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The Rule-Making Power

Petitioner sought a writ of prohibition to enforce the provisions of a statute[1] providing that when a trial judge failed to determine an issue of law or fact within ninety days after taking same under advisement, any party was entitled to apply for withdrawal of the issue from the judge and for appointment of a special judge to take jurisdiction of the case. The trial judge refused petitioner's application. Held: Writ denied. Statute is an unconstitutional legislative interference with the judicial function.[2] *State ex rel Kostas v. Johnson,* 69 N.E.(2d) 592 (Ind. 1946).

In 1923, when the statutory provision involved in the principal case was enacted, there was general acquiescence in the power of the legislature to prescribe rules of practice and procedure,[3] although a strong inclination to the contrary had been indicated by the Indiana Supreme Court.[4] However, the legislative power was always subject to constitutional limitations to prevent interference with action of the courts

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16. Where it was stipulated by pre-trial order that a contract was made in Florida but at the trial there was evidence from which it could be inferred that the contract was made in Texas, the court held that the stipulation was binding since the order was not modified, Ringling Bros.-Barnum & Bailey Combined Shows, Inc. v. Olvera, 119 F. (2d) 584 (C.C.A. 9th, 1941). Accord, Gurman v. Stowe-Woodward, Inc., 302 Mass. 442, 19 N.E.(2d) 717 (1939); E. Dunkel, Inc. v. Barletta Co., 302 Mass. 7, 18 N.E.(2d) 377 (1937).

17. It has been held that in order to prevent manifest injustice the trial judge in the exercise of his judicial discretion may: permit amendments or corrections of mistakes in the pleadings, McDowall v. Orr Felt & Blanket Co., 146 F.(2d) 136 (C.C.A. 6th, 1945); discharge stipulations entered into under a misapprehension, Gurman v. Stowe-Woodward, Inc., 302 Mass. 442, 19 N.E.(2d) 717 1939); or improvidently made, Capano v. Melchinno, 297 Mass. 1, 7 N.E.(2d) 593 (1937).

1. Ind. Acts 1923, c. 83, § 1, Ind. Stat. Ann. (Burns, Repl. 1946) §2-2102.

2. Ind. Const. Art. 3, § 1 and Art. 7, § 1.

3. Smythe v. Boswell, 117 Ind. 365, 20 N.E. 263 (1888); Fletcher v. Holmes, 25 Ind. 458 (1865).

4. Gray v. McLaughlin, 191 Ind. 190, 131 N.E. 518 (1921); Solimeto v. State, 188 Ind. 170, 122 N.E. 578 (1919); Parkison v. Thompson, 164 Ind. 609, 73 N.E. 109 (1905).

in the exercise of their judicial function.[5] It seems clear that the statute in the principal case violated these limitations when enacted.[6]

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5. Consistent with the general rule in the United States under the doctrine of separation of powers. Burney v. Lee, 59 Ariz. 360, 129 P.(2d) 308 (1942); State v. Roy, 40 N.M. 397, 60 P.(2d) 646 (1936); In Re Constitutionality of Sect. 251.18, Wisconsin Statutes, 204 Wis. 501, 236 N.W. 717 (1931); Note (1945) 158 A.L.R. 705, 713.

6. The permissible extent of legislative interference with judicial procedure has been frequently litigated in Indiana in the past. In Gray v. McLaughlin, 191 Ind. 190,194, 131 N.E. 518,519 (1921) it was observed that "There is probably no state in the Union where so much has been said in the decisions on the subject of practice as in this state." It has been held that the legislature may exeed its procedural rule-making powers in prescribing requirements for briefs, Solimeto v. State, 188 Ind. 170, 122 N.E. 578 (1919); Gray v. McLaughlin, 191 Ind. 190, 131 N.E. 518 (1921); in requiring members of the Supreme Court to prepare syllabi of decisions rendered, In Re Griffiths, 118 Ind. 83, 20 N.E. 513 (1889); in restricting a court's power to punish for contempt, Hawkins v. State, 125 Ind. 570, 25 N.E. 818 (1890); Holman v. State, 105 Ind. 513, 5 N.E. 556 (1886); Little v. State, 90 Ind. 338 (1883), (although the legislature could regulate within limits the procedure for contempt cases) Mahoney v. State, 33 Ind. App. 655, 72 N.E. 151 (1904); and in regulating the procedure on appeals where appellate jurisdiction is restricted, Seagram and Sons v. Board of Commissioners, 220 Ind. 604, 45 N.E. (2d) 491 (1943); Warren v. Ind. Telephone Co., 217 Ind. 93, 26 N.E.(2d) 399 (1940); City of Elkhart v. Minser, 211 Ind. 20, 5 N.E.(2d) 501 (1936); Curless v. Watson, 180 Ind. 86, 102 N.E. 497 (1913), (although it may prescribe such procedure) Stocker v. City of Hammond, 214 Ind. 628, 16 N.E.(2d) 874 (1938); Hunter v. Cleveland, C. C. & St. L. Ry., 202 Ind. 328, 174 N.E. 287 (1930); Lake Erie and W. Ry. v. Watkins, 157 Ind. 600, 62 N.E. 443 (1902); State v. Rockwood, 159 Ind. 94, 64 N.E. 592 (1902). Compare State ex rel Emmert v. Hamilton Circuit Court, 223 Ind. 418, 61 N.E.(2d) 182 (1945) for the most recent position of the court as to procedure on appeals. The legislature can abolish the issuance of writs of error, Pittsburgh, C. C. & St. L. Ry. v. Hoffman, 200 Ind. 178, 162 N.E. 403 (1928); Montgomery v. Jones, 5 Ind. 526 (1854); Hornberger v. State, 5 Ind. 300 (1854).
The legislature cannot properly remove, disqualify, or grant a change of judge in a certain case, State ex rel Youngblood v. Warrick Circuit Court, 208 Ind. 594, 196 N.E. 254 (1935); indirectly restrict judicial power to appoint counsel for paupers, Knox County Council v. State ex rel McCormick, 217 Ind. 493, 29 N.E.(2d) 405 (1940), (although it had previously been held to the contrary) Board of Commissioners v. Moore, 93 Ind. App. 180, 166 N.E. 779 (1931); Board of Commissioners v. Mowbray, 160 Ind. 10, 66 N.E. 46 (1903); enact a statute granting a new trial, Young v. State Bank, 4 Ind. 301 (1853); although it could regulate and place restrictions on procedure for new trials and the right to a new trial, Amacher v. Johnson, 174 Ind. 249, 91 N.E. 928 (1910). Statutes cannot prescribe requirements for records on appeal, Davis v. State, 189 Ind. 464, 128 N.E. 354 (1920); Johnson v. Gebhauer, 159 Ind. 271, 64 N.E. 855 (1902) (Procedure as to bills of exceptions); Adams v. State, 156 Ind. 596, 59 N.E.

cilitate the judicial process and to avoid uncertainty as to the proper rules of procedure within the state-court system[18] Such uncertainty is not avoided when the impression is permitted to prevail that the rules of procedure previously having their sanction in legislative enactment are now sanctioned as rules of the Supreme Court, only to discover that the court "amends its own rules" by declaring legislation of long standing unconstitutional.

RENT CONTROL

NECESSITY OF COMPLYING WITH RENT REGULATIONS

Suit by tenant against landlord for rent-overcharge penalty. D attempted to show he had given P the required notice of increase and that the new rent was justified as not being more than P collected for the premises from subtenants. Judgment for P. Held: Affirmed. *Martino* v. *Holzworth*, 158 F.(2d) 845 (C.C.A. 8th, 1947).

This case illustrates the requirement for strict compliance with the Maximum Rent Regulations. There are a few exceptions,[1] but mere "substantial performance" is ordinarily inadequate.[2] The general rule applies to the popularly termed "rent decontrol" for transient rooms.[3] Before the landlord can possibly qualify for decontrol, he must first file a supplemental registration statement so the Rent Director can classi-

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which could be and was held to have been waived in that case, without reference to the constitutionality of the statute.

18. The responsibility of the court seems increasingly important where the legislature has actually abandoned the procedural field and corrective measures are possible only through court rules. For a discussion of the general theories of the rule-making power, see 1 Sutherland, "Statutory Construction" (3rd ed. 1943) § 226.

1. Hotel Enterprise v. Porter, 157 F.(2d) 690 (Ct. Em. App., 1946) (illness of manager excused late application for rent adjustment); Peters v. Porter, 157 F. (2d) 186 (Ct. Em. App., 1946) (requirement of re-registration after remodeling so concealed in the language of the regulations that they were not apparent to landlord of reasonable intelligence).

2. Ambassador Ap'ts. v. Porter, 157 F.(2d) 774 (Ct. Em. App., 1946) (foreign residence and ignorance of procedural regulations of persons controlling corporate landlord held no excuse); Bowles v. Meyers, 149 F.(2d) 440 (C.C.A. 4th, 1945) mere belief that the order is invalid does not excuse).

3. Rent Regulations for Transient Hotels, Residential Hotels, Rooming Houses and Motor Courts, Amend. 102, 12 Fed. Reg. 395 (Jan. 18, 1947).