opinion or conjecture are not admissible under the Federal Shop Book Act exception to the hearsay rule. To admit such entries would drastically impair the right of cross-examination. Hospital records containing psychoneurotic diagnoses, although systematically prepared for operations of the hospital, are not entries made in the regular course of business under the Act. *New York Life Ins. Co. v. Taylor,* 147 F. (2d) 297 (App. D. C. 1945).

Although most courts have consistently held hospital records inadmissible on common law principles,[1] some jurisdictions admit them as business entries coming under the exception to the hearsay rule.[2] Due to the great confusion in the cases on the subject of business entries, a committee of the Commonwealth Fund proposed a so-called model act to admit in evidence regularly kept records and to abolish many of the cumbersome common law restrictions.[3] The model act was substantially adopted by Congress.[4] Prior to the passage of the Act this same court had admitted

1. 6 WIGMORE, EVIDENCE (3d ed. 1940) § 1707. A few jurisdictions exclude all such records as pure hearsay: McMahon v. Bangs, 5 Penne. 178, 62 Atl. 1098 (Del. Super. 1904); Mutual Benefit Health & Accident Ass'n v. Bell, 49 Ga. App. 640, 176 S. E. 124 (1934); National Life & Accident Ins. Co. v. Cox, 174 Ky. 683, 192 S. W. 636 (1917); Metropolitan Life Ins. Co. v. McSwain, 149 Miss. 455, 115 So. 555 (1928).

2. Boss v. Illinois Central R. R., 221 Ill. App. 504 (1921); Globe Indemnity Co. v. Reinhart, 152 Md. 439, 137 Atl. 43 (1927); Pickering v. Peskind, 43 Ohio App. 401, 183 N. E. 301 (1930); Ribas v. Revere Rubber Co., 37 R. I. 189, 91 Atl. 58 (1914); Murgatroyd v. Dudley, 184 Wash. 222, 50 P. (2d) 1025 (1935).

3. See MORGAN ET AL., THE LAW OF EVIDENCE: SOME PROPOSALS FOR ITS REFORM (1927) 51-63.

4. 49 STAT. 1561 (1936), 28 U. S. C. § 695 (1940). The statute provides:

"In any court of the United States and in any court established by Act of Congress, any writing or record, whether in the form of an entry in a book or otherwise, made as a memorandum or record of any act, transaction, occurrence, or event, shall be admissible as evidence of said act, transaction, occurrence, or event, if it shall appear that it was made in the regular course of any business, and that it was the regular course of such business to make such memorandum or record at the time of such act, transaction, occurrence, or event or within a rea-

hospital records of the "opinions" as well as the "observations" of physicians.[5] The court's decision in the instant case is in conflict with other interpretations of the Act by various circuit courts of appeals.[6] Moreover, the states which have adopted the model act have demonstrated a much more liberal tendency to admit diagnostic hospital records [7] than the court in the instant case. The opinion rule would not seem to be violated by admitting a physician's diagnosis because such diagnosis would ordinarily be considered expert opinion.[8] The majority opinion frankly admits that under a literal interpretation of the Act, these hospital records would be admissible.[9] To sustain its decison it relies upon the test of admissibility laid down by the Supreme Court in *Palmer v. Hoffman,*[10] i. e. "the character of the records and their earmarks of reliability . . . acquired from their source and origin and the nature of their compilation." This reliance appears unfounded. The *Palmer* case involved the admissibility as a business entry of a railroad engineer's accident report. Since the primary utility of such a report was in litigating and not in railroading, the Supreme Court, under the Act, excluded this self-serving document as not being made in the regular course of business. But this analogy cannot validly be applied to hospital records. As the dissenting justice clearly states: "The business of hospitals is caring for patients. The methods systematically employed for the conduct of that business include the making of such records as appellant offered in this case. Proper care of patients would be impossible without such records. Their primary utility is not in litigating." [11] As to the question of cross-examination, is there any rational basis for a distinction (certainly there is none in the Act) between hospital records and other business entries? Professor Wigmore strongly advocated the admissibility of hospital records since, as to them, there is a *necessity*

---

sonable time thereafter. *All other circumstances of the making of such writing or record, including lack of personal knowledge by the entrant or maker, may be shown to affect its weight, but they shall not affect its admissibility.* The term 'business' shall include business, profession, occupation, and calling of every kind." (Italics supplied.) The court completely ignores the italicized provision.

5. United States v. Balance, 59 F. (2d) 1040 (App. D. C. 1932). For a case decided under the Act, see Prudential Ins. Co. v. Saxe, 134 F. (2d) 16 (App. D. C. 1943) (hospital records of diagnosis admitted without objection).

6. The following hospital records of diagnoses have been admitted: Buckminster's Estate v. Comm'r of Int. Rev., 147 F. (2d) 331 (C. C. A. 2d, 1944) ("cerebral hemorrhage"); Norwood v. Great American Indemnity Co., 146 F. (2d) 797 (C .C. A. 3d, 1944) ("conflicting" autopsy reports); Becker v. United States, 145 F. (2d) 171 (C. C. A. 7th, 1944) ("Psychoneurosis, Hysteria"); Reed v. Order of United Commercial Travelers of America, 123 F. (2d) 252 (C. C. A. 2d, 1941) ("well under influence of alcohol"); Ulm v. Moore-McCormack Lines, Inc., 115 F. (2d) 492 (C. C. A. 2d, 1940), *cert. denied,* 313 U. S. 567 (1940) ("clinical records," etc.).

7. Borucki v. MacKenzie Bros., Inc., 125 Conn. 92, 3 A. (2d) 224 (1938); Gile v. Hudnutt, 279 Mich. 358, 272 N. W. 706 (1937); People v. Kohlmeyer, 284 N. Y. 366, 31 N. E. (2d) 490 (1940) (a case very near in point: diagnosis of "manic depressive insanity"); Conlon v. John Hancock Mutual Life Ins. Co., 56 R. I. 88, 183 Atl. 850 (1936) ("moderately advanced tuberculosis"). See Note (1939) 120 A. L. R. 1124.

8. See McCormick and Ray, Texas Law of Evidence §§ 632-7. In Paxos v. Jarka Corporation, 314 Pa. 148, 171 Atl. 468 (1934) the court propounded a test based mainly upon the qualifications of the physician making the diagnosis: "such evidence must be the opinion of a person so qualified as an expert in a field as to be capable of drawing a sound conclusion concerning a condition not visible but reflected circumstantially by the existence of other visible and known symptoms." 314 Pa. at 153-4, 171 Atl. at 471.

9. Instant case at 300.

10. 318 U. S. 109, 114 (1943).

11. Instant case at 301.

(calling for direct testimony all the individuals who cooperated in making the records would greatly hamper hospital operations) and a *circumstantial guarantee of trustworthiness* (such records being relied upon in matters of life and death).[12] Accordingly, it is felt that the court has gone far toward nullifying the Act as it applies to hospital records in the District of Columbia.

Labor Law—State Statute Regulating Labor Unions—Repugnancy to National Labor Relations Act—Invoking a statute of 1943,[1] Florida enjoined the petitioners from functioning within the state as a labor union [2] and business agent of the union until the labor union complied with a statutory provision for filing an annual report,[3] and the business agent of the union complied with a provision for securing a license.[4] On certiorari,[5] *held* (two justices dissenting), reversed. Both of the statutory requirements are repugnant to the National Labor Relations Act.[6] *Hill v. Florida,* 65 Sup. Ct. 1373 (U. S. 1945).

The effect of the decision in the instant case is to invalidate anti-union legislative provisions similar to those of the Florida statute and existing in about a dozen states.[7] In a previous Supreme Court case,[8] the exercise by

12. 5 WIGMORE, EVIDENCE (3d ed. 1940) §§ 1521, 1522, 1530a; 6 *id.* § 1707. For a general discussion of the problem, see Hale, *Hospital Records as Evidence* (1941) 14 So. CALIF. L. REV. 99; Comment (1939) 38 MICH. L. REV. 219.

1. Fla. Laws 1943, c. 21968.

2. United Association of Journeymen Plumbers and Steamfitters of United States and Canada, Local No. 234. The union was enjoined in connection with employees of the St. Johns River Shipbuilding Co. of Jacksonville, Florida, which had been held to be engaged in interstate commerce.

3. Section 6 provided: "Every labor organization operating in the State of Florida shall make a report in writing to the Secretary of State annually on or before July first. Such report shall be filed by the secretary or business agent of such labor organization and shall be in such form as the Secretary of State may prescribe, and shall show the following facts: (1) The name of the labor organization; (2) The location of its office; (3) The name and address of its president, secretary and business agent." Fla. Laws 1943, c. 21968, § 6.

4. Section 4 provided: "No person shall be granted a license or a permit to act as a business agent in the State of Florida, (1) Who has not been a citizen of and has not resided in the United States of America for a period of more than ten years next prior to making application for such license or permit. (2) Who has been convicted of a felony. (3) Who is not a person of good moral character. . . ." Fla. Laws 1943, c. 21968, § 4. A board composed of the Governor, the Secretary of State and the Superintendent of Education had to pass on the application. Section 14 provided: "Any person or labor organization who shall violate any of the provisions of this Act, shall upon conviction thereof, be adjudged guilty of a misdemeanor and be punished by a fine not exceeding Five Hundred Dollars ($500.00) or by imprisonment in the county jail for a period not to exceed six months, or by both such fine and imprisonment." *Ibid.*

5. The cases of Alabama State Federation of Labor v. McAdory, 65 Sup. Ct. 1384 (U. S. 1945) and Congress of Industrial Organization v. McAdory, 65 Sup. Ct. 1395 (U. S. 1945) (state court decisions upholding the validity of the Bradford Act of Alabama) were both dismissed on the same day that the instant case was decided for lack of a justiciable dispute.

6. 49 STAT. 449 (1935), 29 U. S. C. § 151 *et seq.* (1941). Hereafter called the Wagner Act.

7. Ala. Acts 1943, No. 298, p. 252; COLO. STAT. ANN. (Michie, Supp. 1944) c. 97, § 94; Idaho Laws 1943, c. 76; KAN. GEN. STAT. ANN. (Corrick, Supp. 1943) c. 44, § 802; MICH. STAT. ANN. (Henderson, Supp. 1944) § 17.454; MINN. STAT. (Mason, Supp. 1944) § 4254; PA. STAT. ANN. (Purdon, 1941) tit. 43, § 211.7; S. D. Laws 1943, c. 86; TEX. ANN. REV. CIV. STAT. (Vernon, Supp. 1945) art. 5154a; WIS. STAT. (1943) § 111.01.

8. Allen-Bradley Local No. 1111 v. Wisconsin Employment Relations Board, 315 U. S. 740 (1941). The Wisconsin board ordered that the union cease mass picketing,

Wisconsin of its police power to regulate disorders growing out of a strike had been upheld on the ground that the state statute did not conflict with the Wagner Act. Although the Court struck down a Texas statute [9] requiring labor organizers to secure an organizer's card before soliciting members because it contravened the constitutional guaranty of freedom of speech and assembly, not until the instant case did the Court squarely face the question of the repugnancy of a state police regulation to the Wagner Act. The Federal Act, which has been applied chiefly in cases of employer-employee disputes, protects the right of collective bargaining not only against the employer but against the state as well. The Florida licensing provision was held invalid as contrary to the Congressional purposes embodied in the Federal Act; [10] and while the information-filing provision did not conflict *per se* with the Federal Act, the sanctions imposed created an obstacle to collective bargaining. A minority of the Court [11] took the position that neither provision of the Florida statute was repugnant to the Federal Act, and therefore the two Acts could coexist [12] since there was no clear Congressional intent expressed to the contrary. Such an argument, it is submitted, in the light of the legislative history of the Wagner Act and the facts of labor-union life,[13] is a sacrifice of substance

threatening employees, picketing their domiciles, and obstructing the factory entrances. "In sum we cannot say that the mere enactment of the National Labor Relations Act excluded state regulation of the type which Wisconsin has exercised in this case. It has not been shown that any employee was deprived of rights protected or granted by the federal act or that the status of any of them under the federal act was impaired." *Id.* at 751. See also SEN. REP. No. 573, 74th Cong., 1st Sess. (1935) 16. This case was followed in distinguishable cases however in subsequent lower court and state court decisions: Border v. Sparks, 54 F. Supp. 300 (M. D. Ala. 1944) (upholding section 7 of the Bradford Act); American Federation of Labor v. Reilly, 155 P. (2d) 145 (Colo. 1944) (Labor Peace Act not repugnant to Wagner Act). The Court in the *Allen-Bradley* case reserved the exact point of the instant case in the words: "If the order of the state Board affected the status of employees or if it caused a forfeiture of collective bargaining rights, a distinctly different question would arise." 315 U. S. at 751. Compare 29 U. S. C. A. § 151 n. 10 (1942).

9. Thomas v. Collins, 323 U. S. 516 (1945). Since a majority of the court did not agree that the statute was repugnant to the Wagner Act, the decision was not placed on that ground.

10. "It is hereby declared to be the policy of the United States to eliminate the causes of certain substantial obstructions to the free flow of commerce . . . *by encouraging the practice and procedure of collective bargaining* and by protecting the exercise by workers of *full freedom of association, self-organization, and designation of representatives of their own choosing,* for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection." 49 STAT. 449 (1935), 29 U. S. C. § 151 (1941). (Italics supplied.) See BUFFORD, THE WAGNER ACT (1941) § 3.

11. Justice Frankfurter wrote the dissent in which Justice Roberts concurred. "Specifically, if Congress were to make certain requirements for the filing of reports by labor organizations that seek to avail themselves of the rights defined by the Wagner Act, and also were to devise a system of identification and licensing of authorized representatives of the unions, one would be hard put to find anything in the Wagner Act to prove that it had already dealt with these matters." 65 Sup. Ct. 1373, 1383. But didn't Congress deal with such matters when it gave "full freedom" to employees regarding them?

12. "We agree, that in the application of this principle of supremacy of an act of Congress in a case where the State law is but the exercise of a reserved power, the repugnance or conflict should be direct and positive, so that the two acts could not be reconciled or consistently stand together. . . ." Sinnot v. Davenport, 22 How. 227, 243 (U. S. 1859). This doctrine has been followed in a long line of cases permitting coexistence of state and federal laws concerning such matters which Congress could have regulated, but did not. Maurer v. Hamilton, 309 U. S. 598 (1939); Kelly v. Washington, 302 U. S. 1 (1937).

13. Section 6 provides that all labor organizations "operating" within the state must make a report. Does this include a nascent union?

to form. The Wagner Act was passed to bring the bargaining power of employees up to that of the employer and, by putting the weight of federal law behind the employees, to maintain an equilibrium which the minority position might tend to upset. When the controversial issue of the constitutionality of the proposed amendment [14] to the Florida Constitution prohibiting closed shops is submitted to the Court, it will find that a possible conflict with the Wagner Act has been avoided by express provision that its terms shall not be construed to abridge the right of collective bargaining.

War—Soldiers' and Sailors' Civil Relief Act—Contracts—Plaintiff and defendant company were parties to a dealership contract, containing a proviso for termination by defendant company upon sixty days notice. Plaintiff enlisted in the Army in August, 1942. In January, 1943, while plaintiff was still in service, defendant company requested his resignation. Upon plaintiff's refusal, defendant company, later in January, served notice of intention to terminate, and in April notice of actual termination. Plaintiff, retired from the Army, brought this action for relief under the Soldiers' and Sailors' Civil Relief Act of 1940. *Held,* for plaintiff. Defendant company did not have the legal right to terminate the contract while plaintiff was in the military service, and consequently all of plaintiff's contract rights and privileges as existing at the time of his enlistment should be restored. *Stockton v. Ford Motor Co.,* 61 F. Supp. 261 (S. D. Idaho 1945).

The Civil Relief Act suspends, in certain cases, enforcement of civil liabilities of persons in the military service.[1] In the instant case no effort was made to enforce any civil liability against plaintiff. The court admitted that if any relief is afforded in the Act it is provided by the section pertaining to relief against fines and penalties incurred for failure to perform obligations.[2] The court reasoned that Congress intended to save military personnel from injury in their civil affairs during service, that forfeiture is a penalty by which one loses interests in his property, and that cancellation of this contract is a forfeiture, and therefore, within the scope of the sec-

14. American Federation of Labor v. Watson, 3 C. C. H. 1945 Labor Law Serv. ¶ 62,686.

1. Soldiers' and Sailors' Civil Relief Act of Oct. 17, 1940, c. 888, § 1, 54 STAT. 1178 (1940), 50 U. S. C. A. § 510 (App. 1944). The basic philosophy of the Act was to provide a moratory period for the accrued obligations of soldiers and sailors. The relief afforded under the 1940 Act was limited principally to a stay of court actions, within the discretion of the court. Amendments, passed in 1942, clarified and strengthened the Act but did not change the moratory character of the legislation. See Skilton, *The Soldiers' and Sailors' Civil Relief Act of 1940 and the Amendments of 1942* (1942) 91 U. OF PA. L. REV. 177; Bridewell, *The Soldiers' and Sailors' Civil Relief Act, Amendments of 1942* (1942) 28 A. B. A. J. 797.

2. "If any relief is provided in the Act it is provided by Section 522, U. S. C. A. Appendix, Title 50. . . ." Instant case at 264. This section is as follows: "When an action for compliance with the terms of any contract is stayed pursuant to this Act no fine or penalty shall accrue by reason of failure to comply with the terms of such contract during the period of such stay, and in any case where a person fails to perform any obligation and a fine or penalty for such nonperformance is incurred a court may, on such terms as may be just, relieve against the enforcement of such fine or penalty if it shall appear that the person who would suffer by such fine or penalty was in the military service when the penalty was incurred and that by reason of such service the ability of such person to pay or perform was thereby materially impaired." Act of Oct. 17, 1940, c. 888, § 202, 54 STAT. 1181 (1940), 50 U. S. C. A. § 522 (App. 1944).

tion.[3] The token benefit [4] given the plaintiff would hardly seem to warrant the extreme efforts of the court here to resolve doubts in favor of a returning serviceman.[5] From a patriotic standpoint, the court is to be commended for its efforts to relieve the plaintiff from an apparently noncommendable course of conduct by the defendant; [6] yet from a legal point of view, the grave concern everywhere for returning servicemen should neither be allowed to obstruct the rights of others nor to obscure judicial appraisement of measures for the servicemen's aid.[7]

Wills—Construction—Admissibility of Extrinsic Evidence—The testator's will bequeathed to his nephew "all the stock which I may own in the X corporation" and gave the rest of his estate to a charity. The question arose whether the terms of the bequest to his nephew were broad enough to pass to him not only the shares of X corporation which were registered in the testator's name, but also other shares of the same corporation which were owned by a family holding company in which the testator had a one-third interest, and which were distributed in kind to his personal representatives upon dissolution of the holding company after his death. These latter shares were among the assets of the dissolved corporation. *Held* (3-2 decision), that the nephew was not entitled to the shares received from the dissolved holding corporation. *Bird v. Wilmington Society of Fine Arts*, 43 A. (2d) 476 (Del. 1945).

The case is important because it presents a unique problem in applying well-established rules of the construction of wills to the equally well-settled "corporate entity" theory. It is submitted that the majority opinion is sound. While it is a cardinal rule in the construction of wills that the

3. Instant case at 264. The court's reasoning hinges on synonymity of "forfeiture" and "penalty." Some distinctions which have been drawn between these words may be found in 31 WORDS AND PHRASES (perm. ed. 1940) "Penalty," 603-4 and pocket part (1945) 140.

4. Although the plaintiff's contract is restored there is nothing to prevent the defendant's serving sixty day notice of intent to terminate now. The court recognizes this possibility at 264-5.

5. The court recognizes that its judgment is questionable. "If any relief is provided in the Act. . . ." Instant case at 264. "The statute itself is somewhat indefinite and there is a serious doubt in the Court's mind that this contract is covered by it." *Ibid.* "If the Court is wrong in its judgment, this law should be amended. . . ." *Ibid.*

6. It is not clear that the defendant is wholly blameworthy. It is stated that plaintiff left two managers, who were later called to service themselves, in charge of his business. Nothing more appears to show whether further provisions for management or continuance of the business were made. Defendant could hardly be expected to allow its customers in the area to remain without service, parts, and available rationed automobiles for an indefinite period; in January, 1943, it was indeed indefinite how long any serviceman might be absent from his business. Negotiations between defendant and plaintiff's competitor to whom the contract was given were carried on without any notice to plaintiff and it would seem he should have been advised of these dealings. From the facts of the case as reported it is difficult to evaluate defendant's conduct.

7. The court admits that if plaintiff had been in civilian life there would be no fine or penalty involved but states that they are dealing with plaintiff not as a civilian but as a soldier, revealing thereby the determinative factor in this case. Instant case at 264. While the action here was for relief under the Soldiers' and Sailors' Civil Relief Act and the court clearly states in its opening paragraph that the question presented is whether the plaintiff is entitled to relief under this Act, there is a considerable amount of dicta about the meaning of an assurance of cooperation given by defendant to plaintiff prior to his enlistment. There is confusion in the dicta also as evidenced by the construction, in one paragraph, of the assurance's constituting a promise by defendant to waive the right to terminate and in the next paragraph stating there was no promise but only an implied contract. Instant case at 263.

intention of the testator must be ascertained and given effect[1] and that extrinsic evidence should be admitted to show the sense in which the testator used his words,[2] it is equally true that where the will contains no ambiguity, it must be construed from its "four corners" according to the plain sense and meaning of the testator's words, and extrinsic evidence that the testator intended to say something other than what he did say is inadmissible.[3] Where several species of property more or less fit the description in the will, but only one answers the description technically and precisely, the other will not pass.[4] Technically, the phrase "all the stock which I may own in the X corporation" refers only to the shares of stock owned by the testator himself and does not include stock owned by a separate and distinct holding corporation of which he was a shareholder. Under ordinary circumstances it is generally accepted that a corporation is an entity, separate and apart from the members who compose it. The corporation, as a distinct legal entity, owns its property in the same sense as a natural person owns property. The property of the corporation is not to be regarded as the property of its stockholders.[5] The fault of the dissenting opinion arises out of the fact that it would permit the receipt of extrinsic evidence to create an ambiguity which did not exist on the face of the will. It would then proceed to dissolve that ambiguity by accepting additional extrinsic evidence as to the testator's intent, though this evidence would have been admissible only if *in fact* an equivocation existed.[6]

1. 69 C. J. (1934) § 1118; 2 PAGE, WILLS (3d ed. 1941) § 918 n. 1.

2. See also Cahill v. Pilzer, 204 Ky. 644, 648, 265 S. W. 32, 34 (1924) where the court said, "In construction of wills the intention of the testator, as gathered from the entire language he employed, is the polar star by which courts should be guided." Congdon v. Comm'r of Int. Rev., 99 F. (2d) 318 (C. C. A. 8th, 1938); Cleveland Clinic Foundation v. Humphrys, 97 F. (2d) 849 (C. C. A. 6th, 1938); Himmel v. Himmel, 294 Ill. 557, 128 N. E. 641 (1920); Boston Safe Deposit and Trust Co. v. Park, 307 Mass. 255, 29 N. E. (2d) 977 (1940); Krause v. Krause, 113 Neb. 22, 201 N. W. 670 (1924); Lange v. Lange, 127 N. J. Eq. 315, 12 A. (2d) 840 (1940).

3. McCormick v. Sanford, 318 Ill. 544, 149 N. E. 476 (1925); Matter of Quackenbush's Will, 127 Misc. 731, 217 N. Y. Supp. 493 (Surr. Ct. 1926); Dwight v. Fancher, 245 N. Y. 71, 156 N. E. 186, *rearg. denied*, 245 N. Y. 565, 157 N. E. 859 (1927); Moseley v. Goodman, 138 Tenn. 1, 195 S. W. 590 (1917).

4. Booker v. Booker, 20 Ga. 786 (1856); Walston's Lessee v. White, 5 Md. 297 (1853); Homer v. Homer, 8 Ch. D. 758 (C. A. 1878); Doe v. Bower, 3 B. & Ad. 453, 110 Eng. Rep. R. 163 (K. B. 1832); Morrell v. Fischer, 4 Ex. 591, 154 Eng. Rep. R. 1350 (1849).

5. See Justice Holmes' statement in Klein v. Board of Tax Supervisors, 282 U. S. 19, 24 (1930): "The corporation is a person, and its ownership is a nonconductor that makes it impossible to attribute an interest in its property to its members." Also 1st National Bank of Boston v. State of Maine, 284 U. S. 312 (1932); Rhode Island Hospital Trust v. Doughton, 270 U. S. 69 (1925); Borough of Ambridge v. Philadelphia Co., 283 Pa. 5, 129 Atl. 67 (1925); Button v. Hoffman, 61 Wis. 20, 20 N. W. 667 (1884).

6. Patch v. White, 117 U. S. 210 (1886); Doe v. Hiscocks, 5 M. & W. 363, 151 Eng. Rep. R. 154 (Ex. 1839). "Evidence to show what were the *actual testamentary intentions* of the testator . . . are admissible only (a) to determine which of several persons or things was intended under an *equivocal description*. . . . Equivocal descriptions are such as apply with sufficient legal certainty to each of several persons or things. . . ." HAWKINS, CONSTRUCTION OF WILLS (3d ed. 1925) 15.