Michigan Law Review

Volume 32 | Issue 1

1933

FEDERAL PRACTICE - APPEAL AND ERROR - NECESSITY FOR FINDINGS OF FACT AND CONCLUSIONS OF LAW IN INTERLOCUTORY PROCEEDINGS

FEDERAL PRACTICE — APPEAL AND ERROR — NECESSITY FOR FINDINGS OF FACT AND CONCLUSIONS OF LAW IN INTERLOCUTORY PROCEEDINGS — The Public Service Commission of Wisconsin issued a temporary order reducing telephone rates, setting forth its reasons and the facts in an elaborate opinion. A temporary restraining order was issued by a federal district court, which was followed by an application for an interlocutory injunction. A hearing on this application was held before three judges who granted an injunction on the same day upon the giving of a bond. Meanwhile the temporary restraining order continued in force. No opinion was rendered other than a general statement in the decree that the Commission's order "would result in the confiscation of the property" of the complainant "without compensation and without due process of law." *Held*, on appeal, that for failure of the court to set forth the facts and law constituting the ground of its decision the decree is vacated and the cause remanded to the district court for appropriate findings and conclusions, the temporary restraining order to remain in force until such determination. *Public Service Commission of Wisconsin v. Wisconsin Telephone Co.*, 289 U. S. 92, 53 Sup. Ct. 514.

The history of equity practice is silent as to a requirement that a decree be accompanied by findings of fact and conclusions of law. It may, then, be inferred that this has been discretionary with the court. Sec. 383 of the Judicial Code[1] provides that "Every order of injunction or restraining order shall set forth the reasons for the issuance of the same. . . ." Failure to conform to this provision, however, does not render the decree void.[2] And the Supreme Court

[1] 38 Stat. 738 (1914), U. S. C. tit. 28, sec. 383 (1926).
[2] Lawrence v. St. Louis-San Francisco Ry., 274 U. S. 588, 47 Sup. Ct. 720, 71

has not passed upon whether "reasons" include findings of fact and conclusions of law. Starting about 1925, there begin to appear in the cases warnings by the Supreme Court of the necessity in equity proceedings of findings of fact and conclusions of law appropriate to the decree.[3] Especially does this necessity exist when the decree enjoins the enforcement of a state law or the actions of administrative boards, "For then, the respect due to the State demands that the need for nullifying the action of the legislature or of its executive officials be persuasively shown."[4] Disregard of the warnings apparently led to the promulgation of Equity Rule 70½.[5] As amended this reads: "In deciding suits in equity, including those required to be heard before three judges, the court of first instance shall find the facts specially and state separately its conclusions of law thereon. . . ." In the instant case the Court held that this rule applies only to final decrees, and since the instant case involved an interlocutory proceeding the rule was not applicable. This presented no obstacle, however, the Court falling back upon its previously uttered warnings and upon the general principles and reasons underlying Rule 70½, which it must be admitted exist no less in interlocutory proceedings.[6] Where findings of fact and law accompany the decree, interlocutory or final, they serve not only as an aid to litigants who otherwise are left with little guidance in determining whether an appeal should be taken, but also permit the appellate court to perceive at once the basis of the decision. Further, the requirement insures, in some measure, careful and deliberate action by the court below.[7]

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L. ed. 1219 (1927); Arkansas R. R. Commission v. Chicago R. I. & P. R. R., 274 U. S. 597, 47 Sup. Ct. 724, 71 L. ed. 1224 (1927).

[3] Virginian Ry. v. United States, 272 U. S. 658 at 675, 47 Sup. Ct. 222 at 229, 71 L. ed. 463 at 472 (1926); Lawrence v. St. Louis-San Francisco Ry., 274 U. S. 588 at 596, 47 Sup. Ct. 720 at 724, 71 L. ed. 1219 at 1224 (1927); Arkansas R. R. Commission v. Chicago R. I. & P. R. R., 274 U. S. 597 at 603, 47 Sup. Ct. 724 at 726, 71 L. ed. 1224 at 1228 (1927); Hammond v. Schappi Bus Line, 275 U. S. 164 at 171, 172, 48 Sup. Ct. 66 at 69, 72 L. ed. 218 at 221 (1927); Railroad Commission of Wisconsin v. Maxcy, 281 U. S. 82 at 83, 50 Sup. Ct. 228, 74 L. ed. 717 (1930). In the last case the relief granted was the same as in the instant case: the decree below was set aside and the case remanded with directions that findings of fact and law be stated.

[4] Railroad Commission of Wisconsin v. Maxcy, 281 U. S. 82 at 83, 50 Sup. Ct. 228, 74 L. ed. 717 (1930).

[5] Announced June 2, 1930, to take effect Oct. 1, 1930; amended May 31, 1932, effective Sept. 1, 1932.

[6] The court had already held that a temporary injunction should not be granted unless a clear case of unreasonable, arbitrary or confiscatory action on the part of the commission were shown. Phoenix Ry. v. Geary, 239 U. S. 277 at 281, 36 Sup. Ct. 45 at 46, 60 L. ed. 289 (1915); Gilchrist v. Interborough Rapid Transit Co., 279 U. S. 159 at 207, 49 Sup. Ct. 282 at 288, 73 L. ed. 652 at 664 (1929); Ohio Oil Co. v. Conway, 279 U. S. 813 at 815, 49 Sup. Ct. 256, 73 L. ed. 972 at 973 (1929).

[7] See 43 Stat. 938 (1925), U. S. C. tit. 48, sec. 380 (1926), requiring proceedings for interlocutory injunction to be heard before three judges.