Indiana Law Journal

Volume 21 | Issue 1 Article 8

Fall 1945

Suits Against the State

FEDERAL JURISDICTION

SUITS AGAINST THE STATE

Petitioner, non-resident Foreign manufacturing corporation, seeks a refund of gross income taxes from the board of the department of treasury[1] of the State of Indiana.[2] The taxes were claimed to have been derived from sales occurring in Indiana;[3] petitioner alleged violation of the Commerce Clause and the Fourteenth Amendment of the United States Constitution.[4] United States District Court denied recovery. Circuit Court of Appeals affirmed.[5] Certiorari granted.[6] Held, complaint dismissed. The consent of the State of Indiana to suit for a tax refund in the state court does not extend to suit in a federal court.[7] No decision on the merits. *Ford Motor Co. v. Department of Treasury of State of Indiana,* et al., 65 Sup Ct. 347 (1945).

Petitioner's right to maintain this action in federal court depends on (1) whether the action is against the individual or the state, and (2) if against the state, whether the state has consented to suit in

---

22. Silving, "Divorce Without Fault" (1944) 29 Iowa L. Rev. 527.
23. See Vanderhuff v. Vanderhuff, 144 F. (2d) 509 (1944), cited supra note 17.
24. Ind. Stat. Ann. (Burns, 1933) §3-1201; Ind. Stat. Ann. (Burns, 1943 Replacement) §3-1201.

1. The action is brought against the department of treasury of the State of Indiana, and M. Clifford Townsend, Joseph M. Robertson, and Frank G. Thompson, the Governor, Treasurer, and Auditor, respectively, of the State of Indiana, who together constituted the board of the department of treasury, as provided by Ind. Stat. Ann. (Burns, 1943 Replacement) §64-2614. See Ind. Stat. Ann. (Burns, 1943 Replacement) § 60-101.
2. Petitioner followed the statutory procedure for obtaining a refund as set forth in Ind. Stat. Ann. (Burns, 1943 Replacement) §64-2614(a).
3. Indiana claimed the taxes under Ind. Stat. Ann. (Burns, 1943 Replacement) § 64-2602.
4. U.S. Const. Art. I, § 8; U.S. Const. Amend. XIV, § 1.
5. Ford Motor Co. v. Department of Treasury of State of Indiana et al., 141 F. (2d) 24 (C.C.A. 7th, 1944).
6. Id at 322 U.S. 721 (1944).
7. The suit was barred by U.S. Const. Amend. XI, "The judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by citizens of another state, or by citizens or subjects of any foreign state." See Hyneman, "Judicial Interpretation of the Eleventh Amendment" (1927) 2 Ind. L. J. 371, especially pps. 380-382.

federal court. If against an individual, a remedy is allowed against the wrongdoer personally.[8] Where the action is against a state officer in his official capacity, constituting an action against the state,[9] the express constitutional limitation of the Eleventh Amendment operates as a bar,[10] unless waived.[11] Petitioner's suit constitutes an action against the state.[12]

A provision of a state tax refund statute, similar to the statute in Indiana, was held a waiver of state immunity from suit in a state court only.[13] The Indiana Attorney General appeared in the Federal District Court and Circuit Court of Appeals and defended on the merits, objecting for the first time in the Supreme Court. Respondents concede that if it is within the power of administrative and executive

---

8. The Eleventh Amendment allows no protection in this situation. Atchison, T., and S. F. Ry. v. O'Connor, 223 U.S. 280, 287 (1912); Mathews v. Rodgers, 284 U.S. 521, 528 (1932).

9. The nature of a suit as one against the state is to be determined by the essential nature and effect of the proceeding. Worcester County Trust Co. v. Riley, Controller of California, 302 U.S. 292, 296 (1937); Ex Parte in the Matter of the State of New York et al., Petitioner, 256 U.S. 490, 500 (1921); In Re Ayers, 123 U.S. 443, 488 (1887). These actions are ordinarily authorized by statute.

10. The state is the real substantial party in interest and may invoke its sovereign immunity even though individual officials are nominal defendants. Great Northern Insurance Co. v. Read, 322 U.S. 47, 53 (1944); Smith v. Reeves, 178 U.S. 436, 440 (1900).

11. The immunity may be waived. Gunter v. Atlantic Coast Line, 200 U.S. 273, 284 (1906) (ancillary proceeding where defendant South Carolina attempted to attack validity of the Pegues judgment (Humphrey v. Pegues, 16 Wall. 244 (U.S. 1872) which had been defended on the merits, after twenty years had elapsed, with a South Carolina statute conferring on the attorney general power to "stand in judgment for the state."); Clark v. Barnard, 108 U.S. 436, 447 (1883) (a voluntary proceeding in intervention); Missouri v. Fiske, 200 U.S. 18, 24 (1905) (intervention proceeding). These cases indicate that something more is required for a waiver than is found in the instant case.

12. Petitioner brings the action under strict compliance with Ind. Stat. Ann. (Burns, 1943 Replacement) § 64-2614(a). Any judgment which might be obtained in such an action is satisfied by payment "out of any funds in the state treasury." This statute clearly provides for action against the state through its collective representatives, instead of one against the collecting officials themselves.

13. "When we are dealing with the sovereign exemption from judicial interference in the vital field of financial administration a clear declaration of the state's intention to submit its fiscal problems to other courts than those of its own creation must be found." Great Northern Insurance Co. v. Read, 322 U.S. 47 (1944) at p. 54, cited supra note 10. Ind. Stat. Ann. (Burns, 1943 Replacement) §64-2614(a) provides for refund in "circuit or superior court of the county in which the taxpayer resides or is located." Reference to a particular state court in a similar California statute warranted an inference that the state legislature consented to suit in state court only. Smith v. Reeves, 178 U.S. 436, 441 (1899). See Ind. Stat. Ann. (Burns, 1933) § 4-1501 for a like provision in case of a contract liability.

officers to waive, they have done so.[14] The Indiana Attorney General exercises only the power delegated him by statute,[15] and does not possess powers of an attorney general at common law;[16] therefore there is no waiver of the state's immunity.

A collateral issue raised by the instant case is the difference in controlling rules regarding application of the Eleventh Amendment when the action is for injunctive relief in equity rather than an action at law as presented in the principal case. Ever since Ex Parte Young[17] it is well settled that federal courts may enjoin proceedings in state courts to enforce statutes repugnant to the Federal Constitution,[18] and suits against state officers to enjoin enforcement of statutes contravening the Federal Constitution are held not suits against the state for the purposes of this particular rule.[19] As a

14. The Indiana Const. Art. IV, § 24 prohibits state consent to suit in any one particular case without a general consent to suit in all similar causes of action. "Since the state legislature may waive state immunity only by general law, it is not to be presumed in the absence of clear language to the contrary, that they conferred on administrative or executive officers discretionary power to grant or withhold consent in individual cases." Principal case at 352.

15. For powers delegated to Indiana Attorney General, see Ind. Stat. Ann. (Burns, 1933) § 4-1501 and § 49-1902. Provision for the attorney general in the instant case is made in Ind. Stat. Ann. (Burns, 1943 Replacement) § 64-2614(c).

16. State ex rel. Bingham v. Home Brewing Co., 182 Ind. 75, 93, 105 N.E. 909, 915 (1914); Julian v. State, 122 Ind. 68, 73, 23 N.E. 690, 692 (1890). An appearance by an attorney general will not bind the state unless he is given authority by state laws to waive the immunity. O'Connor v. Slaker, 22 F. (2d) 147, 152 (1927).

17. 209 U.S. 123 (1907), 13 L.R.A. (N.S.) 932 (1908). See Note (1908) 21 Harv. L. Rev. 527.

18. The federal circuit court in Ex Parte Young had enjoined the Minnesota Attorney-General from proceeding under railroad rate statutes pending decision of their constitutionality. He disobeyed the injunction and his habeus corpus petition was dismissed. The court found (1) the statutes were unconstitutional and (2) the court had jurisdiction to issue the injunction. Accord, Wells Fargo and Co. v. Taylor, 254 U.S. 175 (1920); Truax v. Reich, 239 U.S. 33 (1915); Smythe v. Ames, 169 U.S. 466 (1898); Reagan v. Farmers Loan and Trust Co., 154 U.S. 362 (1894). Dobie, "Federal Procedure" (1928) at p. 679 propounds this view. Cf. North Carolina v. Southern Ry., 145 N.C. 495, 59 S.E. 570 (1907), 13 L.R.A. (N.S.) 966 (1908); In Re Ayers, 123 U.S. 433 (1887); La. ex rel. v. Jumel, 107 U.S. 711 (1882).

19. Looney v. Crane Co., 245 U.S. 178 (1917); Caldwell v. Sioux Falls Stockyards Co., 242 U.S. 559 (1917); Prout v. Starr, 188 U.S. 537 (1903); Tanner v. Little, 240 U.S. 369 (1916). The opposite view was clearly expressed by Mr. Justice Harland dissenting in the Young case, Ex Parte Young, 209 U.S. 123 (1907), cited supra note 18, at p. 173, "And the manifest—indeed the avowed and admitted —object of seeking such relief was to tie the hands of the state, so that it could not in any manner or by any mode of proceeding in its own courts test the validity of the statutes and orders in question. It would therefore seem clear that within the true meaning of the Eleventh Amendment the suit brought in the federal court was one, in legal effect, against the state." Consider-

matter of comity, federal courts ought not to issue an injunction until the party has exhausted the right of appeal in the state,[20] but the doctrine is inapplicable if, pending an appeal, the party would suffer losses for which there is not adequate compensation at law.[21] To further limit excessive use of the power, Congress provided that such injunction could only be issued by three-judge courts.[22]

It is suggested that injunctive relief was not asked for in the principal case because (1) the claim of unconstitutionality was a secondary one,[23] and (2) the Indiana statute had no penalizing features

---

able confusion seems to have arisen as to whether the Eleventh Amendment operates as a bar in this particular situation, and many authorities agree it to be an uncomfortably close question. Trickett, "Suits Against States by Individuals In Federal Courts" (1907) 41 Am. L. Rev. 364 at 383 says, "A survey of the cases, and of the reasonings of the courts too painfully discloses the absence of a clear and definite criterion for deciding when a suit is to be deemed a suit against a state." " . . . and suits by these officers are enjoined at the instance of individuals, surely this is perilously close to the evil which the Eleventh Amendment sought to avert." Dobie, "Federal Procedure" (1928) 537.

20. Prentis v. Atlantic Coast Line Co., 211 U.S. 210, 228 (1908) (where a state commission was fixing the alleged unconstitutional rates); Gilchrist v. Interborough Rapid Transit Co., 279 U.S. 159 (1920) (a public utility attempting to enjoin a commission from changing its rate schedule); Pullman Co. v. Railroad Comm. of Texas, 33 F. Supp, 675 (W.D. Tex. 1940) (injunction sought against an order of Ry. Commission of Texas). Cf Public Utilities Comm. of Ohio v. United Fuel Gas Co., 317 U.S. 456 (1943), Note (1943) 56 Harv. L. Rev. 825. With reference to a tax statute, federal courts ordinarily will not enjoin state officers from collecting taxes where the taxpayer has an adequate remedy at state law. Mathews v. Rodgers, 284 U.S. 521, 526 (1932).

21. Pacific Tel. and Tel. Co. Co. v. Kuykendall, 265 U.S. 196 (1924); Oklahoma Natural Gas Co. v. Russell, 261 U.S. 290 (1923). In the words of Mr. Justice Holmes in Massachusetts State Grange v. Benton, 272 U.S. 525 (1926) at p. 527, " . . . no injunction ought to issue against officers of a state clothed with authority to enforce the law in question, unless in a case reasonably free from doubt and when necessary to prevent great and irreparable injury." See Lockwood, Maw, and Rosenberry, "The Use of the Federal Injunction" (1930) 43 Harv. L. Rev. 426 at 433-436 for a discussion of necessary elements before a tax statute leaves open the way to federal injunction.

22. 36 Stat. 557 (1910), 28 U.S.C.A. §380 (1928). Congress also enunciated the common law at 50 Stat. 738 (1937), 28 U.S.C.A. § 41 (1928), which sanctioned federal court practice by forbidding district courts to enjoin state action when there was an adequate remedy at law available. Great Lakes Dredge and Dock Co. v. Huffman, 319 U.S. 293 (1943), discussed in Note (1943) 43 Col. L. Rev. 837, 871, gives a most recent interpretation of the federal statutes, in this case allowing the injunction to restrain collection of illegal taxes from maritime employees.

23. In the Circuit Court of Appeals, 141 F. (2d) 24 (1944), petitioner's main contention was that the income taxed did not derive from sources in the State of Indiana; the claim of unconstitutionality was not accorded much importance by either the litigants or the court.

giving the petitioner an inadequate legal remedy.[24] By this decision, the operation of Indiana's immunity is not precluded by the mere joining of nominal defendants and Indiana courts must pass initially on Indiana's liability for tax refunds.[25]

INSURANCE

DEATH BY ACCIDENTAL MEANS

Beneficiaries sued on the double indemnity clause of a policy insuring their mother. The clause covered a death occurring "as a result directly and independently of all other causes, of bodily injuries, effected solely through external, violent, and accidental means." Decedent fell while entering a bathroom, suffered a broken hip, hydrostatic pneumonia developed, and death resulted. Prior to her fall, the insured had been bedfast because of chronic nephritis, hypertension, and coronary sclerosis. Decedent's physician testified that death could have been independent of her physical illness and except for a broken hip and resulting pneumonia, she might have lived for several years. Judgments of the trial and appellate courts[1] for plaintiffs reversed and remanded because beneficiaries failed to prove that death occurred as a result of bodily injuries effected solely through accidental means. *Prudential Insurance Co. of America v. Van Wey et al.*, —— Ind. ——, 59 N.E. (2d) 421 (1945).

Indiana is in accord with the majority rule that burden of proof is on the plaintiff to show not only that injury or death was caused by accidental means, but also that it was not caused by pre-existing disease or bodily infirmity.[2]

The introduction of the phrase "accidental means" in the double

---

24. Indiana legislators appear to have realized the possibility of intervention by the federal court and therefore established no basis for the exercise of equitable jurisdiction by the federal court when they enacted Ind. Stat. Ann. (Burns, 1943 Replacement) 64-2614. As suggested by Warren, "Federal and State Court Interference" 43 Harv. L. Rev. 345, 377, it lies with each state itself to eliminate this source of friction with the federal authority. Justice Frankfurter, "The Federal Court" (1929) 58 New Republic 273, 275, is in accord. Statutory construction of the statute in question finds that Indiana has followed this well-guided approach to the problem.

25. Of course, final recourse to federal courts is not foreclosed. " . . . the construction given the Indiana statute leaves open the road to review in this court on constitutional grounds after the issues have been passed upon by state courts." Principal case at 353.

1. Prudential Ins. Co. of America v. Van Wey et al., —— Ind. App. ——, 56 N.E. (2) 509 (1944). Lower courts found pneumonia resulting from the fall was the proximate cause of death. Dissent in principal case concurs in that proximate cause of death determines liability. The cause was transferred from the Appellate Court under Ind. Stat. Ann. (Burns, 1933) §4-215.

2. Orey v. Mutual Life Insurance Company of New York, 215 Ind. 305, 307, 19 N.E. (2d) 547, 548 (1939); Police & Fireman's Ins. Asso. v. Blunk, 107 Ind. App. 279, 285, 20 N.E. (2d) 660, 663 (1939); Note (1943) 144 A.L.R. 1416.