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Civil Practice—Jurisdiction of the Supreme Court

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McGuire Act, manufacturers can constitutionally enjoin non signers from selling below list in interstate commerce.

Defendants argue that the McGuire Act attempts an unconstitutional delegation to the states of power over interstate commerce. The court answers this by bringing the McGuire Act within the language of the Supreme Court in *Southern Pacific Co. v. State of Arizona ex rel. Sullivan:*[46] "Congress has undoubtedly the power to redefine the distribution of power over interstate commerce. It may . . . permit the states to regulate the commerce in a manner which would otherwise not be permissible." In any event, the constitutionality of the McGuire Act was upheld by the U. S. Court of Appeals for the Fifth Circuit in *Schwegman Bros. v. Eli Lilly & Co.*[47]

The defendants' other principle attack is against the constitutionality of the Field-Crawford Act. The Court refuses to reconsider those issues decided by the *Old Dearborn* and *Bourjois Sales* cases.

III. Civil Practice

Jurisdiction of the Supreme Court

An action was brought in the Supreme Court against State officials asking for equitable relief in the form of the recission of a bid made by the plaintiffs, and an injunction forbidding the transfer of the bid check to the State's general fund, and commanding that the check or its proceeds be returned to the plaintiffs. The Court of Appeals affirmed the decision of the Appellate Division, which had reversed a finding for the plaintiffs by the trial court, on the ground that the Supreme Court lacked jurisdiction to entertain the case.[1]

Suits for the recovery of money paid to State officers in their official capacity, although nominally brought against the officers themselves are held to be actions against the state.[2] Actions for the recovery of money from the state must be brought in the Court of Claims.[3] The plaintiffs in the instant case argued that since the Court of Claims has no jurisdiction to grant strictly equitable relief,[4] and since no suit for the return of the deposit could be maintained until the bid was rescinded, they must neces-

46. 325 U. S. 761, 769 (1944).
47. 205 F. 2d 788 (5th Cir.), *cert. denied* 346 U. S. 865 (1953).

1. *Psaty v. Duryea,* 306 N. Y. 413, 118 N. E. 2d 584 (1954).
2. *Samuel Adler, Inc. v. Noyes,* 285 N. Y. 34, 32 N. E. 2d 781 (1941).
3. Court of Claims Act § 9.
4. *Gregory Ferend Co. v. State of New York,* 251 App. Div. 13, 295 N. Y. Supp. 715 (3d Dep't 1937), *leave to appeal denied* 282 N. Y. 808, 26 N. E. 2d 836 (1940).

sarily proceed in the Supreme Court. The court, recognizing the plaintiffs' dilemma, insisted, nevertheless, that relief against the State itself could not be granted in the Supreme Court. *Levine v. Parsons,*[5] a case in which relief similar to that sought by the plaintiff here was granted, was distinguished on the ground that the question of jurisdiction was not raised.

It was pointed out in the opinion in the present case that, while the plaintiffs may have no remedy in the courts, their petition will receive consideration on the administrative level. In this case the administrative ruling was adverse to the plaintiffs. It would seem that a review of the defendants' determination might be sought in the Supreme Court.[6] In view of the broad discretion given to the officials in the treatment of bids once they have been accepted,[7] however, the possibility that the administrative decision would be reversed seems highly unlikely.

Statute of Limitations

The New York statute of limitations for judgments provides: "A final judgment or decree for a sum of money . . . is presumed to be paid and satisfied after the expiration of twenty years from the time, when the party recovering it was first entitled to a mandate to enforce it."[8] It has been held that the words "judgment or decree" are exclusive and that the section does not apply to an *order* directing the payment of costs.[9]

In *Hornblower & Weeks v. Sherwood,*[10] the Court of Appeals was called upon to decide if the twenty year limitation applied to bar the recovery of a fine for criminal contempt of the Legislature imposed by an order in a civil special proceeding. The case arose on an action in the nature of interpleader to decide whether the assignee of the party held in contempt could validly claim the balance due to that party on his account with the plaintiff. Having been served with a writ of attachment, the plaintiff had accumulated the money in the account for more than twenty years. No further attempt was made to collect the money in spite of the plaintiff's notice to the sheriff of the accumulation. When the assignee claimed the fund this action was brought by the plaintiff to determine the right to the fund. The Court of Appeals, affirming (4-3) the decision of the Appellate Division, held that the money was still subject to the attachment and there was no presumption of satisfaction.

5. 258 App. Div. 1003, 16 N. Y. S. 2d 722 (3d Dep't 1940).
6. Under C. P. A. Article 78.
7. PUBLIC BUILDINGS LAW § 8 (4).
8. C. P. A. § 44.
9. *Warren v. Garlipp,* 217 App. Div. 55, 216 N. Y. Supp. 466 (4th Dep't 1926).
10. 307 N. Y. 204, 120 N. E. 2d 790 (1954).