University of Minnesota Law School
Scholarship Repository

Minnesota Law Review

1964

Courts: State Courts Cannot Restrain Federal Court in Personam Relitigation

Minn. L. Rev. Editorial Board

Follow this and additional works at: https://scholarship.law.umn.edu/mlr

 Part of the Law Commons

Recommended Citation

Editorial Board, Minn. L. Rev., "Courts: State Courts Cannot Restrain Federal Court in Personam Relitigation" (1964). *Minnesota Law Review*. 2823.
https://scholarship.law.umn.edu/mlr/2823

This Article is brought to you for free and open access by the University of Minnesota Law School. It has been accepted for inclusion in Minnesota Law Review collection by an authorized administrator of the Scholarship Repository. For more information, please contact lenzx009@umn.edu.

and the *R. R. Trainmen* decision should cause recognition of the benefits available through lay intermediaries and encourage modification of traditional blanket opposition to their activities to the extent consistent with effective avoidance of abuse.

Courts: State Courts Cannot Restrain Federal Court In Personam Relitigation

Petitioners,[1] a group of Dallas citizens, brought suit in a Texas court to restrain the City of Dallas from building an additional runway for its municipal airport and from selling bonds to finance the construction. Under Texas law, the issuance of municipal bonds is automatically stopped when a suit challenging their validity is filed.[2] Summary judgment was given for the city; the Texas Court of Civil Appeals affirmed;[3] the Supreme Court of Texas denied review;[4] and the United States Supreme Court denied certiorari.[5] Petitioners filed another action in federal district court seeking similar relief and again stopped the issuance of the bonds. The Texas Court of Civil Appeals then enjoined petitioners from prosecuting their federal suit.[6] Peti-

1. Plaintiffs originally included 46 Dallas citizens, including their counsel, Donovan. Later, at the time of filing the action in the United States District Court for the Northern District of Texas, plaintiffs were 120 Dallas citizens, including 27 of the original claimants. Petitioners were the 87 of the 120 plaintiffs who were convicted of contempt. Donovan v. City of Dallas, 377 U.S. 408–10 (1964).

2. TEX. REV. CIV. STAT. art. 1269j–5, § 3 (Supp. 1956) authorizes municipal airport revenue bonds and provides in part as follows: "The Revenue Bonds . . . shall not be finally issued until approved by the Attorney General of Texas and registered by the Comptroller of Public Accounts of the State of Texas, and after such approval shall be incontestable." As explained by the Texas Supreme Court in its opinion in the instant case, the Attorney General does not approve issuance as long as the bond validity is under attack in pending litigation. City of Dallas v. Dixon, 365 S.W.2d 919, 925 (Tex. 1963).

3. Atkinson v. City of Dallas, 353 S.W.2d 275 (Tex. Civ. App. 1961).

4. TEXAS WRITS OF ERROR TABLE at 105.

5. Atkinson v. City of Dallas, 370 U.S. 939 (1962).

6. After petitioners filed the second suit in the federal district court, the city applied to the Texas Court of Civil Appeals for a writ of prohibition to bar petitioners from prosecuting their case in the federal court. The Texas court denied relief holding that it was without power to enjoin petitioners and that the defense of res judicata on which the city relied could be raised and adjudicated in the federal court. City of Dallas v. Brown, 362 S.W.2d 372 (Tex. Civ. App. 1962). The Texas Supreme Court reversed. City of Dallas v. Dixon, 365 S.W.2d 919 (Tex. 1963). The Texas Court of Civil Appeals subsequently enjoined petitioners from further prosecution in the

tioners continued the suit and were convicted of contempt.[7] The United States Supreme Court reversed and *held* that the Texas court could not enjoin petitioners from relitigating their in personam action in a federal court. *Donovan v. City of Dallas*, 377 U.S. 408 (1964).[8]

The jurisdictional interrelationship of state and federal courts within the American judicial framework of concurrent jurisdiction has been a matter of continuing concern. Section 5 of the Judiciary Act of 1793 attempted to insure the independence of state courts by prohibiting federal injunctions staying state court proceedings.[9] Although absolute in its terms, this anti-injunction statute has been tempered in its application by subsequent amendments[10] and judicial exceptions. The enactment related only to federal injunctions against state proceedings, and the converse problem of state injunctions against federal proceedings has never been directly regulated by federal statute.[11] Nor have the federal courts denied to state courts the right to exercise reciprocal injunctive powers where concurrent jurisdiction exists. The state courts have conformed to the injunctive pattern of the federal courts, although the reasons for their conformance are not clear.[12]

---

federal court. See City of Dallas v. Brown, 368 S.W.2d 240, 242–43 (Tex. Civ. App. 1963).

7. City of Dallas v. Brown, 368 S.W.2d 240 (Tex. Civ. App. 1963).

8. The Court did not rule on the res judicata question but left it to be decided by the federal district court in the trial of the second suit. 377 U.S. at 412.

9. Section 5 read in part: ". . . nor shall a writ of injunction be granted to stay proceedings in any court of a state . . . ." 1 Stat. 335 (1793).

10. In 1911 the statute was amended to permit injunctions where authorized by any law relating to bankruptcy proceedings. 36 Stat. 1162 (1911).

11. Presumably Congress could legislate against state injunctions staying proceedings in federal courts, although it has never done so. Congress has the power to define the jurisdiction of federal courts. U.S. CONST. art. III, § 1. It would seem that this power to define jurisdiction and the supremacy clause would allow Congress to prevent state interference with federal court proceedings.

12. See Princess Lida v. Thompson, 305 U.S. 456 (1939); Pennsylvania Gen. Cas. Co. v. Pennsylvania, 294 U.S. 189 (1935); Harkin v. Brundage, 276 U.S. 36 (1928); Palmer v. Texas, 212 U.S. 118 (1909); Reagan v. Dick, 76 Colo. 544, 233 Pac. 159 (1925); Prugh v. Portsmouth Sav. Bank, 48 Neb. 414, 67 N.W. 309 (1896); Keith v. Alger, 114 Tenn. 1, 85 S.W. 71 (1905).

At least two rationales have been advanced to justify the conformance. One is founded upon the desire for efficient and harmonious operation within a dual judicial system. To achieve this, some assurance of a minimum of interference between courts, including injunctive authority for each court to isolate and protect its judicial functions, is required. Because avoidance of the evils of interference is as essential to one court system as to the other,

A doctrine of mutual equality was recognized early in *Riggs v. Johnson County*[13] where the Supreme Court, after noting the independence of federal and state courts, characterized their respective processes as being as far beyond the reach of the other as if a physical boundary divided them.[14] More recent evidence of the mutual equality of federal and state injunctive powers is found in the availability to state courts of a judicially declared exception to the federal anti-injunction statute. Under this exception, federal courts could issue injunctions if the federal court first took custody of property — cases classified as in rem or quasi in rem.[15] The converse proposition that a state court, having first taken custody of property, could enjoin subsequent *res* proceedings in a federal court, was established in *Princess Lida v. Thompson*.[16] The *res* case rationale was that the commencement of an action in the first court and that court's exercise of control over the *res* resulted in its being unavailable for control or disposition by a second court.[17] This exception has been regarded as an essential corollary to the mutual

there is no reason to distinguish between state and federal injunctive powers — and the rules should apply reciprocally. Since federal injunctions interfering with state court proceedings are limited by statute, a doctrine of reciprocity requires the states to look to the federal statute to determine state injunctive powers. Note, *Limitations on State Judicial Interference With Federal Activities*, 51 COLUM. L. REV. 84 (1951).

The other rationale is based upon the theoretical ground that, in the absence of statute, both federal and state courts would be without injunctive restrictions; that only the federal courts are directly restricted by statute; but that under a doctrine of comity the state courts consider themselves limited to the same extent as the federal courts. Note, *State Injunctions Against Proceedings in the Federal Courts*, 90 U. PA. L. REV. 714 (1942). For a summary of the development of judicial comity in this area, see Warren, *Federal and State Court Interference*, 43 HARV. L. REV. 345 (1930).

The argument over state power is represented on the one side by Story's oft-quoted statement that "the State Courts cannot enjoin proceedings in the Courts of the United States," 2 STORY, EQUITY JURISPRUDENCE § 900, at 186 (1st ed. 1836), and on the other side by Mr. Justice Frankfurter's statement in his dissenting opinion in Baltimore & O.R.R. v. Kepner, 314 U.S. 44, 56 (1941), referring to "the discredited notion that there is a general lack of power in the state courts to enjoin proceedings in the federal courts."

For a good discussion of the development of the injunctive powers, see Note, 51 COLUM. L. REV. 84 (1951); Note, 90 U. PA. L. REV. 714 (1942).

13. 73 U.S. (6 Wall.) 166 (1867).

14. *Id.* at 195–96.

15. Princess Lida v. Thompson, 305 U.S. 456 (1939) (dictum); Julian v. Central Trust Co., 193 U.S. 93 (1904); see Palmer v. Texas, 212 U.S. 118 (1909).

16. *Supra* note 15; *cf.* Palmer v. Texas, *supra* note 15.

17. Princess Lida v. Thompson, *supra* note 15; Kline v. Burke Constr. Co., 260 U.S. 226 (1922) (dictum); Palmer v. Texas, *supra* note 15.

noninterference principle underlying the anti-injunction statute and as equally applicable to both state and federal courts.[18]

Federal courts which had fully adjudicated an action were also permitted to enjoin the relitigation of the action in a state court.[19] The federal anti-injunction statute was deemed to be merely a declaratory enactment of the principles of comity and mutual noninterference, and hence limited by the demands of orderly disposal of suits in the dual judicial system.[20] Conversely, a state court held that it could enjoin relitigation of adjudicated issues in federal courts.[21]

In 1941, *Toucey v. New York Life Ins. Co.*,[22] an in personam relitigation case, presented the relitigation exception to the Su-

---

Although the classification of cases as in rem or quasi in rem has frequently been difficult, the distinction has persisted. Markham v. Allen, 326 U.S. 490 (1946); Mandeville v. Canterbury, 318 U.S. 47 (1943); United States v. Klein, 303 U.S. 276 (1938). For a brief discussion of the problem see HART & WECHSLER, THE FEDERAL COURTS AND THE FEDERAL SYSTEM 1074 (1953). Since separate judgments in the same in personam action can be satisfied without a necessary conflict, the exclusive jurisdiction rationale generally has not been applied to in personam cases. Kline v. Burke Constr. Co., *supra* at 235.

18. The relation of the *res* case exception to the principles underlying the anti-injunction statute of 1793 was described in the majority opinion by Mr. Justice Frankfurter in Toucey v. New York Life Ins. Co., 314 U.S. 118, 135 (1941):

> The Act of 1793 expresses the desire of Congress to avoid friction between the federal government and the states resulting from the intrusion of federal authority into the orderly functioning of a state's judicial process. The reciprocal doctrine of the *res* cases is but an application of the reason underlying the Act. Contest between the representatives of two distinct judicial systems over the same physical property would give rise to actual physical friction. The rule has become well settled, therefore, that § 265 does not preclude the use of the injunction by a federal court to restrain state proceedings seeking to interfere with property in the custody of the court.

19. Supreme Tribe of Ben-Hur v. Cauble, 255 U.S. 356 (1921); Looney v. Eastern Tex. R.R. 247 U.S. 214 (1918); see Local Loan Co. v. Hunt, 292 U.S. 234 (1934); Gunter v. Atlantic Coast Line R.R., 200 U.S. 273 (1906); Riverdale Cotton Mills v. Alabama & Ga. Mfg. Co., 198 U.S. 188 (1905); Julian v. Central Trust Co., 193 U.S. 93 (1904); Root v. Woolworth, 150 U.S. 401 (1893); Dietzsch v. Huidekoper, 103 U.S. 494 (1880); Dial v. Reynolds, 96 U.S. 340 (1877); French v. Hay, 89 U.S. (22 Wall.) 250 (1874).

20. *E.g.*, Wells Fargo & Co. v. Taylor, 254 U.S. 175 (1920).

21. Reagan v. Dick, 76 Colo. 544, 233 Pac. 159 (1925). Although this case involved interference with possession and use of property, the Colorado court allowed the State injunction on the grounds that the State court had power to enjoin prosecution of a proceeding in a federal court involving controversies already adjudicated in a state court. However, this case was never considered by the Supreme Court.

22. 314 U.S. 118 (1941).

preme Court. The Court, disallowing a federal injunction, pointedly struck down the notion of a relitigation exception.[23] It held that the anti-injunction statute was to be read literally and that exceptions to the rule were to be limited to the *res* cases[24] and express statutory exceptions.[25] A vigorous dissent,[26] which later became the basis for an amendment to the anti-injunction statute, disputed the majority's assertion that Congress had intended to reject the relitigation exception in the 1911 re-enactment of the statute, and contended that the exception should be allowed in order to eliminate wasteful relitigation and examination of res judicata in another forum.[27] The dissent provides

23. The *Toucey* majority said that a judicial relitigation case exception had not been before the Congress at the time of the 1911 amendment and that congressional silence on the matter could not be construed as enactment. Of the earlier cases which had appeared to support the relitigation exception, the ones which were not branded as *res* cases were dismissed because "loose language and a sporadic, ill-considered decision cannot be held to have imbedded in our law a doctrine which so patently violates the expressed prohibition of Congress." 314 U.S. at 139.

24. "The rule of the *res* cases was unequivocally on the books when Congress reenacted the original § 5 of the Act of 1793, first by Revised Statutes of 1874 and later by the Judicial Code of 1911." *Ibid.* See note 18 *supra* for a discussion of the rationale of permitting the *res* exception.

25. Toucey v. New York Life Ins. Co., 314 U.S. 118, 141 (1941). The Court examined the exceptions created by Congress: (1) Bankruptcy proceedings: 36 Stat. 1162 (1911); (2) Removal of actions: 28 U.S.C. § 1442(b) (1958); (3) Limitation of shipowners' liability: 9 Stat. 635, 636 (1851); (4) Interpleader: 28 U.S.C. § 2361 (1958); (5) Frazier-Lemke Act: 47 Stat. 1478, 11 U.S.C. § 203(*o*) (1958).

26. Mr. Chief Justice Stone and Mr. Justice Roberts joined Mr. Justice Reed in dissent. 314 U.S. at 141.

27.

> This alternative [to permitting injunctions] is that a federal judgment entered perhaps after years of expense in money and energy and after the production of thousands of pages of evidence comes to nothing that is final. It is to be only the basis for a plea of *res judicata* which is to be examined by another court, unfamiliar with the record already made, to determine whether the issues were or were not settled by the former adjudication. We, too, desire that the difficulties innate in the federal system of government may be smoothed away without a clash of sovereignties but we find no cause for alarm in affirming a court which forbids parties bound by its decree to fight the battle over on another day and field. We should not, in reaching for theoretical symmetry, hamper the efficiency and needlessly break the continuity of our judicial methodology. A decree forbidding a defeated party from setting up any right, anywhere, based upon claims adjudged is the usual form where injunctions are appropriate for determining controversies.

Id. at 144.

For a brief evaluation of Mr. Justice Reed's argument, see Note, 90 U. PA. L. REV. 714, 724–25 (1942).

further evidence of a policy of mutuality wherein no distinctions should exist between federal and state court relitigation powers. It cited *Princess Lida v. Thompson*,[28] where a state court was allowed to enjoin federal in rem proceedings, in support of its contention that there are no effects sufficiently harmful to deny the federal relitigation injunction.[29]

After *Toucey*, the federal statute was amended to allow a federal court to enjoin state court proceedings where necessary "to protect or effectuate its judgments."[30] The Reviser's notes specifically mention the *Toucey* opinion, and explain that the amendment was intended to adopt the *Toucey* dissent and to restore the rule as understood before *Toucey*.[31] Since the 1948 amendment, two Tenth Circuit cases involving control of property have relied directly upon this specific expression of legislative intent to uphold federal relitigation injunctions.[32]

The need to protect a court's judgments exists in both in personam actions and *res* cases. Although the Tenth Circuit cases interpreting the amendment involved property, neither these opinions nor the Reviser's notes in any way suggest that the *res* judgments alone were entitled to effectuation. Moreover, *Toucey*, the effect of which the Reviser indicated was to be overcome, was itself an in personam action. Prior to the instant case, these considerations, coupled with an application of the traditional policy of mutuality and equal treatment, permitted the assumption that a state court possessed the power to enjoin relitigation in a federal court of issues previously adjudicated by the same parties in a state court.

---

28. 305 U.S. 456 (1939).

29. 314 U.S. at 144.

30. 28 U.S.C. § 2283 (1958).

31. The Reviser's notes to § 2283 explain:

> The exceptions specifically include the words "to protect or effectuate its judgments," for lack of which the Supreme Court held that the Federal courts are without power to enjoin relitigation of cases and controversies fully adjudicated by such courts. (See Toucey v. New York Life Insurance Co., ... A vigorous dissenting opinion . . . notes that at the time of the 1911 revision of the Judicial Code, the power of the courts of the United States to protect their judgments was unquestioned and that the revisers of that code noted no change and Congress intended no change).
>
> Therefore the revised section restores the basic law as generally understood and interpreted prior to the Toucey decision.

H.R. REP. No. 308, 80th Cong., 1st Sess. app. 181–82 (1947).

32. Berman v. Denver Tramway Corp., 197 F.2d 946, 950 (10th Cir. 1952); Jackson v. Carter Oil Co., 179 F.2d 524, 526 (10th Cir.), *cert. denied*, 340 U.S. 812 (1950).

The Court in *Donovan* stressed that petitioners had a right of action granted to them by Congress, and that while a full hearing might have shown that the Texas court judgment barred the issues in the federal suit, the question of res judicata was for the federal court alone to decide.[33] But as the dissent correctly argued, the petitioners' right to proceed in the federal court, as well as the federal court's right to determine res judicata, were precisely the questions in issue and were not proper bases for the decision.[34] It seems unlikely that the Court's denial of state power to restrain a congressional right was based on the supremacy clause.[35] The majority cited early cases in support of its statement that Congress "has in no way relaxed the old and well-established judicially declared rule that state courts are completely without power to restrain federal-court proceedings in in personam actions. . . ."[36] The only rationale expressed in those cases is the *mutual* separation and *equal* independence of state and federal courts in their respective spheres of action.[37]

The Court may have been motivated by a desire to protect the integrity and independence of the federal courts from interference resulting from state prejudices.[38] However, this view seems unwarranted in relitigation cases. An argument that the States would be depriving plaintiffs of a federal right seems answered by the fact that plaintiffs were free to bring suit in the federal court in the first instance had they so desired. Moreover, a state injunction restraining plaintiffs from federal relitigation would be subject to ultimate review by the Supreme Court. Although it might be possible for state courts to subvert a party's right to federal trial — for example, if the second action were not res judicata and there were prolonged and unnatural delay in appealing the injunction through the state court channels — for the

33. 377 U.S. at 412.

34. *Id.* at 420.

35. The supremacy clause has not been utilized to prevent state court injunctions against federal judicial proceedings where there is a need to preserve harmonious relations between the concurrent sovereignties and to avoid clashes of jurisdiction. These areas are distinguished from those where the major concern is preservation of the federal government's paramount authority. Note, 51 COLUM. L. REV. 84, 85 (1951). For a good discussion of the latter area, see Arnold, *The Power of State Courts to Enjoin Federal Officials*, 73 YALE L.J. 1385 (1964).

36. 377 U.S. at 412–13.

37. United States v. Council of Keokuk, 73 U.S. (6 Wall.) 514, 517 (1867); Weber v. Lee County, 73 U.S. (6 Wall.) 210, 213 (1867); Riggs v. Johnson County, 73 U.S. (6 Wall.) 166, 194–96 (1867). The earliest case cited, M'Kim v. Voohies, 11 U.S. (7 Cranch) 279 (1812), expressed no grounds for the decision.

38. See Note, 51 COLUM. L. REV. 84, 89 (1951).

Court in *Donovan* to give credence to such a notion seems to suggest a lack of integrity in the state judicial process. That the instant Court made such a suggestion seems clear in view of the obvious congressional recognition of the need to allow federal in personam relitigation injunctions[39] where the interest of the federal courts in effectuating their judgments appears no more compelling than the state courts' interest. The application of a double standard in the relitigation area has the apparent effect of prescribing for state courts an inferior and secondary status and undermining a traditional concept of equality and mutual independence.[40]

The reasons for allowing relitigation injunctions, regardless of which court is first to adjudicate, are premised, as in the *res* cases, upon practical considerations. Determination of the res judicata question can be handled more expeditiously in the original court, which is already familiar with the record and issues.[41] Moreover, disposal by the original court insures that final determination of the res judicata question would always occur before trial of the second suit. In contrast, disposal of the question by the second court might delay such final determination until completion of the retrial.[42] These reasons are sufficient to permit injunctive relief in all relitigation cases, but such relief seems particularly appropriate in the instant case. After delaying the runway project for two years during the first litigation,[43] plaintiffs again were permitted to block the project by the filing of the second suit. The Texas Supreme Court found plaintiffs' actions to be vexatious and harassing, and this finding was not disputed by the instant Court. On the basis of that finding, the dissent forcibly argued that an injunction should be issued and cited ample authority permitting injunctions to prevent such

39. See note 30 *supra*. The Court mentioned in passing that Congress has seen fit to authorize federal court restraint of state court proceedings "in some special circumstances," implying that the instant case would not so qualify were a federal court seeking the injunction. It is submitted, however, that the *Donovan* case would have come within the special circumstances provided for by Congress in 28 U.S.C. § 2283 (1958).

40. See Arnold, *supra* note 35, at 1397.

41. Toucey v. New York Life Ins. Co., 314 U.S. 118, 144 (1941) (dissenting opinion) (see note 27 *supra*).

42. Under FED. R. CIV. P. 73, and 28 U.S.C. § 1292(b) (1958), an interlocutory appeal of the federal court's res judicata ruling, as a controlling question of law which could materially advance the termination of the litigation, would reduce the possibility of added inconvenience of a second trial on the merits before appellate review of the res judicata question. However, if the interlocutory appeal were not allowed, the second trial would precede the final ruling on res judicata.

43. See note 2 *supra*.

harassing and vexatious litigation.[44] Furthermore, time was a crucial factor in the *Donovan* case. The City of Dallas considered the runway a needed public project, and the city's extensive efforts to issue the bonds were within hours of consummation.[45] It can be assumed that the bond issuance had been scheduled at a time to maximize its success.[46] In view of these facts, it is difficult to justify awarding plaintiffs another hearing in a federal forum.

Congress has endeavored to provide injunctive powers allowing federal courts to protect or effectuate their judgments.[47] In view of the legislative intent set forth in the Reviser's notes,[48] the subsequent interpretation in the Tenth Circuit cases,[49] and the need for prompt and final settlement of disputes, it is probable that a federal court would have been permitted to enjoin similar relitigation in a state court. The arguments are as forceful when made in support of allowing state injunctions. Consistent with a traditional policy of mutual separation and equal independence, similar protection should be given final judgments of state courts.

Income Taxation: Capital Gains Treatment of Lump-Sum Qualified Trust Distribution— Change of Employers as "Separation From the Service"

The Waterman Corporation established a tax qualified employee trust retirement plan for the benefit of the taxpayer and its other employees. The plan did not provide for lump-sum distributions on termination of a participating employee's service but, in that event, made his accrued benefits payable as an annuity commencing on his normal retirement date.[1] However, the plan provided for lump-sum distributions at the option of the trustee upon termination of the plan. Later, the C. Lee Company, an unrelated corporation, purchased 99 per cent of the outstanding Waterman stock and caused a new Waterman board of direc-

44. 377 U.S. at 415–18.

45. Brief for Respondent, pp. 5, 31, Donovan v. City of Dallas, 377 U.S. 408 (1964).

46. See, *e.g.*, GELLHORN & BYSE, ADMINISTRATIVE LAW 654 (4th ed. 1960); LANDIS, THE ADMINISTRATIVE PROCESS 108–09 (1938).

47. 28 U.S.C. § 2283 (1958).

48. See note 31 *supra*.

49. See note 32 *supra*.

1. Thomas E. Judkins, 31 T.C. 1022, 1023 (1959), involved the same qualified retirement plan as the instant case but it gave a more complete listing of the facts.