

Burns Mortgage Co. Vs. Fried

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SooperKanoon Citation : sooperkanoon.com/95934

Court : US Supreme Court

Decided On : May-28-1934

Appeal No. : 292 U.S. 487

Appellant : Burns Mortgage Co.

Respondent : Fried

Judgement :

Burns Mortgage Co. v. Fried - 292 U.S. 487 (1934)

U.S. Supreme Court Burns Mortgage Co. v. Fried, 292 U.S. 487 (1934)

Burns Mortgage Co. v. Fried

No. 786

Argued May 3, 1934

Decided May 28, 1934

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CERTIORARI TO THE CIRCUIT COURT OF APPEALS

FOR THE THIRD CIRCUIT

SYLLABUS

1. The Conformity Act, 28 U.S.C. 724, requires that the form of a law action in a federal court and the right in which it may be brought shall be determined by the local law, but it does not apply to substantive questions upon which the local procedure may depend. P. [292 U. S. 492](#)

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2. Under the Rules of Decision Act, 28 U.S.C. 725, the applicable state statute furnishes the rule of decision for a federal court sitting within or outside of the state, and must be given the meaning and effect attributed to it by the highest court of the state, as if the state court's decision was literally incorporated into the enactment. P. [292 U. S. 493](#) .

3. There is no valid distinction in this respect between an act which alters the common law and one which codifies or declares it, such as the Uniform Negotiable Instruments Law, nor between a statute prescribing rules of commercial law and one concerned with some other subject of narrower scope. [Swift v. Tyson](#), 16 Pet. 1, considered; [Watson v. Tarpley](#), 18 How. 517, [59 U. S. 521](#) , limited. P. [292 U. S. 495](#) .

4. The negotiability of a promissory note made and payable in Florida, *held* to depend upon the Florida Negotiable Instruments Law. P. [292 U. S. 495](#) .

5. In the absence of construction by the Florida court, it was the duty of the federal courts in this case (tried in Pennsylvania) to decide the question of negotiability according to the accepted canons and in the light of the decisions of the courts of other states with respect to the same sections of the Negotiable Instruments Law. P. [292 U. S. 496](#) .

6. Promissory notes provided for interest on the principal sum at the rate of 7% per annum from date until paid and for payment of interest semi-annually, and added that deferred interest payments should bear interest from maturity at 105 per

annum, payable semi-annually. *Held* that the word "maturity" refers to the due dates of interest, and not to date for payment of principal; that there is therefore no ambiguity with respect to the rate of interest, and that the notes are negotiable. Pp. [292 U. S. 496](#) -497.

67 F.2d 352 reversed.

Certiorari, 291 U.S. 657, to review the affirmance of a judgment entered against the Burns Mortgage Company in its action on promissory notes made by Fried. The decision below went upon the ground that the notes were nonnegotiable, and that the company, as assignee, could not sue in Pennsylvania in its own name, but only as use plaintiff in the name of the payee.

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MR. JUSTICE ROBERTS delivered the opinion of the Court.

This writ brings here for review a judgment entered by the District Court for Eastern Pennsylvania in an action on six instruments, each promising the payment of \$1,000, all of even date and like tenor. They were executed and delivered by the respondent at Miami, Florida, and were there payable to Golden Isles Corporation at intervals of six months, the first falling due six months from August 28, 1925, and the last three years from that date. Prior to maturity, the payee indorsed and delivered them to one Williamson, who, after refusal of payment at maturity, transferred them by delivery to the petitioner. In response to the petitioner's statement of claim, the respondent filed an affidavit of defense in the nature of a statutory demurrer, asserting that, as the writings did not embody a promise to pay a sum certain, they were not negotiable notes.

The District Judge followed the decisions of the Pennsylvania courts to the effect that the holder of negotiable paper, whether he obtained title before or after dishonor, may sue in his own name, [[Footnote 1](#)] but a holder must sue as use plaintiff in the name of the obligee if the instrument is not

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negotiable. [[Footnote 2](#)] Concluding that the notes were not negotiable, and consequently the petitioner could sue only in the name of Golden Isles Corporation, he sustained the affidavit of defense, and, as the petitioner refused to amend, entered judgment for the respondent. The Court of Appeals affirmed. [[Footnote 3](#)]

The provisions held to create the uncertainty which deprived the notes of negotiability were:

". . . with interest thereon [the principal sum] at the rate of 7 percent per annum from date until fully paid. Interest payable semi-annually. . . . Deferred interest payments to bear interest from maturity at ten percent per annum, payable semi-annually."

The petitioner urged that, as Florida had adopted the Uniform Negotiable Instruments Law, the federal courts were bound to decide the issue according to that statute as interpreted by the Florida court of last resort; the respondent insisted as the action was in the District Court sitting in Pennsylvania, which had also adopted the Uniform Act, the statute as interpreted by the courts of that state must be applied. The Circuit Court of Appeals held that it need not adopt the construction of the act by the courts of either state, but should decide the case upon the general principles of the law merchant. From these it concluded the quoted provisions rendered the instruments uncertain as to the amount payable, and therefore nonnegotiable.

1. The Conformity Act [[Footnote 4](#)] required the trial court to apply the local law in matters of procedure. The form of action and the right in which it must be brought were therefore governed by the Pennsylvania practice. But the procedural question turned on another of substance -- namely, whether the instruments were negotiable.

2. The negotiable quality of the notes is to be ascertained by reference to the law of Florida. [[Footnote 5](#)] The Uniform Negotiable Instruments Law adopted in that state provides [[Footnote 6](#)] (1) that:

"An instrument to be negotiable must conform to the following requirements:"

" * * * *"

"(2) Must contain an unconditional promise or order to pay a sum certain in money."

And, by 2, it is declared:

"The sum payable is a sum certain within the meaning of this Act, although it is to be paid: (1) with interest, or (2) by stated installments, or (3) by stated installments, with a provision that, upon default in payment of any installment or of interest, the whole shall become due. . . ."

Section 34 of the Judiciary Act of 1789 directs that 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. [[Footnote 7](#)] The applicable state statute furnishes the rule of decision for a federal court sitting in the state [[Footnote 8](#)] or outside its borders. [[Footnote 9](#)] And in that court, the law

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must be given the meaning and effect attributed to it by the highest court of the state, as if the state court's decision were literally incorporated into the enactment, whatever the federal tribunal's opinion as to the correctness of the state court's views. [[Footnote 10](#)] The petitioner says the Supreme Court of Florida has construed the pertinent sections of the Negotiable Instrument Law as declaring writings of the tenor of those in suit to be negotiable, and the courts below were therefore bound so to rule. The Circuit Court of Appeals, however, held that the construction by a state court of last resort of a state statute which is merely

declaratory of the common law or law merchant does not bind federal courts. It ascribed that character to the Uniform Act, and refused to consider as conclusive the Florida decision upon which the petitioner relied. The court referred to several opinions which sustain this position. [[Footnote 11](#)] It recognized that the opposing view also finds support in other decisions of the federal courts. [[Footnote 12](#)] Because of this contrariety of opinion, we granted the writ of certiorari.

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We think the better view is that there is no valid distinction in this respect between an act which alters the common law and one which codifies or declares it. Both are within the letter of 34 of the Judiciary Act (*supra*). And a declaratory act is no less an expression of the legislative will because the rule it prescribes is the same as that announced in prior decisions of the courts of the state. Nor is there a difference in this respect between a statute prescribing rules of commercial law and one concerned with some other subject of narrower scope. The contention of the respondent that this Court announced a contrary view in [Swift v. Tyson](#), 16 Pet. 1, is not sustained by a careful reading of the opinion in that case. [[Footnote 13](#)] We are referred to certain expressions found in [Watson v. Tarpley](#), 18 How. 517, at [59 U. S. 521](#) . What was there said on the subject was unnecessary to the decision, and has not been followed in later cases. The Florida Negotiable Instruments Law, as construed by the Supreme Court of the state, furnishes the rule of decision by which the negotiable character of the notes is to be determined.

3. The petitioner asserts that, in *Taylor v. American National Bank of Pensacola*, 63 Fla. 631, 57 So. 678, the Supreme Court of that state construed the statute so as to make negotiable an instrument of the tenor of those in suit. The note involved in that case was payable two years after date with interest from date at the rate of 8 percent per annum, interest payable quarter-annually, and was held to be negotiable, 2 of the Uniform Act being quoted. The decision is a clear authority that, under the Act, the provision for periodical payment of

interest before the due date of the principal does not destroy negotiability. As the note did not provide for interest on deferred interest payments, either at the same or a different rate from that named as payable upon principal, the effect of such a stipulation was not decided. Upon this matter, therefore, the case cannot be said to be an authority by which the Circuit Court of Appeals was bound.

4. The absence of a decision by the Supreme Court of the state did not relieve the courts below from applying the Florida statute. Lacking such authoritative construction, their duty was to determine the question according to the accepted canons and in the light of the decisions of the courts of other states with respect to the same sections of the Negotiable Instruments Law. [[Footnote 14](#)]

If, as is admitted, the court of last resort of the state holds that provision for payment of interest in installments prior to maturity of principal does not render the sum payable so uncertain as to destroy negotiability, we think an added stipulation that overdue interest shall bear interest at a named rate until paid would not call for a different decision. Courts which have had occasion to consider the effect of the Act upon instruments of like tenor have uniformly pronounced them negotiable. [[Footnote 15](#)] And cases decided prior to the adoption of the Act are to the same effect. [[Footnote 16](#)] No contrary decision has been brought

to our notice. Until the Supreme Court of Florida holds otherwise, we are justified in construing the Act in accordance with what we think its intent, especially as this construction accords with the views of the courts of other states.

5. The respondent urges that the notes are so ambiguous with respect to the rate of interest that they do not call for the payment of a sum certain, and must therefore be held not to be negotiable. *First National Bank of Miami v. Bosler*, 297 Pa. 353, 147 A. 74, is cited as sustaining this position. The note there under consideration stipulated for 8 percent per annum upon the principal,

"from date until fully paid. Interest payable semi-annually. . . . Deferred payments are to bear interest from maturity at ten percent per annum semi-annually."

The decision against negotiability rested upon the proposition that the two interest provisions were so inconsistent that one reading the note could not ascertain at which rate interest was payable on overdue principal. The decision has been criticized, *Lessen v. Lindsey*, 238 App.Div. 262, 264 N.Y.S. 391, on the ground that ambiguity alone does not destroy negotiability, but requires merely a construction of the instrument and a determination of which of two inconsistent clauses shall control. But, be this as it may, the notes in the present case are, we think, free from ambiguity. They provide for interest on the principal sum at the rate of 7 percent per annum from date until fully paid, for interest payable semiannually, and add that deferred interest payments shall bear interest from maturity at 10 percent per annum, payable semiannually. While, therefore, the principal is to bear interest at 7 percent, overdue interest is to be paid with interest at 10 percent. The word "maturity" seems obviously to refer to the due dates of interest, and not to the date for payment of principal.

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The judgment must be reversed, and the cause remanded to the District Court for further proceedings in conformity with this opinion.

So ordered.

[[Footnote 1](#)]

Rankin v. Woodworth, 2 Watts 134; *Hanratty v. Dougherty*, 71 Pa.Super.Ct. 248.

[[Footnote 2](#)]

Fahnestock v. Schoyer, 9 Watts 102; *Reynolds v. Richards*, 14 Pa. 205.

[[Footnote 3](#)]

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[[Footnote 4](#)]

U.S.C. Tit. 28, 724.

[[Footnote 5](#)]

Ogden, Negotiable Instruments (3d ed.) 374; [Tilden v. Blair](#), 21 Wall. 241; *Kobey v. Hoffman*, 229 F. 486.

[[Footnote 6](#)]

Florida Compiled General Laws, 6761, 6762.

[[Footnote 7](#)]

Act of September 24, 1789, c. 20, 34; R.S. 721; U.S.C. Tit. 28, 725.

[[Footnote 8](#)]

[Bank of United States v. Tyler](#), 4 Pet. 366; [Bank of United States v. Daniel](#), 12 Pet. 32; *Paine v. Central Vermont R. Co.*, [118 U. S. 152](#) , [118 U. S. 160](#) ; *Moses v. Lawrence County Bank*, [149 U. S. 298](#) ; *Sowell v. Federal Reserve Bank*, [268 U. S. 449](#) , [268 U. S. 456](#) ; *Crittenden v. Widrevitz*, 272 F. 871; *Mack v. Dailey*, 3 F.2d 534, 538; *Queensboro Nat. Bank v. Kelly*, 48 F.2d 574.

[[Footnote 9](#)]

[Junction R. Co. v. Bank of Ashland](#), 12 Wall. 226; *Flash v. Conn*, [109 U. S. 371](#) , [109 U. S. 378](#) ; *Prentice v. Zane*, 19 Fed.Cas. 1270; *Phipps v. Harding*, 70 F. 468; *United Divers Supply Co. v. Commercial Credit Co.*, 289 F. 316; *Gutelius v. Stanbon*, 39 F.2d 621.

[[Footnote 10](#)]

Knights of Pythias v. Meyer, [265 U. S. 30](#) , [265 U. S. 32](#) ; *Jones v. Prairie Oil & Gas Co.*, [273 U. S. 195](#) , [273 U. S. 195](#) , [273 U. S. 199](#) -200; *Gregg Dyeing Co. v. Query*, [286 U. S. 472](#) , [286 U. S. 480](#) .

[[Footnote 11](#)]

Mutual Life Ins. Co. v. Lane, 151 F. 276; *Capital City state Bank v. Swift*, 290 F. 505, 509; *Peterson v. Metropolitan Life Ins. Co.*, 19 F.2d 74; *Jockmus v. Claussen & Knight*, 47 F.2d 766. In addition to the cases cited by the Circuit Court, the following express like views: *Byrne v. Kansas City, Ft. S. & M. R. Co.*, 61 F. 605, 614; *Babbitt v. Read*, 236 F. 42, 49; *Manufacturers' Finance Corp. v. Vye-Neill Co.*, 62 F.2d 625, 628. Compare *American Mfg. Co. v. U.S. Shipping Board*, 7 F.2d 565, 566.

[[Footnote 12](#)]

The court cited *Savings Bank of Richmond v. National Bank of Goldboro*, 3 F.2d 970, and *Niagara Fire Ins. Co. v. Raleigh Hardware Co.*, 62 F.2d 705. There are other cases in which the federal courts have held they must follow the state court's construction of the Uniform Negotiable Instruments Law. See *Kobey v. Hoffman*, 229 F. 486, 488; *Crittenden v. Widrevitz*, 272 F. 871; *Mack v. Dailey*, 3 F.2d 534, 538; *Gutelius v. Stanbon*, 39 F.2d 621; *Queensboro National Bank v. Kelly*, 48 F.2d 574. Compare *Bank of United States v. Cuthbertson*, 67 F.2d 182, 186.

[[Footnote 13](#)]

The language relied on is found at p. [41 U. S. 18](#) .

[[Footnote 14](#)]

Wabash Valley Electric Co. v. Young, [287 U. S. 488](#) , [287 U. S. 496](#) ; *Farmers' National Bank v. Sutton Mfg. Co.*, 52 F.191, 196; *Kobey v. Hoffman*, 229 F. 486, 488; *United Divers Supply Co. v. Commercial Credit Co.*, 289 F. 316, 319; *Gutelius v. Stanbon*, 39 F.2d 621.

[[Footnote 15](#)]

Lister v. Donlan, 85 Mont. 571, 281 P. 348; *Continental & Commerical National Bank v. Jefferson*, 51 S.D. 477, 215 N.W. 533; *Barker v. Sartori*, 66 Wash. 260, 119 P. 611.

[[Footnote 16](#)]

Gilmore v. Hirst, 56 Kan. 626, 44 P. 603; *Brown v. Vossen*, 112 Mo.App. 676, 87 S.W. 577.

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