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Federal Courts — Federal Question Jurisdiction — Abstention

Plaintiff, as executor, filed a suit in a United States district court against the City of Atlanta, Georgia, alleging a "taking" of property without compensation. Plaintiff claimed that this taking was caused by low level flights over his property of commercial jet aircraft using the facilities of the Atlanta Municipal Airport. The plaintiff's petition alleged jurisdiction based on a federal question¹ and on a federal statute.² The district court entered judgment dismissing the action for failure to state a substantial federal question and granted defendant a judgment on the merits. Plaintiff appealed to the Court of Appeals for the Fifth Circuit which, although disagreeing with the district court's disposition of the case, agreed that the essential issue³ could best be determined by the state court. *Held, reversed and remanded*: Although the district court has jurisdiction over the case, it should abstain from exercising such jurisdiction until it is certain that the plaintiff cannot obtain relief in a state condemnation suit. *Creel v. The City of Atlanta*, 399 F.2d 777 (5th Cir. 1968).

The *Creel* ruling by the court of appeals is another application of the abstention doctrine in federal courts. This doctrine is practiced in those cases where the federal court, although having jurisdiction of the case, chooses not to exercise it. There are at least three basic situations in which this doctrine has been applied. These include: (1) Situations where the case can be disposed of by state law; (2) situations where the case involves uncertain issues of state law; and (3) situations where the federal court ruling might constitute an interference with a state's administration of its own affairs. These situations are not strictly differentiated, however, and there is a great deal of overlapping.

Perhaps the leading case in the development of the doctrine was *Railroad Commission of Texas v. Pullman Company*.⁴ *Pullman* initiated the practice of a federal court abstaining from exercising its jurisdiction where the case could be disposed of by state law. This case, which reached the Supreme Court on appeal from the Western District of Texas, arose when the Texas Railroad Commission ordered that no sleeping car could be operated on any railroad in Texas unless the car was in the charge of an employee having the rank of Pullman conductor.⁵ In areas of Texas where passenger traffic was light and the trains carried only one sleeping car, it was the custom for the porter, who was traditionally a Negro, to be in

¹ U.S. CONST. amend. XIV, § 1.

² 28 U.S.C. § 1331(a) (1964). This section provides that the "district court shall have original jurisdiction of all civil actions wherein the matter in controversy exceeds the sum or value of \$10,000 exclusive of interest and costs, and arises under the Constitution, laws, or treaties of the United States."

³ The Georgia constitutional interpretation and handling of municipal eminent domain.

⁴ 312 U.S. 496 (1941).

⁵ *Id.* at 489-98.

charge. The Pullman Company and the railroads affected then brought a successful action in the federal district court to enjoin the Commission's order. The basis for this attack was that the order was unauthorized by Texas law and in violation of the equal protection, the due process, and the commerce clauses of the United States Constitution.⁶ The Supreme Court ruled that the Pullman complaint raised a substantial constitutional issue, but recognized that the constitutional ruling could be avoided here if the state courts made a definite determination of the state law issue. Reasoning that sensitive areas of social policy as presented by the *Pullman* case could best be handled by the state court, the Court remanded the case to the district court directing it to retain jurisdiction pending a state determination of the Commission's authority.⁷

The federal courts have also employed the abstention doctrine in that line of cases in which the state law has not yet been considered by the state courts.⁸ The reasoning in these cases is that a lower federal court's decision of the issues which should be determined by the state court "cannot escape being a forecast rather than a determination."⁹ By abstaining from a premature ruling on state statutes, federal courts avoid making a ruling which may later be displaced by state adjudication.¹⁰ In part, the rationale is that by handling state issues in this manner, the independence of the state governments is preserved and tranquil operation of the judiciary is insured.

The third area where abstention has been utilized is in those cases where federal action might interfere with state administrative action.¹¹ The leading case in this area is *Alabama Pub. Serv. Comm'n v. Southern R.*¹² The case arose when the Southern Railway Company brought suit in federal district court under the due process clause challenging an order by the Alabama Public Service Commission barring the discontinuance of certain of its passenger services. The district court granted a permanent injunction against the Commission, and on appeal the Supreme Court reversed, saying that the matter was one of state administration and could best be remedied by state action.¹³ Here the Court found neither unclear state statutory issues, as in *Pullman*, nor a constitutional questioning of the state statute. The basis for abstention appears to have been the availability of state court review of the administrative order and the feeling that a ruling here would constitute an interference with matters primarily of state concern.

Strangely enough, however, the abstention doctrine has not been strictly followed in *Pullman* and *Alabama*-type situations. There are cases involv-

⁶ *Id.* at 498.

⁷ *Id.* at 501-02.

⁸ *Harrison v. NAACP*, 360 U.S. 167, 177-78 (1959); *Shipman v. Du Pre*, 339 U.S. 321 (1950).

⁹ *Railroad Comm'n of Texas v. Pullman Co.*, 312 U.S. 496 (1941).

¹⁰ *Lee v. Bickel*, 292 U.S. 415, 425 (1934).

¹¹ *Burford v. Sun Oil Co.*, 319 U.S. 315 (1943). Here, the Supreme Court ruled that it was proper for a federal equity court to decline to exercise its jurisdiction to determine the validity of an order made by a state commission whose existence was authorized by a state conservation statute.

¹² 341 U.S. 341 (1951).

¹³ *Id.*

ing similar issues where neither the *Pullman* rule nor the *Alabama* rule was applied.¹⁴ There are also various limitations to the application of the abstention doctrine. Prior to any ruling on the question of abstention, a party must show that his case raises a substantial federal question.¹⁵ It is mandatory that the dispute over the federal law be essential in the case and not a background issue.¹⁶ This requirement prevents a federal question from being asserted solely for the purpose of obtaining jurisdiction. Even though jurisdiction has been established, federal courts have limited the exercise of their jurisdiction where a party's rights could be protected by state action. This self-imposed restriction has not been employed, however, where there is a lack of adequate procedure in state courts¹⁷ or where deferring to a state court might cause the plaintiff irreparable harm.¹⁸ Abstention has also been limited to more frequent application in suits at law, where the practice has been for the federal district court to decide even difficult and doubtful questions of state law,¹⁹ as opposed to those in equity.²⁰

Having imposed the abstention doctrine, the federal courts have adopted several post-abstention techniques for dealing with the case. The method common in *Pullman*-type cases²¹ is to retain jurisdiction pending a determination of proceedings to be brought in the state court.²² When federal courts have adopted this type of procedure, they have given state courts time to make a ruling either in pending litigation or in other litigation which might be instituted within a reasonable time.²³ By utilizing this procedure, federal courts avoid deciding many complex problems of state law.

Other federal courts, after practicing abstention, have retained jurisdiction while the plaintiff sought a ruling on an issue of state law in the state courts.²⁴ Florida even has a statute permitting a federal court of appeals to certify an issue of Florida law to the Florida Supreme Court.²⁵ By handling the case in this manner, the federal court avoids making a

¹⁴ In *Meredith v. Winter Haven*, 320 U.S. 228 (1943), the Supreme Court ruled that uncertain state law was not an appropriate ground for a federal court of equity to decline to exercise its jurisdiction. A similar ruling was given in *County of Allegheny v. Frank Mashuda Co.*, 360 U.S. 185 (1959). Here the Court said that the federal district court should not abstain from exercising jurisdiction in a Pennsylvania eminent domain proceeding even though applying the state law would pose difficult federal constitutional questions.

¹⁵ *Stanturf v. Sipes*, 335 F.2d 224 (8th Cir. 1964); *Mosher v. City of Boulder*, 225 F. Supp. 32, 34 (D. Colo. 1964).

¹⁶ *Johnson v. Byrd*, 354 F.2d 982, 984 (5th Cir. 1956).

¹⁷ *Creasy v. Stevens*, 160 F. Supp. 404 (W.D. Pa. 1958), *rev'd on interpretation of state law sub nom. Martin v. Creasy*, 360 U.S. 219 (1959).

¹⁸ *Toomer v. Witsell*, 334 U.S. 385, 391-92 (1948).

¹⁹ *Markham v. Allen*, 326 U.S. 490 (1946).

²⁰ *Harlow v. Ryland*, 172 F.2d 784, 785 (8th Cir. 1949).

²¹ The *Pullman*-type case exists where there is a constitutional issue that need not be determined if the state court will act.

²² *Gov't and Civic Employees Organizing, Comm., CIO v. Windsor*, 353 U.S. 364, 366 (1957); *Spector Motor Service v. McLaughlin*, 323 U.S. 101 (1944); *City of Chicago v. Fieldcrest Dairies*, 316 U.S. 168 (1942); *Railroad Comm'n of Texas v. Pullman Co.*, 312 U.S. 496, 501-02 (1941).

²³ *Id.*

²⁴ *Louisiana Power & Light Co. v. Thibodaux*, 360 U.S. 25 (1959). In this case the Supreme Court approved a district judge submitting a Louisiana statute to the Louisiana Supreme Court for a declaratory judgment. *Lecter Minerals, Inc. v. United States*, 352 U.S. 220, 230 (1957).

²⁵ FLA. STAT. § 25.031 (1961).

ruling based on a question of state law, which when determined with finality by the supreme court of the state, may necessitate a reversal of the federal court decision.

A final post-abstention procedure has been to dismiss the action completely.²⁶ In dismissing the action the courts have reasoned that where the issues involved are primarily of local concern and the state court does have adequate judicial precedent for handling the matter, it is in the interest of comity to dismiss the case.²⁷ This technique is particularly common in the *Alabama*-type case.

In *Creel v. City of Atlanta*, the factual situation was somewhat different from previous cases where abstention was invoked. Here plaintiff had filed suit for damages in a district court alleging jurisdiction based on the assertion of a federal question.²⁸ He contended that the continuous flights of jet aircraft over decedent's property, which was adjacent to the Atlanta airport, rendered it useless and was a taking within the meaning of the Fourteenth Amendment.²⁹ At the time of this suit, it appeared that there was and had been some litigation between the parties on the same matter in the state courts.³⁰ When this case was heard, there was pending in the state court an action by the City of Atlanta to condemn decedent's property.

The first problem the district court faced was to determine if it had jurisdiction. The controlling consideration in deciding matters of jurisdiction is the wording of the complaint.³¹ To this extent "the party who brings a suit is master to decide what law he will rely upon and therefore does determine whether he will bring a suit arising under the . . . [Constitution or laws] of the United States by his declaration or bill."³² Relying on *Bell v. Hood*,³³ the trial court decided it had jurisdiction.

The district court then dismissed the suit on the merits for failure to state a substantial federal question. The basis of the decision was that the main issue of the case could best be determined by the state court. It is this dismissal which is the real problem presented in *Creel*, since the possible effect of the dismissal in district court was to deny petitioner any relief whatsoever. If Georgia law would prevent petitioner from maintaining his action in the state courts under any circumstances,³⁴ he would

²⁶ *Great Lakes Dredge and Dock Co. v. Huffman*, 319 U.S. 293 (1943); *Pennsylvania v. Williams*, 294 U.S. 176 (1935).

²⁷ *Id.*

²⁸ 28 U.S.C. § 1331 (1964).

²⁹ U.S. CONST. amend. XIV, § 1.

³⁰ The City originally filed an action in the state court to condemn an easement over the property. That action was dismissed, however, and at the time of plaintiff's suit there was an action by the City pending in the state courts to condemn the property in its entirety.

³¹ *Bell v. Hood*, 372 U.S. 678, 681 (1945).

³² *The Fair v. Kohler Die & Specialty Co.*, 228 U.S. 22, 25 (1945).

³³ 327 U.S. 678 (1945).

³⁴ The City was seeking fee simple title in its condemnation action which was pending in the state court. If petitioner prevailed in this suit he would be entitled to damages caused by the flights over his property for the remaining value of his fee simple interest. He contended that under Georgia law he would be unable to maintain his action for flight damages in the state court and that in the condemnation proceeding he could not litigate his claim for damages.

be without a remedy. The previous dismissal in the federal district court also would bar plaintiff from any subsequent suit in the federal courts.

In *Creel*, then, the principal issue before the Court of Appeals for the Fifth Circuit was whether or not the complaint really raised a dispute over federal law. To invoke the jurisdiction of a federal court, the federal issue must be substantial and not merely lurking in the background.³⁵ Looking at the petitioner's complaint, the court of appeals concluded that the federal question was not a background issue. The complaint specifically alleged a violation of the fourteenth amendment. This alleged violation was "not only the gist but the whole foreground of the lawsuit."³⁶ In addition, the court cited *Griggs v. Allegheny County*³⁷ and *United States v. Causby*³⁸ as examples of cases where allegations of continuous overflights were deemed sufficient to make out a federal cause of action.

Thus, the most significant inquiry in the case arose. Having concluded that petitioner had properly invoked the jurisdiction of the district court in his suit for flight damages, but agreeing with that court that the issue of municipal eminent domain was primarily a state matter, what decree should it render? The problem was intensified by the fact that the city was seeking fee simple title to petitioner's land in a pending state action. The district court did not have jurisdiction to grant this relief. If both suits proceeded and plaintiff prevailed, he would be entitled to damages in both courts, one for the remaining value of his fee simple interest and the other for antecedent flight damages which had destroyed the value of his land. Thus, there was the potential here of having two suits proceeding simultaneously with neither of the two courts having knowledge or control of what the other was doing. Recognizing this fact, the court of appeals concluded that these issues could best be tried in a single action and that one court must abstain from ruling. Therefore, the court ruled that since the district court did have jurisdiction of the controversy, it should have abstained from acting until it was clear that petitioner could not obtain complete relief in the state condemnation proceedings.

In *Creel*, the Fifth Circuit's ruling that the district court should have abstained from exercising its jurisdiction is in line with the established abstention doctrine. By recognizing that eminent domain is essentially a local matter, the court is following the principle of the *Alabama* rule. In ordering that the district court should have abstained rather than dismissed on the merits, the court of appeals has given the Georgia state court an opportunity to rule on its eminent domain proceedings but has not precluded plaintiff from any relief to which he may be entitled. The Fifth Circuit has not alleviated all the problems, however, by following the abstention doctrine. In delaying a decision in this matter, the court almost penalizes the plaintiff for invoking appropriate jurisdiction by forcing him to return to the state court to litigate and possibly requiring

³⁵ *Johnston v. Byrd*, 354 F.2d 982 (5th Cir. 1965).

³⁶ *Creel v. City of Atlanta*, 399 F.2d 777, 778 (5th Cir. 1968).

³⁷ *Griggs v. Allegheny County*, 369 U.S. 84 (1961).

³⁸ *United States v. Causby*, 328 U.S. 256 (1945).

him to re-litigate in the federal court. And so, although in practicing abstention in the *Creel* case the court does achieve a logical result, it certainly does not solve all the problems presented by this type of case.

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