STATE OF MARYLAND	:	IN THE
VS.	:	CRIMINAL COURT, PART III
ROBERT MACK BELL, LOVELLEN P. BROWN, ARIMENTHA D. BULLOCK, ROSETTA GAINEY, ANNETTE GREEN, ROBERT M. JOHNSON, RICHARD MCKOY, ALICETEEN E. MANGUM, JOHN R. QUARLES, SR., MURIEL B. QUARLES, LAWRENCE M. PARKER and BARBARA F. WHITTAKER	:	OF BALTIMORE CITY Indictment 2523 Y/1960

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Appearances:
James W. Murphy, Assistant State's Attorney (Saul A. Harris, State's Attorney of Baltimore City), Attorneys for the State

Robert B. Watts (Brown, Allen and Watts), Tucker R. Dearing (Dearing and Toadvine) and Juanita Jackson Mitchell, Attorneys for the Defendants

Robert F. Skutch, Jr. (Weinberg & Green), Amicus Curiae, representing The Restaurant Association of Maryland, Inc.

MEMORANDUM OPINION

BYRNES, J.

On July 12, 1960 the above named defendants, students attending local schools, were indicted by the Baltimore City Grand Jury for trespassing on the premises of Hooper's Restaurant at the southwest corner of Fayette and Charles Streets in Baltimore City. The first count of the indictment charges that the defendants

> " ... on the seventeenth day of June, in the year of our Lord nineteen hundred and sixty, at the City aforesaid, unlawfully did enter upon and cross over the land, premises and private property of a certain corporation in this State, to wit, Hooper Food Co., Inc., a corporation, after having been duly notified by Albert Warfel, who was then and there the servant and agent for Hopper [sic] Food Co., Inc., a corporation, not to do so; contrary to the form of the Act of Assembly in such case made and provided, and against the peace, government and dignity of the State."

The second count charges that the defendants

> " . . . unlawfully did enter and trespass on certain property of Hooper Food Co., Inc., a corporation wich said property was then and there posted against trepassers [sic] in a conspicuous manner; contrary to the form of the Act of Assembly in such case made and provided, and against the peace, government and dignity of the State."

Testimony at the trial disclosed that on June 17, 1960, the defendants entered the restaurant while it was open for business and requested the hostess, Ella Mae Dunlap, to assign them seats at tables for the purpose of being served. She informed them that it was not the policy of the restaurant to serve Negroes, and that she was sorry but she could not seat or serve any of the defendants. She explained to them that she was following the instructions of the owner of the restaurant.

Despite this refusal, defendants persisted in their demands and, brushing by the hostess, took seats at various tables on the main floor and at the counter in the basement. Not being served, which they apparently anticipated, some of the defendants began to read their school books.

The trespass statute, Article 27, section 577 of the Maryland Code, 1957 Ed. was read to the defendants and they were told by the manager, Albert R. Warfel, that they were trespassers, and they were then requested to leave. Upon their refusal to do so, police were summoned. Warfel was advised by the police that in order to have defendants ejected by the Baltimore City Police Department it would be necessary for him to obtain warrants for their arrest for trespassing. Warrants were obtained and the arrests followed. Defendants waived a hearing before the Magistrate at the Central Police Station and the

case was referred to the Grand Jury.

Defendants contend that their ejection from the restaurant, and subsequent arrest were violative of the Equal Protection and Due Process Clauses of the Fourteenth Amendment to the Constitution of the United States. The position of the State and the Restaurant Association of Maryland, appearing as Amicus Curiae, is that these clauses of the Fourteenth Amendment do not prohibit discriminatory action by private individuals, such as the proprietor of the restuarant here, nor do they inhibit state action in the form of arrest and conviction for trespass of persons who defy the proprietor's request to leave his property regardless of his reason for doing so. No cases supporting defendants' contention were cited to or found by this Court; on the other hand the State's position is firmly rooted in authority.

At the trial of this case, defendants' counsel repeated arguments made before the Supreme Court of the United States in the highly-publicized case of Boynton v. Virginia, 364 U.S. 454 (1960) and requested this Court to withhold its decision pending the outcome of that case. Since then the Boynton case has been decided, but nothing in the Court's opinion gives solace to defendants. While it is true that the Supreme Court reversed the Virginia Court's conviction of Boynton, an alleged trespasser in a privately owned restaurant, the Court avoided the Constitutional questions there presented (the same ones advanced here) and held that the restaurant at an interstate bus terminal, although privately owned, was an "integral part of the bus carriers transportation service for interstate passengers" and any racial discrimination in the restaurant violated provisions of the Interstate Commerce Act barring

discriminations of all kinds.

It is significant, this Court believes, that in Boynton, supra, the Court was careful to point out that "We are not holding that every time a bus stops at a wholly independent roadside restaurant the Interstate Commerce Act requires that restaurant service be supplied in harmony with the provisions of that Act."

Two recent decisions clearly in point are determinative of the principle that in the absence of appropriate legislation forbidding racial discrimination the operators of privately owned restaurants, even though generally open to the public, may discriminate against persons of another color or race, however unfair or unjust such policy may be deemed to be.

In a per curiam opinion the United States Court of Appeals for the Fourth Circuit, Slack v. White Tower, 284 F 2d 746 (1960), affirmed Judge Roszel Thomsen's decision holding, after an excellent summation of the applicable law, that a restaurant owner in refusing service to a Negro, violated no law nor did such refusal deprive the Petitioner of any constitutional guarantees, Slack v. White Tower, 181 F. Supp. 124 (1960).

In the most recent case dealing with efforts of Negroes to force the owners of business premises to open their establishments to all comers through so-called "sit-in" tactics, our Court of Appeals in Drews v. State, ___ Md ___, 167 A 2d 341 (1961) affirmed Judge W. Albert Menchine's conviction of four persons charged with disorderly conduct for refusing to leave Gwynn Oak Amusement Park in Baltimore County after being ordered to do so. Speaking for the Court, Judge Hammond pointed out that the duty imposed by the early common law to serve the public without discrimination was later confined to exceptional

callings where an urgent public need required its continuance, such as innkeepers and common carriers. Continuing Judge Hammond stated that

> " * * * Operators of most enterprises including places of amusement, did not and do not have any such common law obligation, and in the absence of a statute forbidding discriminations, can pick and choose their patrons for any reason they decide upon, including the color of their skin."

For the reasons stated this Court must find each defendant guilty on the first count of the indictment, and not guilty on the second count.

Each defendant is fined $10.00 and costs, the fine is suspended, the costs must be paid.

Joseph R Byrnes
Judge

Filed March 24, 1961