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Religious Societies—Arbitration and Award

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it is true, in this case set aside the sale but upon the grounds of lack of good faith on the part of the trustee. The existence of the right to foreclose was specifically recognized and the court cited several prior Missouri decisions.

Probably the most outstanding is the case of *Rumsey v. People's Railway Company*, 154 Mo. 215, a suit brought to foreclose a deed of trust against one of the predecessors of the United Railways for failure to meet interest coupons. The deed was conditioned upon the payment of the interest coupons, the principal to become due upon the failure to pay the interest.

At page 246, the court said, "It was a matter of contract, and in the case at bar it is expressly provided in the mortgage deed of trust that it is 'distinctly understood and agreed' that failure to pay any one of said coupons for thirty days after due should cause all of said bonds to become immediately due and payable, and we know of no reason why such a contract is not valid. It is an agreement which the parties were at liberty to make, and there is nothing in it immoral or against public policy and is a perfectly valid contract."

In the case of *Philips v. Bailey*, 82 Mo. 639, the court held that a tender of the interest due before foreclosure, but when the date for its payment was passed, waives the default and prevents a valid foreclosure. However, the court recognizes the right to foreclose in the absence of the payment of the interest.

The deed of trust must be conditioned upon payment of interest or taxes, and not merely upon payment of the principal, or the right to foreclose for non-payment of taxes or interest does not exist. This point is illustrated by the case of *Wilson v. Reed*, 270 Mo. 400, in which the agreement of the parties was that the interest, if not paid when due, was to become part of the principal and bear interest. The deed was conditioned upon the payment of principal only and the court refused to permit a foreclosure for non-payment of interest. The court went as far so to say that there are cases involving like circumstances in which the right to sue for interest does not exist until the maturity of the principal.

The result of the Missouri decisions seems to be that a deed of trust can be conditioned upon the payment of interest or taxes as well as upon the payment of the principal and that a provision that, upon a failure to pay taxes or interest, the entire debt shall become due is valid and will be enforced, subject to the rules of equity requiring good faith and fair dealing.

RELIGIOUS SOCIETIES—ARBITRATION AND AWARD.

The recent case of *Bogard et al. v. Boone, et al.* (Court of Appeals of Kentucky), 255 S. W. 112, was a suit between the trustees of rival factions of the Mt. Zion Baptist Church, Colored, of Paducah, Kentucky. each faction claiming to be the true congregation, and as such entitled to the church property.

An agreement was entered into between the rival factions by which the whole matter was submitted to arbitration and articles to that effect were drafted and duly executed by the acting trustees of the rival factions. These

articles provided that "each faction hereby binds and obligates itself to abide by and be guided by the finding of said board."

Appellants declined to abide by the award for several assigned reasons, among them being that the board of arbitration did not decide the first two of three questions submitted and which appellants insist were the basis of the answer to and decision of the third question.

The controversy was finally carried to the district association of the church where all matters were heard and it was determined by that body that appellees, acting as trustees, and the faction which they represented were the true trustees and congregation.

The court held that this action in most church congregations, in the absence of anything to the contrary, would be conclusive, the rules of the church being supreme in such matters, citing *Poynter v. Phelps*, 129 Ky. 381.

That the award was not void or ineffectual in so far as it decided and determined any of the questions submitted to the board of arbitration.

That the award of the board was much more favorable to the appellants than was their right, and, that the appellees having generously accepted the award, that the appellants had no grounds to complain and affirmed the judgment of the lower court sustaining the award.

TRIAL—STATUTE PRESCRIBING RULES FOR DIRECTING VERDICT ASSUMPTION OF JUDICIAL POWER BY LEGISLATURE.

The Supreme Court of Wisconsin in the recent case of *Thoe v. Chicago, M. and St. P. Ry. Co.*, 195 N. W. 407, held a statute, which prohibited the court from directing a verdict after the jury had been selected, to be unconstitutional as an unauthorized assumption of the judicial power by the legislature. The case involved a suit to recover damages for the death of the deceased. The evidence was clearly insufficient as a matter of law to sustain a verdict for the plaintiff.

In passing on the statute which prohibited the direction of a verdict, the court said, page 410: "If the power to determine the legal sufficiency of the evidence is a judicial power, then the legislature has exercised that power by determining in every case that the legal sufficiency of the evidence is to go to the jury. If this does not constitute a clear exercise of judicial power, it is difficult to imagine a case where the judicial power can be invaded." The legislature attempts to interpose the statute where the courts have had power to act from time immemorial, i. e., to direct a verdict at the close of the testimony if the evidence cannot from any point of view support a verdict for the adverse party.

The court went on to deny the right of the legislature to declare in advance that evidence is sufficient. Its sufficiency is purely a judicial matter for the court. The fact that even though the trial court is prohibited from directing a verdict, an unwarranted verdict of the jury can be corrected at a subsequent time in the proceedings cannot affect the constitutionality of the statute. An