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REVERSAL OF JUDGMENTS BY ACT
OF LEGISLATURE

The recent case of *In re Chester School District's Audit*, 301 Pa. 203, presents a situation where an act of the legislature was permitted to reverse the judgment of a court of common pleas. The School Code of Pennsylvania provides certain specifications which must be followed by directors of school districts in making contracts for the school. For three years, the nine school directors of the city of Chester entered into contracts for the school without meeting these statutory requirements. The penalty for failure to meet the requirements was a surcharge for all of the wrongful expenditures.¹ Upon petition by more than ten resident taxpayers, the Court of Common Pleas of Delaware County rendered a decree removing the directors from office, and entered judgments against individual directors for the amount of wrongful expenditures.

After the decree and judgments were entered, the legislature passed an act² providing that no board of school directors or any members thereof should be subject to surcharge for payments made by any board of school directors on any contract ratified, confirmed, and validated by the act. The act is as follows: "Section 1. Whenever any board of school directors shall have heretofore contracted for labor, materials, and supplies, for the school district, the purchase of which by contract are authorized under the provisions of the school laws of the Commonwealth, and such board of school directors has actually received such labor, materials, and supplies, and the same are being used by the school district—if the said contract does not evidence any fraud or conspiracy to violate the provisions of the school laws of the Commonwealth, and the school district has not suffered any pecuniary loss as a result of such contract, then such contract shall be valid and binding on the school district and payment for such labor, materials, and supplies, by the

¹Act of June 9, 1911, P. L. 865. Section 517 of School Code, section 2613 in 24 P. S. 363, 482, and 2213.

²Act of February 20, 1929, P. L. 3; 24 P. S. 337 & note.

school district is hereby ratified, confirmed, and validated, notwithstanding the fact that the affirmative votes of the majority of the board of school directors were not recorded in the minutes showing how each member voted, as required by law. No board of school directors, or any members thereof, shall be subject to surcharge for payments made by any board of school directors on any such contract.

Section 2. This act shall be in force immediately upon its passage and approval by the Governor."

Relying upon this act, the directors applied for and were granted a rule to show cause why the judgments against them should not be opened and set aside. The Court of Common Pleas of Delaware County discharged the rule. The reasons given for this discharge were: (a) The act of 1929 does not affect the basis upon which the judgments were entered, and (b) The act cannot constitute a reversal by the legislature of the final judgment of a court.

Upon appeal to the Supreme Court, the decree removing the directors from office was affirmed, but the judgments against the individual directors for the amounts of wrongful expenditures authorized by them, were reversed. In this reversal, the Supreme Court makes a very fine distinction. The court admits that where only *private interests* are concerned, a final judgment cannot be overthrown by a statute subsequently passed.³ But in this case, according to the court, *public interests* only are involved, and the rule prohibiting the reversal of a judgment by a statute does not apply. The court reasons that the state is dealing with one of its purely public creatures, charged with the performance of the state's duty. In such case, since only public interests are involved, the legislature can reverse the judgment, and the act of 1929 is a valid exercise of legislative power.

It is to be noted that no cases are cited as authority for this distinction. It is doubtful whether this is a case where only public interests are involved. It is true that

³Citing *Greenough v. Greenough*, 11 Pa. 489 (1849); *Lewis v. Pennsylvania R. R. Co.*, 220 Pa. 307 (1908).

the school may be considered as the purely public creature of the state. But this does not necessarily lead to the conclusion that the only interests involved are public. If the surcharge had been permitted to stand, the taxpayers would have had to meet a bill for school expenditures much smaller than it is, now that the surcharge is abolished. Because of this fact, each individual tax payer certainly has an interest in the judgments rendered by the Court of Common Pleas of Delaware County.

Even if the question as to whether or not the interests involved are purely public is waived, it is difficult to see how the Supreme Court could have arrived at its decision.

There are cases in Pennsylvania which hold that an act validating an unauthorized or informal act of a municipal corporation or its officers in making contracts or in contracting debts, is valid.⁴ However, in all of these cases, the validating act was passed in order to render a prior unconstitutional act valid, and in order to validate transactions undertaken under the authority of the prior act. None of these cases involve situations in which a judgment had been entered prior to the passing of the validating statute. Because of these two distinguishing facts, it is impossible to use any of these cases as an authority for the decision in the instant case.

It is true that the legal formalities of a contract imposed by act of the legislature may be removed or modified by a change in the law.⁵ As a general rule, it is competent for the legislature to dispense retrospectively with any formality it might have dispensed with in advance.⁶ But, in no case, as far as the writer has been able to determine, has the legislature ever been permitted to affect rights and interests accrued under a judgment rendered prior to the passage of the act. Before the recovery of

⁴Donley v. Pittsburgh, 147 Pa. 348 (1892); Devers v. York City, 150 Pa. 208 (1892); Melick v. Williamsport, 162 Pa. 408 (1894); Chester v. Pennell, 164 Pa. 300 (1895).

⁵Cooley: Principles of Constitutional Law.

⁶Singer v. Supervisors of Marathon, 38 Wis. 363 (1875); Ake v. Gleim, 52 Pa. 432 (1866).

judgment, no right is vested in any penalty or forfeiture, and any possible rights may be destroyed by a statute. But when a judgment has been entered, the legislature can not change the effect of that judgment.⁷ A judgment is a vested right of property in such a sense that the legislature cannot destroy or diminish its value or deprive anyone of the fruits of it.⁸

The law of the case at the time when it has become complete is an inherent element in it; and, if changed or annulled, the law is annulled, justice denied, and the due course of law violated.⁹ It may be stated as a well-recognized rule of law that the legislature has no power to annul, set aside, or reverse a judgment rendered either by a state or Federal court.¹⁰ To permit such action by the legislature would be to install the legislature in the place of the judiciary with power to revise and overturn the solemn adjudications of the latter. When once any controversy has proceeded to a decree and judgment upon its merits, it has passed beyond the power and control of the legislature.¹¹ In the words of Chief Justice Gibson,¹² "it is the province of the legislature to enact, of the judiciary to expound, and of the executive to enforce. These functions could have been performed by a single organ but the people of Pennsylvania have not willed it so. The legislature cannot exercise any judicial power". The reversal of judgments is a judicial power exclusive in the judiciary. Any attempt of

⁷Black: Constitutional Law, 3rd. ed.; *United States v. Tynen*, 11 Wall. 88 (1870); *Atwood v. Buckingham*, 78 Conn. 423, 62 Atl. 616 (1905); *Parmalee v. Lawrence*, 44 Ill. 405 (1867).

⁸*Merchant's Bank of Danville v. Ballou*, 98 Va. 112, 32 S. E. 481, 44 L. R. A. 306 (1899); *Chiles v. School District of Buchner*, 103 Mo. App. 240, 77 S. W. 82 (1903); *Tucker v. State*, 163 Ind. 403, 71 N. E. 140 (1904).

⁹*Menges v. Dentler*, 33 Pa. 495 (1859); see also *Kay v. Pa. Ry. Co.*, 65 Pa. 269 (1870).

¹⁰*McNichol v. U. S. Mercantile Reporting Agency*, 74 Mo. 457 (1881); *Ex Parte Chetwood*, 165 U. S. 443, 17 Sup. Ct. 385 (1897); *Roche v. Waters*, 72 Md. 264, 19 Atl. 535, 7 L. R. A. 533 (1890); *De Chastella v. Fairchild*, 15 Pa. 18, 53 Am. Dec. 570 (1850).

¹¹*Martin v. So. Salem Land Co.*, 94 Va. 28, 26 S. E. 591 (1897).

¹²*In Greenough v. Greenough*, 11 Pa. 489 (1849).

the legislature to exercise the power is an encroachment upon the powers of the judiciary and unconstitutional.

It appears that the court, recognizing the general rules applicable to the situation, but wishing to decide the question fairly, has manufactured a distinction between judgments wherein private interests are involved and those involving only public interests. This amazing distinction seems to have never been recognized before. From a study of various authorities,¹³ it is safe to say that no such distinction exists. If a judgment has been entered, it is immaterial whether the interests therein involved are public or private it follows as a fixed and basic principle of constitutional law that the legislature cannot reverse the judgment.

W. Reese Hitchens

PROBATION ON CONDITION PRISONER LEAVE STATE

In a recent Michigan case¹ where the defendant, convicted of a violation of the Michigan liquor law, was sentenced to pay a fine and within thirty days leave the state for a period of probation, which was fixed at five years, the Supreme Court reversed the sentence of the lower court and remanded the case for imposition of a legal sentence. The appellate court held that the sentence was not authorized specifically by statute and was contrary to public policy. What would be the result if a similar case arose in Pennsylvania today?

The Michigan statute in terms gives the court the power to impose such lawful conditions of probation as the circumstances of the case may require or warrant² except in cases of murder, treason, robbery while armed, or break-

¹³Including Black, Cooley, White, Ruling Case Law, Corpus Juris, etc.

¹People v. Baum, 231 N. W. 95 (Mich. 1930).

²Mich. Public Acts 1927, Number 175, c. 11, Sec. 2.