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FEDERAL COURTS - REVIEW OF STATE COURTS DECISION INVOLVING FEDERAL AND NONFEDERAL QUESTIONS

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FEDERAL COURTS — REVIEW OF STATE COURT'S DECISION INVOLVING FEDERAL AND NONFEDERAL QUESTIONS — In exercising appellate jurisdiction over federal questions raised in the highest court of a state,¹ the Supreme Court of the United States has refused to adopt the view that the existence of a federal question in the record or decision of the state court will empower it to decide every other question that is raised in the case.² Correlated to this refusal to review

¹ U. S. Constitution, art. 3, § 2.

² *Murdock v. City of Memphis*, 20 Wall. (87 U. S.) 590 (1874).

the nonfederal question is the further self-imposed limitation that where the decision of the state court rests upon a nonfederal ground sufficient in itself to support the judgment of the state court, the Supreme Court will not review that judgment,³ even though the state court decided a federal question erroneously.⁴ It is the purpose of this comment to examine the present status of these rules and some of the problems arising thereunder.

At first the limitations of the nonfederal ground rule were not regarded as jurisdictional in nature, and in the presence of the nonfederal question the Court's procedure was either to affirm the decision of the state court once jurisdiction over the cause had been taken, or dismiss the writ of error.⁵ But in the more recent cases the Court, prompted by considerations of convenience, has generally refused to grant the writ of certiorari when the judgment sought to be reviewed was adequately based on a nonfederal ground.⁶ The adoption of Supreme Court Rule 12 requiring the appellant to submit a jurisdictional statement⁷ seems further to indicate a tendency to treat the limitations as a jurisdictional matter, and as a result it has been possible for the Court to dispose of most of these cases before they reach the stage of oral argument.⁸

However, such a disposition of a case necessarily depends upon the determination of two questions: (1) Is the decision of the state court "based" upon a nonfederal ground? (2) Is that nonfederal ground "adequate to support" the judgment or decree?⁹ In answering the first question, the problem of the Court is largely one of finding the

³ *Petrie v. Nampa & Meridian Irrigation District*, 248 U. S. 154, 39 S. Ct. 25 (1918); *New York ex rel. Doyle v. Atwell*, 261 U. S. 590, 43 S. Ct. 410 (1923).

⁴ *Murdock v. City of Memphis*, 20 Wall. (87 U. S.) 590 (1874); *Enterprise Irrigation District v. Farmers' Mutual Canal Co.*, 243 U. S. 157, 37 S. Ct. 318 (1917).

⁵ *Gaar, Scott & Co. v. Shannon*, 223 U. S. 468, 32 S. Ct. 236 (1912); *Live Oak Water Users' Assn. v. Railroad Commission of State of California*, 269 U. S. 354, 46 S. Ct. 149 (1926). Cf. *Fox Film Corp. v. Muller*, 296 U. S. 207, 56 S. Ct. 183 (1935).

⁶ *New York City v. Central Savings Bank*, 306 U. S. 661, 59 S. Ct. 790 (1939); *Public Service Commission of Wisconsin v. Wisconsin Telephone Co.*, 309 U. S. 657, 60 S. Ct. 514 (1940).

⁷ "The applicant shall append to the statement a copy of any opinions delivered upon the rendering of the judgment or decree sought to be reviewed, including earlier opinions in the same case, or opinions in companion cases, reference to which may be necessary to ascertain the grounds of the judgment or decree." Supreme Court Rules (1939), No. 12.

⁸ Frankfurter and Fisher, "The Business of the Supreme Court at the October Terms, 1935 and 1936," 51 HARV. L. REV. 577 at 581 et seq. (1938).

⁹ ROBERTSON and KIRKHAM, JURISDICTION OF THE SUPREME COURT OF THE UNITED STATES, § 85 et seq. (1936).

decisive reasoning upon which the state court relied. If the nonfederal question was presented but not actually decided, the Supreme Court will then undertake to review the federal question involved.¹⁰ But in the cases where the basis for the state court's decision is so ambiguous that it cannot be determined which of the two grounds was relied upon, the Court will either dismiss the petition or vacate the judgment of the court below in order to have the state court clarify its holding.¹¹ As to the latter question, the Court has held that the nonfederal ground must be independent of the federal ground,¹² that it must be substantial,¹³ and that it must be a tenable ground for the decision.¹⁴ Through all of these cases the Court is attempting to draw a distinct line between those rights which are within the province of the state courts and those which must be defined by the Supreme Court of the United States.

A rather common instance in which the nonfederal ground rule is applied is the case in which identical provisions of both a state and the federal constitution are involved.¹⁵ Of course, if the state court holds that rights are denied under the state constitution, it does not matter what disposition was made of the federal constitutional issue, for Supreme Court review is precluded.¹⁶ On the other hand it is not uncommon to find that in such a case the state court has interpreted its own constitution in the light of federal cases,¹⁷ and although the technical grounds for denying the review still remain, there is presented a situation in which it has been suggested that the Supreme Court make an exception to its rule and grant the review.¹⁸ Inasmuch as the limitation imposed by the Court is based on considerations of convenience

¹⁰ *Grayson v. Harris*, 267 U. S. 352, 45 S. Ct. 317 (1925).

¹¹ *State Tax Commission v. Van Cott*, 306 U. S. 511, 59 S. Ct. 605 (1939); *Honeyman v. Hanan*, 300 U. S. 14, 57 S. Ct. 350 (1937).

¹² *Abie State Bank v. Bryan*, 282 U. S. 765, 51 S. Ct. 252 (1931).

¹³ *Lawrence v. State Tax Commission of Mississippi*, 286 U. S. 276, 52 S. Ct. 556 (1932).

¹⁴ *Ward v. Board of Commissioners of Love County*, 253 U. S. 17, 40 S. Ct. 419 (1920).

¹⁵ For example, forty-three of the states have due process provisions in their constitutions, and the five who do not, have provisions that for most purposes afford similar protection. *MOTT, DUE PROCESS OF LAW* 26 (1926).

¹⁶ *Bryan v. Hubbell Bank*, 289 U. S. 753, 53 S. Ct. 785 (1932).

¹⁷ A very similar question can arise in the case in which a state statute is interpreted on the authority of cases from the Supreme Court of the United States. Thus in *Wisconsin Telephone Co. v. Public Service Commission*, 232 Wis. 274, 287 N. W. 122 (1939), cert. denied sub nom. *Public Service Commission of Wisconsin v. Wisconsin Telephone Co.*, 309 U. S. 657, 60 S. Ct. 514 (1940), a statute governing a rate-making tribunal made provisions for "hearing" and "reasonable rates," and the state court in construing these statutory provisions relied upon cases dealing with the Fourteenth Amendment.

¹⁸ 49 *YALE L. J.* 1463 (1940).

and not upon statutory or constitutional grounds, the exception could be rationalized upon the theory that the nonfederal question is so interwoven with the federal question that the requirement that the two be independent grounds is not satisfied. By making this exception the Court could then resolve the federal issue, and in this day of constitutional change, it might result in the striking down of the cases deemed authoritative by the state court.

The recent case of *National Tea Co. v. State*¹⁹ presents the problem clearly. The Supreme Court of Minnesota, in holding invalid a state graduated gross sales tax upon chain stores, discussed both the equal protection clause of the Fourteenth Amendment and the uniformity clause of the state constitution,²⁰ which the court found to be identical provisions as applied to classification for taxing purposes.²¹ In reaching its conclusion the court relied upon five cases which dealt with the Fourteenth Amendment, including two cases decided by the Supreme Court of the United States. Reviewing upon certiorari, the Supreme Court of the United States, with three justices dissenting, found there was "considerable uncertainty as to the precise grounds for the decision" and vacated the judgment to allow the Minnesota court to clarify its position.²² The dissenting justices were of the opinion that the case was decided upon an adequate nonfederal ground and urged dismissal of the writ of certiorari.²³

Previous to this case several cases had come to the Supreme Court of the United States from the Court of Appeals of New York in such a way as to present an interesting background. In *People ex rel. Pierson v. Lynch*²⁴ the court of appeals affirmed without opinion the decision of a lower court annulling a tax assessment as being violative of due process.²⁵ Although this case was decided upon the authority of cited cases dealing with the Fourteenth Amendment, the Supreme Court of the United States dismissed the writ of certiorari because it was not clear that the court of appeals had not affirmed on the basis of the state constitutional provision, and "jurisdiction cannot be founded upon surmise."²⁶ The court of appeals then refused to grant a motion to amend the remittitur to show the grounds of the decision and the case was at

¹⁹ 205 Minn. 443, 286 N. W. 360 (1939).

²⁰ Minn. Constitution (1896), Art. 9, § 1.

²¹ *National Tea Co. v. State*, 205 Minn. 443, 286 N. W. 360 (1939), citing *Reed v. Bjornson*, 191 Minn. 254, 253 N. W. 102 (1934).

²² *Minnesota v. National Tea Co.*, 309 U. S. 551 at 555, 60 S. Ct. 676 (1940).

²³ 309 U. S. 551 at 558, 60 S. Ct. 676 (1940).

²⁴ 263 N. Y. 533, 189 N. E. 684 (1934).

²⁵ *Pierson v. Lynch*, 237 App. Div. 763, 263 N. Y. S. 259 (1933).

²⁶ *Lynch v. New York ex rel Pierson*, 293 U. S. 52 at 54, 55 S. Ct. 16 (1934).

an end.²⁷ Later in the case of *People ex rel. Tipaldo v. Morehead*,²⁸ the court of appeals invalidated the state's minimum wage law upon the ground of due process. Although it was urged that the statute violated both the state and federal constitutions, the court did not indicate whether its decision was based upon one or both of these grounds. The Supreme Court of the United States, however, was satisfied that the nonfederal ground was not present from the fact that the remittur certified "that the federal constitutional question was presented and necessarily passed on,"²⁹ and the decision of the state court was affirmed. Whether or not this case marked a relaxation of the nonfederal ground rule is a subject of some dispute,³⁰ but even if it did, the Court has indicated that the departure would have but narrow application. Later in the case of *Central Savings Bank in City of New York v. New York City*³¹ where the Court of Appeals of New York held a statute in violation of due process and of the contracts clause, relying in part upon federal cases, it amended its remittur by adding "A question under the Federal Constitution was duly presented and necessarily passed upon by this court."³² Nevertheless, certiorari to the Supreme Court was denied on the authority of the *Lynch* case.³³

Thus for the Court to have reviewed the *National Tea Company* case because it was decided in the light of federal cases would have required a departure from this line of authority, unless the *Tipaldo* case can be said already to have marked that departure where an issue

²⁷ *People ex rel. Pierson v. Lynch*, 266 N. Y. 431, 195 N. E. 141 (1934).

²⁸ 270 N. Y. 233, 200 N. E. 799 (1936).

²⁹ *Morehead v. People of New York ex rel. Tipaldo*, 298 U. S. 587 at 603, 56 S. Ct. 918 (1936).

³⁰ In the statement of the proceedings of this case the Supreme Court said: "Relator took the case to the Court of Appeals [of New York]. It held the Act repugnant to the due process clauses of the state and federal constitutions. . . . The remittur . . . certified that the federal constitutional question was presented and necessarily passed on." 298 U. S. 587 at 603. From this statement it can certainly be argued that at least the Supreme Court should have had an honest doubt as to whether this case was decided upon the federal issue alone, and it might appear from this that because of the timeliness of the question of the constitutionality of minimum-wage legislation, the Court chose to depart from the nonfederal ground rule. On the other hand, however, this case might be explained by the fact that the respondent did not raise the question of jurisdiction. Another explanation offered is that the Court meant to emphasize the word "necessarily" in its statement, thereby indicating that the court of appeals passed the adequate state ground and rested its ultimate decision upon the federal ground. See ROBERTSON and KIRKHAM, JURISDICTION OF THE SUPREME COURT OF THE UNITED STATES, § 92, note 41 (1936).

³¹ 279 N. Y. 266, 18 N. E. (2d) 151 (1938), motion to amend remittur granted 280 N. Y. 9, 19 N. E. (2d) 659 (1939).

³² 280 N. Y. 9 at 11.

³³ *New York City v. Central Savings Bank*, 306 U. S. 661, 59 S. Ct. 790 (1939).

of pressing public interest is present. But apart from authority there are valid reasons lying behind the Court's refusal to direct the state courts in their interpretation of state constitutional provisions.

In the first place it is to be remembered that the limitations of the nonfederal ground rule were first adopted by the Court as a matter of convenience in preventing "a useless and profitless reversal."⁸⁴ In its more recent application under the requirements of Supreme Court Rule 12 it is being used as an effective means of keeping the Court's docket cleared of cases that can be disposed of without imposing a further duty upon the Court.

Another of the reasons lying behind the nonfederal ground rule is that it has the effect of placing squarely upon either the state or federal courts the onus of the decision. Under the practice of vacating the judgment of the state court, the Supreme Court can prevent the state court from escaping its burden by means of an ambiguous or uncertain ruling. Thus being forced to state clearly the basis of its judgment, the state court must either undertake the responsibility of applying the state constitutional provision, or ignore that question and lay the ground for review before the Supreme Court of the United States by deciding upon the federal issue alone.⁸⁵ In either event the court must meet the proposition squarely.

Some of the state courts have themselves indicated through their approach to their own state's constitutional provisions a willingness to be controlled absolutely by the interpretations of the Supreme Court. Thus, the Court of Appeals of New York after once holding a statute to be in violation of the due process clauses of the state and federal constitutions, later overruled its own decision when the Supreme Court of the United States upheld a similar statute of another state.⁸⁶ Technically, the New York court could have distinguished between the application of the state and federal constitution, but instead it felt obliged to reverse its former decision. On the other hand some courts, while recognizing that the rulings of the Supreme Court of the United States are determinative of the provisions of the federal constitution, consider them only strongly persuasive as to similar clauses of the state constitution.⁸⁷ In practical effect the result reached by these differing approaches will in most instances be the same, for even the courts that

⁸⁴ *Murdock v. City of Memphis*, 20 Wall. (87 U. S.) 590 at 635 (1874).

⁸⁵ *Grayson v. Harris*, 267 U. S. 352, 45 S. Ct. 317 (1925).

⁸⁶ *Doubleday, Doran & Co. v. R. H. Macy & Co.*, 269 N. Y. 272, 199 N. E. 409 (1936), reversed in *Bourjois Sales Corp. v. Dorfman*, 273 N. Y. 167, 7 N. E. (2d) 30 (1936), upon the authority of *Old Dearborn Distributing Co. v. Seagram-Distillers Corp.*, 299 U. S. 183, 57 S. Ct. 139 (1936).

⁸⁷ *Miami Home Milk Producers Assn. v. Milk Control Board*, 124 Fla. 797 at 805, 169 So. 541 (1936).

insist upon maintaining the distinction between state and federal constitutions have been disposed to reverse their former positions following a similar change by the Supreme Court of the United States.³⁸ At the same time the state courts that desire to apply their own interpretation of the state constitution are in a position to do so. In the *National Tea Company* case the Supreme Court of Minnesota in reinstating the judgment vacated by the Supreme Court of the United States was urged to place the judgment on ground which would give the Supreme Court of the United States a clear and unmistakable jurisdiction to review. This the court declined, however, upon the ground that it had the duty to apply the relevant clause of the Minnesota Constitution.³⁹ Further review by the Supreme Court was thereby precluded.

If the Supreme Court were to take the position of granting review in these cases upon the theory that the nonfederal question was so interwoven with the federal question that the two could not be said to be independent, the end result would differ in the material respect that the state court would have to make its final determination after the Supreme Court of the United States had spoken. Once the Supreme Court had proceeded to determine that the supposed authoritative cases relied upon by the state court were not binding upon the federal issue, the state court would then be in the position of having to revise its own views, or draw a line of demarcation between the state and federal constitutional provisions. As a matter of policy this approach points to uniformity of decision controlled by the Supreme Court of the United States, but it is a uniformity attained by striking at the independent right of a state court to interpret its own state constitution. At the same time, if the state court insists upon differing with the Supreme Court of the United States, the review has concluded with a "useless and profitless reversal."

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³⁸ In *State ex rel. Fulton v. Ives*, 123 Fla. 401, 167 So. 394 (1936), the state supreme court invalidated a state statute regulating barbering because the court thought that the price-fixing features of the law were repugnant to the theories of due process as developed in the cases before the Supreme Court of the United States previous to 1934. However, the Supreme Court of the United States was at the time in the process of revising its own views. In the later case of *Bon Ton Cleaners & Dyers v. Cleaning, Dyeing & Pressing Board*, 128 Fla. 533, 176 So. 55 (1937), the court indicated by way of dicta that it was willing to depart from the basic doctrines of the *Fulton* case, because in the recently decided case of *West Coast Hotel Co. v. Parrish*, 300 U. S. 379, 57 S. Ct. 578 (1937), the Supreme Court of the United States had shown its own departure from the traditional theories of "liberty" and "freedom to contract." So when the question of legislative price-fixing was again raised in the case of *Miami Laundry Co. v. Florida Dry Cleaning & Laundry Board*, 134 Fla. 1, 183 So. 759 (1938), the court upheld the statute on the authority of the recently decided federal cases.

³⁹ *National Tea Co. v. State*, 208 Minn. 607, 294 N. W. 230 (1940).