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FEDERAL COURTS - CONFLICT BETWEEN THE FEDERAL DECLARATORY JUDGMENTS ACT AND THE JOHNSON ACT

Spencer E. Irons
University of Michigan Law School

FEDERAL COURTS — CONFLICT BETWEEN THE FEDERAL DECLARATORY JUDGMENTS ACT AND THE JOHNSON ACT — Plaintiff gas company contracted with defendant city to furnish gas from a certain field at rates fixed by ordinance. Plaintiff reserved the right, when this field became insufficient, to furnish gas from other fields at rates to be adjusted in accordance with the increased cost. In a suit in the federal district court for a declaratory judgment, plaintiff sought a determination that the local field had become insufficient, and that it was necessary to furnish gas from other fields. Plaintiff alleged that defendant city refused to recognize the changed conditions and insisted that plaintiff continue to furnish gas at the old rates. *Held*, the Federal Declaratory

Judgments Act[1] gave the district court power to give declaratory relief, and the Johnson Act[2] did not deprive the court of jurisdiction to hear this dispute. *Mississippi Power & Light Co. v. City of Jackson,* (C. C. A. 5th, 1941) 116 F. (2d) 924; cert. denied, *City of Jackson v. Mississippi Power & Light Co.,* 312 U. S. 698, 61 S. Ct. 741 (1941).

The purpose of the Federal Declaratory Judgments Act is to give to an immediate remedy to a person whose legal rights are in doubt but who is otherwise unable to get a present determination of those rights, and thus to avoid the economic waste which results when a person is forced to act at his peril until a technical breach of such rights occurs.[3] The new form of relief is created to satisfy a recognized need, but with no intention of furnishing a new choice of tribunals, or of drawing into the federal courts the adjudication of causes properly cognizable by state courts.[4] So, inasmuch as the granting of declaratory relief is within the discretion of the district courts,[5] the relief should be refused where the petitioner has an adequate remedy in the state courts, and where there is a policy against allowing the federal courts to adjudicate on the merits of the case.[6] Such a policy is found in the Johnson Act, which is designed to keep the

[1] Judicial Code, § 274d, 48 Stat. L. 955 (1934), 28 U. S. C. (1934), § 400. The act provides: "(1) In cases of actual controversy the courts of the United States shall have power upon petition, declaration, complaint, or other appropriate pleadings to declare rights and other legal relations of any interested party petitioning for such declaration, whether or not further relief is or could be prayed, and such declaration shall have the force and effect of a final judgment or decree and be reviewable as such."

[2] Judicial Code, § 24, 48 Stat. L. 775 (1934), 28 U. S. C. (1934), § 41(1). The act amends the Judicial Code as follows: "no district court shall have jurisdiction of any suit to enjoin, suspend, or restrain the enforcement, operation, or execution of any order of an administrative board or commission of a State, or any rate-making body of any political subdivision thereof, or to enjoin, suspend, or restrain any action in compliance with any such order, where jurisdiction is based solely upon the ground of diversity of citizenship, or the repugnance of such order to the Constitution of the United States, where such order (1) affects rates chargeable by a public utility, (2) does not interfere with interstate commerce, and (3) has been made after reasonable notice and hearing, and where a plain, speedy, and efficient remedy may be had at law or in equity in the courts of such State."

[3] BORCHARD, DECLARATORY JUDGMENTS 94-98 (1934); S. REP. 1005, 73d Cong., 2d sess. (1934), pp. 2-3.

[4] Aetna Casualty & Surety Co. v. Quarles, (C. C. A. 4th, 1939) 92 F. (2d) 321 at 324.

[5] The statutory language is: "the courts of the United States shall have power . . . to declare rights. . . ." 48 Stat. L. 955 (1934), 28 U. S. C. (1934), § 400. See: Aetna Casualty & Surety Co. v. Quarles, (C. C. A. 4th, 1937) 92 F. (2d) 321; United States Fidelity & Guaranty Co. v. Koch, (C. C. A. 3d, 1939) 102 F. (2d) 288; American Automobile Ins. Co. v. Freundt, (C. C. A. 7th, 1939) 103 F. (2d) 613; BORCHARD, DECLARATORY JUDGMENTS 99-113 (1934).

[6] In City of El Paso v. Texas Cities Gas Co., (C. C. A. 5th, 1938) 100 F. (2d) 501, cert. denied sub nom. Texas Cities Gas Co. v. City of El Paso, 306 U. S. 650, 59 S. Ct. 592 (1939), rehearing denied, 306 U. S. 669, 59 S. Ct. 643 (1939), where the terms of the Johnson Act did not strictly apply, it was held that as a matter of comity, and in the interests of the smooth and satisfactory operation of our dual form of government, an injunction of a city ordinance fixing gas rates should be denied. The court felt that it was not proper to interfere with the state regulation.

utilities out of the federal district courts by limiting the jurisdiction of those courts to enjoin state rate orders. It is not simply a policy of preventing rate orders from being enjoined; [7] it is a broader policy of correcting abuses which had developed through the use of the federal courts by public utilities.[8] The use of the federal courts tended to delay proceedings and make them more expensive, because a de novo record of the case was required, and also tended to deprive the states of their natural prerogative of having their own courts pass on their rate controversies.[9] To prevent the continuance of this situation, Congress took away the injunction remedy which had been used to bring the rate cases into the federal district courts.[10] This solution of the problem was immediately threatened, however, by the creation of the declaratory remedy, which could be used to bring the controversies into the federal courts without the use of the forbidden injunction. Although there can be no temporary injunction given in a declaratory action and although a declaratory judgment has no real finality until it has reached the court of last resort, still a rate-order proceeding under the declaratory procedure would involve the same old difficulties of the increased expense of a de novo record before the federal court, and the adjudication by the federal court of an inherently local matter. Thus in the principal case, while it was correctly decided that the district court had *jurisdiction* to hear the case for declaratory relief,[11] there are certainly policy factors present which could justify

[7] It has been suggested that careful draftsmanship of the Johnson Act would have made an express provision concerning declaratory judgments, in addition to injunctions. 3 MOORE, FEDERAL PRACTICE 3220 (1938). The act clearly does not prevent any injunction at all against the rate order, since it does not apply where the state courts do not provide an injunctive remedy. H. HEARINGS ON S. 752, 73d Cong., 2d sess. (1934), p. 216 (Committee on Judiciary—Jurisdiction of United States District Courts over Suits Relating to Orders of State Administrative Boards). Where the utility is denied by statute the right to get a preliminary injunction in the state courts, no "speedy remedy" can be said to exist, even though there may be considerable doubt as to the constitutionality of the statute. Mountain States Power Co. v. Public Service Commission of Montana, 299 U. S. 167, 57 S. Ct. 168 (1936). See also: Corporation Commission of Oklahoma v. Cary, 296 U. S. 452, 56 S. Ct. 300 (1935).

[8] H. REP. 1194, 73d Cong., 2d sess. (1934), pp. 2-3, 10; Johnson, "Why Utility Rate Cases Should be Restricted to State Courts," 11 PUB. UTIL. FORT. 199 (1933). See also: Warren, "Federal and State Court Interference," 43 HARV. L. REV. 345 at 372-378 (1930); Lilienthal, "The Federal Courts and State Regulation of Public Utilities," 43 HARV. L. REV. 379 at 415-425 (1930); Lockwood, Maw, and Rosenberry, "The Use of the Federal Injunction in Constitutional Litigation," 43 HARV. L. REV. 426 (1930).

[9] See: 30 ILL. L. REV. 215 at 216 (1935); 44 YALE L. J. 119 (1934); 20 IOWA L. REV. 128 (1934). The debates on the measure show prejudice by some members of Congress against the attitude of the federal judiciary in overzealously protecting the sanctity of property rights.

[10] In both the House and Senate debates on the bill it was clearly brought out that any federal question of confiscation could still be brought up to the United States Supreme Court after reaching the court of last resort in the state.

[11] Rates established by a municipal ordinance come within the scope of the Johnson Act. East Ohio Gas Co. v. City of Cleveland, (C. C. A. 6th, 1938) 94 F. (2d) 443, cert. denied, 303 U. S. 657, 58 S. Ct. 761 (1938). In Mississippi Power &

a district court in denying relief.[12] Even though the court was merely asked to construe a contract, and no direct ruling on the rates was sought, the same policy factors still operate, and the court should therefore consider carefully whether the state or federal court can best handle the litigation and adequately settle the issue.[13]

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Light Co. v. City of Jackson, Miss., (D. C. Miss. 1935) 9 F. Supp. 564, it was held that the Johnson Act had deprived the federal district courts of jurisdiction to give declaratory relief concerning rate orders as well as limiting jurisdiction to enjoin them. A more correct statement of the principles involved would have been that while the court has jurisdiction to grant the declaratory relief, it has exercised its discretion to refuse it on the grounds of comity.

[12] See note 6, supra.

[13] Limitations upon the jurisdiction of federal courts to enjoin the collection of state taxes as embodied in the Act of Congress of August 21, 1937, amending § 24(1) of the Judicial Code, 50 Stat. L. 738 (1937), 28 U. S. C. (Supp. 1939), § 41(1), are not as likely to be nullified by actions under the Federal Declaratory Judgments Act. The declaratory judgment procedure, without temporary injunction, apparently would be too slow to protect against having to pay the tax unless there were a long period between the passage of the act and the collection date. On the other hand, however, the federal taxing authorities demanded, and got, in 1935, an amendment to the Federal Declaratory Judgments Act which provided that the act should not be applied to the determination of the validity of federal taxes. 49 Stat. L. 1027, § 405 (1935), 28 U. S. C. (Supp. 1939), § 400. See: Wideman, "Application of the Declaratory Judgment Act to Tax Suits," 13 TAX MAG. 539 (1935); Borchard, "Recent Developments in Declaratory Relief," 10 TEMP. L. Q. 233 at 237 (1936); 44 YALE L. J. 1451 at 1452 (1935).