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Federal Courts—No Jurisdiction Under Johnson Act When Plain, Speedy and Efficient Remedy May Be Had in State Courts

In February 1964, the Preston County Light and Power Company and the Preston Public Service Corporation applied to the Public Service Commission of West Virginia for approval of a merger of the two companies. Since the merger was the subject of litigation in the Preston County Circuit Court, the Commission delayed action until the completion of those proceedings. In June 1966, the companies filed a revision to the tariff schedule of the Preston County Light and Power Company. The Commission then made the companies respondents in a hearing concerning the tariff application and deferred use of the new rates until November of 1966. In February 1967, the Commission cancelled the tariffs and ordered refunds to be made on the grounds that neither company had proper standing to file tariff requests with the Commission. Subsequently, the companies petitioned the West Virginia Supreme Court for a suspension of the order. The petition was denied, and the companies failed to apply to the United States Supreme Court for a writ of certiorari within the statutory period allowed. An action was then brought in federal district court seeking an injunction to restrain the enforcement of the order. Held, action dismissed. The federal court was prohibited from exercising jurisdiction in this case by the Johnson Act, 28 U.S.C. § 1342 (1948). Preston County Light and Power Co. v. Public Service Comm’n of West Virginia, 297 F. Supp. 759 (S.D. W. Va. 1969).

Under the Johnson Act, federal district courts are prohibited from enjoining any order made by a state administrative agency which affects the rates chargeable by a public utility, where:

(1) Jurisdiction is based solely on diversity of citizenship or repugnance of the order to the Federal Constitution; and, (2) The order does not interfere with interstate commerce; and, (3) The order has been made after reasonable notice and hearing; and, (4) A plain, speedy and efficient remedy may be had in the courts of such State. 28 U.S.C.A. § 1342.

The district court, in dismissing the action, concluded that the plain, speedy and efficient remedy required by the Johnson Act
was provided by a West Virginia statute. W. VA. CODE ch. 24, art. 5, § 1 (Michie 1966). While a petitioner is not entitled to a trial de novo under this provision, the fact that the statute empowers the court to set aside decisions of administrative agencies is sufficient to satisfy the requirements of a plain, speedy and efficient remedy.

The companies contended that they failed to make a timely application for a writ of certiorari because they did not receive the customary personal notice of the disposition of their case from the West Virginia Supreme Court. The district court noted that, in the absence of a statute requiring personal notice, the companies were not deprived of their right to due process since the decision had been read in open court. Therefore, the expiration of the time period in which a writ of certiorari could have been sought did not deny the companies the remedy contemplated by the Johnson Act.

Pleading—Default Judgment and New Trials

Defendants, husband and wife, failed to list plaintiff's claim in a bankruptcy proceeding. After defendant husband was adjudicated a bankrupt, plaintiff sued both defendants to recover principal and interest on a loan made before the bankruptcy proceedings. Defendant wife filed no answer to the complaint, but did appear in court. The jury rendered a verdict against defendants for one dollar, but the circuit court on plaintiff's motion set aside the one dollar judgment against defendant husband, and entered judgment against him, and a default judgment against defendant wife, for the total amount of the loan, including interest.

The West Virginia Supreme Court of Appeals reversed and remanded for a new trial, citing as errors: failure to give defendant wife, who had appeared in the action, at least three days prior notice of application for default judgment, a violation of Rule 55 (b) (2) of the West Virginia Rules of Civil Procedure; and failure to comply with Rule 59 (a) of the West Virginia Rules of Civil Procedure by entering a new judgment against defendant husband after setting aside the one dollar judgment. Rule 59 (a) permits the court to direct the entry of a new judgment in an action tried without a jury, but permits only a new trial, when, as in this case, there has been a trial by jury. Investors Loan Corporation v. Long, 166 S.E. 2d 113 (W. Va. 1969).