North Dakota Law Review

Volume 17 | Number 4 Article 5

1940

Courts - Authority of State Decisions

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sequently if the provisions of subsections (s) (3) are construed strictly, there is the questtion of what is meant by "inability to refinance" and also when may the creditor use this as a basis for a sale. In the case of Wright v. Vinton Branch, supra, the court appeared to take the stand that there must be evidence only after a "reasonable time" that the debtor is unable to refinance himself, and the case of Bartels v. John Hancock Mutual Life Insurance Company, 100 F. (2d) 813 (C. C. A. 5th, 1938), aff'd, 308 U. S. 180, 60 Sup. Ct. 221 (1939), would seem to interpret the "reasonable time" liberally. Nevertheless, the Supreme Court held in the instance case that even though the creditor does secure a termination of the three-year stay, the debtor still has the right to purchase at the appraised or reappraised value prior to a public sale.

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COURTS—AUTHORITY OF STATE DECISIONS IN FEDERAL COURTS

In an action to compel a corporation to restore remaindermen's rights in shares of stock which the corporation had wrongfully transferred to a life tenant without any disclosure of the limitation appearing upon the certificate, an intermediate appellate court of Ohio denied relief upon the ground that under Ohio law it was a prerequisite to recovery that remaindermen allege and prove demand upon the corporation to restore the remaindermen's rights, and that corporation had refused said demand. Demand was then made by the remaindermen and suit was instituted in a federal court, there being diversity of citizenship. Held, that federal courts are bound to apply a decision of an intermediate appellate state court as the "state law," when there has been no determination of the point in question by the state supreme court, and in the absence of persuasive data that the highest court of the state would decide differently. West et al. vs. American Telephone and Telegraph Company, 311 U. S. —, 61 S. Ct. 179, 85 L. ed. 146 (Ohio, 1940).

This is the farthest the Supreme Court has ever extended the doctrine of "state law" as defined in Sec. 34 of the Judiciary Act of 1789, 28 U. S. C. A. Sec. 725, 8 F. C. A. Tit. 28 Sec. 725; 28 U. S. C. Sec. 726; said provision reading: "The laws of the several states, except where the Constitution, treaties, or statutes of the United States otherwise require or provide, shall be regarded as rules of decision in trials at common law, in the Courts of the United States, in cases where they apply."

The construction of this section as announced in Swift v. Tyson, 16 Pet. 1, 10 L. ed. 865 (1842), was followed for almost a century, and with increasing dissatisfaction by many judges and attorneys. In brief, the Swift case held that "state law" under

Section 34 applies only to positive state statutes and their interpretation by local tribunals and to local usages of a fixed and permanent nature, but not to questions of a more general character. But finally by its decision in Erie Railroad Company v. Tompkins, 304 U. S. 64, 58 S. Ct. 817, 82 L. ed. 1188, 114 A. L. R. 1487 (1938), the Supreme Court ended the checkered career of Swift v. Tyson, supra, with its doctrine of general federal law, ruling that the law to be applied in any case is the law of the state, whether declared by the state legislature in a statute or by the highest state court in a decision, and whether it be a matter of "general" law, or "local" law, there being no federal common law. Of course constitutionally recognized federal fields, such as bankruptcy, remain unaffected.

The main point to be noted in the recent case of West et al. v. American Telephone and Telegraph Company, supra, is that it went a step further than Erie Railroad Company v. Tompkins, supra, and held that federal courts are bound to follow decisions of a county court of appeals, in the absence of applicable decisions by the State Supreme Court. There is only one previous federal decision in accord with the doctrine announced in the West case. In re Shyvers, 33 F. Supp. 643 (1940), holds that a decision of a California District Court of Appeals, rehearing of which was denied by the California Supreme Court, is to be regarded as binding upon federal courts in California. On the other hand there have been numerous recent federal decisions to the contrary, holding that federal courts are not bound to follow decisions of intermediate appellate state courts. The Court states in the West case that decision of an intermediate appellate state court is not to be disregarded by a federal court, unless it is convinced by other persuasive data that the highest court of the State would hold otherwise. The question arises, what is meant by other persuasive data? It could not be a decision of the state supreme court on the same point as such decision would be controlling in the case under determination. It therefore seems that "persuasive data," as used, refers either to cases decided by the state supreme court which, although not in point, are similar to the immediate case; or that there has been some indication by dictum from the state supreme court that the point would be decided in a certain way. Conversely, the Court appears to indicate that inasmuch as that in the West case the Ohio Supreme Court had refused to review the decision of the intermediate appellate state court, this might be "persuasive data" that the State Supreme Court would be in accord with the inferior state court, thus making a stronger case in favor of following the decision of intermediate state court by the federal court.

What is to be done in the case where there are no state decisions for the federal courts to follow? The general rule seems to be that the point will be determined in light of general jurisprudence on the subject, and of state decisions on analogous question. Life. Assur. Assoc. of U. S. vs. First National Bank of Birmingham, 113 F. (2d) 272 (1940). Thus federal courts

may yet, just as state courts, have to ascertain common law points of first impression in the jurisdiction.

In conclusion, what is to be the "state law" where there are two or more appellate state courts in conflict in their decisions, and no State Supreme Court holding? When the supreme court decisions of the state are in conflict, the later decision is controlling on the federal court as expressing the present state law. Dayton and Michigan R. Co. v. Commission of Internal Revenue, 112 F. (2d) 627 (1940). It is submitted that the same method could be used in respect to intermediate appellate state courts, or possibly the law as determined by the state appellate court division in which the federal court in question is sitting could be used as the proper reference. In time, no doubt, the questions arising from the decision in the Erie Railroad Company case will be answered, as they come up before the United States Supreme Court, and the principal case is one helpful as a partial clarification of what is meant by "state law."

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OUR SUPREME COURT HOLDS

In Christine Messersmith, Pltf. and Applt., vs. Leo R. Reilly et al., Defts. and Respts.

That a promissory note containing a provision to pay interest at a rate which is lawful at the time the note is executed is not rendered usurious by the execution of a subsequent supplementary contract agreeing to pay interest in excess of the lawful rate as consideration for the extension of the time of payment of the original note.

That in the absence of legislative intent showing the contrary, a statute is deemed to act prospectively only; and legislation reducing the rate of lawful interest which may be charged, enacted subsequent to the execution of a note providing for interest at a rate then valid, does not taint the promissory note with usury.

That where after the execution of a promissory note, providing for the payment of interest at a valid rate, a contract is made to pay interest at a usurious rate, the payments of interest under such second contract must be credited upon the principal; but the rate specified in the promissory note stands. Appeal from the judgment of the District Court of Stark County; Hon. Harvey J. Miller, Judge. AFFIRMED. Opinion of the Court by Burr, Ch. J.

In State of North Dakota ex rel Reo L. Knauss, Petr., vs. Joseph Kohler, as Sheriff of Burleigh County, Respt.

That where a defendant has been convicted in a police magistrate's court of violating a city ordinance and sentenced to both fine and imprisonment, he may appeal to the district court from a judgment of conviction within ten days from the pronouncement of such judgment.

That where, in appealing from a police magistrate's court to a district court, the appellant files a notice of appeal which has not been served on the city attorney, and also files an undertaking on appeal limited in amount