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Bankruptcy -- Rights of Partially Secured Creditors

D. W. Markham

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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 circuitry 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.

STATON P. WILLIAMS.

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.

An interesting exception to that situation is presented in the recent case of *Ivanhoe Building & Loan Ass'n. of Newark v. Orr*.³ The bankrupt was liable on a bond, secured by a mortgage on property which did not belong to him. The creditor foreclosed the mortgage, and bid the property in at a nominal figure. It (the creditor) then filed a claim in the bankruptcy proceedings for the amount due on the bond, less the amount of the nominal bid. The referee reduced the claim to the amount due on the bond, less the actual value of the property, and his action was sustained by the District Court and the Circuit Court of Appeals. The Supreme Court reversed the ruling, on the ground that, since the property did not belong to the bankrupt, the creditor was not a "secured creditor" within the definition in Section 1(23),⁴ and therefore its rights were not governed by Section 57(e).⁵ Hence, the Court said these sections did not "forbid the proof of a claim for the principal of the bond with interest, though the petitioner [creditor] may not collect and retain dividends which with the sum realized from the foreclosure will more than make up that amount."

This return to the "chancery" rule again illustrates the Court's long-maintained preference,⁶ and serves as fair warning that, hereafter, the Court will, in all probability, apply that rule, even in bankruptcy cases, whenever it is not bound by strict statutory language.

D. W. MARKHAM.

Bills and Notes—Adoption of Printed Seal.

A hurrying age has largely cast seals on the scrapheap. In states where they are not abolished their formality and significance are much impaired by either statutory or judicial action.¹ Yet even in such an

³ 55 Sup. Ct. 685 (U. S. 1935).

⁴ 30 STAT. 544 (1898), 11 U. S. C. A. §1(23) (1927).

⁵ 30 STAT. 560 (1898), 11 U. S. C. A. §93(e) (1927).

⁶ See Clark, *supra* note 1.

¹ In the following states private seals have been abolished: ARIZ. REV. CODE (Struckmeyer, 1928) §3048 (except corporate seals); ARK. CONST. of 1874, Schedule 1; CAL. CODE OF CIV. PROC. (Deering, 1931) §1932; IDAHO CODE ANN. (1932) §§28-108; IOWA CODE (1931) §9439; KAN. REV. STAT. (1923) c. 16, §106 (except corporate seals); KY. STAT. (Carroll, 1930) §471; MINN. STAT. (Mason, 1927) §6933 (except corporate seals); MISS. CODE (1930) §3302 (except corporate seals); MO. REV. STAT. (1929) §2957 (except corporate seals); MONT. REV. CODES (1921) §7524; NEB. COMP. STAT. (1929) c. 76, §256; N. M. STAT. ANN. (1929) §117-105 (except corporate seals); N. D. COMP. LAWS (1913) §5894; OHIO ANN. CODE (Throckmorton, 1929) §32; OKLA. COMP. STAT. (1921) §5037; S. D. COMP. LAWS (1929) §864; TENN. CODE (1932) §7828 (except corporate seals); TEX. REV. CIV. STAT. (Vernon, 1935) art. 27 (except corporate seals); WASH. REV. STAT. (Remington, 1933) §10556; WYO. REV. STAT. (1931) c. 97, §122 (except corporate seals).

The effect of this legislation has in most instances been to reduce the status of a sealed instrument to that of a written contract. In some states, however, just the reverse seems to have happened. In these states statutes provide that the distinction between sealed and unsealed instruments shall be abolished, but written