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## CONSTITUTIONAL LAW-REVIEW OF STATE COURT DETERMINATION-SUPREME COURT'S VACATION OF STATE COURT JUDGMENT WITHOUT GIVING GROUNDS FOR REVERSAL

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CONSTITUTIONAL LAW—REVIEW OF STATE COURT DETERMINATION—  
SUPREME COURT'S VACATION OF STATE COURT JUDGMENT WITHOUT GIVING  
GROUNDS FOR REVERSAL—The Supreme Court of the United States granted  
plaintiff's petition for certiorari to review a decision of the Supreme Court of  
California summarily denying plaintiff's application for habeas corpus. Pre-  
viously the cause had been continued to enable petitioner to secure a determina-

tion of the California Supreme Court as to whether its judgment was intended to rest on an adequate independent state ground.<sup>1</sup> It was later held that a letter from the clerk of that court was not a sufficient determination of that question,<sup>2</sup> and petitioner was still unable to obtain that determination. *Held*, judgment of the Supreme Court of California is vacated and the cause remanded to resolve the doubt as to the jurisdiction of the United States Supreme Court. *Dixon v. Duffy*, 344 U.S. 143, 73 S.Ct. 193 (1952).

To warrant jurisdiction over an appeal from a state court's decision the Supreme Court has adhered to the principle that it must appear affirmatively on the record, not only that a federal question was presented for decision to the highest court of the state having jurisdiction, but also that its decision of the federal question was necessary to determination of the cause.<sup>3</sup> In cases in which the record is ambiguous but presents reasonable grounds to believe that the judgment may rest on a decision of a federal question the Supreme Court has followed three procedures. The traditional approach<sup>4</sup> has been dismissal of the appeal.<sup>5</sup> A later development was vacation of the judgment and remanding for further state court consideration. This procedure has been applied to cases coming from state courts where supervening changes in the law had occurred since entry of the judgment<sup>6</sup> where the record failed adequately to state facts underlying the decision of a federal question,<sup>7</sup> and where grounds of the state court decision were obscure.<sup>8</sup> The latest procedure employed has been continuance of the cause<sup>9</sup> for such period as will enable petitioners to apply speedily to the state court for amendment, or a certificate<sup>10</sup> which will show whether the decision of a federal question was necessary to the judgment rendered. This last procedural approach is the most recent technique applied

<sup>1</sup> *Dixon v. Duffy*, 342 U.S. 33, 72 S.Ct. 10 (1951).

<sup>2</sup> *Dixon v. Duffy*, 343 U.S. 393, 72 S.Ct. 859 (1952).

<sup>3</sup> *Honeyman v. Hanan Exr.*, 300 U.S. 14, 57 S.Ct. 350 (1937); *Woolsey v. Best*, 299 U.S. 1, 57 S.Ct. 2 (1936); *Eustis v. Bolles*, 150 U.S. 361, 14 S.Ct. 131 (1893).

<sup>4</sup> *Johnson v. Risk*, 137 U.S. 300, 11 S.Ct. 111 (1890); *Adams v. Russell*, 229 U.S. 353, 33 S.Ct. 846 (1913); *Lynch v. New York*, 293 U.S. 52, 55 S.Ct. 16 (1934).

<sup>5</sup> *Cf. Murdock v. Memphis*, 20 Wall. (87 U.S.) 590 (1874), where the Court on deciding that state law governed the question affirmed the state court decision. Later practice was to dismiss in this situation.

<sup>6</sup> *Patterson v. Alabama*, 294 U.S. 600, 55 S.Ct. 575 (1935); *State Tax Comm. v. Van Cott*, 306 U.S. 511, 59 S.Ct. 605 (1939).

<sup>7</sup> *Villa v. Van Schaik*, 299 U.S. 152, 57 S.Ct. 128 (1936).

<sup>8</sup> *Honeyman v. Hanan*, note 3 *supra*; *Minnesota v. National Tea Co.*, 309 U.S. 551, 60 S.Ct. 676 (1940). The latter case appears to be the first square holding that the Supreme Court will vacate and remand instead of dismissing when it does not clearly appear in light of possible alternative grounds for the state court decision, that the decision was rested exclusively on a federal question. See *Patterson*, "Federal Review of Ambiguous State Court Decisions," 27 VA. L. REV. 900 (1941).

<sup>9</sup> *Herb v. Pitcairn*, 324 U.S. 117, 65 S.Ct. 459 (1945); *Loftus v. Illinois*, 334 U.S. 804, 68 S.Ct. 1212 (1948).

<sup>10</sup> *Cf. Railroad Co. v. Rock*, 4 Wall. (71 U.S.) 177 (1866); *Seaboard Airline Ry. Co. v. Duvall*, 225 U.S. 477, 32 S.Ct. 790 (1912); *Purcell v. N.Y. Central R. Co.*, 296 U.S. 545, 56 S.Ct. 173 (1935), as to insufficiency of a certificate by chief justice or presiding justice of state court.

by the court in these cases.<sup>11</sup> In justifying its vacating of state court judgments in this situation the Supreme Court reasons that in setting aside the judgment and remanding the case for further consideration it is not, in a proper sense, reviewing the state court's decision<sup>12</sup>—a pulling oneself *down* by his own bootstraps argument. The very real dilemma the Supreme Court faces in this situation, no matter which procedural path it follows, is vividly demonstrated by the principal case. Where there is a strong indication that a federal question controlled the decision below, the court is hesitant to dismiss for fear that the state court will be the final arbiter of an important issue under the Federal Constitution in the particular case because of an ambiguous or summary decision.<sup>13</sup> Continuance of the cause until the state court clarifies the grounds for its decision is practicable only where state court procedure envisages such action,<sup>14</sup> which it did not in the principal case. In this case the Court held that a letter from the clerk of the state court was not a sufficient determination of the question raised, and the state court felt that it had no jurisdiction to take any further action.<sup>15</sup> This led the Court to follow the remaining procedural device, vacation of the state court judgment, and remanding for clarification on further consideration by the state court. The difficulty involved in following the last course of action is that although the Supreme Court has the power to vacate and remand, the state court may at its pleasure reinstate the judgment without any further clarification, especially when the grounds for its decision appear to be obviously clear locally. This has happened on several occasions,<sup>16</sup> with the result that the litigants drop into some legal abyss, never to be seen before the Supreme Court again.<sup>17</sup> Considering the above factors, and also remembering the Supreme Court's reluctance to encroach on state jurisdiction or render needless opinions on constitutional questions when other grounds for decision abound,<sup>18</sup> and also keeping in mind the Court's duty and natural desire to be the final arbiter of federal questions, the best course to pursue in a case of this kind would appear to be continuance. However, for continuance to succeed, state courts must either adapt their procedures to the rendering of qualifying

<sup>11</sup> *Herb v. Pitcairn*, note 9 *supra*, appears to be the first case in which it was applied.

<sup>12</sup> *Patterson v. Alabama*, note 6 *supra*; *Minnesota v. National Tea Co.*, note 8 *supra*.

<sup>13</sup> This was the rationale of the majority of the court in ordering vacation of state court judgment in *Minnesota v. National Tea Co.*, note 8 *supra*.

<sup>14</sup> Some states, such as New York, entertain an application for an amendment in order to show appropriately the basis of determination of its court. *Pflueger v. Sherman*, 293 U.S. 55, 55 S.Ct. 10 (1934).

<sup>15</sup> The California Supreme Court advised petitioner's counsel informally that it doubted its jurisdiction to render such a determination. Principal case at 145.

<sup>16</sup> Compare *Minnesota v. National Tea Co.*, note 8 *supra*, with *National Tea Co. v. State*, 208 Minn. 607, 294 N.W. 230 (1940); and *State Tax Comm. v. Van Cott*, note 6 *supra*, with *Van Cott v. State Tax Comm.*, 98 Utah 264, 96 P. (2d) 740 (1939).

<sup>17</sup> See *National Tea Co. v. State*, note 16 *supra*, where although the Court refused to clarify its prior holding for the benefit of unquestioned Supreme Court jurisdiction to review, it strongly inferred its prior decision had been based on an independent state ground.

<sup>18</sup> *Burton v. United States*, 196 U.S. 283, 25 S.Ct. 243 (1905).

opinions or the Supreme Court must be satisfied with less formal renditions of clarifying statements from state courts.

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