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Appeal and Error -- Power of Superior Court to Remand to Industrial Commission Case Remanded by Supreme Court for Judgment of Dismissal for Want of Jurisdiction

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NOTES AND COMMENTS

Appeal and Error—Power of Superior Court to Remand to Industrial Commission Case Remanded by Supreme Court for Judgment of Dismissal for Want of Jurisdiction.

Plaintiff instituted proceedings under the North Carolina Workmen's Compensation Act, and the Industrial Commission awarded compensation. Defendants then appealed to the Superior Court, where the jurisdiction of the Industrial Commission was challenged for the first time on the ground that the record showed that the Commission had no jurisdiction, the only evidence in the record being a statement by defendant to the effect that he had employed three other men than himself. The Superior Court, however, affirmed the award and defendants appealed. The Supreme Court held that the Industrial Commission had no jurisdiction and reversed and remanded the case to the Superior Court for judgment in accordance with the opinion. While the case was pending in the Superior Court, plaintiffs moved to remand to the Industrial Commission to hear specific evidence on the number of employees employed by defendant. This motion was allowed, and defendants appealed to the Supreme Court. *Held,* that the Superior Court had power to remand the case and judgment affirmed.[1]

The Workmen's Compensation Act provides no specific method by which a case may be appealed; §60[2] provides that either party may "appeal from the decision of the said Commission to the Superior Court of the county in which the alleged accident happened . . . under the same terms and conditions as govern appeals in ordinary civil actions." From the wording of §60, no greater liberality should be accorded in applying it (giving effect to its application) than is used in appeals from courts in general.

Prior to the principal case, the Supreme Court consistently applied the rules governing appeals from the justice of the peace courts in determining the method of appeal from administrative or quasi-judicial commissions, when the statute creating such commissions was silent as to any specific method of appeal. When the question of appeal from the Corporation Commission, now the Public Utilities Commission, was first presented, the Court adopted the rules of procedure from the justice's court.[3] The same rule has been followed in regard to appeal from

[1] Thompson v. Johnson Funeral Home, 208 N. C. 178, 179 S. E. 801 (1935).
[2] N. C. Code (1935) §8081 (ppp).
[3] Corporation Commission v. Southern Railway Co., 196 N. C. 190, 145 S. E. 19 (1928).

county commissioners.[4] With these decisions before it, the Court adopted the same principle in regard to appeal from the Industrial Commission.[5]

On appeal from a justice of the peace, the jurisdiction of the Superior Court is derivative, not original, and if the justice had no jurisdiction, the Superior Court can have none, and can only dismiss the case.[6] This is strikingly illustrated in the situation which arises under the statutory provision[7] that, where the amount demanded in a suit brought before a justice is in excess of the jurisdictional amount, the plaintiff may remit the excess so as to give the justice jurisdiction.[8] If the *remittitur* is not made in the justice's court, and the case reaches the Superior Court on appeal, the latter Court can acquire no jurisdiction by *remittitur* or amendment.[9] If such orders for *remittitur* or amendment are, in this situation, *coram non judice* and void, the same is inevitably true of the order for remand in the instant case.

It is true that the doctrine of derivative jurisdiction was vigorously attacked in dissenting opinions by the late Chief Justice Clark. He assailed the doctrine as not being founded upon the Constitution and as being a creature of judicial construction. The mainstay of his argument was that the Superior Court was a court of general jurisdiction and that on appeal from a justice's court the trial was *de novo*. However, he asserted that "if on appeal from the justice of the peace to the Superior Court the inquiry were confined to the question whether error had been committed in the Court below, there would be a logical basis for the doctrine of 'derivative jurisdiction'."[10] The jurisdiction of the Superior Court on appeal from the Industrial Commission is limited to questions of law only;[11] therefore, conceding the criticism of the doctrine of derivative jurisdiction espoused by the late Chief Justice as

[4] Blair v. Coakley, 136 N. C. 405, 48 S. E. 804 (1904).

[5] Higdon v. Nantahala Power & Light Co., 207 N. C. 39, 175 S. E. 710 (1934). The Court said: "It has been held in this State that where no procedure has been prescribed by statute for appeals, the rules regulating appeals from the justices of the peace are applicable and control."

[6] Durham Fertilizer Co. v. Marshburn, 122 N. C. 411, 29 S. E. 411 (1898); McLaurin v. McIntyre, 167 N. C. 350, 83 S. E. 629 (1914); Lower Creek Drainage Commission v. Sparks, 179 N. C. 581, 103 S. E. 142 (1920). The same conclusion was reached on an appeal from the Corporation Commission, now the Public Utilities Commission. Corporation Commission v. Southern Railway Co., 196 N. C. 190, 145 S. E. 19 (1928). Likewise, in an appeal from a statutory court of the City of High Point. Lewellyn v. Lewellyn, 203 N. C. 575, 166 S. E. 737 (1932). There is a strong inference that the same result would be reached in an appeal from county commissioners. Blair v. Coakley, 136 N. C. 405, 48 S. E. 804 (1904).

[7] N. C. Code (1935) §1475.

[8] Brock v. Scott, 159 N. C. 513, 75 S. E. 724 (1912).

[9] Perry v. Pulley, 206 N. C. 701, 175 S. E. 89 (1934).

[10] Stacey Cheese Co. v. Pipkin, 155 N. C. 394, 401, 71 S. E. 442, 445 (1911).

[11] N. C. Code (1935) §8081; Byrd v. Glouchester Lumber Co., 207 N. C. 253, 176 S. E. 572 (1934).

being legitimate, it could find no application to the situation of appeal from the Industrial Commission, for the purpose of such appeal comes within the purview of the exception which he enunciated, since on appeal the trial is not *de novo*.

Obviously, then, if the Industrial Commission had no jurisdiction, and the Court so held, the Superior Court could acquire none, and when the Court held otherwise it did so in complete derogation of the "law of the case." It is a well established rule in this state that, while the decision of the appellate court is absolutely binding upon the action of the lower court, it also fixes the "law of the case" in the Supreme Court,[12] which may be changed only by petition to rehear.

Although the decision of the principal case purports to be based on precedent, the three cases cited are not in point. One case[13] involved the question of the power of the Superior Court, in instances of newly discovered evidence, to remand the case for a rehearing; the second case[14] involved the issue as to whether the Industrial Commission had authority to vacate an award and make its record speak the truth; and the third case[15] was a holding for the proposition that the Industrial Commission had power to grant a rehearing for newly discovered evidence.

In a concurring opinion, Justice Clarkson probably intimated the real motive behind the decision. He openly confessed that his objection was that the insurance company, on a mere technicality, would be getting out of something it had obligated itself to pay. That, he said, would be an injustice. According to this theory, it is a mere technicality when a plaintiff fails to make out his case under provisions of the Workmen's Compensation Act. This is inconsistent with the same Justice's holding

[12] Newbern v. Western Union Telegraph Co., 196 N. C. 14, 141 S. E. 337 (1928).

[13] Byrd v. Glouchester Lumber Co., 207 N. C. 253, 176 S. E. 572 (1934). Plaintiff was denied recovery by the Commission on the ground that the accident did not arise out of and in the course of his employment, and plaintiff appealed to the Superior Court, where, before the case was heard on its merits, plaintiff moved that a rehearing be granted before the Industrial Commission on the ground of newly discovered evidence. The motion was allowed, and defendant appealed. Judgment was affirmed, the holding being that in certain instances of newly discovered evidence the Superior Court has discretionary power to remand for rehearing. (Here the Superior Court had jurisdiction of the case.)

[14] Ruth v. Carolina Cleaners, 206 N. C. 54, 174 S. E. 445 (1934). The Commission granted a trial *de novo*, as the award had been made contrary to law, and defendant appealed. The Superior Court affirmed the ruling and remanded the case. Defendant then appealed to the Supreme Court, where it was held that the Industrial Commission had the authority to vacate the award and make its record speak the truth. (No jurisdiction of the Superior Court was involved.)

[15] Butts v. Montague Bros., 208 N. C. 186, 179 S. E. 799 (1935). This case merely involved the question whether the Industrial Commission had power to grant a rehearing for newly discovered evidence, even though the case had been remanded by the Superior Court for a specific purpose. (No question of the power of the Superior Court to remand the case.)

that it is not a mere technicality when a defendant in a counterclaim fails to enter a *remittitur* in the justice's court for the amount claimed in excess of the justice's jurisdiction.[16] In each instance the lower tribunal has no jurisdiction, and the Superior Court should not be allowed to acquire any.

Furthermore, the instant holding was not necessary to prevent the insurance company from escaping liability, unless the statute of limitations had run. It might have ultimately been held liable in a new proceeding initiated before the Commission. A judgment of dismissal for want of jurisdiction is not on the merits and hence does not bar a new suit wherein jurisdiction is established.[17]

It is submitted that the ruling in the principal case presents an anomalous situation, as it leaves one in doubt as to what the real status of appeal from the Industrial Commission is. Quite conceivably the Supreme Court, with the same circuity of reasoning, might refuse to follow the rule in the principal case and revert to their previously laid-down rule that such appeals are governed by the rules relating to appeals from the justice's court. It is also submitted that such an abrupt departure from a well-established principle without cognizable justification destroys that stability of judicial precedent upon which disputants in litigation have a right of reasonable reliance.

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Bankruptcy—Rights of Partially Secured Creditors.

An earlier issue of this publication contained a comment discussing the four rules which govern the rights of partially secured creditors in the distribution of insolvent estates.[1] It is there pointed out that the "bankruptcy" rule is embodied in the National Bankruptcy Act,[2] and is usually thought to govern in bankruptcy cases.

[16] Perry v. Pulley, 206 N. C. 701, 175 S. E. 89 (1935).

[17] Brick v. Atlantic Coast Line Railroad, 145 N. C. 203, 59 S. E. 50 (1907). Plaintiff brought action in justice's court to recover value of contents of a trunk. The trunk contained $46.75 worth of clothing, and jewelry to value of $207.83. In the justice's court it was held that plaintiff could not recover the value of the jewelry and judgment was rendered for $46.75. On appeal to the Supreme Court, judgment was affirmed on ground that the action being in tort and in excess of $50, the justice had no jurisdiction over the claim for the jewelry. Thereupon plaintiff instituted this new action in the Superior Court, founded in tort, asking for recovery of the value of the jewelry. Facts were found to be as testified by plaintiff in the former trial. *Held,* that plaintiff was not estopped by the former judgment.

[1] Comment (1935) 13 N. C. L. REV. 239. For further discussion, see Citizens' & Southern Bank v. Alexander, 147 Ga. 74, 92 S. E. 868 (1917); Clark, *Proof by Secured Creditors in Insolvency and Receivership Proceedings* (1920) 15 ILL. L. REV. 171; Notes (1908) 21 HARV. L. REV. 280; (1910) 23 HARV. L. REV. 219; (1912) 12 COL. L. REV. 255; (1924) 8 MINN. L. REV. 232; L. R. A. 1918B, 1024,

[2] Comment (1935) 13 N. C. L. REV. 239, 240.