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Admininstrative Law - Federal Injunctive Relief Against State Administrative Orders

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COMMENTS

ADMINISTRATIVE LAW — FEDERAL INJUNCTIVE RELIEF AGAINST STATE ADMINISTRATIVE ORDERS — The increasing tendency of state legislatures to establish administrative agencies to regulate various specialized fields has created serious new problems for both courts and lawyers. In dealing with state administrative agencies, the federal courts have been confronted with the dual problem of protecting the individual's constitutional rights and at the same time respecting the prerogatives of the states. The result has been the development of a "hands-off" policy in the federal courts, leaving the initial determina-

tion of rights to the state courts, and limiting the use of the federal injunctive power. The purpose of this comment is to indicate the limitations now placed on resort to federal injunctive relief against state administrative orders.

I

Faced with a need to obtain relief for his client against a confiscatory state administrative rate order, a lawyer will attempt to choose the forum which will give him the most adequate and sympathetic hearing. Until 1908 he could seek an injunction against the order from a federal district court, if he could show the required diversity of citizenship of the parties, or if he could raise a federal question.[1] In that year, however, the United States Supreme Court's decision in *Prentis v. Atlantic Coast Line Co.*[2] imposed a major limitation on this resort. Thereafter, it was announced, the petitioner would be required to exhaust all the administrative appeals provided by the state, including "administrative appeal" in state courts, before he could ask a federal court for an injunction. For this purpose administrative appeals in the courts are distinguished from judicial appeals on several grounds. First of all, if the court can "affirm, modify, or revoke" the order appealed from, it is in effect passing upon a basic policy question and making a new order, so the process is deemed to be administrative.[3] On the other hand, if the court is limited to passing on the validity of the existing order, the appeal is judicial.[4] The Supreme Court also announced that the administrative appeal does not result in a decision to which the rules of res judicata apply.[5] Subsequently the Supreme Court stated it would not hear a review of an administrative appeal.[6] A judicial appeal, however, does result in res judicata, so the only remaining remedy is review by the Supreme Court.[7]

State authorities at the time of the *Prentis* case were already manifesting dissatisfaction with the system that allowed a single federal judge to enjoin state action.[8] Congress consequently enacted legisla-

[1] 1 Stat. L. 78 (1789), 28 U.S.C. (Supp. V, 1952) §1332.
[2] 211 U.S. 210, 29 S.Ct. 67 (1908).
[3] Ibid.
[4] Pacific Telephone and Telegraph Co. v. Kuykendall, 265 U.S. 196, 44 S.Ct. 553 (1924); Bacon v. Rutland R. Co., 232 U.S. 134, 34 S.Ct. 283 (1914).
[5] Prentis v. Atlantic Coast Line Co., 211 U.S. 210, 29 S.Ct. 67 (1908).
[6] Federal Radio Commission v. General Electric Co., 281 U.S. 464, 50 S.Ct. 389 (1930).
[7] Stason, "Methods of Judicial Relief from Administrative Action," 24 A.B.A.J. 274 (1938); Prentis v. Atlantic Coast Line Co., 211 U.S. 210, 29 S.Ct. 67 (1908).
[8] For an account of the history of the Johnson Act, 48 Stat. L. 775 (1934), as amended, 28 U.S.C. (Supp. V, 1952) §1342, see Stason, "Methods of Judicial Relief from Administrative Action," 24 A.B.A.J. 274 (1938).

tion which limits the use of the injunction by requiring a three-judge district court for the setting aside of state administrative orders,[9] and which provides for direct appeal to the Supreme Court.[10] A later congressional enactment requires the federal district courts to stay action if the state has granted a stay of the order pending determination of the state action to enforce the order.[11] Still later appeared the Johnson Act,[12] pursuant to which, if jurisdiction is based on diversity of citizenship or a federal question of constitutionality, a state rate order cannot be enjoined if the order does not interfere with interstate commerce and if there is a plain, adequate, and speedy remedy provided by state law. Moreover, an assessment, levy, or collection of a tax under state law may not be enjoined if there is a plain, adequate, and speedy state remedy.[13] All of these limitations serve to impose substantial qualifications upon the federal equity injunction against state administrative orders.

II

In cases not specifically dealing with administrative law, the courts have placed other limitations on the general power of the federal district courts to grant injunctions before the state courts have been given a chance for judicial review. State criminal proceedings will not be enjoined unless there is danger of irreparable injury.[14] The state's fiscal affairs will not be interfered with.[15] If the interests of the parties are properly protected by state laws, and an adequate procedure is provided, liquidation of state banks on insolvency is left to state courts.[16] Even in bankruptcy proceedings, matters requiring ultimate determination by state courts will be left to the state court for decision, and the federal bankruptcy proceeding will be stayed for such determination.[17] When an action is brought to shape a domestic policy

[9] 36 Stat. L. 557 (1910), 43 Stat. L. 938 (1925), as amended, 28 U.S.C. (Supp. V, 1952) §2281.

[10] 36 Stat. L. 557 (1910), 43 Stat. L. 938 (1925), as amended, 28 U.S.C. (Supp. V, 1952) §1253.

[11] 37 Stat. L. 1014 (1913), as amended, 28 U.S.C. (Supp. V, 1952) §2284(5).

[12] 48 Stat. L. 775 (1934), as amended, 28 U.S.C. (Supp. V, 1952) §1342.

[13] 50 Stat. L. 738 (1937), as amended, 28 U.S.C. (Supp. V, 1952) §1341.

[14] Spielman Motor Sales Co., Inc. v. Dodge, 295 U.S. 89, 55 S.Ct. 678 (1935); Watson v. Buck, 313 U.S. 387, 61 S.Ct. 962 (1941); Douglas v. City of Jeannette, 319 U.S. 157, 63 S.Ct. 877 (1943).

[15] Matthews v. Rodgers, 284 U.S. 521, 52 S.Ct. 217 (1932); Ristey v. Chicago, R.I. & P. Ry. Co., 270 U.S. 378, 46 S.Ct. 236 (1926) (equity can act if the entire tax statute is attacked as unconstitutional).

[16] Pennsylvania v. Williams, 294 U.S. 176, 55 S.Ct. 380 (1935).

[17] Thompson, Trustee v. Magnolia Petroleum Co., 309 U.S. 478, 60 S.Ct. 628 (1940).

within the state, federal equity will not interfere.[18] And, of course, in every case a cause of action has to be stated which will give equity jurisdiction to a federal court.[19] If a question of state law is to be decided, the federal district court can stay proceedings until the state court decides the state law question.[20] There is some suggestion, too, that the older view that "adequate remedy in law" referred only to federal remedy[21] has been changing to the view that it also includes state remedies.[22]

While there has been an occasional judicial expression to the effect that the district court can decide state law questions itself if the matter is essentially federal,[23] the tendency has been such that the attorney general's committee in its first report suggested that there has been less and less federal review of many questions where appeal formerly was considered important.[24]

III

Soon after the *Prentis* case[25] was decided, the courts began to limit its application. If the administrative agency delayed for an unreasonable time in reaching a decision, the petitioner could go into the district court without waiting for a final administrative order.[26] If the agency lacked power to act, there was no need to resort to it.[27] When irreparable damage was being done, and no stay was provided pending

[18] Great Lakes Dredge & Dock Co. v. Huffman, 319 U.S. 293, 63 S.Ct. 1070 (1943); Burford v. Sun Oil Co., 319 U.S. 315, 63 S.Ct. 1098 (1943); In re President and Fellows of Harvard College, (1st Cir. 1945) 149 F. (2d) 69.

[19] Atlas Life Ins. Co. v. W. I. Southern, Inc., 306 U.S. 563, 59 S.Ct. 657 (1939).

[20] Railroad Commission of Texas v. Pullman Co., 312 U.S. 496, 61 S.Ct. 643 (1941); Siler v. Louisville and Nashville R. Co., 213 U.S. 175, 29 S.Ct. 451 (1909). To the list of exceptions should be added the power to refuse jurisdiction in admiralty, represented by Canada Malting Co. v. Paterson Steamships, Ltd., 285 U.S. 413, 52 S.Ct. 413 (1932). The exercise of such discretion will be set aside only when there is clearly an abuse.

[21] Smyth v. Ames, 169 U.S. 466, 18 S.Ct. 418 (1898); Spector Motor Service, Inc. v. O'Connor, 340 U.S. 602, 71 S.Ct. 508 (1951).

[22] Great Lakes Dredge and Dock Co. v. Huffman, 319 U.S. 293, 63 S.Ct. 1070 (1943); Gulf Oil Corp. v. Gilbert, 330 U.S. 501, 67 S.Ct. 839 (1947) (suggesting the court may apply the forum non conveniens rule when the state can give adequate relief).

[23] Siler v. Louisville and Nashville R. Co., 213 U.S. 175, 29 S.Ct. 451 (1909); Meyers v. Bethlehem Shipbuilding Corp., 303 U.S. 41 at 51, 58 S.Ct. 459 (1937); In re President and Fellows of Harvard College, (1st Cir. 1945) 149 F. (2d) 69 (when jurisdiction attaches, court will decide state law questions except in exceptional circumstances); Pennsylvania Greyhound Lines, Inc. v. Board of Public Utility Commissioners, (D.C. N.J. 1952) 107 F. Supp. 521; Public Utilities Commission of Ohio v. United Fuel Gas Co., 317 U.S. 456, 63 S.Ct. 369 (1943).

[24] S. Doc. No. 8, 77th Cong., 1st sess. (1941).

[25] Prentis v. Atlantic Coast Line Co., 211 U.S. 210, 29 S.Ct. 67 (1908).

[26] Smith v. Illinois Bell Telephone Co., 270 U.S. 587, 46 S.Ct. 408 (1926).

[27] Buder v. First National Bank in St. Louis, (8th Cir. 1927) 16 F. (2d) 990, cert. den. 274 U.S. 743, 47 S.Ct. 588 (1927).

appeal, petitioner could seek a federal injunction at once.[28] If the petitioner claimed the statute was unconstitutional, the federal court was immediately available.[29] A statutory opportunity for rehearing before the agency had to be resorted to only if the state made an application for such rehearing mandatory.[30]

However, the basic "exhaustion rule" of the *Prentis* case[31] remains. The reasons given for this rule are that it effects a better working relation between the federal and state governments and that the court is unwilling to reach a decision only to find the work rendered useless when the higher state body holds the order improper. Prior to the *Prentis* decision, the courts had already decided that application to the agency itself was a condition of federal relief—the so-called "prior resort" rule. Perhaps some of the reasons which had caused the courts to develop that rule also played a part in the evolution of the rule in the *Prentis* case. Indeed, there might be a complete denial of relief on the ground that there was a failure to pursue the administrative remedy.[32] The reasons generally given for the "prior resort" rule are the need of uniformity in application of the agency rules, something that cannot be achieved if the federal equity courts may pass in the first instances on the cases,[33] and the fact that the agency generally possesses more adequate knowledge than the court on the specialized subject the agency is created to handle.[34] Thus, the person who fears that a general administrative rule or policy will be confiscatory when applied to him is required to apply first to the agency for a determination of applicability in his case.[35]

[28] Oklahoma Natural Gas Co. v. Russell, 261 U.S. 290, 43 S.Ct. 353 (1923); Pacific Telephone and Telegraph Co. v. Kuykendall, 265 U.S. 196, 44 S.Ct. 553 (1924).

[29] Buder v. First National Bank in St. Louis, (8th Cir. 1927) 16 F. (2d) 990, cert. den. 274 U.S. 743, 47 S.Ct. 588 (1927); Railroad and Warehouse Commission of Minnesota v. Duluth R. Co., 273 U.S. 625, 47 S.Ct. 489 (1927).

[30] Prendergast v. New York Telephone Co., 262 U.S. 43, 43 S.Ct. 466 (1923); Atlantic Coast Line R. Co. v. Public Service Commission of South Carolina, (D.C. S.C. 1948) 77 F. Supp. 675. But see Red River Broadcasting Co. v. FCC, (D.C. Cir. 1938) 98 F. (2d) 282, suggesting that a merely permissive rehearing must be exhausted.

[31] Prentis v. Atlantic Coast Line Co., 211 U.S. 210, 29 S.Ct. 67 (1908).

[32] First National Bank of Greeley v. Board of County Commissioners of the County of Weld, 264 U.S. 450, 44 S.Ct. 385 (1924). The decision limited itself to tax assessment cases on the grounds of public need for prompt determination. The rule appears to be one of estoppel. See Stason, "Timing of Judicial Redress from Erroneous Administrative Action," 25 MINN. L. REV. 560 (1941).

[33] Texas and Pacific Ry. Co. v. Abilene Cotton Oil Co., 204 U.S. 426, 27 S.Ct. 350 (1907).

[34] Railroad Commission of Texas v. Rowan & Nichols Oil Co., 310 U.S. 573, 60 S.Ct. 1021 (1940), 311 U.S. 614, 61 S.Ct. 66 (1940), 311 U.S. 570, 61 S.Ct. 343 (1941).

[35] Texas and Pacific Ry. Co. v. Abilene Cotton Oil Co., 204 U.S. 426, 27 S.Ct. 350 (1907); Great Northern Ry. Co. v. Merchants Elevator Co., 259 U.S. 285, 42 S.Ct. 477 (1922); United States Navigation Co. v. Cunard Steamship Co., 284 U.S. 474, 52 S.Ct. 247 (1932).

IV

While federal injunctive relief was somewhat disfavored, nevertheless it appears to have been the rule until 1951 that there did not need to be exhaustion of state judicial remedies before the petitioner sought an injunction in federal courts.[36] In such instances federal jurisdiction was concurrent with that of state courts,[37] and the petitioner had the privilege of choosing his forum. If chosen, the federal court had the duty to take jurisdiction.[38] Apprehension was sometimes expressed that if state judicial remedies were utilized, the petitioner would reach the Supreme Court with the facts decided against him,[39] notwithstanding the fact that the *Ben Avon* decision[40] indicated the Supreme Court had to be afforded the power to review the facts when an order was alleged to be confiscatory.

Then in 1951 came the decision in *Alabama Public Service Commission v. Southern Pacific Ry. Co.*[41] In that case the Supreme Court held that a federal district court should, in the exercise of its discretion, refuse jurisdiction in an injunction proceeding against a public service commission when the state judicial remedies have not been exhausted. The *Alabama* suit was brought to enjoin an order requiring the railroad to maintain two local trains a day between certain points. The plaintiff contended that the operation was so costly as to amount to confiscation. Two justices concurred in the Supreme Court's decision on the ground that the company had not shown it was losing money on the entire operation in the state and hence that there was confiscation. Nevertheless, they objected to the majority opinion, contending that in

[36] Lilienthal, "The Federal Courts and State Regulation of Public Utilities," 43 HARV. L. REV. 379 (1929), suggests that the right to by-pass the state courts for a federal injunction was recognized "beyond question." See Bacon v. Rutland R. Co., 232 U.S. 134, 34 S.Ct. 283 (1914); Railroad and Warehouse Commission of Minnesota v. Duluth Street Ry. Co., 273 U.S. 625, 47 S.Ct. 489 (1927); Lane v. Wilson, 307 U.S. 268, 59 S.Ct. 872 (1939); Columbia Ry., Gas & Electric Co. v. Blease, (D.C. S.C. 1927) 42 F. (2d) 463; Ann Arbor R. Co. v. Michigan Public Service Commission, (D.C. Mich. 1950) 91 F. Supp. 668; Southern Ry. Co. v. Alabama Public Service Commission, (D.C. Ala. 1950) 91 F. Supp. 980.

[37] Cohens v. Virginia, 6 Wheat. (19 U.S.) 264 (1821).

[38] Ibid.; Wilcox v. Consolidated Gas Co., 212 U.S. 19 at 40, 29 S.Ct. 192 (1909) ("That the case may be one of local interest only is entirely immaterial. . . ."); Prentis v. Atlantic Coast Line Co., 211 U.S. 210 at 228, 29 S.Ct. 67 (1908) ("A State cannot tie up a citizen of another State, having property within its territory invaded by unauthorized acts of its own officers, to suits for redress in its own courts").

[39] Prentis v. Atlantic Coast Line Co., 211 U.S. 210, 29 S.Ct. 67 (1908).

[40] Ohio Valley Water Co. v. Ben Avon Borough, 253 U.S. 287, 40 S.Ct. 527 (1920). Other decisions also held constitutional facts were a sufficient basis for jurisdiction. St. Joseph Stock Yards Co. v. United States, 298 U.S. 38, 56 S.Ct. 720 (1936); Ex parte Young, 209 U.S. 123, 28 S.Ct. 441 (1908).

[41] 341 U.S. 341, 71 S.Ct. 762 (1951).

requiring resort to the state courts in such cases the decision served to overturn "a long course of decisions and, in effect, to repeal an act of Congress defining the jurisdiction of the district courts."[42]

The *Alabama Public Service Commission* decision appears to put new life into the *Prentis* doctrine.[43] Evidently if there is *any* state court remedy, whether it is administrative or judicial, the petitioner must exhaust it before he can proceed in the federal courts. About the same reasons are given for the need to exhaust judicial remedies as were given in the *Prentis* case. Another possible reason for the decision is the desire to relieve the federal docket.[44] The *Prentis* case had indicated that exhaustion of state administrative appeals before coming into federal courts for an injunction would not place the petitioner in a position in which he was barred from litigating the facts by res judicata. The *Prentis* case continued, however, that exhaustion of state judicial remedies would result in res judicata, so that these state judicial remedies need not be exhausted before petitioner could seek federal injunctive relief. The *Alabama* case[45] appears to do away with this res judicata distinction between state administrative and judicial appeals. This elimination of the res judicata distinction appears to be in line with the gradual extinction of the *Ben Avon* ruling[46] that in a case of alleged confiscation, the court must look at both law and facts.[47] Redetermination of the facts by the courts no longer seems important.

V

While it is too early to be sure what effect the *Alabama* decision will have on administrative law, some generalizations can be made at this time. Lower courts in general are consistently applying the de-

[42] Id. at 355. One other possible change in the law should be noted. The old view, represented by Smyth v. Ames, 169 U.S. 466, 18 S.Ct. 418 (1898), had been that in determining the reasonableness of an administrative rate order, the actual transaction would govern, and the net gain from total operation, or even state operation, would have no bearing on the case. The concurring opinion suggests that a larger view may now be taken.

[43] Prentis v. Atlantic Coast Line Co., 211 U.S. 210, 29 S.Ct. 67 (1908).

[44] 46 ILL. L. REV. 756 (1951).

[45] Alabama Public Service Commission v. Southern Ry. Co., 341 U.S. 341, 71 S.Ct. 762 (1951).

[46] Ohio Valley Water Co. v. Ben Avon Borough, 253 U.S. 287, 40 S.Ct. 527 (1920).

[47] Ashwander v. Tennessee Valley Authority, 297 U.S. 288 at 321, 56 S.Ct. 466 (1936): "We think . . . that the opportunity to resort to equity, in the absence of an adequate legal remedy . . . should not be curtailed because of reluctance to decide constitutional questions." But the Court later began to allow the agency to determine the "jurisdictional facts," Meyers v. Bethlehem Shipbuilding Corp., 303 U.S. 41, 58 S.Ct. 459 (1938), and then it was held that rates had to be clearly confiscatory before equity would intervene, Vincennes Water Supply Co. v. Public Service Commission of Indiana, (7th Cir. 1929) 34 F. (2d) 5, cert. den. 280 U.S. 567, 50 S.Ct. 26 (1929).

cision to require judicial review in state courts prior to any federal action.[48] One court suggests that "adequate remedy at law" now clearly refers to state remedy as well as federal remedy.[49]

But limitations are being placed on the doctrine as well. One court has said that the rule applies only to regulatory orders, as distinguished from allegedly unconstitutional tax levies by state agencies.[50] The federal district court of Minnesota suggests that predominantly local factors must be found in the case before the federal equity court will refuse jurisdiction.[51] The New Jersey federal district court has made a similar statement, holding that it would retain jurisdiction when federal law must be weighed against state rules even when the state rules have not been construed.[52] The California federal court asserts that the Alabama doctrine applies only to constitutional improprieties in enforcing state laws, not to cases in which state law conflicts with a federal statute.[53] The doctrine has been held not to apply to fundamental rights which petitioner declared were denied by a state administrative body.[54] In *Peay v. Cox* the court, after citing the *Alabama* case, continues: "The only trouble here [in the use of discretion] comes from the distinction set up in some of the cases between State remedies which are administrative . . . [as in this case] and those which are judicial and operate only to shift the case from a federal court into a state court and end in a *res judicata* . . . . Such a remedy need not be exhausted."[55] This dicta has the appearance of desire to nullify the *Alabama* decision. It would seem, therefore, that the last word on the question of exhaustion of judicial remedies in state courts has not as yet been said.

[48] Rock Island Motor Transit Co. v. Murphy Motor Freight Lines, Inc., (D.C. Minn. 1952) 101 F. Supp. 978; Pierce v. Hildebrand, (D.C. Iowa 1952) 103 F. Supp. 396; Atlantic Freight Lines, Inc. v. Pennsylvania Public Utility Commission, (D.C. Pa. 1952) 109 F. Supp. 385. Cf. Red Rock Cola Co. v. Red Rock Bottlers, Inc., (5th Cir. 1952) 195 F. (2d) 406.

[49] Local 333B, United Marine Division of International Longshoremen's Assn. v. Battle, Governor of Virginia, (D.C. Va. 1951) 101 F. Supp. 650, affd. per curiam 342 U.S. 880, 72 S.Ct. 178 (1951).

[50] Central Steel & Wire Co. v. Detroit, (D.C. Mich. 1951) 101 F. Supp. 470. This case was not in equity. The complaint was brought to recover taxes paid under protest, and unconstitutionality was claimed.

[51] Rock Island Motor Transit Co. v. Murphy Motor Freight Lines, Inc., (D.C. Minn. 1952) 101 F. Supp. 978 at 981.

[52] Pennsylvania Greyhound Lines, Inc. v. Board of Public Utility Commissioners, (D.C. N.J. 1952) 107 F. Supp. 521.

[53] United Air Lines, Inc. v. Public Utilities Commission of California, (D.C. Cal. 1952) 109 F. Supp. 13. Cf. Pennsylvania Greyhound Lines, Inc. v. Board of Public Utility Commissioners, (D.C. N.J. 1952) 107 F. Supp. 521.

[54] Wilson v. Beebe, (D.C. Del. 1951) 99 F. Supp. 418.

[55] (5th Cir. 1951) 190 F. (2d) 123 at 125, cert. den. 342 U.S. 896, 72 S.Ct. 230 (1951).

VI

The *Alabama* decision[56] does provide a new and clear-cut rule: it is necessary to make use of all the state remedies provided, whether at the administrative level or at the court level, whether "administrative" in nature or judicial. The rule simplifies procedure and minimizes the possibility of error. A wrong step, under the old rule, could cost the petitioner his case, or, at best, a great deal of time and expense.[57] The Supreme Court has held, of course, that if no state judicial review is provided, the statute creating the agency is unconstitutional.[58] Now it appears that this state review must be followed, with review by the Supreme Court as a final protection, and with stay of enforcement during the appeals as a means of preventing irreparable damage. The rule, however, is one of "comity and convenience."[59] A major question of policy remains to be answered: should the Supreme Court legislate, where Congress has not done so, to deprive petitioners of the concurrent federal court action—a very speedy and efficient means of preventing enforcement of improper state administrative orders?

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[56] Alabama Public Service Commission v. Southern Ry. Co., 341 U.S. 341, 71 S.Ct. 762 (1951).

[57] 46 ILL. L. REV. 756 (1951). Nine years were required for a final decision in Spector Motor Service, Inc. v. O'Connor, 340 U.S. 602, 71 S.Ct. 508 (1951).

[58] Ohio Valley Water Co. v. Ben Avon Borough, 253 U.S. 287, 40 S.Ct. 527 (1920).

[59] Railroad Commission of Texas v. Pullman Co., 312 U.S. 496, 61 S.Ct. 643 (1941); Alabama Public Service Commission v. Southern Ry. Co., 341 U.S. 341, 71 S.Ct. 762 (1951).