C
120 Md. 403, 87 A. 690

Court of Appeals of Maryland.
MAYOR AND **CITY COUNCIL** OF
BALTIMORE et al.
v.
DAVIS.
April 10, 1913.

Appeal from Baltimore City Court; James P. Gorter, Judge.

Action by Wallace G. Davis against the Mayor and City Council of Baltimore and others. Judgment for the plaintiff, and defendants appeal. Reversed without a new trial.

West Headnotes

Municipal Corporations 268 ⚷176(3.1)
268k176(3.1) Most Cited Cases
 (Formerly 268k176(3))
Acts 1912, c. 847, approved April 15, 1912, re-enacting Code Pub.Loc.Laws, art. 4, § 745, and providing that sergeants of police in Baltimore shall receive $22 per week, repeals by implication Acts 1912, c. 503, approved April 8, 1912, providing that police sergeants detailed for desk duty shall be paid $30 per week.

Statutes 361 ⚷158
361k158 Most Cited Cases

Statutes 361 ⚷159
361k159 Most Cited Cases
Repeals by implication are not favored, and both statutes will be permitted to stand if it can be done upon any reasonable construction.

Statutes 361 ⚷159
361k159 Most Cited Cases
The doctrine of repeal by implication is not favored in law, and will not be resorted to except where the repugnance or opposition is too clear and plain to be reconciled.

Statutes 361 ⚷166
361k166 Most Cited Cases
That act of 1912, c. 847, relating to salaries of sergeants of police in Baltimore, was a re-enactment of a section which was amended by Acts 1912, c. 503, does not prevent the implied repeal of chapter 503 by chapter 847.

Argued before BOYD, C. J., and BRISCOE, BURKE, THOMAS, PATTISON, URNER, STOCKBRIDGE, and CONSTABLE, JJ.

S. S. Field, of Baltimore, for appellants. J. Cookman Boyd and Peter J. Campbell, both of Baltimore, for appellee.

CONSTABLE, J.
The principal question involved in this appeal is whether chapter 503 of the Acts of 1912, which was approved April 8, 1912, is repealed by chapter 847 of the Acts of 1912, which was approved April 15, 1912. The prior act directs the police commissioners of Baltimore city to pay sergeants, assigned by them to do clerical work at police headquarters, not exceeding eight, the sum of $30 a week instead of $22 per week, the pay of sergeants provided for in section 745 of article 4 of the Code of Public Local Laws. The latter act repeals and reenacts with amendments section 745 of article 4 of the Code of Public Local Laws. Its provisions cover the whole police force of the city, providing for the appointment of the members, their numbers and salaries. The provisions in regard to sergeants are as follows: "Said police force shall consist *** of such number of sergeants as the board of police commissioners in their judgment may deem necessary. *** The members of the police force shall receive the following salaries, payable every two weeks, *** each sergeant twenty-two dollars per week." This act does not expressly repeal chapter 503, but by the second section thereof provides: "That all laws and parts of laws inconsistent with this act are hereby repealed, otherwise to remain in full force and effect."

Westlaw.

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The appellee, a sergeant assigned to do clerical work at headquarters, brought suit to recover from the city a balance he claimed was due him on account of salary. He claims that he was entitled to a weekly salary of $30, under chapter 503, and that the city had paid him only $22, under chapter 847. The appellant asked the court below to rule as a matter of law that chapter 503 was repealed by chapter 847. This the court refused, and, the judgment being against the city, it brought this appeal.

The appellant's contention is that the two acts are inconsistent, and that the latter repeals the former.

[1] It is not open to question that courts will hold a law to be repealed by a subsequent law without any express clause of repeal, where the two provisions are so repugnant that they cannot stand together.

[2] If, however, they can stand together, there is no repeal by implication. Webb v. Ridgely, 38 Md. 364. And in State v. Yewell, 63 Md. 121, this court quoted with approval from United States v. Tynen, 11 Wall. 92, 20 L. Ed. 153: "When there are two acts on the same subject, the rule is to give effect to both, if possible. But if the two are repugnant in any of their provisions, the latter act, without any repealing clause, operates to the extent of the repugnancy as a repeal of the first."

It is equally well settled that repeal of a former by a subsequent statute is not favored by the courts, and, if by a reasonable construction the two acts can be made to stand together, they will be harmonized. It is only when two acts are repugnant and plainly inconsistent that the later repeals the earlier. Yunger v. State, 78 Md. 575, 28 Atl. 404; Mining Co. v. C. & P. R. R., 81 Md. 35, 31 Atl. 698; Com. of P. G. County v. Laurel Com'rs, 51 Md. 457; School Com. v. Henkel, 117 Md. 97, 83 Atl. 89.

[3] Now let us look at the two acts to determine whether their provisions are so repugnant and inconsistent that they cannot be fairly harmonized. The act, dealing with the police force of Baltimore prior to the enactment of chapter 847, Acts of 1912, was section 745 of article 4 of the Code of Public Local Laws and had been enacted by chapter 234 of the Acts of 1908. So far as sergeants were concerned, this act provided a salary for all sergeants of $22 per week. By chapter 503, Acts of 1912, a qualification was made, giving sergeants, detailed for clerical work to headquarters, a salary of $30. The effect of this act was the same as an amendment to section 745. Subsequently chapter 847 was approved whereby chapter 234, Acts of 1908, was repealed and re-enacted so that "*each sergeant*" was to receive $22 per week. There was no provision whatever made for any sergeant detailed for clerical work.

We then have two acts dealing with the same subject; the earlier providing $30 per week for some sergeants, the later providing $22 per week for all. Can we give full effect to each of these acts so that each may stand? If we give full effect to chapter 503, certain sergeants will receive $30 a week; and, if we give the same effect and operation to chapter 847, each sergeant on the entire force can receive but $22. Therefore, the only method by which they both can stand would be to say that the prior act limits the effect of the later, and thus permit chapter 503 to stand at its full effect, and chapter 847 to stand, except in so far as it is limited and modified by chapter 503. In other words, we would be reading into the later act an exception that was not there. If that had been the intention***692** of the Legislature, they surely would have provided for sergeants doing clerical work, just as they did further on in chapter 847 for patrolmen doing clerical work. We are therefore of the opinion that chapter 503 is so repugnant and inconsistent with the provisions of chapter 847, relating to sergeants, that the two cannot stand together, and that therefore chapter 503 must fall.

[4] It is contended for the appellee that, because chapter 847 was a substantial re-enactment, so far as it related to sergeants, of the provisions of chapter 234, Acts of 1908, the operation of the latter continued uninterruptedly. It is a fact that the one is almost the exact reproduction of the other, but the difficulty in applying that principle arises from the fact that the very provision which they endeavor to revive is omitted from the new law, and the old law was only re-enacted as it stood prior to the passage of chapter 503. Therefore, if the old law allowed only $22 a week, its exact re-enactment could not allow any more than originally.

Because we think there was error in refusing the prayer of the appellant in asking the court to declare chapter 503, Acts of 1912, repealed by chapter 847, Acts of 1912, the judgment will be reversed without a new trial.

Judgment reversed without a new trial, with costs to appellant.

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