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EQUITY-JURISDICTION TO ENJOIN ACTS OF A FEDERAL OFFICER IN EXCESS OF STATUTORY AUTHORITY

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EQUITY—JURISDICTION TO ENJOIN ACTS OF A FEDERAL OFFICER IN EXCESS OF STATUTORY AUTHORITY—As a device for recovering excessive profits, federal legislation authorized the Secretary of War to order concerns holding contracts with the government to withhold and pay over to the government amounts due from them to parties against which the excessive profits

had been determined.[1] Acting under this authority, the Secretary ordered twelve government contractors to withhold sums due or to become due to plaintiff, of which they were customers, after a determination against the plaintiff of $7,000,000 in excessive profits. Plaintiff sought to enjoin defendant from using this means of collection, contending that because the order was not limited to amounts already due on subcontracts for government work, it was in excess of his statutory authority. Defendant moved to dismiss, on the ground that plaintiff stated no basis for equitable jurisdiction. *Held*, motion denied. Plaintiff has a right to test the validity of the withholding order. Its remedy at law is inadequate, because a multiplicity of actions against its customers would be required, impairing its business relationships. *Lord Mfg. Co. v. Stimson*, (D.C. D.C. 1947) 73 F. Supp. 984.

As an instrument for testing the constitutionality of statutes, the suit for an injunction against enforcement is well established. Wherever the plaintiff presents a case or controversy, the federal courts usually seem willing to assume jurisdiction to grant injunctive relief, giving liberal effect to the principle that equitable relief is proper if the legal remedy is not complete, practical, and efficient.[2] Even if plaintiff asserts only the excessive nature of defendant's order and raises no constitutional question, the case for equity jurisdiction would seem to be just as great; there is "no logical difference . . . between unconstitutional human action and similar action without color of law therefor." [3] When there is combined with this question of the validity of the statute (or of its scope) the multiplicity aspect presented by the principal case,[4] the action would

[1] Renegotiations Act, 1942, § 403(c)(2), 50 U.S.C.A. (1944) § 1191(c)(2).

[2] Hammer v. Dagenhart, 247 U.S. 251, 38 S.Ct. 529 (1918); Station WBT v. Poulnot, (D.C. S.C. 1931) 46 F. (2d) 671; Simpson, "Fifty Years of American Equity," 50 HARV. L. REV. 171 at 237 (1936). In some of the cases there was involved an actual inquiry into the adequacy of the legal remedy: attacks on the constitutionality of statutes providing an administrative remedy which plaintiff had not yet employed—Hegeman Farms Corp. v. Baldwin, 293 U.S. 163, 55 S.Ct. 7 (1934); Anderson v. Schwellenbach, (D.C. Cal. 1947) 70 F. Supp. 14; statutes providing criminal sanctions (which equity has always been reluctant to restrain)—Spielman Motor Sales v. Dodge, 295 U.S. 89, 55 S.Ct. 678 (1935); or tax statutes (where a similar reluctance has been displayed)—Matthews v. Rodgers, 284 U.S. 521, 52 S.Ct. 217 (1932).

[3] Dissent in Hoffman Brewing Co. v. McElligott, (C.C.A. 2d, 1919) 259 F. 525 at 532, in which the court made a distinction between the two situations for the purpose of determining whether the action was against the United States, and therefore subject to the federal immunity to suit. Statements in other cases indicate that this difference would not be found. Smith v. Tillitson, (C.C.A. 8th, 1928) 29 F. (2d) 535.

[4] Under the preferred view, it is sufficient to sustain equity jurisdiction, if the numerous suits at law involve only a common question of law or fact. Chafee, "Bills of Peace with Multiple Parties," 45 HARV. L. REV. 1297 (1932). But there are many courts which take the view that there must also be a common interest in the subject of the action among all the parties to the suits at law. Georgia Power Co. v. Hudson, (C.C.A. 4th, 1931) 49 F. (2d) 66; Mountain Lumber Co. v. Davis, (C.C.A. 2d, 1926) 11 F. (2d) 219. Since the action against each customer would be based on a separate contract, courts following that doctrine might object to the present decision.

seem to be within the familiar bounds of equity jurisdiction, at least in its procedural features.[5] There is a genuine multiplicity of serious proportions if plaintiff is to be compelled to sue all its contractors at law. It is immaterial that the parties to the actions the plaintiff seeks to void are not the same as the parties to the equity action, so long as the act contemplated by the equity defendant would give rise to such litigation.[6] The government's assurance that it would intervene in the first suit between plaintiff and its customer and consider itself bound by the outcome did not persuade the court that plaintiff should be required to risk the possibility that the Secretary might desire to relitigate the question in the event of an unfavorable decision, although other courts have regarded such assurance, or a presumption thereof, as sufficient to render the legal remedy adequate.[7] Whether the Secretary acted to plaintiff's prejudice or violated any duty to it in issuing the order would appear to be an additional question, inasmuch as plaintiff's claims against its customers were unimpaired.[8] This aspect of the case did not receive consideration by the court.

William J. Schrenk

[5] In a previous suit to enjoin a similar order under the Renegotiation Act, the Supreme Court denied jurisdiction on the ground that the action was against the sovereign. Mine Safety Co. v. Forrestal, 326 U.S. 371, 66 S.Ct. 219 (1945). The case is distinguishable from the principal action, in that the order there was directed to government disbursing officers, and the court considered the suit an attempt on the part of the plaintiff to recover money owed it by the government. It appears well settled that in the absence of such exceptional circumstances, a suit to enjoin a public officer from acting under an unconstitutional statute will not be regarded as an action against the sovereign. See the cases collected in 43 A.L.R. 408 (1926).

[6] 1 POMEROY, EQUITY JURISPRUDENCE, §§ 250, 261(1) (1941); Smyth v. Ames, 169 U.S. 466, 18 S.Ct. 418 (1898); Chicago City Ry. Co. v. City of Chicago, (C.C. Ill. 1905) 142 F. 844; Ozark Bell Tel. Co. v. City of Springfield, (C.C. Mo. 1905) 140 F. 666. Language can be found, however, to the effect that there is a basis for equity jurisdiction only when a multiplicity of suits between the same parties would result. Matthews v. Rodgers, 284 U.S. 521, 52 S.Ct. 217 (1932); Chicago Ry. Co. v. Bauman, (C.C.A. 8th, 1934) 69 F. (2d) 171; Pacific Mut. Life Ins. Co. v. Parker, (C.C.A. 4th, 1934) 71 F. (2d) 872.

[7] Equitable Guarantee & Trust Co. v. Donahoe, 8 Del. Ch. 422, 45 A. 583 (1900); Pacific Express Co. v. Seibert, (C.C. Mo. 1890) 44 F. 310.

[8] In a very similar situation, where plaintiff sued his customers to enjoin payment pursuant to the order, the Supreme Court denied the existence of any case or controversy on the ground that plaintiff's contract claims would remain valid and subsisting. Coffman v. Breeze Corp., 323 U.S. 316, 65 S.Ct. 298 (1945).