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Equity - Injunction - Federal Court under Duty to Restrain State Criminal Proceeding Where Irreparable Injury to a National Interest Is Threatened

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ease."[14] The strong language contained in this quoted passage seems to point out that the classification of the local mental hospital had no little influence on the court's decision. Perhaps this was even the decisive factor, though from the wording of the opinion, the court is placing its decision on the disapproval of a procedure previously approved by a higher court in its own circuit.

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EQUITY—INJUNCTION—FEDERAL COURT UNDER DUTY TO RESTRAIN STATE CRIMINAL PROCEEDING WHERE IRREPARABLE INJURY TO A NATIONAL INTEREST IS THREATENED.

United States v. Wood (5th Cir. 1961).

Prior to July, 1961, John Hardy, a resident of Tennessee, came to Mississippi for the purpose of organizing Negroes in Walthall County to register and vote. On September 7, 1961, Hardy was the victim of a battery committed by the local registrar, who acted without just provocation. The local sheriff, upon hearing of the incident, arrested Hardy for disturbing the peace. Prior to Hardy's trial, the United States Attorney General applied to the United States District Court for the Southern District of Mississippi for a temporary restraining order, so that a hearing might be had on its motion for a preliminary injunction of this state criminal prosecution. The United States alleged, as a basis for its application for injunction, that the continued prosecution of Hardy would intimidate qualified Negroes in Walthall County from attempting to register to vote. It was asserted that this threatened intimidation constituted an injury which the United States could enjoin under the authority of the Civil Rights Act. The District Court denied the application and the government appealed. The Court of Appeals, reversing, *held* that, under the circumstances, the denial of the temporary restraining order was a final decision which was appealable, and that not only did the government's complaint state a claim for relief, but that the District Court was obliged to issue a temporary restraining order. *United States v. Wood,* 295 F.2d 772 (5th Cir. 1961).[1]

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are mentally fit to stand trial — and also those who are found not guilty by reason of insanity at trial, in an attempt to cure them.

14. Tremblay v. Overholser, *supra* note 3, at 571. The view of the court as expressed in this quoted passage may possibly cast some light on the District Court's disposition of this case in a manner opposite to the Circuit Court's holding in the very similar *Lynch* case.

1. Before reaching the merits of the present case, the court was confronted with a difficult procedural question involving whether the decision of the District Court was appealable as a final decision under 28 U.S.C. § 1291 (1958) or as an inter-

Federal courts rarely enjoin state court proceedings of any kind, particularly criminal prosecutions.[2] In fact, except in a few instances, federal courts are specifically prohibited from granting injunctions to stay state court proceedings.[3] However, in *Leiter Minerals, Inc. v. United States,*[4] in which the United States successfully enjoined state civil proceedings in order to protect federal property rights, it was held that section 2283[5] does not apply when the United States is the party seeking the injunction and the stay is sought to prevent threatened irreparable injury to a national interest. Although the *Leiter Minerals* case has been criticized for diluting the effect of section 2283 in order to strengthen the tentacles of federal supremacy, the decision has endured.[6] Further, in *Cooper v. Hutchinson,*[7] it was decided that a federal court was empowered to enjoin a state judge from proceeding in a criminal action in which out-of-state counsel for defendant had been arbitrarily dismissed. The force of this decision, however, was successfully diverted by staying the injunction long enough to give the state court an opportunity to rectify the patent deprivation of civil rights. Additionally, it should be noted that the section itself excepts

locutory order refusing an injunction under 28 U.S.C. § 1292 (1958). As to whether section 1292 was applicable, the court noted that this section has been interpreted to include only orders denying, modifying, or continuing injunctions and not those denying temporary restraining orders. St. Helen v. Wyman, 222 F.2d 890 (9th Cir. 1955); Mesabi Iron Co. v. Reserve Mining Co., 270 F.2d 567 (8th Cir. 1959); Pennsylvania Motor Truck Ass'n v. Port of Philadelphia Marine Terminal Ass'n, 276 F.2d 931 (3d Cir. 1960). However, the court did conclude that, under the circumstances of the instant case, the denial of a temporary restraining order could be considered a final decision and, hence, was appealable. Section 1291 provides: "The courts of appeals shall have jurisdiction of appeals from all final decisions of the district courts of the United States . . . except where a direct review may be had in the Supreme Court." The words "final decision" have generally been given a liberal rather than a strict, technical interpretation. See in this context Cohen v. Beneficial Industries Loan Corp., 337 U.S. 541, 69 S. Ct. 1221 (1949), where the Court said that a "practical," rather than a "technical," construction of section 1291 should be used; United States v. Cerforalti, 202 F.2d 13 (D.C. Cir. 1952) ("liberal and reasonable," rather than "strict and technical"). *But see* Berman v. United States, 302 U.S. 211, 58 S. Ct. 164 (1937) (narrow technical construction preferred). Adopting a liberal construction in Sears Roebuck v. Mackey, 351 U.S. 427, 76 S. Ct. 895 (1956), two tests were found to determine when an appeal may be taken before completion of the litigation: when failure to grant an appeal would preclude any effective review or when it would result in irreparable injury. The present situation clearly fulfills the first requirement. If appeal is now denied, the state court machinery will resume functioning, and Hardy's trial will at least have begun (and perhaps been completed) before a formal hearing on the petition for an injunction could be obtained. Consequently, the question whether the trial itself was an intimidation device and part of a general scheme of harassment will have been mooted. Further, the good faith allegation by the United States of irreparable harm demands an *effective* hearing, especially since the assertion appears far from frivolous. But, once the trial has begun, a subsequent finding that it has caused irremediable damage would be meaningless.

2. Ex parte Young, 209 U.S. 123, 28 S. Ct. 441 (1908); Douglas v. City of Jeannette, 319 U.S. 157, 63 S. Ct. 877 (1943).

3. 28 U.S.C. § 2283 (1958): "A court of the United States may not grant an injunction to stay proceedings in a state court except as expressly authorized by Act of Congress, or where necessary in aid of its jurisdiction, or to protect or effectuate its judgments."

4. 352 U.S. 220, 77 S. Ct. 287 (1957).

5. *Supra* note 3.

6. 10 VAND. L. REV. 864 (1957).

7. 184 F.2d 381 (3d Cir. 1957).

those instances in which Congress has expressly authorized the issuance of an injunction.[8] In *Douglas v. City of Jeannette,*[9] a suit brought by private individuals, an injunction was sought to restrain threatened criminal prosecution on the ground that the statute which formed the basis of the prosecution was unconstitutional. The Court denied injunctive relief, asserting that no individual should be immunized from prosecution in good faith for his alleged criminal act. It was pointed out that the constitutionality of a statute could be determined as well in a criminal trial as in a suit for injunctive relief. In the instant case, the United States asserts that Hardy's prosecution was not only begun in bad faith but was instigated for a purpose which will allegedly result, if the trial is allowed to continue, in irreparable injury to a national interest. Assuming this assertion is justified, it would seem that the United States has established the very situation implicit in *Douglas,* that is, where a person is not being prosecuted in good faith and where only a suit for injunctive relief can effectively determine the merits of the claim.

The claim in the present case is that the very trial of Hardy is part of a general scheme of harassment designed to interfere with the rights of the Negro voters in Walthall County. In *United States v. Raines,*[10] the United States Supreme Court held that the United States had the power to enjoin the registrars in a Georgia county from discriminating against Negroes who attempted to register to vote. The Court declared that ". . . there is the highest public interest in the due observation of all the constitutional guaranties, including those that bear the most directly on private rights, and we think it perfectly competent for Congress to authorize the United States to be the guardian of that public interest in a suit for injunctive relief."[11] It is apparent in the instant case that the United States is acting as the champion of the private constitutional rights of the prospective Negro voters in Walthall County and that the injunction is being sought to prevent alleged co-operative intimidation by the local officials. It is difficult to see any difference in principle between the registrars' action in depriving Negroes of the right to register in *United States v. Raines* and the less direct intimidation in the instant case.

As pointed out in *United States v. Raines,* the United States is the proper party to bring this suit, even though it is brought primarily on behalf of the prospective Negro voters in Walthall County. The basis for this position is subsections 1971 (b) and (c) of the Civil Rights Act of 1957.[12] The Act permits the United States to enjoin any person, whether

8. *Supra* note 3. It has been suggested that federal courts may have the power to enjoin state court proceedings under the Civil Rights Act; however, this thought was qualified by the suggestion that if Congress had so intended, the grant should have been more specific, as in the Interpleader and Bankruptcy Acts. 74 HARV. L. REV. 726 (1961).

9. 319 U.S. 157, 63 S. Ct. 877 (1943).

10. 362 U.S. 17, 80 S. Ct. 519 (1960).

11. *Id.* at 27, 80 S. Ct. at 526.

12. 42 U.S.C. § 1971 (1958): "(b) Intimidation, threats, or coercion. No person . . . shall intimidate . . . or attempt to intimidate . . . any other person for

acting under color of law or not, from interfering with another's right to vote. Since registration is a necessary prerequisite to voting, intimidation in regard to the one is certainly interference with the other. Here, if the government's claim is true, those who, under color of law, unjustifiably prosecuted Hardy are thereby effecting such intimidation. Certainly, the claim in the instant case states sufficient cause to warrant a hearing on the merits; but this will be effectively precluded by a denial of the temporary restraining order.[13]

In *NAACP v. Alabama,*[14] the United States Supreme Court declared: "constitutional adjudication should where possible be avoided. . . . The principle is not disrespected where constitutional rights of persons who are not immediately before the Court could not be effectively vindicated except through an appropriate representative before the Court." In the instant case the United States asserts its right under the Civil Rights Act to obtain an injunction to protect the interests of citizens who are not immediately before the Court but whose rights are allegedly at stake. The situation appears analogous to that in *Morrison v. Davis.*[15] There, certain Negroes obtained a declaratory judgment pronouncing a state statute, which required certain segregative practices, unconstitutional. The Court, after determining that protection of civil rights was made a federal cause of action by Congress, reasserted a portion of the trial court's opinion: "It is not the Court's view that in our civilization it is necessary to have incidents requiring arrests to have the rights of people declared. These plaintiffs are not being prosecuted; they have not violated the state law . . . they are seriously affected by the provision of the statute . . . it is not even apparent that they could put themselves in position to be arrested and prosecuted even if they sought to test their constitutional rights in that manner, which we hold they do not have to do."[16] Clearly, the prospective Negro voters in Walthall County, indirectly the plaintiffs in the instant case, have not violated state laws nor are they being prosecuted. It is asserted that they will be seriously affected if Hardy's prosecution is permitted. Hardy's trial with its deterrent effect on registration, is no different in principle from the statute in the *Morrison* case which discriminated against Negroes solely because of their race or color. In both cases personal liberties were

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the purpose of interfering with the right of such other person to vote. . . . (c) Preventive relief; injunction; costs. Whenever any person has engaged or there are reasonable grounds to believe that any person is about to engage in any act or practice which would deprive any other person of any right or privilege secured by subsection (a) or (b) of this section, the Attorney General may institute for the United States, or in the name of the United States, a civil action . . . including an application for a permanent or temporary injunction, restraining order, or other order."

13. Also inherent in the forecasted harm is the deterring effect Hardy's trial will have on the Negro citizens in Walthall County who are not yet qualified to vote. At best, they are presented with a rationalization for their disinterest and, at worst, a stimulus to remain unqualified.

14. 357 U.S. 449, 459, 78 S. Ct. 1163, 1170 (1958).

15. 252 F.2d 102 (5th Cir. 1958).

16. *Id.* at 103.