Michigan Law Review

Volume 44 | Issue 1

1945

ABSTRACTS

Mary Jane Plumer
University of Michigan Law School

Follow this and additional works at: https://repository.law.umich.edu/mlr

 Part of the Conflict of Laws Commons, Constitutional Law Commons, Courts Commons, and the Estates and Trusts Commons

Recommended Citation
Mary J. Plumer, *ABSTRACTS*, 44 MICH. L. REV. 165 (1945).
Available at: https://repository.law.umich.edu/mlr/vol44/iss1/8

This Regular Feature is brought to you for free and open access by the Michigan Law Review at University of Michigan Law School Scholarship Repository. It has been accepted for inclusion in Michigan Law Review by an authorized editor of University of Michigan Law School Scholarship Repository. For more information, please contact mlaw.repository@umich.edu.

ABSTRACTS

Mary Jane Plumer *

CONFLICT OF LAWS—APPLICATION OF STATE STATUTE OF LIMITATIONS IN DIVERSITY OF CITIZENSHIP CASE IN FEDERAL COURT—EXTENSION OF ERIE RAILROAD V. TOMPKINS—The Supreme Court granted certiorari in the principal case to decide upon "the extent to which federal courts, in the exercise of the authority conferred upon them by Congress to administer equitable reme-

* Managing Editor, MICH. L. REV.

dies, are bound to follow state statutes and decisions affecting those remedies." [1] Grace York instituted as a class suit an action based upon an alleged breach of trust on the part of petitioner, Guaranty Trust Company, and invoked the jurisdiction of the federal district court on the ground of diversity of citizenship. It was argued that a statute of limitations of New York, the state in which the cause of action, if any, arose, barred the action. The district court gave summary judgment for petitioner and the circuit court reversed,[2] holding that, for the purposes of the *Erie Railroad Company v. Tompkins* doctrine, state statutes of limitations are to be regarded in the federal courts as affecting not substantive rights but merely equitable "remedial rights." *Held,* reversed and remanded. The rule that the federal court will apply state law to matters of "substance," applies to suits in equity as well as to suits at law. The court then ruled that the statute of limitations was a matter of "substance" saying, ". . . the question is not whether a statute of limitations is deemed a matter of procedure in some sense. The question is whether such a statute concerns merely the manner and the means by which a right to recover, as recognized by the State, is enforced, or whether such statutory limitation is a matter of substance in the aspect that alone is relevant to our problem, namely, does it significantly affect the result of a litigation for a federal court to disregard a law of a State that would be controlling in an action . . . in a State court?" [3] *Guaranty Trust Company v. York,* (U.S. 1945).[4]

CONSTITUTIONAL LAW—CONSENT OF STATE TO SUIT—ACTION BROUGHT IN FEDERAL COURT TO RECOVER STATE TAXES—Petitioner, a non-resident foreign manufacturing corporation, brought an action in a federal district court against the Department of the Treasury of Indiana and officers, who together constituted the board of the department, to recover gross income taxes which petitioner alleged had been illegally exacted. The action was brought in accordance with an Indiana statute,[1] prescribing the procedure for obtaining refund of taxes, which provided that a taxpayer must first file a timely application for a refund with the state department of the treasury, and, upon denial, could then recover in an action against the "department." The statute further provided

[1] The court quoted from Russell v. Todd, 309 U.S. 280 at 294, 60 S. Ct. 527 (1940).

[2] (C.C.A. 2d, 1944) 143 F. (2d) 503.

[3] Principal case at 11 (United States Supreme Court advance sheet, June 18, 1945).

Justice Rutledge wrote a dissenting opinion, concurred in by Justice Murphy, in which he expressed the view that the cause should be remanded to the circuit court for a determination of the question whether the cause of action was barred. Unless that question were decided in the affirmative, the question decided by the majority would not come up. But if the question considered by the majority did come up, precedent demanded that it be decided the other way.

[4] For case note on circuit court of appeals decision see 44 COL. L. REV. 915 (1944). See also collection of material in 43 MICH. L. REV. 761 at 771, item 30; and 115 A.L.R. 1007 (1938).

[1] Ind. Stat. (Burns, 1943 Replacement), § 64-2614(a).

that any judgment obtained in such an action should be satisfied "out of any funds in the state treasury." [2] The district court denied recovery and the circuit court of appeals affirmed. The Supreme Court took the case on certiorari and defendant, for the first time, raised the defense that it was, under the 11th Amendment, immune from suit in the federal courts without its consent. *Held*, judgment vacated and cause remanded with direction to dismiss the complaint. The statute under which the action was brought authorized an action against the state officer in his official capacity and therefore the action was against the state. The legislature did not waive the state's immunity by enacting the statute. The statute provided that "the circuit or superior court of the county in which the taxpayer . . . is located shall have original jurisdiction . . . ." There is no clear indication here that the state intended to consent to suits in the federal courts, and "when we are dealing with the sovereign exemption from judicial interference in the vital field of financial administration a clear declaration of the state's intention to submit its fiscal problems to other courts than those of its own creation must be found." [3] Neither can it be said that the state attorney general waived immunity, though he appeared and defended the suit in the district and circuit courts. The Indiana Constitution provides that no *special* act shall be passed authorizing a suit against the state. The court said that "Since the state legislature may waive state immunity only by general law, it is not to be presumed, in the absence of clear language to the contrary, that they conferred on administrative or executive officers discretionary power to grant or withhold consent in individual cases." [4] *Ford Motor Co. v. Dept. of Treas. of Ind.*, (U.S. 1945) 65 S. Ct. 347.[5]

CONSTITUTIONAL LAW—FAIR LABOR STANDARDS ACT—MESSAGES NOT GOODS "PRODUCED" FOR SHIPMENT IN INTERSTATE COMMERCE—On writ of certiorari to the Supreme Court, petitioner telegraph company sought reversal of an order enjoining it from using messengers under sixteen and motor car drivers between the ages of sixteen and eighteen in the transmission of messages, in violation of section 12(a) of the Fair Labor Standards Act.[1] The act provides that "no producer, manufacturer, or dealer shall ship or deliver for shipment in commerce any goods produced . . . in or about which . . . any oppressive child labor has been employed." [2] Petitioner contended that telegraph messages were not "goods" which the company "produced" and "shipped" in inter-state commerce, within the meaning of the act. *Held*, judgment reversed. Although telegraph messages can be said to be "subjects of commerce" and, therefore, "goods," they cannot be said to be "produced" within the meaning of the act, since "handled" and "worked on" (the terms used in the act to

[2] Id. § 64-2614(b).

[3] The Court quoted (at p. 351) from United States v. Shaw, 309 U.S. 495 at 501, 60 S. Ct. 659 (1940).

[4] Principal case at 352.

[5] See item 113, 43 MICH. L. REV. 763 at 788 (1945).

[1] 29 U.S.C. (1940), § 212(a).

[2] 29 U.S.C. (1940), § 212(a).

define "produced" [3]), do not include handling in carriage or transmission. The court held further that messages were not "shipped" within the meaning of the act.[4] *Western Union Telegraph Co. v. Lenroot*, (U.S. 1944) 65 S. Ct. 335.[5]

CORPORATIONS—LIABILITY OF STOCK TO EXECUTION UNDER UNIFORM STOCK TRANSFER ACT WHERE STOCK CERTIFICATE IS OUTSIDE GEOGRAPHICAL JURISDICTION OF COURT—Plaintiff was ordered by the Multnomah County, Oregon, court to surrender to the sheriff of that county stock certificates owned by plaintiff and at that time kept in a safety deposit box in Vancouver, Washington; the certificates to be sold and the proceeds used to pay a judgment rendered by the same court against plaintiff. Plaintiff appealed on the ground that under the Uniform Stock Transfer Act, the certificate was personal property, not merely an evidence of ownership of stock; its situs was in Washington and not subject to execution in Oregon. *Held*, affirmed. Under the Uniform Act an attachment or levy on stock may be made effective by enjoining the holder from transferring the certificate,[1] and by the sheriff leaving a copy of the writ of attachment with the proper officers of the corporation.[2] Both the debtor and the corporations in which he owned stock were in Oregon, but according to section 13 of the Uniform Act,[3] no new certificate could be issued unless the old one had been lost or destroyed. However, section 14 provides that a creditor whose debtor is the owner of the certificate is entitled to "such aid from the courts of appropriate jurisdiction by injunction or otherwise, in attaching the certificate or satisfying the claim by means thereof as is allowed at law or in equity, in regard to property which cannot readily be attached or levied upon by ordinary legal process." [4] Under this section, the action of the court was proper. *Hodes v. Hodes*, (Ore. 1945) 155 P.(2d) 564.[5]

CRIMINAL LAW—CONSTITUTIONAL LAW—REVERSAL OF STATE COURT CONVICTION ON GROUND OF WANT OF DUE PROCESS—At the trial at which one Malinski was convicted of murder, evidence was admitted of certain confessions made by Malinski concerning his guilt. The evidence was that Malinski had been held in a hotel room for four days without arraignment. During the first day he had not been permitted to see a lawyer and had been deprived of his clothes for most of the day. There was some evidence that he had been beaten but this was disputed. On the afternoon of the first day Malinski con-

[3] Fair Labor Standards Act of 1938, § 31(j), 29 U.S.C. (1940), § 203(j).

[4] Justice Murphy filed a dissenting opinion, concurred in by Justices Black, Douglas, and Rutledge.

[5] For other cases construing the F.L.S.A. see 43 MICH. L. REV. 761, item 2. (1945). See also Radin, "A Case Study in Statutory Interpretation," 33 CAL. L. REV. 219 (1945); and see generally Davisson, "The Scope of the Fair Labor Standards Acts," 43 MICH. L. REV. 867 (1945); 29 IOWA L. REV. 606 (1945).

[1] Uniform Stock Transfer Act § 13, Ore. Comp. Laws Ann. (1940) § 78-113.

[2] Ore. Comp. Laws Ann. (1940) §§ 6-1501 and 7-206.

[3] Id. § 78-113.

[4] Id. § 78-114.

[5] See 122 A.L.R. 338 at 366 et seq. (1939).

fessed to the crime and on the second and third days he identified a car connected with the crime and the place of the crime, and early in the morning of the fifth day he made a full confession. The first confession was not introduced as evidence but was referred to at the trial as bearing upon the voluntary character of the other confessions, which were admitted. The prosecutor also made reference in his summary to the jury to this first confession in such a way as to indicate that it was involuntary. The question of the character of the confessions admitted in evidence was submitted to the jury with the instruction that if they were found to be the result of coercion, they were invalidated by statute. No objection was made to the references to this first confession, or to the instructions to the jury on this point. On appeal from the conviction, the Court of Appeals of New York found that none of the confessions were, as a matter of law, involuntary, and affirmed the conviction.[1] The Supreme Court granted certiorari to decide the question of "due process" and *held*, reversed. The Court, speaking through Justice Douglas, said that "the question whether there has been a violation of the due process clause of the Fourteenth Amendment by the introduction of an involuntary confession is one on which we must make an independent determination on the undisputed facts .... If all the attendant circumstances indicate that the confession was coerced or compelled, it may not be used to convict a defendant." [2] The Court then examined the evidence summarized above and came to the conclusion that the first confession was coerced and that since the judgment then rested in part upon a confession obtained by coercion, the case should be remanded.[3] *Malinski v. People of State of New York*, (U.S. 1945) 65 S. Ct. 781.

FEDERAL COURTS—INTERLOCUTORY REVIEW—DIRECT APPEAL TO SUPREME COURT UNDER SECTION 262 OF JUDICIAL CODE—Petitioners, by certiorari, sought review in the Supreme Court of an order of the federal district court denying petitioners' motion for dissolution of a preliminary injunction, which had been issued against them in a suit brought by the United States under the Anti-Trust laws. The preliminary injunction prohibited petitioners, who were foreign corporations, from disposing of any property in the United States until the court should determine the issues of the case. *Held*, an order granting a preliminary injunction is reviewable under the statute authorizing the issuance of writs not otherwise specifically provided for [1] where the order affects a matter outside the issues of the case, and is beyond the power of the court issuing it, for

[1] 292 N.Y. 370, 55 N.E. (2d) 357 (1944).

[2] Principal case at 783.

[3] A concurring opinion was written by Justice Frankfurter; Chief-Justice Stone and Justices Roberts, Reed, and Jackson dissented; Justices Murphy and Rutledge dissented from the affirmance of the judgment against one Rudish, who was tried with Malinski.

[1] Judicial Code § 262, 28 U.S.C. (1940), § 377.

otherwise it could never be corrected.[2] *De Beers Consolidated Mines, Ltd. v. United States*, (U.S. 1945) 65 S. Ct. 1130.[3]

FUTURE INTERESTS—MEANING OF "NEXT NEAREST OF KIN"—Testator provided in his will that his entire estate be divided equally among his four children (except for a bequest of $1000 to his daughter, Anne Lee Warren, in addition to her share), the entire estate to be held in trust "for the benefit of the heirs named . . ." until the youngest reaches the age of twenty-one years. It was further provided that the bequests made to Anne Lee Warren were to be held in trust "for the benefit and use of Anne Lee Warren during her natural life, *and at her death without children her estate to descend to the next nearest of kin.*" [1] This action was brought after the death without surviving descendants of Anne Lee Warren by the successor trustee under the will for a construction of the terms of the will. The claimants are Guy Warren, sole surviving brother of Anne Lee Warren, and Thomas Penner, grandson of a deceased brother. Warren claimed the entire estate on the ground that since he was a son of the testator, and Penner was only a great-grandson, he was the "next nearest of kin." Penner claimed that "next nearest" meant "second nearest" and therefore he should inherit the entire estate. *Held*, affirming the lower court on this point, the estate should be divided equally between the two claimants. The court arrived at this conclusion by determining the intent of the testator, as it appeared from a consideration of the will, to be that "next nearest of kin" meant a class composed of those persons referred to as "heirs" (as used by testator to denote wife and children) or their descendants. *St. Louis Union Trust Co. v. Kaltenbach*, (Mo. 1945) 186 S.W. (2d) 578.[2]

INJUNCTION—POWER OF COURT TO ENJOIN DISPOSAL OF ASSETS UNDER ANTI-TRUST LAWS—Petitioners, foreign corporations doing business in the United States, were charged, in a complaint filed in the district court by the United States, with conspiracy to restrain and monopolize the commerce of the United States with foreign nations in gem and industrial diamonds in violation of the anti-trust laws.[1] The Court granted a motion filed by the United States for a preliminary injunction restraining petitioners from withdrawing from the United States any property located therein, and from disposing of such property "until such time as the court shall have determined the issues of this case and defendant corporations shall have complied with its orders." [2] The district

[2] Four members of the Court (Justices Douglas, Black, Murphy and Rutledge) dissented. They thought that in providing in the Expediting Act that in suits in equity under the Anti-Trust Act in which the United States is complainant, the appeal from the *final* decree of the trial court should be direct, Congress indicated its intent to except mere interlocutory decrees. There was nothing unusual about this interlocutory decree, they said, which would take it out of this rule.

[3] For a more complete statement of the facts of this case see below, INJUNCTION.

[1] Quoted by court in principal case at p. 580. (Italics the court's.)

[2] For construction of "next of kin" see 133 A.L.R. 597 at 601 (1941); 126 A.L.R. 157 at 169 (1940).

[1] Sherman Anti-Trust Act, § 1, as amended, and § 2, 15 U.S.C. (1940), §§ 1, 2; Wilson Tariff Act, § 73, 15 U.S.C. (1940), § 8.

[2] Principal case at 1132.

court based its power upon section 4 of the Sherman Act [3] and section 262 of the Judicial Code,[4] reasoning that such a decree was necessary as the only means of enforcing "any order or decree which the Court *may* render." Otherwise petitioners might remove their assets and render sequestration of their property impossible. On certiorari under section 262,[5] *held*, reversed. Neither section 4 of the Sherman Act nor section 262 of the Judicial Code enlarge the general equity powers of the Court. A preliminary injunction is appropriate to grant intermediate relief of the same character as that which may be finally granted, but there is no jurisdiction under the Sherman and Wilson Acts to enter a money judgment. In fact, there is no precedent for such an injunction and to create one would permit "every suitor who resorts to chancery for any sort of relief by injunction . . . on a mere statement of belief that the defendant can easily make away with or transport his money or goods, to impose an injunction, indefinite in duration, disabling him to use so much of his funds or property as the court deems necessary for security or compliance with a possible decree." [6] *DeBeers Consolidated Mines, Ltd. v. United States*, (U.S. 1945) 65 S. Ct. 1130.

LABOR LAW—FAIR LABOR STANDARDS ACT—AUTHORITY OF ADMINISTRATOR TO ABOLISH INDUSTRIAL HOMEWORK UNDER SECTION 8(f)—In order to make effective a minimum wage order, based upon the recommendations of an industry committee for the embroideries industry, the Wage and Hour Division Administrator ordered that "homework" in the industry be prohibited. At peak employment there were 8,500 to 12,000 homeworkers in the industry while there were about 18,500 factory workers. The administrator relied for his authority for the order upon section 8(f) of the Fair Labor Standards Act, which provides that, "Orders issued under this section . . . shall contain such terms and conditions as the administrator finds necessary to carry out the purposes of such orders, to prevent the circumvention or evasion thereof, and to safeguard the minimum wage rates established therein." [1] In a proceeding to review the order, the circuit court of appeals sustained it and the Supreme Court granted certiorari to decide the single question, whether, granting that the prohibition was "necessary," i.e., absolutely essential to accomplish the purposes of the order and of the statute, the administrator had authority to issue it. Petitioner argued that the prohibition was not a "method of enforcement," but "a form of experimental social legislation" touching a matter not incidental to the order and therefore beyond the administrator's power. They seem also to have made other arguments that Congress did not intend to authorize such

[3] That section reads, in part, ". . . and pending such petition [i.e. the petition by which proceedings under the Act are begun] and before final decree, the court may at any time make such temporary restraining order or prohibition as shall be deemed just in the premises." 15 U.S.C. (1940), § 4.

[4] That section reads, in part, ". . . the district courts shall have power to issue all writs not specifically provided for by statute, which may be necessary for the exercise of their respective jurisdictions, and agreeable to the usages and principles of law." 28 U.S.C. (1940), § 377.

[5] Discussed at p. 169, supra.

[6] Principal case at 1135.

[1] 29 U.S.C. (1940), § 208 (f).

an order, based upon the legislative history of the act, and upon the provisions which seemed to indicate a contrary intent. *Held*, affirmed. The administrator is authorized "to include 'such terms and conditions' as he finds necessary to carry out the purposes of such orders." Nothing in the statute, or in the legislative history thereof, forbids him to take "the only measures which would be effective, merely because other consequences necessarily would follow." [2] Justice Roberts wrote a dissenting opinion, concurred in by Chief Justice Stone, in which he interpreted the section in question as authorizing the administrator to facilitate enforcement only by such orders as pertain to keeping records or filing reports. *Gemsco, Inc. v. Walling*, (U.S. 1945) 65 S. Ct. 605.[3]

LIMITATION OF ACTIONS—RIGHT TO DEFICIENCY JUDGMENT UNDER MORTGAGE WHERE NOTE SECURED BY IT IS BARRED BY STATUTE OF LIMITATIONS—Plaintiff brought an action to recover a judgment for a deficiency arising out of a mortgage foreclosure sale. The mortgage foreclosed was given as security for a debt evidenced by promissory notes, but the mortgage itself also contained a covenant to pay the debt. Defendant argued that since more than six years elapsed between the time the notes were declared due and the time that the action was brought, and since a six year statute of limitations is provided with reference to "an action upon a contract, obligation or liability, express or implied," [1] the action was barred. Plaintiff contended that the applicable statute was the ten-year statute of limitations with reference to "an action upon a contract contained in any conveyance or mortgage of or instrument affecting the title to real property." [2] The trial court dismissed the action and plaintiff appealed. *Held*, reversed. "In this state a note and mortgage are separate contracts. . . . They afford separate remedies. . . . Neither [the six year statute of limitations applying to the note, nor the ten year statute applying to the contract contained in the mortgage] . . . extinguishes the debt. Each bars the remedy to which it applies. . . . Thus we are impelled to the conclusion that a statute which bars the remedy on a note does not bar the right of the owner of the debt to enforce the promise contained in the mortgage . . ." [3] *Lincoln Nat. Life Ins. Co. v. Kelly*, (N.D. 1945) 17 N.W. 906.[4]

TAXATION—TAX IMMUNITY OF FEDERAL HOUSING—The Federal Public Housing Authority sought an injunction against taxing officials of Cuyahoga County, and the City of Cleveland to restrain them from attempting to assess and collect taxes under Ohio law on lands in the city and county belonging to the United States. The lands in question were condemned under the National Recovery program for low-cost dwelling units, and the units, erected by the Federal Public Housing Authority, were leased to Cleveland Metropolitan

[2] Principal case at 613.

[3] For an annotation on the problem involved see 155 A.L.R. 782 (1945), and 143 A.L.R. (1943).

[1] N.D. Rev. Code (1943) § 28-0116 quoted by the court in principal case at 908.

[2] N.D. Rev. Code (1943) § 28-0115 quoted by the court in principal case at 908.

[3] Principal case at 909-910.

[4] See 124 A.L.R. 640 (1940).

Housing, a State of Ohio Authority. Appellant contended that the United States Housing Act is unconstitutional because Congress has no power to establish low-cost housing projects. The lower court granted the injunction. The dissenting judge said that the government couldn't engage in private business in such a way as to immunize the property employed from normal state taxation to support local police and other services required of the community of which the housing project forms a part. *Held*, affirmed. It was constitutional for Congress to enact the Housing Act "to promote the general welfare of the nation," [1] and for it specifically to exempt the property held thereunder from state taxation.[2] The court pointed out further that the act authorizes agreements with the authority to pay annual sums, not exceeding taxes which would otherwise be paid, in lieu of taxes.[3] *City of Cleveland v. United States*, (U.S. 1945) 65 S. Ct. 280.

WILLS—FUTURE INTERESTS—EFFECT OF WILL CONTEST BY LEGATEE FOR PROBABLE CAUSE WHERE LEGACY CONDITIONED UPON PROVISION AGAINST WILL CONTEST—Decedent, after providing in his will for specific bequests to his two surviving brothers and two surviving sisters who would have been his heirs, directed that if any person entitled to a legacy under the will should directly or indirectly contest the will, "all legacies . . . declared in favor of such person . . . shall immediately thereupon be revoked." [1] This action was instituted by the administrator of decedent's will to ascertain whether or not decedent's sister, Fanny Watkins, who had contested the will, and his other sisters and brother who participated in the contest, had forfeited their bequests. The trial court decided, following *Moran v. Moran*,[2] that the provision in the will was operative, but dismissed the action on the ground that the administrator was not the proper person to bring it. *Held*, the executor was the proper person to institute the proceedings, but, overruling *Moran v. Moran*, the condition in the will "will not be enforced against one who contests the will in good faith and for probable cause." [3] The reason given by the court for overruling its earlier decision is that it is against public policy to give a man the choice between contesting a will secured by fraud, or undue influence, or one executed by an incompetent, or forged, and accepting his legacy. The fact that the brother and sister found within the forfeiture clause by the lower court had acted on the advice of counsel in contesting the will, the fact that the judge who presided over the trial of the will contest was satisfied that a jury question was presented, and the fact that the jury deliberated for 29 hours before returning for further instructions and then stayed out six more hours before returning a verdict, indicates that the contest was in good faith. The cause was remanded for entry of supplemental judgments in accord with the opinion. *In re Cocklin's Estate*, (Iowa 1945) 17 N.W. (2d) 129.[4]

[1] 42 U.S.C. (1940), § 1401.
[2] 42 U.S.C. (1940), § 1405(e).
[3] 42 U.S.C. (1940), § 1413.

[1] Principal case at 130.
[2] 744 Iowa 451, 123 N.W. 202 (1909).
[3] Principal case at 135.
[4] See 125 A.L.R. 1135 (1940); 146 A.L.R. 1211 (1943).