

591.

FINANCIAL RESPONSIBILITY LAW—DISCHARGE IN BANKRUPTCY OF JUDGMENT—EFFECT ON LAW.

SYLLABUS:

A discharge in bankruptcy of a judgment rendered against a person in an action for wrongful death, personal injury or damage to property caused by such person's individual operation of a motor vehicle, does not relieve such person from the obligations imposed under and by virtue of the provisions of the Financial Responsibility Law, Sections 6298-1, et seq., of the General Code.

COLUMBUS, OHIO, May 14, 1937.

HON. FRANK WEST, *Registrar, Bureau of Motor Vehicles, Columbus, Ohio.*

DEAR SIR: This will acknowledge receipt of your recent communication, which reads as follows:

“Directing your attention to 6298-1 of the General Code, relative to unsatisfied judgment for damages, as a result of a person's individual operation of a motor vehicle, one or two cases have arisen where the person after being reported in by the court has been adjudicated a bankrupt.

We will appreciate your opinion as to whether such an adjudication can relieve a person from his obligations under the Financial Responsibility Law.

For your information and without being able to give you the exact citation, we believe a Federal Court of Appeals, in whose jurisdiction the State of New York lies has passed on this matter in connection with the Financial Responsibility Law of the State of New York and held that such an adjudication did relieve the person from his obligations under the Financial Responsibility Law of New York.”

Since in your letter reference is made to the fact that a Federal Court for the State of New York has passed on this question, I deem it advisable to direct your attention to that particular decision. Before so doing, I believe it necessary to refer to the provisions of Section 94-B of the Vehicle and Traffic Laws of the State of New York, which provide as follows:

"The operator's or chauffeur's license and all of the registration certificates of any person, in the event of his failure within fifteen days thereafter to satisfy every judgment which shall have become final by expiration without appeal, of the time within which appeal might have been perfected or by final affirmance on appeal, rendered against him by a court of competent jurisdiction in this state, or any other state or the District of Columbia, or of any district court of the United States, or by a court of competent jurisdiction in any province of the Dominion of Canada, for damages on account of personal injury, including death, or damages to property in excess of one hundred dollars, resulting from the ownership maintenance, use or operation of a motor vehicle by him, his agent, or any other person for whose negligence he shall be liable and responsible, shall be forthwith suspended by the commissioner of motor vehicles, upon receiving a certified copy of such final judgment or judgments from the court in which the same are rendered, showing such judgment or judgments to have been still unsatisfied after the expiration of fifteen days after the same became final as aforesaid, and shall remain so suspended and shall not be renewed nor shall any other motor vehicle be thereafter registered in his name while any such judgment or judgments remain unstayed, unsatisfied and subsisting, until said judgment or judgments are satisfied or discharged, except by a discharge in bankruptcy, to the extent of or at least five thousand dollars for an injury to one person in one accident, and to the extent of ten thousand dollars for an injury to more than one person in one accident, and to the extent of one thousand dollars for an injury to property in any one accident, and until the said person gives proof of his ability to respond in damages, as required in section ninety-four-c of this chapter for future accidents. * * *

It will be noted that in many respects the provisions of the above cited section are substantially the same as the Financial Responsibility Law of Ohio, particularly with reference to the power and authority of the Commissioner of Motor Vehicles of the State of New York to suspend an operator's or chauffeur's license or registration certificate of a person who has failed to satisfy a final judgment rendered by a court of competent jurisdiction in any court involving damages on account of personal injury, including

death, or damage to property resulting from such person's ownership, maintenance, use or operation of a motor vehicle.

It will also be noted that the above cited section further provides that such license and registration certificate shall remain so suspended until said judgment or judgments are satisfied or discharged, *except by a discharge in bankruptcy*. Section 94-c of the act provides the manner by which a person may give proof of his ability to respond in damages.

The validity of Section 94-b, above cited, was questioned in the case of *In Re Perkins*, U. S. District Court, for the Northern District of New York (3 Fed. Supp. 697). In this case a bankrupt sought an injunction restraining a judgment creditor from filing with the Commissioner of Motor Vehicles of the State of New York a certified copy of an unsatisfied judgment obtained by the judgment creditor in an action involving the operation of a motor vehicle. It was claimed in the application filed that the judgment had been discharged in bankruptcy proceedings. The court in granting the injunction held Section 94-B of the Vehicle and Traffic Laws of the State of New York invalid in that it denied the bankrupt the full effect of a discharge in bankruptcy.

However, this same question confronted the United States District Court for the Southern District of New York in the case of *Munz vs. Hartnett*, 6 Fed. Supp; 158. This case involved the filing by a bankrupt of an application for a preliminary injunction wherein the validity of Section 94-B of the Vehicle and Traffic Laws of the State of New York was attacked on two grounds, namely, (1) said statute was unconstitutional in its entirety, and (2) that it was in contravention to the Bankruptcy Act. The facts upon which this action was based are identical with those that confronted the court in the Perkins case, *supra*. The court in denying the application held that the statute was a valid exercise of the police powers and not in violation of the 14th Amendment of the Federal Constitution, and, further, that it was not in contravention to the Bankruptcy Act.

In passing upon the theory that Section 94-B was in contravention of the Bankruptcy Act in that it denied the bankrupt the full effect of a discharge in bankruptcy, the court on page 160 of the opinion said:

“We pass to the other ground of attack, that the statute is in contravention to the Bankruptcy Act (see 11 USCA) because it provides that a discharge in bankruptcy shall not be deemed a satisfaction of the judgment in so far as the suspension of license is concerned. This clause was probably

inserted from superabundance of caution, for a discharge in bankruptcy has never been regarded as a satisfaction of a judgment against the bankrupt. It goes only to bar the judgment creditor's civil remedies to collect the judgment. * * * It is argued that the effect of the act is to supply the judgment creditor with a remedy to compel the debtor to pay the judgment, despite his discharge in bankruptcy. This argument leaves us unconvinced. The New York legislature has not undertaken to say that the judgment creditor may compel the debtor to pay in spite of the discharge in bankruptcy. The act no more gives an additional remedy to collect a civil judgment than does a revocation of a license for driving while intoxicated impose an additional punishment for a crime. * * * The statute has to do with motor vehicles on the highway."

The court in rendering the opinion in the above cited case referred to the Perkins case, supra, and declined to follow the decision rendered therein.

From a search of the authorities, I find that the above cited cases are the only pronouncements of a Federal Court on this particular question. However, numerous Federal decisions have been rendered to the effect that a discharge in bankruptcy shall not be deemed as a satisfaction of a judgment. In this connection, your attention is directed to the decision rendered by the United States District Court for the Southern District of Michigan, in the case of *In Re Weisberg*, 253 Federal Reporter, 833. In this case a petition was filed by a bankrupt asking that one of his creditors be punished for contempt of court in that he did, by garnisheeing certain moneys belonging to the bankrupt ignore a discharge in bankruptcy granted said bankrupt. In denying the petition, the court held as disclosed on page 834 of the opinion that:

"In the first place, the discharge in bankruptcy granted to petitioner did not automatically relieve him from even the provable debts previously owed by him and duly scheduled. It is true that such discharge afforded him a complete defense to an action brought to recover any such debt, but in order to avail himself thereof it would be necessary for him to plead the discharge in such action, and failure to do so would render him amenable to whatever judgment the court might render against him in that action."

In this respect, your attention is further directed to the case of *Dimock vs. Revere Copper Co.*, 117 U. S. 559. It was held in this case as is disclosed by the headnote thereof, that:

“A discharge in bankruptcy is no bar to an action on a judgment recovered against the bankrupt after his discharge in a suit commenced before the bankruptcy pending when the discharge was granted, and upon a debt provable against him in bankruptcy.”

The Financial Responsibility Law of Ohio was enacted as a regulatory measure designed for the protection of the public and to eliminate the irresponsible driver from the public roads and highways of this state, and, as the United States Supreme Court has held, such regulations are a valid exercise of the police power. *Packard vs. Benton, etc., et al.*, 264 U. S. 140; *Hendricks vs. State of Maryland*, 235 U. S. 610; *C. A. Bradley, etc., vs. Public Utilities Commission of Ohio*, 289, U. S. 92; *Sprout vs. City of South Bend*, 277 U. S. 163.

For the purpose of this opinion it becomes necessary to refer herein to the provisions of the Financial Responsibility Law, which are pertinent to your question. Section 6298-1, General Code, provides in part as follows:

“The registrar of motor vehicles of the State of Ohio is hereby authorized and empowered to and shall, in accordance with the provisions of this act, revoke and terminate the right and privilege of operating a motor vehicle upon the public roads and highways of this state, each license, certificate, or permit to operate a motor vehicle, as chauffeur or otherwise, and each certificate of registration for a motor vehicle of or belonging to any person, who has hereafter either

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(b) Failed within thirty (30) days after the entry of the same, to satisfy or stay the execution of any final judgment hereafter rendered against him in any court of record within this state, in an action for wrongful death, personal injury, or damage to property, caused by such person's individual operation of a motor vehicle.”

It will be noted that under the provisions of the section above cited, adequate authority is granted to the Registrar of Motor

Vehicles to revoke and terminate a person's right and privilege of operating a motor vehicle upon the public roads and highways of this state, who has failed within thirty days to satisfy or stay the execution of a final judgment rendered against him in an action involving any of the causes as therein set forth, wherein the operation of a motor vehicle was involved.

Sections 6298-2, 6298-5 and 6298-6, General Code, provide the method by which a judgment may be satisfied. These sections provide as follows:

Sec. 6298-2.

"For the purpose of this act, the payment or crediting of the amounts set forth in Section 5 of this act upon any judgment or judgments in excess of those amounts shall be deemed equivalent to the satisfaction of such judgment or judgments.

A judgment debtor to whom this act applies may, by written motion, notice of which shall be given to the judgment creditor in the same manner as other motions, apply to the trial court in which the judgment was obtained for the privilege of paying such judgment in installments, and the court may, without affecting any rights to execute upon such judgment, grant such motion and fix the amounts and times of payments of the installments. As long as said order is complied with, the registrar of motor vehicles may, without proof of the ability of such judgment debtor to respond in damages, permit the judgment debtor's right and privilege of operating a motor vehicle, his licenses, certificate, and permit to operate a motor vehicle, and the certificate or certificates of registration for his motor vehicle or motor vehicles, to remain in force and unrevoked."

Sec. 6298-5.

"A person shall be deemed to have ability to respond in damages, as required by this act, if, and only if he can satisfy a judgment, or judgments, thereafter rendered against him on account of his ownership, maintenance, use, or operation of a motor vehicle, which do not exceed the following:

(a) The sum of five thousand dollars (\$5,000.00) in an action for wrongful death or personal injury;

(b) The aggregate sum of ten thousand dollars (\$10,000.00) in two or more actions for wrongful death

and/or personal injury to two or more persons, arising out of one accident;

(c) The aggregate sum of one thousand dollars (\$1,000.00) in one or more actions for damages to property arising out of one accident.”

Section 6298-6.

“Proof of ability to respond in damages, as required by this act, may be made only by showing that there has been issued to or for the benefit of the person making such proof:

(a) A motor vehicle liability policy or policies, as hereinafter defined, covering a period of one year and dated not longer than thirty (30) days prior to the date of making proof; or

(b) A bond of a surety company authorized to do business in this state, or with individual sureties, owning unencumbered real estate within this state, subject to execution and worth above all exemption, the sum of eleven thousand dollars (\$11,000.00), in the form prescribed by, and to the satisfaction of the registrar, conditioned for the payment of a judgment, or judgments, of the nature and in the amounts set forth in Section 5 of this act, which may be rendered against the person making proof upon causes of action arising within one year after the date of making proof; or, by the deposit with the registrar of motor vehicles of the sum of eleven thousand dollars (\$11,000.00) in money, or bonds, of the United States of America, of the State of Ohio, or of a political subdivision of the State of Ohio of that par or face value, for the purpose of securing the payment of judgment of the nature and in the amounts set forth in Section 5 of this act, which may be rendered against the person making proof upon causes of action arising within one year after the date of such deposit.”

It will be observed from a reading of the above cited sections that a judgment rendered in an action for wrongful death, personal injury or damage to property caused by a person's individual operation of a motor vehicle, may be satisfied in either of two ways, (1) the judgment debtor may by written motion, apply to the trial court in which the judgment was obtained, for the privilege of paying such judgment in installments, and if such motion is granted and as long as such order is complied with, the Registrar of Motor Vehicles may, without proof of the ability of such debtor

to respond in damages, permit the judgment debtor's right and privilege of operating a motor vehicle, his licenses, certificate, and permit to operate a motor vehicle, and a certificate or certificates of registration for his motor vehicle or motor vehicles, to remain in force and unrevoked, and (2) by showing his ability to respond in damages if, and only if, he can satisfy a judgment or judgments *thereafter* rendered against him on account of his ownership, maintenance, use or operation of the motor vehicle in the amounts as set forth in Section 6298-5, *supra*.

In the event the judgment debtor is unable to comply with the provisions of Section 6298-2, *supra*, he is provided under the provisions of Section 6298-6 with one of two ways by which he may show proof of his ability to respond in damages, namely, (a) a motor vehicle liability policy covering a period of one year and dated not longer than thirty days prior to the making of proof; (b) bond of a surety company authorized to do business in this state or with individual sureties, owning unencumbered real estate within this county subject to execution and worth above all exemptions the sum of \$11,000.00, conditioned for the payment of a judgment or judgments of the nature and in the amounts as set forth in Section 6298-5, *supra*, which may be rendered against a person making proof, or such judgment debtor may deposit with the Registrar of Motor Vehicles the sum of \$11,000.00 in money for the purpose of securing the payment of the judgment of the nature and in the amounts set forth in Section 6298-5, *supra*.

It is apparent from a reading of these sections that the proof of ability to respond in damages is prospective in operation, that is, it operates not as a satisfaction of a judgment rendered prior to the time of making such proof, but as a guarantee that all judgments which may be rendered against a person in the future arising out of such person's individual operation of a motor vehicle will be satisfied to the extent of the amounts set forth in Section 6298-5, *supra*.

It is therefore my opinion, in specific answer to your question, that a discharge in bankruptcy of a judgment rendered against a person in an action for wrongful death, personal injury or damage to property caused by such person's individual operation of a motor vehicle, does not relieve such person from the obligations imposed under and by virtue of the provisions of the Financial Responsibility Law, Sections 6298-1, *et seq.*, of the General Code.

Respectfully,

HERBERT S. DUFFY,

Attorney General.