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Courts-Conflicting Jurisdiction Between State and Federal Courts

RECENT CASE NOTES

COURTS—CONFLICTING JURISDICTION BETWEEN STATE AND FEDERAL COURTS.—The resident trustees of an *inter vivos* trust filed an account in a state court of Pennsylvania. The next day two of the five beneficiaries, being non-residents, filed suit in the United States District Court for an accounting and removal of the trustees. An injunction was obtained in the state court by the trustees restraining plaintiffs in the federal court from further proceeding. Subsequently, the plaintiffs in the federal court petitioned that court for an injunction against the trustees' further proceeding with their original proceeding in the state court and on the same day appealed to the state supreme court from the lower state court's decree. The federal court granted the injunction, and the state supreme court affirmed the judgment of its lower court. With each court having enjoined further proceeding in the other, the United States Supreme Court granted a writ of certiorari to the state supreme court. Held, Affirmed. Under Pennsylvania law, the filing of an account by the trustee invested the state court with such jurisdiction over the administration of the trust estate that suits such as the one brought by the beneficiaries could not be entertained by a federal court. *Princess Lida of Thurn and Taxis v. Thompson* (1939), 59 S. Ct. 275.

The position of the parties prior to the action of the Supreme Court was a concrete embodiment of the possibilities apprehended in the old case of *Peck v. Jennes*. "For if one may enjoin, the other may retort by injunction and thus the parties be without remedy, being liable to a process for contempt in one if they dare to proceed in the other."[1]

The instant case involves one of the several frictional points of conflict between the state and federal courts.[2] A collision is likely to ensue in those situations where the state and federal courts have concurrent power[3] over controversies contemporaneously pending between the same parties or their privies, and the issues in the two suits are identical or substantially so, or where the two suits concern the same specific property or status.

Where the judgment sought in both suits is strictly *in personam* for the recovery of money or for an injunction compelling or restraining action by the defendant, both courts may proceed with the litigation, at least until

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[1] (1849), 7 How. 612.

[2] Some of the other conflicts occur respecting (a) the appropriate substantive law to be applied by the federal courts. See Erie R. Co. v. Tompkins (1937), 304 U. S. 64, 58 S. Ct. 817; (b) criminal jurisdiction of state and federal courts. See United States v. Lanza (1922), 260 U. S. 377, 43 S. Ct. 141; (c) the removal jurisdiction of the District Courts; (d) the appellate jurisdiction of the United States Supreme Court over the highest courts of the states. Martin v. Hunter's Lessees (1816), 1 Wheat. 304; Cohens v. Virginia (1821), 6 Wheat. 264; (e) federal *habeas corpus* when petitioner is in state custody. 28 U. S. C. A. § 453.

[3] The two most important classes of cases where the state and federal courts have concurrent jurisdiction are (a) those arising under the Constitution, laws and treaties of the United States (with certain exceptions) and (b) those between citizens of different states.

judgment is obtained in one court which may be set up as *res adjudicata* in the other.[4] In evaluating the effect of this rule certain objections are apparent; namely, the entailment of wasted time and effort by the court other than the one first to render judgment; the possibility of both courts shirking their responsibilities and waiting for the other to proceed with a consequent delay in the litigation; and the possibility of one or both courts wanting to be the first to render judgment with a resulting undue hastening of the suit.

Where one court gets actual or constructive possession[5] of specific property, the general rule is that such court has exclusive "jurisdiction" to determine all controversies relating thereto.[6] Any proceeding subsequently instituted in any court of concurrent jurisdiction designed to interfere with this possession will be dismissed or enjoined.

The rule is not applicable if a court was first to obtain possession of the property as a result of the fraud of either party,[8] or if the process was void under which possession was acquired,[9] or if the first court having only constructive possession neglects for an unreasonable time to proceed with the disposition of the property and actual possession is obtained in the meantime by a court of concurrent jurisdiction.[10] Neither does the rule have any application to a case in a federal court based upon diversity of citizenship, wherein the plaintiff seeks merely an adjudication of his right or his interest as a basis for a claim against a fund in the possession of a state court.[11] Personal enforcement of the federal court's decree in such case may be had against the administrator, executor, trustee, receiver, etc., but the possession of the

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[4] Kline v. Burke Const. Co. (1922), 260 U. S. 226, 43 S. Ct. 79, and cases there cited. A few states have adopted a minority rule, and on grounds of comity dismissed an action *in personam* when another action *in personam* was pending in a federal court. Wilson v. Millikan (1898) 103 Ky. 165, 44 S. W. 660; Smith v. Atlantic Mutual Fire Insurance Co. (1850), 22 N. H. 21.

[5] A court is said to have "constructive possession" of property upon the filing of a bill in a suit, the object of which necessitates an eventual taking of actual possession. Harkin v. Brundage (1928) 276 U. S. 36, 48 S. Ct. 268.

[6] Taylor v. Carryl (1857), 20 How. 583; Covell v. Heyman (1885) 111 U. S. 176, 4 S. Ct. 355; Farmers' Loan & Trust Co. v. Lake St. R. Co. (1890), 177 U. S. 51, 20 S. Ct. 564; Palmer & Texas R. Co. (1908), 212 U. S. 118, 29 S. Ct. 230; Lion Bonding Co. v. Karatz (1923) 262 U. S. 77, 43 S. Ct. 480; Staton v. New (1931), 283 U. S. 318, 51 S. Ct. 465. Power to "determine all controversies relating to the property" does not extend to all matters which may by possibility become involved, but is confined to such questions as arise ordinarily and properly in the progress of the suit first brought. For example, in Buck v. Colbath (1865), 3 Wall 334, a state court had "jurisdiction" to hear an action brought against a federal marshal for trespass to goods which he at the time of suit held under a writ from a federal court.

[7] The Federal Judicial Code since 1793, has provided that "the writ of injunction shall not be granted by any court of the United States to stay the proceedings in any court of a state, except in cases where such injunction shall be authorized by any law relating to bankruptcy." As to the exceptions which the courts have engrafted on this statute and an excellent discussion thereof, see 30 Mich. L. Rev. 145.

[8] Harkin v. Brundage (1928), 276 U. S. 36, 48 S. Ct. 268.

[9] Hammock v. Farmers' Loan & Trust Co. (1881), 105 U. S. 77.

[10] Jackson v. Parkersburg & O. R. Co. (1916), 233 Fed. 784.

[11] Commonwealth Trust Co. v. Bradford (1935), 297 U. S. 613, 56 S. Ct. 600, and cases there cited.

property by the state court cannot be disturbed. This limitation of the general rule even to the extent of allowing only a personal decree would have little to recommend it, when thought is given to the confusion it engenders in the administration of the state fund. Being founded on the theory that it is a constitutional privilege of a citizen of one state to sue a citizen of another state in the federal courts,[12] which theory has now been repudiated,[13] the limitation should be abolished.

An important and desirable exception to the general rule recognized by the United States Supreme Court in a recent line of cases[14] concerns the administration of insolvent corporations of certain types. Building and loan associations, insurance corporations, and state banks which are excepted from the provisions of the National Bankruptcy Act and other kinds of corporations which by reason of their quasi-public nature are usually subject to administrative control and liquidation by an administrative official of the state, are permitted to be liquidated by these state officials even though the federal court may have first acquired actual possession of the property. This is an eminently practical approach and a further salutary step in minimizing the possible abuses of indiscriminate federal receiverships based on diversity of citizenship.

The instant case involves neither the situation where both suits are *in personam* nor where one court has actual or constructive possession of specific property, but an intermediate situation. It is governed by the following rule which has been enunciated by almost every court that has dealt with facts similar to those of the instant case: "Nor is the rule (i.e. as between state and federal courts, the court first assuming jurisdiction over property may maintain and exercise it to the exclusion of the other) restricted in its application to cases where property has been actually seized under judicial process before a second suit is instituted in another court, but it often applies as well where suits are brought to enforce liens against specific property, to marshall assets, administer trusts or liquidate insolvent estates and in suits of a similar nature where in the progress of the litigation, the court may be compelled to assume possession and control of the property affected."[15] The application of this rule makes pertinent two inquiries: First, when is the nature of the first suit such that its immediate or potential objects or purposes may require for their accomplishment the possession or control of specific property,[16] and

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12 Snydam v. Broadnax (1840), 14 Pet. 67.

13 Kline v. Burke Const. Co. (1922) 260 U. S. 226, 43 S. Ct. 79.

14 Commonwealth of Pennsylvania v. Williams (1935), 294 U. S. 176, 155 S. Ct. 380; Penna. Gen. Casualty Co. v. Commonwealth of Penna. (1935), 294 U. S. 189, 55 S. Ct. 386; Gordon v. Ominsky (1935), 294 U. S. 186, 55 S. Ct. 391.

15 Peck v. Jenness (1849) 7 How. 612; Freeman v. Howe (1860), 24 How. 450; Moran v. Sturgis (1893), 154 U. S. 256, 14 S. Ct. 1019; Central Bank v. Stevens (1897), 169 U. S. 432, 18 S. Ct. 403; Harkrader v. Wadley (1898), 172 U. S. 148, 19 S. Ct. 119; Farmers' Loan & Trust Co. v. Lake St. R. R. Co. (1899), 177 U. S. 51, 20 S. Ct. 564; Palmer v. Texas (1908), 212 U. S. 118, 29 S. Ct. 230; United States v. Bank of New York (1935), 296 U. S. 463, 56 S. Ct. 343.

16 Franz v. Buder (1926), 11 F. (2d) 854. (First action in state court to construe a will did not bar a subsequent action in federal court by remaindermen against a trustee for an accounting from a trustee of a trust created

second, when is the nature of the second suit such that the accomplishment of its immediate or potential objects or purposes may necessitate an interference with or prevention of the proper and effective disposition of the first suit?[17] The definitive lines of these two concepts can not be drawn with academic nicety. Each case must be considered separately on its own particular facts with preference being given to principles of comity that seem to promote harmony in our judicial system.

The constitutional doctrine of dual form of government has never been expressly recognized as the basis on which should be predicated decisions involving this conflicting jurisdiction between state and federal courts. However, expressions in the cases can be found to the effect that the governing principles have a higher sanction than one of "utility derived from concord" or merely of comity. It is said to be "a matter of right and of law."[18] Also, the rules are often expressed in terms of jurisdiction.

It would seem that it could not be a matter of jurisdiction in the more limited sense. That the jurisdiction of the federal courts is not subject to diminution or control of state legislation is clear.[19] Therefore, if in the case under review, it was a question whether the federal district court had jurisdiction to entertain the suit brought by the beneficiaries of the trust, it would have been for the United States Supreme Court to have determined by its own notions the extent of jurisdiction acquired by the state court when the trustees filed the suit to account. The provisions of the state statute on this score would have been immaterial.

Even though the constitutional doctrine of dual form of government is not strictly applicable, the decisions in this field are inarticulately premised on the same considerations of policy underlying that principle. As an actual fact, the doctrine is here applied in its Simon-purity, unadulterated by the premise of federal supremacy.[20] The tendency, if there is one, is the desirable one of paying more respect to state "jurisdiction" with which the instant case is in complete accord. J. M. C.

CRIMINAL LAW: EFFECT OF AN IMPOSSIBLE FUTURE DATE IN AN INDICTMENT. —The defendant was indicted on three counts for his part in a bank robbery committed December 1, 1934. The indictment was returned and filed on September 18, 1936. The time of commission of the robbery was stated correctly in the first and third counts as "December 15, 1934"; but the second

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by the will); Ala. Power Co. v. Gulf Power Co. (1922), 283 Fed. 606. (Pendency of condemnation proceeding in state court held not to abate similar proceeding in federal court.) Compare, Dennison Brick Co. v. Chicago Trust Co. (1923), 286 Fed. 818 (suit to quiet title in state court barred subsequent suit in federal court to foreclose a mortgage on the same land. The mortgage could have been foreclosed in the state action.)

[17] The instant case is illustrative on this point.

[18] Kline v. Burke Const. Co. (1922), 260 U. S. 226, 43 S. Ct. 79.

[19] United States v. Howland (1819), 4 Wheat. 108; Mississippi Mills v. Cohn (1893), 150 U. S. 202, 14 S. Ct. 75.

[20] This is more than can be said as to those situations where the United States Supreme Court has held that the doctrine is strictly applicable. See Willis, Constitutional Law, p. 236.