St. John's Law Review

Volume 6
Number 2 *Volume 6, May 1932, Number 2*

Article 18

Constitutional Law--Railroad Regulation--Application for Rehearing Because of Changed Economic Level Should be Granted--Judicial Notice Will be Taken of Depression (Atchison, Topeka and Santa Fe Railroad Company v. United States, 284 U.S. 148 (1932))

St. John's Law Review

enforced wherever the person is found.[3] However, jurisdiction is discretionary in such cases. Thus, where the right of recovery given by the foreign state is so dissimilar to that given by the law of the state in which the action is brought as to be incapable of enforcement in such state, the action cannot be maintained. The latter proposition was applied in *Slater* v. *Mexican Nat. R. R. Co.*[4] In that case the district court refused to entertain jurisdiction because the foreign statute sued on contemplated decree for periodical payments analogous to alimony, subject to modification from time to time as the circumstances change. The main problem is to determine when the right of action arising in the foreign state is so dissimilar to that given by the state wherein the action is brought as to be against its declared public policy. In the principal case, there was a mere procedural difficulty which could be overcome by staying enforcement of judgment until plaintiff became qualified to collect it in accordance with the New Jersey law. Since our Surrogate's Court Act[5] permits such practice the motion to dismiss the complaint on the ground that the facts stated in the complaint did not constitute a cause of action was properly denied.

A. S.

CONSTITUTIONAL LAW—RAILROAD REGULATION—APPLICATION FOR REHEARING BECAUSE OF CHANGED ECONOMIC LEVEL SHOULD BE GRANTED—JUDICIAL NOTICE WILL BE TAKEN OF DEPRESSION.—Plaintiff railroad company sues to restrain enforcement of an order of the Interstate Commerce Commission made as a result of a general investigation of rates, charges, regulations and practices as authorized by the Hoch-Smith resolution. The record of the hearing before the Commission was closed in September, 1928. An order of the Commission was reported on July 1, 1930. In February, 1931, before the order was made effective, the plaintiff petitioned for a rehearing, which was denied. This suit is brought to restrain the enforcement of the order on the ground that the denial of the petition for rehearing was an abuse of administrative discretion and, consequently, a denial of due process in violation of the Fifth Amendment of the United States Constitution. On appeal to the United States Supreme Court, *held,* injunction should be granted. *Atchison, Topeka and Santa Fe Railroad Company* v. *United States,* 284 U. S. 248, 52 Sup. Ct. 146 (1932).

---

[3] State of Colorado v. Harbeck, 232 N. Y. 71, 133 N. E. 357 (1921); Zeikus v. Florida East Coast Ry. Co., 153 App. Div. 345, 138 N. Y. Supp. 478 (2d Dept. 1912).

[4] Slater v. Mexican Nat. R. R. Co., 194 U. S. 120, 24 Sup. Ct. 581 (1904).

[5] N. Y. SURR. CT. ACT §§89, 122.

The Commission has broad powers and a wide extent of administrative discretion but it is fundamental that the powers of the Commission are subject to circumscription by legislative enactments and constitutional rights. It is a fundamental requirement that opportunity for a fair hearing must be provided by the Commission in the discharge of its duties.[1] Lacking this, an order of the Commission will be in violation of the due process clause.[2] Moreover, an edict of the Commission may be set aside as arbitrary and unreasonable in the light of the general intendment of the legislative requirements.[3] Assuredly, in view of the present economic conditions existing in the country and in view of the financial situation of the railroads, the order of the Commission, based on facts existent in 1928, requiring the lowering of rates is unreasonable and arbitrary. No opportunity for a fair hearing on the basis of a record reflecting the present conditions has been given. The difference between conditions in 1931 and in 1928 is not a matter of a slight fluctuation in business conditions but is the result of the advent of a new economic level. The allegation that the general business level has drastically declined needs no proof. The change is the outstanding contemporary fact, dominating thought and action throughout the country. Since it is a fact of common everyday knowledge which admittedly everyone within this country can be presumed to know, the court will take judicial notice of the present economic situation; it would not be good sense to do otherwise.[4] Stripped of its technical grounding in the rules of administrative and constitutional law, the decision is one which has for its motivating power a degree of common sense which seems to be an attribute peculiar to the members of the United States Supreme Court.

E. P. W.

CONSTITUTIONAL LAW—REQUIREMENT OF FINDING OF PUBLIC NEED FOR ADDITIONAL FACILITIES AS PREREQUISITE TO LICENSE TO ENGAGE IN ICE BUSINESS.—Plaintiff, engaged in the manufacture, sale, and distribution of ice in Oklahoma City under a license of the Corporation Commission of Oklahoma, brought a bill in the United States District Court to enjoin defendant from engaging in the same

[1] Interstate Commerce Commission v. Louisville & Nashville R. R. Co., 227 U. S. 88, 91, 33 Sup. Ct. 185, 186 (1913).

[2] Dohany v. Rogers, 281 U. S. 362, 369, 50 Sup. Ct. 299, 302 (1930).

[3] Interstate Commerce Commission v. Illinois Central R. R. Co., 215 U. S. 452, 30 Sup. Ct. 155 (1910); Interstate Commerce Commission v. Union Pacific R. R. Co., 222 U. S. 541, 32 Sup. Ct. 108 (1912).

[4] MCKELVEY, EVIDENCE (1924) §12. "The doctrine of judicial notice is that there are certain facts of which the courts will not require evidence, because they are so well known, so easily ascertainable or so related to the official character of the court, that it would not be good sense to do so."