Louisiana Law Review

Volume 3 | Number 3
March 1941

Federal Procedure - Decisions of Inferior State Courts - Binding on Federal Courts

G. D. L.

accept the offer made by the dissenters, or to take one of the alternative actions[9] offered by the statute. When they failed to pursue any of these courses the corporation became obligated to pay the price asked by the dissenters. The corporation, and not the shareholders, was deprived of property by the action, or rather inaction, of its duly authorized agents. As has been pointed out by Professor Lattin,[10] the loss to the shareholders here was no greater than in any other case of mismanagement. If the directors were guilty of mismanagement, the corporation would have a cause of action against them.

The result reached in the present case is highly desirable and allows the beneficial purpose of the appraisal provisions[11] to continue without the delay and expense which would result from requiring that notice be given to each of the numerous individual shareholders. The only criticism of the Supreme Court's decision is that it did not rest upon the simple proposition that the demand made by a dissenting shareholder is made upon the corporation, and that in receiving notice and acting thereon the corporation acts through its normal management, the directors.

M. M. H.

FEDERAL PROCEDURE—DECISIONS OF INFERIOR STATE COURTS—BINDING ON FEDERAL COURTS—Suit was brought to compel defendant company to restore the rights of plaintiffs as remaindermen in certain shares of stock in defendant company. Whether the statute of limitations barred the action was dependant upon whether a demand upon defendant was a prerequisite to the accrual of the cause of action. The only state decision on this subject in the district where the case was brought was by an intermediate appellate court of Ohio. The circuit court of appeals declined to follow this decision. *Held,* on writs of certiorari, that the decision of the Ohio appellate court was "state law," and must be

9. Under the statute the corporation could reject the offer and make a counter offer, and if it was refused, could file a petition asking the court for an appraisement; or the corporation could abandon the sale. Ohio Gen. Code Ann. (Page, 1938) § 8623-72, par. 106. Cf. La. Act 250 of 1928, § 52, I [Dart's Stats. (1939) § 1132, I] which has substantially the same provisions.

10. Lattin, supra note 7.

11. For discussion of the right of appraisal generally, see Bennett, Remodeling, Merger, and Dissolution of Louisiana Corporations—A Critical Survey (1941) 3 LOUISIANA LAW REVIEW 481, 482 et seq.; Lattin, Remedies under Appraisal Statutes (1931) 45 Harv. L. Rev. 233; Lattin, supra note 7, at 1177.

followed by the Federal court. *West v. American Telephone and Telegraph Company,* 61 S.Ct. 179 (1940).

Prior to the decision of *Erie Railroad Company v. Tompkins,*[1] there existed a conflict in the lower federal courts as to whether decisions of intermediate state courts interpreting state statutes were binding on the federal courts sitting in that state. Probably the majority view was that such decisions, although persuasive, were not binding on the federal courts.[2] Other courts held that where the highest state court had not spoken, the decisions of the intermediate state courts should be followed.[3]

After the *Erie* case, the conflict of authority persisted both with respect to decisions interpreting state statutes and also decisions declaring the state's common law. But the majority rule was that such decisions must be followed.[4] The tendency of the federal courts was to follow whatever indications there were of local law in order to ascertain conscientiously what the state court of last resort *would* declare the local law to be.

West v. American Telephone and Telegraph Company,[5] which was followed in two other decisions by the United States Supreme Court within twenty-four hours,[6] has now settled the problem. Chief Justice Hughes, in *Fidelity Union Trust Company v. Field,*[7] said, that the "highest state court is the final authority on state law . . . but it is still the duty of the federal courts, where the state law supplies the rule of decision, to ascertain and apply that law even though it has not been expounded by the highest court of the State. . . . An intermediate state court in declaring and applying the state law is acting as an organ of the State and

---

1. 304 U.S. 64, 58 S.Ct. 817, 82 L.Ed. 1188, 114 A.L.R. 1487 (1938).

2. Patapsco Guano Co. v. Morrison, 18 Fed. Cas. No. 10792 (S.D.Ga. 1886); Freund v. Yaegerman, 27 Fed. 248 (E.D.Mo. 1886); Anglo-American Land, M. & A. Co. v. Lombard, 132 Fed. 721 (C.C.A. 8th, 1904); United States Telephone Co. v. Central Union Telephone Co., 202 Fed. 66 (C.C.A. 6th, 1913), cert. denied, 229 U.S. 620, 22 S.Ct. 1049, 57 L.Ed. 1354 (1913); In re Gary, 281 Fed. 218 (S.D. Tex. 1922); Irving Nat. Bank v. Law, 9 F. (2d) 536 (C.C.A. 2d, 1925).

3. Eaton v. St. Louis Shakspear Mining & Smelting Co., 7 Fed. 139 (E.D. Mo. 1881); Hay v. Alexandria & W. R.R., 20 Fed. 15 (E.D. Va. 1884).

4. Hack v. American Surety Co., 96 F. (2d) 939 (C.C.A. 7th, 1938); In re Wiegand, 27 F. Supp. 725 (S.D. Cal. 1939); In re Shyvers, 33 F. Supp. 643 (S.D. Cal. 1940).

But for a holding that the decisions of intermediate state courts were not binding on federal courts, see Kehaya v. Axton, 32 F. Supp. 266 (S.D. N.Y. 1940).

5. 61 S.Ct. 179 (1940).

6. 61 S.Ct. 176 (1940); Six Companies of California v. Joint Highway Dist. No. 13, 61 S.Ct. 186 (1940).

7. 61 S.Ct. 176 (1940).

its determination, in the absence of more convincing evidence of what the state law is, should be followed by the federal court."[8]

These decisions further advance the fundamental purpose of the *Erie* decision. They represent another step in the removal of judicial uncertainties attendant upon a duplex system of jurisprudence. The whole purpose of the *Erie* decision might be thwarted if federal courts were free to choose their own rules of decision whenever the highest court of the state has not spoken, since the state is not necessarily without law on a subject merely because its highest courts have not spoken. The federal courts must now follow the rules of intermediate appellate courts of the state, unless "convinced by other persuasive data that the highest court of the state would decide otherwise."[9]

G. D. L.

LABOR LAW—NORRIS-LAGUARDIA ACT—APPLICATION TO ANTI-TRUST PROSECUTION OF LABOR UNIONS—Members of two craft unions, both affiliated with the American Federation of Labor, disagreed over which was to perform certain work for their mutual employer, a brewing company dependent on interstate commerce for materials and a market. The dispute resulted in a strike, picketing, and boycott whereby one union sought to force its jurisdictional demands on the employer. Officials of the dissatisfied organization were indicted under the Sherman Act for combination and conspiracy in restraint of trade. *Held,* demurrers denying that what was charged constituted a violation of the laws of the United States were properly sustained. *United States v. Hutcheson,* 61 S.Ct. 463, 85 L.Ed. 422 (1941).

The conclusion at which the Court arrived is another significant extension of the concept that labor should be relatively free from legal restraint.[1] But the process of statutory interpretation relied upon to sustain this result presents an interesting problem.

The Court's line of reasoning can be restated substantially as

---

8. 61 S.Ct. at 178.

9. West v. American Telephone & Telegraph Co., 61 S.Ct. 179, 183 (1940).

1. Compare Thornhill v. Alabama, 310 U.S. 88, 60 S.Ct. 736, 84 L.Ed. 1093 (1940) (involving the right to picket); Apex Hosiery Mills v. Leader, 310 U.S. 469, 60 S.Ct. 982, 84 L.Ed. 1311 (1940) (dealing with a suit for triple damages under the Sherman Act); American Federation of Labor v. Swing, 61 S.Ct. 568, 85 L.Ed. 513 (1941) (concerning the right to picket). Cf. Milk Wagon Drivers Union v. Meadowmoor Dairies, 61 S.Ct. 552, 85 L.Ed. 497 (1941).