CONFLICT OF JURISDICTION: POWER OF FEDERAL COURT TO ENJOIN INSTITUTION OF PROCEEDINGS IN A STATE COURT

Denton v. City of Carrollton, 235 F.2d 481 (5th Cir. 1956)

Plaintiffs, a labor organizer and the union of which he was a member, brought suit in a federal district court to enjoin the enforcement of a city ordinance which required persons engaged in certain labor union activities to obtain a license. The license fee for *each* person engaged in the activity was an initial $1,000 plus $100 each day the activity was carried on. The penalty for violating the ordinance was a fine not exceeding $100, or imprisonment not exceeding sixty days, or both.[1] Although the district court had jurisdiction,[2] it dismissed the case without reaching the merits, stating that: (1) to grant the injunction would preclude proceedings in a state court contrary to federal statute, and (2) the case was wanting in equity since there was no showing of danger of irreparable injury.[3] The court of appeals, reversing, summarily dismissed the first ground and held that the district court should proceed to the merits because the facts showed that there was a reasonable basis for apprehension of irreparable harm — both great and immediate.[4]

The discretionary power of federal equity courts to interfere with state activities has been confined within narrow bounds by, (1) statutory limitations, (2) traditional limitations imposed upon federal courts of equity,[5] and (3) a series of special rules promulgated by the Supreme Court for application in the area of federal-state conflict. In determining whether federal courts may enjoin the enforcement of state criminal statutes, a careful examination must be made of these restrictions. Although a federal court may have jurisdiction,

1. The pertinent portions of the ordinance are quoted in note 1 to the court's opinion. Denton v. City of Carrollton, 235 F.2d 481, 482 n.1 (5th Cir. 1956).

2. Jurisdiction in the principal case was asserted under (1) 28 U.S.C. § 1337 (1952), AFL v. Watson, 327 U.S. 582 (1946) (district courts have original jurisdiction of any civil action arising under acts regulating commerce); and (2) under the Civil Rights Act, 28 U.S.C. § 1343 (1952), Hague v. CIO, 307 U.S. 496 (1939). The district court predicated jurisdiction on the latter ground.

3. Denton v. City of Carrollton, 132 F. Supp. 302 (N.D. Ga. 1955).

4. Denton v. City of Carrollton, 235 F.2d 481 (5th Cir. 1956).

5. One of the traditional rules governing all courts of equity, whether state or federal, is that the enforcement of criminal statutes will normally not be enjoined without a showing of irreparable harm, both great and immediate. The rules governing what constitutes "irreparable harm" are said to be more stringent in the federal courts than in the state courts. See MCCLINTOCK, EQUITY § 173 (2d ed. 1948). The reason for this can probably be attributed to the fact that federal judges, recognizing the problems presented by dual sovereignty, confine their discretionary power to enjoin state statutes within narrower bounds than the traditional rules of equity would warrant.

"It is in the public interest that federal courts of equity should exercise their discretionary power with proper regard for the rightful independence of state governments in carrying out their domestic policy." Pennsylvania v. Williams, 294 U.S. 176, 185 (1935). *Cf.* Fenner v. Boykin, 271 U.S. 240, 243-44 (1926); Massachusetts State Grange v. Benton, 272 U.S. 525, 527 (1926); Matthews v. Rodgers, 284 U.S. 521, 525-26 (1932).

it will often be prevented from proceeding to a determination by one or more of these restrictions.

Of the several statutes which have placed restrictions on the power of federal courts to interfere with state activities,[6] two were pertinent in the principal case.[7] Title 28, section 1341, of the *United States Code* forbids federal district court interference with the collection of a state tax where a *plain and efficient remedy may be had in the state court.*[8] An examination of the Georgia law satisfied the court in the principal case that recovery of a tax, even though paid under protest, is uncertain at best.[9] It has been held that where recovery of a tax

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6. There are three statutes in this area not considered in the principal case: (1) 28 U.S.C. § 2281 (1952), which provides that only a three-judge court can enjoin "the enforcement, operation or execution of any state statute." This provision is not applicable in the principal case because the ordinance under attack is not "a policy of statewide concern." Rorick v. Commissioners, 307 U.S. 208, 212 (1939). See also Spielman Motor Sales Co. v. Dodge, 295 U.S. 89 (1935) (distinction between "state" and "local" officers); *The Three-Judge Federal Court*, 1 RACE REL. L. REP. 811 (1956); (2) 28 U.S.C. § 1342 (1952) (enjoining rate orders of state agencies); and (3) 29 U.S.C. § 101 (1952) (Norris-LaGuardia Act regulating labor injunctions).

7. 28 U.S.C. § 1341 (1952) (discussed in the majority opinion of the circuit court, 235 F.2d at 485-86) and 28 U.S.C. § 2283 (1952) (relied on by district court, 132 F. Supp. at 303).

8. 28 U.S.C. § 1341 (1952). Note that the statute requires an "efficient" remedy. The Supreme Court has interpreted this to mean "adequate"—in the technical sense used by courts of equity. Town of Hillsborough v. Cromwell, 326 U.S. 620 (1946); Spector Motor Serv., Inc. v. McLaughlin, 323 U.S. 101 (1944). It has been argued that Congress' use of the word "efficient" was deliberate, and was intended to restrict federal activity. Note, 59 HARV. L. REV. 780 (1946).

9. "Voluntary payments; recovery back.—Payments of taxes or other claims, made through ignorance of the law, or where the facts are all known, and there is no misplaced confidence and no artifice, deception, or fraudulent practice used by the other party, are deemed voluntary, and cannot be recovered back, unless made under an urgent and immediate necessity therefor, or to release persons or property from detention, or to prevent an immediate seizure of person or property. Filing a protest at the time of payment does not change the rule." GA. CODE ANN. § 20-1007 (1947). Recoverability of a tax or fine in Georgia depends entirely upon the interpretation of the above statute. In Dennison Mfg. Co. v. Wright, 156 Ga. 789, 120 S.E. 120, 123 (1923), the court indicated that payment of an illegal tax under protest, when failure to pay subjects the taxpayer to prosecution and punishment, is not voluntary within the meaning of the statute. Subsequently, however, in Strachan Shipping Co. v. Savannah, 168 Ga. 309, 315, 147 S.E. 555, 557-58 (1929) the status of the law on this point was much confused. It was there held that money paid under *apprehension* or *threat* of criminal prosecution, when no warrant has yet been issued nor any proceedings begun was paid voluntarily and cannot be recovered. The court, however, indicated that where demands or threats are made by a person clothed with governmental authority to carry them into effect, the money so paid may *generally* be recovered. See also Eibel v. Royal Indemnity Co., 50 Ga. App. 206, 177 S.E. 350 (1934) (tax paid under threat of arrest from an officer not having authority to make the arrest is voluntary and cannot be recovered). In Goodwin v. MacNeill, 188 Ga. 182, 3 S.E.2d 675 (1939), the court held that a fine paid by a person accused of a misdemeanor in order to secure her release before an appeal had been taken, was a voluntary payment and could not be recovered, even after the case had been reversed on appeal and "nolprosed" in the lower court. Three years later, in Clay v. Drake, 66 Ga. App. 544, 18 S.E.2d 516 (1942), the court held that fines imposed for violation of an ordinance and deposited with the clerk of the recorder's court to obtain liberty pending decision in the appellate court

is doubtful, there is no adequate remedy in the state court and the statute does not bar a federal injunction.[10] It is submitted, therefore, that the court correctly held that the statute did not preclude the issuance of an injunction.

Section 2283 of title 28, upon which the district court relied, is the latest expression of a prohibition which has been, in various forms, part of the Judicial Code since 1793.[11] It provides that no federal court shall issue an injunction staying proceedings in a state court unless it can be shown that such an injunction either has been expressly authorized by act of Congress, is necessary in aid of its jurisdiction, or is necessary to protect or effectuate its judgment, already rendered.[12] It is to be noted, however, that the prohibition of section 2283 is directed toward staying *proceedings*[13] *in* a state court. It does not prevent federal courts from enjoining state officers from *instituting* criminal actions in state courts under allegedly uncon-

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were recoverable as money paid involuntarily when the ordinance was subsequently declared unconstitutional in another proceeding. It is not within the scope of this comment to distinguish these cases. Suffice it to say that the case law in Georgia interpreting the above statute is uncertain and confused enough to warrant the court in the principal case finding that recovery under the facts of that case was at least doubtful.

10. Dawson v. Kentucky Distilleries Co., 255 U.S. 288, 295-96 (1921). See also Georgia R.R. & Banking Co. v. Redwine, 342 U.S. 299 (1952); Town of Hillsborough v. Cromwell, 326 U.S. 620 (1946); *cf.* Stewart Dry Goods Co. v. Lewis, 287 U.S. 9 (1932); Atlantic Coastline R.R. v. Daughton, 262 U.S. 413, 426 (1923).

11. For a history of the predecessor of § 2283, see Taylor & Willis, *Power of Federal Courts to Enjoin Proceedings in State Courts*, 42 YALE L.J. 1169 (1932-33); Comment, 35 CALIF. L. REV. 545 (1947); Note, 48 NW. U.L. REV. 383 (1953).

12. 28 U.S.C. § 2283 (1952). Its predecessor incorporated only one exception to the general prohibition—bankruptcy proceedings—instead of the present three. 28 U.S.C. § 379 (1940). The prior statute, however, was loosely applied, and over the years, the courts succeeded in carving out a number of exceptions to the general prohibition it imposed. Finally, in Toucey v. New York Life Ins. Co., 314 U.S. 118 (1941), the Court, in an opinion written by Justice Frankfurter, challenged all but one of these judicially improvised exceptions, holding that the language of the statute must be strictly enforced. See Comment, 35 CALIF. L. REV. 545 (1947). As a result of the *Toucey* case, Congress passed § 2283 in its present form, thereby reviving some of the exceptions that *Toucey* had repudiated. Justice Frankfurter, however, has interpreted the present provision in the same narrowly restrictive manner in which he interpreted its predecessor, holding that federal courts could not enjoin proceedings in a state court even when the state court had usurped jurisdiction which lay exclusively within the federal system. Amalgamated Clothing Workers v. Richman Bros., 348 U.S. 511 (1955). For a view contending that Congress did not intend the provision to be applied where the jurisdiction is exclusively within the federal system, see Kochery, *Conflict of Jurisdiction: 28 U.S.C. § 2283 and Exclusive Federal Jurisdiction*, 4 BUFFALO L. REV. 269 (1955).

13. "That term [proceedings] is comprehensive. It includes all steps taken or which may be taken in the state court or by its officers from the institution to the close of the final process." Hill v. Martin, 296 U.S. 393, 403 (1935). It applies to restraint of parties as well as to the courts. Amalgamated Clothing Workers v. Richman Bros., 348 U.S. 511 (1955). *But see* Rea v. United States, 350 U.S. 214 (1956) (federal officer may be enjoined from testifying in a state court, even though the effect is to prevent a state trial, where such testimony, if given in a federal court, would violate federal law).

stitutional or invalid statutes.[14] Thus, since in the principal case the injunction was sought to prevent the *institution* of proceedings in a state court, the court was correct in holding that the statute was inapplicable.

It must next be determined whether, in the exercise of its discretion, the court should have refused to exert its powers because of the traditional rules imposed upon federal equity courts. Federal injunctions against the enforcement of state criminal statutes are not granted as a matter of course, even though the statute sought to be enjoined is invalid or unconstitutional.[15] The general rule is that a federal court of equity will not interfere to prevent the enforcement of an allegedly invalid or unconstitutional state criminal statute unless it appears that there is danger of irreparable harm—both great and immediate;[16] imminence of prosecution is not in and of itself enough to qualify as irreparable injury.[17] Danger of irreparable harm, both great and immediate, is sufficiently shown where,[18] (1) the penalties imposed are so severe that violation to test the statute's validity will not be risked;[19] (2) a property right, such as the right to work,[20] or the right to carry on a business[21] is infringed by statute; (3) the cost of complying with the statute while awaiting a determination of its validity is excessive, and is combined with criminal sanctions imposing fines and/or imprisonment;[22] or (4) violation to

14. *Ex parte* Young, 209 U.S. 123 (1908); see also Fenner v. Boykin, 271 U.S. 240, 243 (1926); Truax v. Raich, 239 U.S. 33 (1915). See MOORE, JUDICIAL CODE COMMENTARY 408-09 (1949).

15. Watson v. Buck, 313 U.S. 387, 400 (1941).

16. Douglas v. City of Jeannette, 319 U.S. 157, 163-64 (1943); Spielman Motor Sales Co. v. Dodge, 295 U.S. 89, 95 (1935); Fenner v. Boykin, 271 U.S. 240, 243 (1926).

17. "No person is immune from prosecution in good faith for his alleged criminal acts. Its imminence, even though alleged to be in violation of constitutional guaranties, is not a ground for equity relief since the lawfulness or constitutionality of the statute or ordinance on which the prosecution is based may be determined as readily in the criminal case as in a suit for an injunction." Douglas v. City of Jeannette, 319 U.S. 157, 163-64 (1943). See also Beal v. Missouri Pac. R.R., 312 U.S. 45, 49 (1941); Spielman Motor Sales Co. v. Dodge, 295 U.S. 89, 95 (1935).

18. These categories represent an attempt to ascertain, through a careful analysis of the cases, some of the minimum requirements that the courts will allow in sustaining a finding of irreparable harm, both great and immediate. It should be noted that since these are minimum requirements, many of the decisions fall into two or more of these categories. Nor is it contended that these four categories are *all* inclusive.

19. *Ex parte* Young, 209 U.S. 123 (1908); see also Terrace v. Thompson, 263 U.S. 197 (1923).

20. Truax v. Raich, 239 U.S. 33 (1915); *cf.* Hague v. CIO, 307 U.S. 496 (1939); Terrace v. Thompson, 263 U.S. 197 (1923). See also *In re* Sawyer, 124 U.S. 200 (1888); International News Serv. v. Associated Press, 248 U.S. 215, 236 (1918) (any civil right of a pecuniary nature is treated as a property right).

21. Hynes v. Grimes Packing Co., 337 U.S. 86 (1949); Hygrade Provision Co. v. Sherman, 266 U.S. 497 (1925); Packard v. Banton, 264 U.S. 140 (1924).

22. Toomer v. Witsell, 334 U.S. 385 (1948).

test the statute's validity would involve a multiplicity of suits each of which is punishable by fine and/or imprisonment.[23]

It is submitted that the court was correct in finding that there was danger of irreparable harm both great and immediate in the instant case. Had the union elected to comply with the statute while testing its validity, the cost would have been excessive. Indeed, as the court pointed out, it would cost one person engaging in these activities for one year of working days $32,300 to comply with the ordinance's provisions.[24] As was earlier pointed out, recoverability of this money under Georgia law in the event that the ordinance subsequently should be declared invalid is uncertain at best.[25] Nor is the alternative satisfactory. It is true that the union could have elected to violate the ordinance just once in order to test its validity in the state courts. However, this would have the effect of precluding any labor activities in the area until the case had wended its way up and down the judicial ladder, a process which conceivably could take several years. Such interruption of union activities strongly savors of an interference with the right to carry on a business,[26] and as applied to the plaintiff business agent, an interference with the right to work.

There remains to consider what bearing, if any, those special limitations which the federal courts have imposed upon themselves in the area of federal-state conflict have upon the principal case. This type of judicial restriction, often called "the doctrine of abstention,"[27] was raised by the district judge, who felt that the state courts should be given the opportunity of ruling upon the validity of the ordinance.[28] When a state statute is ambiguous, and its validity depends upon its interpretation or application, federal courts are required to stay their own proceedings until the statute has been interpreted[29] or applied[30] by the state courts.[31] If, however, the statute has been in-

23. Lee Optical Co. v. Williamson, 120 F. Supp. 128, 143-44 n.37 (W.D. Okla. 1954); *cf.* Beal v. Missouri Pac. R.R., 312 U.S. 45 (1941); Spielman Motor Sales Co. v. Dodge, 295 U.S. 89 (1935).

24. 235 F.2d at 485.

25. See note 9 *supra.*

26. The right to organize is derived from the Labor-Management Relations Act (Taft-Hartley Act), 61 STAT. 136 (1947), 29 U.S.C. § 157 (1952).

27. See Galfas v. City of Atlanta, 193 F.2d 931, 934 (5th Cir. 1952); Government Employees Organizing Comm., CIO v. Windsor, 116 F. Supp. 354 (N.D. Ala. 1953), *aff'd per curiam,* 347 U.S. 901 (1954).

28. 132 F. Supp. at 304.

29. Shipman v. DuPre, 339 U.S. 321 (1950); AFL v. Watson, 327 U.S. 582 (1946); Chicago v. Fieldcrest Dairies, Inc., 316 U.S. 168 (1942); Railroad Comm'n v. Pullman Co., 312 U.S. 496 (1941); Gilchrist v. Interborough Co., 279 U.S. 159 (1929); Government Employees Organizing Comm., CIO v. Windsor, 116 F. Supp. 354 (N.D. Ala. 1953), *aff'd per curiam,* 347 U.S. 901 (1954). *But see* Propper v. Clark, 337 U.S. 472 (1949).

30. Spector Motor Serv., Inc. v. McLaughlin, 323 U.S. 101 (1944); Watson v. Buck, 313 U.S. 387 (1941).

31. Indeed, a federal court may *direct* parties before it to initiate a suit in state courts. Thompson v. Magnolia Petroleum Co., 309 U.S. 478 (1940); *cf.* Shipman v. DuPre, 339 U.S. 321 (1950).

terpreted or applied by the state court, the federal court may not stay its proceedings even though the state decisions interpreting the statute are obscure or not definitive,[32] but must interpret the statute in the light of those decisions. Furthermore, if the statute itself is unambiguous and clear—capable of bearing only one interpretation—the federal court need not and should not await the state court's supplying the obvious answer.[33] Since the statute in the instant case was clear, and there was no question of interpretation, the "doctrine of abstention" found no application.

Inasmuch as the jurisdiction of the court was properly invoked, it is submitted that the court of appeals was correct in directing a trial on the merits. The statutory and judicial restrictions on federal interference with state activities were inapplicable, and there was a sufficient showing of irreparable harm, both great and immediate, to warrant granting the injunction.

TORTS—NEGLIGENCE—LIABILITY OF EMPLOYER FOR EMPLOYEE'S MISCONDUCT

Kendall v. Gore Properties, 236 F.2d 673 (D.C. Cir. 1956)

The defendant-manager of defendant-realty company employed a complete stranger to paint various interiors of an apartment building owned by the realty company. According to plaintiff's evidence defendants did not require references, nor was any other investigation made to ascertain the hired man's character or background. The employee was assigned to paint the apartment of a young woman who defendants knew lived alone. While in the apartment the "painter" strangled the tenant. Subsequently, the employee was adjudicated to be a person of unsound mind, dangerous and irresponsible. In a suit brought by the administratrix of the deceased tenant's estate, the United States District Court for the District of Columbia directed a verdict for the defendants at the conclusion of plaintiff's evidence. On appeal the circuit court reversed and remanded, holding that the absence of any investigation of the employee would be sufficient to support a jury finding that defendants were liable for the death of the tenant.[1]

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32. Doud v. Hodge, 350 U.S. 485 (1956); Meredith v. City of Winter Haven, 320 U.S. 228 (1943).

33. "The statutes involved are clear and there is no such need for interpretation or other special circumstances as would warrant the Court in staying action pending proceedings in courts of the state . . . ." Toomer v. Witsell, 73 F. Supp. 371, 374 (E.D.S.C. 1947). "[W]e agree with the District Court that there is neither need for interpretation of the statutes nor any other special circumstance requiring the federal court to stay action pending proceedings in the State courts." Toomer v. Witsell, 334 U.S. 385, 392 n.15 (1948). The clarity of the ordinance in the principal case was never questioned by either side. See note 1 *supra*.

1. Kendall v. Gore Properties, Inc., 236 F.2d 673 (D.C. Cir. 1956).