

SUPEREM COURT OF UNITED STATES

Asbury Hospital

Vs.

Cass County, N.D.

05.11.1945

Appeal from the Supreme Court of the State of North Dakota.

[Syllabus from pages 207-209 intentionally omitted]

Mr. Herbert G. Nilles, of Fargo, N.D., for appellant.

Mr. Nels G. Johnson, of Bismarck, N.D., for appellees.

Mr. Chief Justice STONE delivered the opinion of the Court.

Appellant, a Minnesota non-profit corporation sought in the state district court of North Dakota, a declaratory judgment that the so-called Initiative Measure of 1932, North Dakota Laws, 1933, pp. 494, 495, as amended by Chap. 89, Laws 1933, and Chap. 111, Laws 1935, is unconstitutional as applied to appellant's North Dakota farming lands.

The challenged statute declares, §§ 2, 3, that corporations both domestic and foreign, which 'now own or hold rural real estate, used or usable, for farming or agriculture, except such as is reasonably necessary in the conduct of their business, shall dispose of the same within ten years from the date that this Act takes effect * * *', and that 'the ten year limitation provided by this Section shall be deemed a covenant, running with the title to the land against any grantee, successor of (or) assignee

of such corporation, which is also a corporation.' Farming land in the state owned by any corporation in violation of the statute is, by § 5, made subject to escheat to the county in which it is located, by suit instituted by the county attorney. The county is required to dispose of the land at public auction to the highest bidder within one year after escheat, and to pay the proceeds, less the expenses of sale, to the former corporate owner.

Appellant alleges in its amended complaint that prior to the enactment of the statute it had acquired a tract of land within Cass County, North Dakota, in satisfaction of a mortgage indebtedness, and that it has since leased the property out to farmers who have used it as farm land. The amended complaint further alleges that since the enactment of the statute appellant has constantly attempted to sell this tract, and that it has been and will be unable to sell it for an amount equal to the original mortgage debt before the expiration of the statutory ten year period; that any sale which the county, proceeding under the statute, might be able to make, would be for substantially less than the amount appellant has invested in the land and the costs of sale. The amended complaint sets up that the statute, as applied to appellant's tract, violates the privileges and immunities clauses of Article IV, § 2 and the Fourteenth Amendment of the Federal Constitution, the contract clause, Article I, § 10, and the due process and equal protection clauses of the Fourteenth Amendment, and prays for a judgment that the statute is unconstitutional and void as applied to appellant and for an injunction restraining respondent county from enforcing the statute.

The Supreme Court of North Dakota sustained an order of the trial court overruling appellee's demurrer to the amended complaint, 72 N.D. 359, 7 N.W.2d 438. Upon remand of the case for further proceedings, the trial court found the allegations of fact set out in the amended complaint to be true, construed the statute as applicable to appellant's land, which was held not to be necessary to the conduct of appellant's business, and sustained the constitutionality of the statute in all respects. The Supreme Court of North Dakota affirmed. 16 N.W.2d 523. The case comes here on appeal under § 237(a) of the Judicial Code, 28 U.S.C. 344(a), 28 U.S.C.A. § 344(a), appellant repeating in its assignments of error the attack made on the statute by its complaint.

Appellant does not invoke the commerce clause, and is neither a citizen of a state nor of the United States within the protection of the privileges and immunities clauses of Article IV, § 2 of the Constitution and the Fourteenth Amendment. *Paul v. Virginia*, [1868] USSC 79; 8 Wall. 168, 177[1868] USSC 79; , 19 L.Ed. 357; *Pembina Consol. Silver Mining & Milling Co. v. Pennsylvania*, [1888] USSC 104; 125 U.S. 181, 187[1888] USSC 104; , 8 S.Ct. 737, 740[1888] USSC 104; , 31 L.Ed. 650; *Selover, B. & Co. v. Walsh*, [1912] USSC 205; 226 U.S. 112, 126[1912] USSC 205; , 33 S.Ct. 69, 72[1912] USSC 205; , 57 L.Ed. 146. The State of North Dakota has granted no charter or certificate of incorporation to appellant, and has issued to it no permit to do business or own property within the state which could give rise to contract rights which appellant could assert against the state. None are to be implied from appellant's mere acquisition of land in the state either before or after the enactment of the statute. *Erie R. Co. v. Pennsylvania*, [1874] USSC 47; 21 Wall. 492, 22 L.Ed. 595

; Connecticut Mutual Life Ins. Co. v. Spratley, [1899] USSC 28; 172 U.S. 602, 620-622[1899] USSC 28; , 19 S.Ct. 308, 315, 316[1899] USSC 28; , 43 L.Ed. 569; Hammond Packing Co. v. Arkansas, [1909] USSC 56; 212 U.S. 322, 344, 345[1909] USSC 56; , 29 S.Ct. 370, 377, 378[1909] USSC 56; , 53 L.Ed. 530, 15 Ann.Cas. [645](#).