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ADMINISTRATIVE LAW - JOHNSON ACT - JURISDICTION OF FEDERAL COURTS WHERE STATE REVIEW PROCEDURE PROHIBITS ISSUE OF SUPERSEDEAS

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RECENT DECISIONS

ADMINISTRATIVE LAW — JOHNSON ACT — JURISDICTION OF FEDERAL COURTS WHERE STATE REVIEW PROCEDURE PROHIBITS ISSUE OF SUPERSEDEAS — Complainant power company attacked as confiscatory the decrease in rates ordered by the Public Service Commission of Montana. The company demanded an interloctory injunction pending a final decree. It appeared that there was on the statute book of Montana a statute prohibiting supersedeas [1] pending judicial review in such cases. The district court granted the commission's motion to dismiss on the ground that a plain, speedy, and efficient remedy was available to the plaintiff in the state courts, and hence the requirements of the Johnson Act of May 14, 1934, were met.[2] Therefore, so it was contended, federal jurisdiction was precluded. *Held*, a plain, speedy and efficient remedy was not available in the state court in view of the prohibition on supersedeas, and further, that the Court would not assume that the state court would declare the prohibiting statute unconstitutional and thus leave available appropriate preliminary relief. The jurisdiction of the federal courts, as provided for by the Judiciary Act of 1875,[3] remained unimpaired, since this case came within the exception of the Johnson Act. *Mountain States Power Co. v. Public Service Commission of Montana*, 299 U. S. 167, 57 S. Ct. 168 (1936).

The instant case raises this question: Is a remedy "plain, speedy, and efficient" which rests on the hypothesis that a state statute contrary to the constitutional provision of due process will be declared invalid? Upon examination of the few decisions interpreting the requirements which a state remedy must possess in order to be effective, it is seen that the decided tendency has been to adopt the standard of due process as determined by the Supreme Court.[4] But

[1] 2 Mont. Rev. Code (1935), § 3906.

[2] 48 Stat. L. 775 (1934), 28 U. S. C. (Supp. 1936), § 41 (1). Section 24 of the Judiciary Act, as amended, is amended by adding, "no district court shall have jurisdiction of any suit to enjoin, suspend, or restrain the enforcement, operation, or execution of any order of an administrative board or commission of a State, or any rate-making body of any political subdivision thereof, or to enjoin, suspend, or restrain any action in compliance with any such order, where jurisdiction is based solely upon the ground of diversity of citizenship or the repugnance of such order to the Constitution of the United States, where such order (1) affects rates chargeable by a public utility, (2) does not interfere with interstate commerce, and (3) has been made after reasonable notice and hearing, and where a plain, speedy, and efficient remedy may be had at law or in equity in the courts of such State."

[3] 28 U. S. C., § 41 (1), § 24 of the Judicial Code, as amended, provided: "The district courts shall have original jurisdiction as follows:

"First. Of all suits of a civil nature, at common law or in equity, brought by the United States, or by any officer thereof authorized by law to sue, or between citizens of the same State claiming lands under grants from different States; or, where the matter in controversy exceeds, exclusive of interest and costs, the sum or value of $3,000, and (a) arises under the Constitution or laws of the United States or treaties made, or which shall be made, under their authority. . . ."

[4] See 35 MICH. L. REV. 274 (1936), which contains a discussion of all the cases (six) involving the act which have been tried in the federal courts, including the

this is the first case to present the peculiar situation where, aside from the statute denying preliminary relief, an efficient remedy fulfilling constitutional demands is available to the complainant.[5] Our question thus resolves itself into this: Will anything but an authoritative condemnation of such staute by the state court be sufficient? Turning to the Montana decisions, we find references concerning the statute; these references imply not disapproval but approval.[6] On the other hand, the United States Supreme Court has been explicit in holding similar statutes invalid as contrary to due process as demanded by the Federal Constitution.[7] But in the absence of any decision by the Supreme Court holding this particular statute invalid, the decision of the state court must remain open to conjecture, and the constitutionality of the state remedy in doubt.[8] Therefore this case falls within the jurisdiction of the federal

opinion of the district court in the principal case. (D. C. Mont. 1935) 12 F. Supp. 945.

[5] See Munoz v. Porto Rico Ry. Light & Power Co., (C. C. A. 1st, 1936) 83 F. (2d) 262, where the court failed to recognize the possibility adopted by the district court in the principal case. This case involved the sufficiency of the state remedy where a state statute provides that the findings of fact of the commission shall be binding upon the reviewing court. Also see Cary v. Corporation Commission of Oklahoma, (D. C. Okla. 1935) 9 F. Supp. 709, affd. 296 U.S. 452, 56 S. Ct. 300 (1935), which is the only other case involving the construction of "plain, speedy and efficient." The issue raised was whether legislative review by state courts, in the absence of any clear indication that there is a purely judicial review, was sufficient to defeat federal jurisdiction. In that case, a decision finding such review defective might result in leaving the complainant remediless.

[6] State ex rel. Board of R. R. Commrs. v. District Court, 53 Mont. 229, 163 P. 115 (1916); State ex rel. Public Service Comm. v. Great Northern Utilities Co., 86 Mont. 442, 284 P. 772 (1930); Billings Utility Co. v. Public Service Comm., 62 Mont. 21, 203 P. 366 (1921). If these decisions had contained dicta expressing strong condemnation of this statute, quaere whether the Supreme Court of the United States would have found that the equivalent of an actual ruling? It is submitted that it would not.

[7] See Oklahoma Natural Gas Co. v. Russell, 261 U. S. 290 at 293, 43 S. Ct. 353 (1922), where complainant appealed from the district court's orders denying application for preliminary injunction to restrain the enforcement of rate orders claimed to be confiscatory. Assuming the rate to be confiscatory, the court held, "they are suffering daily from confiscation under the rate to which they now are limited. They have done all that they can under the state law to get relief and cannot get it." [Supersedeas had been refused by the state court.] "the District Court had jurisdiction and a duty to try the question whether preliminary injunctions should issue. . . ." Also see Pacific Tel. & Tel. Co. v. Kuykendall, 265 U. S. 196, 44 S. Ct. 553 (1924), which in an action to enjoin enforcement of a rate order held that a statute somewhat like that involved in the principal case was contrary to due process. It is to be noted that two of the Montana decisions (see note 6, supra) preceded the Supreme Court holdings chronologically. However, the third Montana dicta in 1930 seemed to take the same attitude as had appeared previous decisions.

[8] In Porter v. Investors' Syndicate, 286 U. S. 461, 52 S. Ct. 617 (1932), another Montana statute restraining preliminary injunction was involved. The court declared by a process of interpretation that the act did not prevent preliminary injunction, but in a dictum said that if such had been the purport of the act it would

court.[9] It may be argued by some, despite the express language of limitation in the Johnson Act, that such an interpretation emasculates the act. Any force that such an argument might have disappears under the consideration that the states may completely preclude the federal courts by adopting such remedies as will be in accord with due process.[10]

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be unconstitutional.

The language in the principal case impliedly suggests that if there had been a previous decision declaring this specific statute unconstitutional a different result would follow.

[9] The decision in the principal case is in accord with Corporation Commission of Oklahoma v. Cary, 296 U. S. 452, 56 S. Ct. 300 (1935), wherein it was indicated that if there was any doubt as to whether a state remedy was plain, speedy and efficient it would confer jurisdiction on the federal courts.

[10] See 35 MICH. L. REV. 274 (1936), in which note it is pointed out that decisions interpreting "plain, speedy, and efficient" as the equivalent of due process will force the states to effect constitutional remedies. If the Supreme Court should be too exacting in its interpretation of due process, the act should be amended so as to make clear what remedy in a state court will be deemed sufficient.