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CONSTITUTIONAL LAW-APPELLATE JURISDICTION OVER STATE COURT DECISIONS-WHEN IS A STATE COURT DECISION "FINAL"

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CONSTITUTIONAL LAW—APPELLATE JURISDICTION OVER STATE COURT DECISIONS—WHEN IS A STATE COURT DECISION "FINAL"—Plaintiff brought suit to enjoin peaceful picketing of an apartment project by defendant labor organizations. The Circuit Court, Montgomery County, Alabama granted temporary injunction ex parte. Defendants appealed to the Alabama Supreme Court which affirmed the trial court's order denying a motion to dissolve the injunction. Certiorari was sought and granted by the United States Supreme Court.[1] *Held,* certiorari had been improvidently granted since the Alabama Supreme Court's determination had not constituted a final judgment or decree. *Montgomery Bldg. and Constr. Trades Council v. Ledbetter Erection Co.,* 344 U.S. 178, 73 S.Ct. 196 (1952).

Since the Judiciary Act of 1789,[2] Supreme Court review of judgments or decrees of highest state courts has been limited to those within the "final" category.[3] Although the basic restriction is congressionally imposed, the Court itself has shown a willingness to follow it on sound policy grounds of its own.[4] The hesitation of any appellate court to undertake or encourage piecemeal review has certainly been a factor in the Court's attitude.[5] Also present is the reluctance of the Supreme Court to decide constitutional issues before it is absolutely necessary. Finally, the duality of our federal system leads, or should lead, to a reflex withdrawal on the part of the Supreme Court from potential conflict with a

[1] Montgomery Bldg. & Constr. Trades Council v. Ledbetter Erection Co., 343 U.S. 962, 72 S.Ct. 1061 (1952).

[2] 1 Stat. L. 85, §25 (1789).

[3] The present restriction is embodied in 62 Stat. L. 929 (1948), 28 U.S.C. (Supp. V, 1952) §1257. "Final judgments or decrees rendered by the highest court of a state in which a decision could be had, may be reviewed by the Supreme Court. . . ."

[4] Requirement of "finality" before review has the support of considerations generally applicable to good judicial administration; it avoids the mischief of economic waste and delayed justice. Radio Station WOW v. Johnson, 326 U.S. 120, 65 S.Ct. 1475 (1945).

[5] Louisiana Nav. Co. v. Oyster Comm. of Louisiana, 226 U.S. 99, 33 S.Ct. 78 (1912).

state court which represents a distinct government.[6] Postponement of the day of reckoning until the last legal moment appears to be the basic reason for the "finality" concept. At what point of time or space the magic line is crossed is not altogether definite[7] but certain guideposts have been erected for the wary litigant. Generally a state court judgment to be within the appellate jurisdiction of the Supreme Court must be "final" in two senses. First, it must be subject to no further review or correction in any other state tribunal.[8] Second, it must be an effective determination of the litigation and not merely of the interlocutory or intermediate steps therein.[9] It must be, then, the final word of a final court.[10] The designation given a judgment by state practice is not controlling in determining whether it is "final" for purposes of federal review, but resort to local law may be had to determine what effect the judgment has under state rules of practice.[11] Although the place of the "final" judgment rule in its purest form in relation to a smoothly working federal system may have a definite appeal to the detached observer, certain hard-pressed litigants have come to view it with more reserve. The gap between legal finality and practical finality can be of such proportions that effective review for the would-be appellant is non-existent.[12] Nowhere is this gap more clearly recognizable than in the area of temporary injunctions.[13] He who obtains or is denied the fruits of such an injunction is often the real winner, or loser, the final outcome of the litigation becoming academic. Both federal and state legislatures have recognized this and have attempted remedial action by allowing appeals from interlocutory injunctions, but the Supreme Court has held, as in the principal case, that this does not confer "finality" status on such injunctions for the purpose of reviewing state court decisions.[14] The question then arises, if in theory the litigant's rights under the

[6] See Republic Natural Gas Co. v. Oklahoma, 334 U.S. 62 at 67-68, 68 S.Ct. 972 (1948), and Radio Station WOW v. Johnson, note 4 supra, to the effect that the finality requirement is especially pertinent when constitutional barriers are asserted against a state court's decision on matters peculiarly of local concern.

[7] Considerations that determine finality are not abstractions but have reference to very real interests—not merely those of the immediate parties but those that pertain to smooth functioning of the judicial system. Republic Natural Gas Co. v. Oklahoma, note 6 supra.

[8] Largent v. Texas, 318 U.S. 418, 63 S.Ct. 667 (1943) (judgment of a county court held "final"); Marino v. Ragen, 332 U.S. 561, 68 S.Ct. 240 (1947) (trial court's order quashing writ of habeas corpus held "final" since no review by any higher state court was available). See also Virginian Ry. Co. v. Mullens, 271 U.S. 220, 46 S.Ct. 526 (1926); Grovey v. Townsend, 295 U.S. 45, 55 S.Ct. 622 (1935).

[9] Georgia Ry. and Power Co. v. Decatur, 262 U.S. 432, 43 S.Ct. 613 (1923). Compare Moses v. Mobile, 15 Wall. (82 U.S.) 387 (1872), with Tippecanoe County v. Lucas, 93 U.S. 108 (1876).

[10] Market Street Ry. Co. v. Railroad Comm. of California, 324 U.S. 548, 65 S.Ct. 770 (1945).

[11] Richfield Oil Corp. v. State Bd. of Equalization, 329 U.S. 69, 67 S.Ct. 156 (1946).

[12] See principal case at 181 where the Court recognizes the substance of such an assertion but maintains that it does not warrant enlarging jurisdiction to review.

[13] Gibbons v. Ogden, 6 Wheat. (19 U.S.) 448 (1821), was the first decision in this area where the court refused to review a decree affirming an order denying dissolution of an injunction.

[14] Principal case at 180.

Constitution are safe but in practical effect they are or may be useless, what avenues of relief, if any, are available? The Court in the *Montgomery* case suggests that this interlocutory decree could have been readily converted into a final decree and the appeal could have proceeded without question as to jurisdiction. Query as to how many patients would be willing to take such a potentially lethal cure? A second approach is suggested by inferences from various decisions; an appeal of an order that otherwise might be deemed interlocutory may be allowed because the controversy had proceeded to a point where the losing party would be irreparably injured if review were unavailing.[15] The applications of this escape mechanism have been limited,[16] and the same appears to be the case with its future possibilities. A final procedural device which offers some hope has been successfully used in many instances. This lies in utilizing mandamus[17] or prohibition[18] proceedings. The Court has held that these are independent adversary suits and a judgment awarding or refusing either writ is a "final" judgment within the meaning of the Federal Judicial Code. This form of relief has been resorted to and upheld by the Supreme Court in various types of situations including temporary injunctions[19] and would appear to offer tangible results to the hard pressed suitor, if it is not abused. Conceding the virtues in our governmental framework of a doctrine such as that embodied in the "finality" concept, the protective armor should not be turned into a straightjacket when the Court is faced with the realities of litigation. The mandamus-prohibition practice seems to be a step in the right direction.

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[15] Republic Natural Gas Co. v. State of Oklahoma, note 6 supra. See also Radio Station WOW v. Johnson, note 4 supra, where the Court implies that in a few situations where intermediate rulings may carry serious public consequences interlocutory review may be granted.

[16] In Radio Station WOW v. Johnson, note 4 supra, a judgment directing immediate delivery of physical property was reviewed, the Court deeming it to be dissociated from a provision for an accounting even though that was decreed in the same order.

[17] Detroit and Mackinac R. Co. v. Michigan R.R. Comm. and Fletcher Paper Co., 240 U.S. 564, 36 S.Ct. 424 (1916); Hartman v. Greenhow, 102 U.S. 672 (1880). See also annotation in 89 L. Ed. 1194 (1945).

[18] Missouri ex rel. St. Louis B. and M. Ry. Co. v. Taylor, 266 U.S. 200, 45 S.Ct. 47 (1924); Rescue Army v. Municipal Ct. of Los Angeles, 331 U.S. 549, 67 S.Ct. 1409 (1947); Michigan Central R. Co. v. Mix, 278 U.S. 492, 49 S.Ct. 207 (1929).

[19] Missouri v. Taylor, 266 U.S. 200, 45 S.Ct. 47 (1924) (denial of prohibition writ to prevent lower court from entertaining jurisdiction by garnishment held final); Bandini Petroleum Co. v. Superior Ct., 284 U.S. 8, 52 S.Ct. 103 (1931) (proceeding for writ of prohibition to restrain trial court from enforcing preliminary injunction reviewable as a final judgment on denial of writ); Rescue Army v. Municipal Ct. of Los Angeles, note 18 supra (judgment denying prohibition writ to restrain court from trying petitioner for alleged ordinance violations held "final" and reviewable).