Volume 40 | Issue 4 Article 18

June 1934

Trusts--Constitutional Law--Retroactivity of Provision of 1931 Code as to Parol Trusts

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TRUSTS — CONSTITUTIONAL LAW — RETROACTIVITY OF PROVISION OF 1931 CODE AS TO PAROL TRUSTS. — In 1930 plaintiff by deed conveyed land to defendant on parol trust for plaintiff. In 1933 plaintiff seeks a reconveyance. In the meantime 36-1-4 had been enacted, requiring a writing only in the case of a declaration of trust by settlor. Held: In the absence of fraud, grantor cannot here set up a parol trust in his favor; and the statute of 1931 does not effect the rule, so far as it relates to deeds executed prior thereto. *Hall v. Burns.*[1]

When Virginia[2] and in turn West Virginia[3] enacted their Statutes of Frauds, Sec. VII of the English Statute of Frauds[4] making a writing necessary in order to create enforceable express trusts, was omitted. As a consequence, it would seem that in West Virginia all parol trusts were valid. But in the early case of *Troll v. Carter*[5] the rule was laid down that a grantor could not have an oral trust in his favor because it violated the parol evidence rule and the Statute of Frauds. It is argued that the parol evidence rule has nothing to do with the case.[6] However, the rule and its reasons were followed by a long line of decisions until it became settled law in West Virginia.[7]

36-1-4[8] was enacted to "clarify the law upon the whole subject of trusts."[9] Can it operate retroactively so as to change the result reached in the principal case?

It is suggested that the answer may be derived from the analogous instance in the field of retroactive laws, of reviving an

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[1] 169 S. E. 522 (W. Va. 1933).

[2] HENING, STATS. AT LARGE, vol. 12, (1785) c. LXIV; CODE OF VIRGINIA (1923) c. 232.

[3] CODE (1868) c. 98; BARNES' W. VA. CODE (1923) c. 98; W. VA. REV. CODE (1931) c. 31, art. 1, §§ 3 & 4.

[4] 29 CHAS. II c. 3 (1676).

[5] 15 W. Va. 567 (1879).

[6] Madden, *Trusts and the Statute of Frauds* (1924) 31 W. VA. L. Q. 166. Of course, the parol evidence rule should not apply normally in equity; otherwise there never could be rescission for duress or fraud, or reformation for mutual mistake of fact, etc.

[7] Zane v. Fink, 18 W. Va. 693 (1881);; Pusey v. Gardner, 21 W. Va. 469 (1883); Pain v. Cox, 23 W. Va. 594 (1884); Handlan v. Handlan, 42 W. Va. 309, 26 S. E. 179 (1896); Richardson v. McConaughey, 55 W. Va. 546, 47 S. E. 287 (1904); Crawford v. Workman, 64 W. Va. 19, 61 S. E. 322 (1908); Hawkinberry v. Metz, 91 W. Va. 637, 640, 114 S. E. 240 (1922).

[8] "No declaration of trust of land shall be enforceable, unless it be made in writing, signed by the person who declared such trust, or by his agent. If a conveyance of land, not fraudulent, is made to one in trust, either for the grantor or a third person, such trust may be enforced, though it be not disclosed on the face of the conveyance, nor evidenced by writing . . . . . "

[9] See Revisers' note to 36-1-4 *supra* n. 8.

action barred by the statute of limitations. There are three views as to the validity of such laws:[10] 1. These are valid.[11] 2. These are invalid.[12] 3. These are permissible where the circumstances appeal with some strength to the prevailing views of justice.[13] Yet all cases under the first and third group agree that the scope of valid retroactivity is limited, and does not extend to reviving actions barred by the statute of limitations, involving title to specific property.[14]

The parol evidence rule is, in West Virginia, a rule of substantive law,[15] and fixed the status of the parties in the deed of 1930. Those "vested rights must not be disturbed".[16]

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[10] Note (1924) 19 ILL. L. REV. 355.

[11] Campbell v. Holt, 115 U. S. 620, 29 L. Ed. 483 (Tex. 1885). (Removal of the statute of limitations with regard to a debt); see also, 45 L. R. A. 609, for a summary of cases.

[12] Board of Education v. Blodgett, 155 Ill. 441 (1895); Eingartner v. Illinois Steel Co., 103 Wis. 373 (1899); see also, 45 L. R. A. 609.

[13] Danforth v. Groton Water Co., 178 Mass. 472 (1901); Dunbar v. Boston & P. R. Corp., 181 Mass. 383 (1902); Southern Pacific Co. v. Jensen, 244 U. S. 205 (N. Y. 1917).

[14] *Supra* n. 11 and n. 13. (In Campbell v. Holt, p. 623, the court says, "It may, therefore, very well be held that, in an action to recover real or personal property, where the question is as to the removal of the bar of the statute of limitations by a legislative act passed after the bar has become perfect, such act deprives the party of his property without due process of law. *The reason is, that, by the law in existence before the repealing act, the property had become the defendant's. Both the legal title and real ownership had become vested in him, and to give the act the effect of transferring this title to plaintiff, would be to deprive him of his property without due process of law.*"

[15] JONES, COMMENTARIES ON EVIDENCE (2d ed.) § 1842; GREENLEAF (16th ed) § 305a; WIGMORE ON EVIDENCE (2d ed.) § 2400; 22 C. J. p. 1075, § 1380.

[16] Johnson v. Sanger, 49 W. Va. 405, 38 S. E. 645 (1901); 12 C. J. on Constitutional Law, § 486; 6 R. C. L. on Constitutional Law, § 293. See also, *supra* n. 14.