



UNC
SCHOOL OF LAW

NORTH CAROLINA LAW REVIEW

Volume 29 | Number 3

Article 9

4-1-1951

Federal Courts -- Civil Rights Act -- Stay of State Criminal Proceedings

Richard deY. Manning

Follow this and additional works at: <http://scholarship.law.unc.edu/nclr>



Part of the [Law Commons](#)

Recommended Citation

Richard d. Manning, *Federal Courts -- Civil Rights Act -- Stay of State Criminal Proceedings*, 29 N.C. L. REV. 287 (1951).

Available at: <http://scholarship.law.unc.edu/nclr/vol29/iss3/9>

This Note is brought to you for free and open access by Carolina Law Scholarship Repository. It has been accepted for inclusion in North Carolina Law Review by an authorized editor of Carolina Law Scholarship Repository. For more information, please contact law_repository@unc.edu.

in an action for support.²⁰ In both actions, if the foreign decree is pleaded as a defense, the court may inquire into the jurisdiction of the foreign court.²¹

The deserted spouse may also resort to the declaratory judgment, requesting the court to determine the marital status of the parties. If it is successfully proved that the plaintiff in the divorce action was not domiciled at the divorce forum the court will adjudge the foreign divorce decree null and void.²² That a declaratory judgment is an appropriate remedy seems well settled today²³ In such a case there is an actual controversy as one spouse asserts that the foreign divorce is valid and the other contends that it is not.²⁴ Both have an interest in the marital status; and if the deserted spouse does not wish a divorce or support, there is no adequate remedy at law.²⁵ Thus, the action will settle the status and terminate the controversy.²⁶

These remedies seem to afford the non-appearing defendant in a foreign divorce suit adequate protection of his or her marital status and property rights. Reasonably prompt action would prevent the result of the principal case.

ROBERT M. WILEY.

Federal Courts—Civil Rights Act—Stay of State Criminal Proceedings

In 1793, Congress, apprehending the danger of encroachment by federal courts upon the jurisdiction of state courts, passed a statute prohibiting the enjoining of proceedings in state courts by courts of the United States.¹ This statute, with but one amendment,² remained

²⁰ *White v. White*, 150 F. 2d 157 (D. C. Cir. 1945); *Evans v. Evans*, 149 F. 2d 831 (D. C. Cir. 1945); *Atkins v. Atkins*, 386 Ill. 345, 54 N. E. 2d 488 (1945); *Phelps v. Phelps*, 154 Pa. Super. 270, 35 A. 2d 530 (1944).

²¹ Note, 157 A. L. R. 1399 (1945).

²² *Mills v. Mills*, 119 Conn. 612, 179 Atl. 5 (1935); *Hogan v. Hogan*, 320 Mass. 658, 70 N. E. 2d 821 (1947); *Lawler v. Lawler*, 2 N. J. 527, 66 A. 2d 855 (Sup. Ct. 1949); *Henry v. Henry*, 140 N. J. Eq. 21, 144 Atl. 18 (Ch. 1928); *Lowe v. Lowe*, 265 N. Y. 197, 192 N. E. 291 (1934); *Baumann v. Baumann*, 250 N. Y. 382, 165 N. E. 819 (1929); *Altholy v. Altholy*, 72 N. Y. S. 2d 143 (Sup. Ct. 1947); *Smerda v. Smerda*, 74 N. E. 2d 751 (Ohio 1947); *Melnick v. Melnick*, 147 Pa. Super. 564, 25 A. 2d 111 (1942); BORCHARD, *DECLARATORY JUDGMENTS* 478 (2d ed. 1941); see *Jacobs, The Utility of Injunctions and Declaratory Judgments in Migratory Divorce*, 2 LAW & CONTEMP. PROB. 370, 391 (1935).

²³ BORCHARD, *DECLARATORY JUDGMENTS* 479 (2d ed. 1941).

²⁴ *Melnick v. Melnick*, 147 Pa. Super. 564, 25 A. 2d 111 (1942).

²⁵ *Henry v. Henry*, 140 N. J. Eq. 21, 144 Atl. 18 (Ch. 1928); *Melnick v. Melnick*, 147 Pa. Super. 564, 25 A. 2d 111 (1942).

²⁶ *Hogan v. Hogan*, 320 Mass. 658, 70 N. E. 2d 821 (1947).

¹ ". . . nor shall a writ of injunction be granted to stay proceedings in any court of a state." Act of March 2, 1793, c. 22, §5, 1 STAT. 334 (1793), as amended, REV. STAT. §720 (1875), 28 U. S. C. §379 (1926), 62 STAT. 968, 28 U. S. C. §2283 (1948). This statute has been held not to be jurisdictional, but

basically unchanged until 1948. In the intervening period, however, many judicial exceptions were made as to its applicability.³ In 1941, the case of *Toucey v. New York Life Ins. Co.*⁴ disapproved several of these court made exceptions and expressly overruled one of them.⁵ Also, Congress has enacted exceptions to the "anti-injunction" statute, by other acts which expressly provide in specific instances, for stay of state court proceedings.⁶ These Congressional exceptions were recognized and approved in the *Toucey* case.

As a result of the *Toucey* case, Congress amended the "anti-injunction" statute when the new Judicial Code was enacted in 1948. The new Act reads:

"A court of the United States may not grant an injunction to stay proceedings in a state court except (1) as expressly authorized by Act of Congress, or (2) where necessary in aid of its jurisdiction, or (3) to protect or effectuate its judgments."⁷

The first exception is merely Congressional recognition of the long standing, unquestioned, legislative exceptions and had no real effect on the existing law; but the latter two exceptions were inserted to reinstate the judicial exceptions questioned or overruled by the *Toucey* case.⁸

In the recent case of *Cooper v. Hutchinson*,⁹ a novel question dealing with the application of the "anti-injunction" statute was presented. Cooper was tried and convicted of murder by a county court in New Jersey, being represented at trial by court appointed counsel. Between

merely as going to the question of whether there is equity in a particular bill. *Smith v. Apple*, 264 U. S. 274, 279 (1924).

³ ". . . except in cases where such injunction may be authorized by any law relating to proceedings in bankruptcy." REV. STAT. §720 (1875).

⁴ The authorities are not all in accord as to the classification of these exceptions, but generally they are: (1) The res cases, where the jurisdiction of a federal court has attached to the subject matter of a particular action, an injunction will lie to prevent any other court from taking jurisdiction over the same subject matter. (2) The ancillary cases, where the injunction would be granted as ancillary to other relief being sought. (3) The cases in which federal courts have enjoined the enforcement of void or fraudulent judgments obtained in a state court. (4) The relitigation cases, where injunctions are granted against state court actions which seek to relitigate the same issue decided in the federal court. See generally *Toucey v. New York Life Ins. Co.*, 314 U. S. 118 (1941); Barrett, *Federal Injunction Against Proceedings in State Courts*, 35 CALIF. L. REV. 545 (1947).

⁵ 314 U. S. 118 (1941). Notes, 27 CORNELL L. Q. 270 (1942), 27 IOWA L. REV. 652 (1942), 26 MINN. L. REV. 558 (1942).

⁶ The relitigation cases were overruled and doubt was cast on all other exceptions to the "anti-injunction" statute except the res cases.

⁷ See notes 19, 20, and 21 *infra*; MOORE, COMMENTARY ON THE U. S. JUDICIAL CODE §0.03(49) p. 396 (1949).

⁸ 62 STAT. 968, 28 U. S. C. §2283 (1948) (numbers supplied).

⁹ See 28 U. S. C. A. §2283, Reviser's notes (1948); Mangan, *Federal Legislation, The Judicial Code of 1948*, 37 GEO. LAW J. 394, 396 (1949); MOORE, COMMENTARY ON THE U. S. JUDICIAL CODE §0.03(49) p. 410 (1949).

¹⁰ 184 F. 2d 119 (3rd Cir. 1950).

trial and appeal he secured the services of two New Jersey attorneys and three New York attorneys. The latter were admitted *pro hac vice* in the Supreme Court of New Jersey and later in the county court. Upon reversal of the conviction, the attorneys proceeded in the county court with various preliminary matters incident to the new trial. Before the new trial commenced, the trial judge, without a hearing, entered an order depriving the New York attorneys of further authority to appear in the case. There was no charge of misconduct. Cooper, the accused, then filed this action in the federal district court seeking to enjoin the trial judge from proceeding further with the case until the New York attorneys were recognized. The accused charged that he had been deprived of rights guaranteed by the fifth,¹⁰ sixth,¹¹ and fourteenth¹² amendments of the Constitution, and that such was a violation of the Civil Rights Act.¹³ Upon dismissal of the complaint,¹⁴ appeal was taken to the Court of Appeals.

The court refused to pass upon the constitutional questions raised, deferring them until the New Jersey Supreme Court had an opportunity to act. However, the court did pass upon the problem raised by the plaintiff as to the Civil Rights Act and held the Act to be an express exception to the "anti-injunction" statute, thus implying that injunction would be proper if the court found it necessary.

Assuming the action of the trial judge violated the aforementioned constitutional rights, which would necessarily violate the Civil Rights Act, the case raises two interesting questions.

(1) *Does the Civil Rights Act authorize stay of state court proceedings in case of violation of its provisions?*

The decision in the instant case cites no authority in support of its position on this point, and a diligent search indicates that this is the only federal appellate court which has so held. In several cases decided in the old circuit courts, this issue was raised and in each case the court held the Civil Rights Act *did not* in any way modify the "anti-injunction"

¹⁰ U. S. CONST. AMEND. V, "No person shall be . . . deprived of life, liberty, or property, without due process of law. . . ."

¹¹ U. S. CONST. AMEND. VI, "In all criminal prosecutions, the accused shall enjoy the right . . . to have the Assistance of Counsel for his defense."

¹² U. S. CONST. AMEND. XIV §1, ". . . No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law. . . ."

¹³ "Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States . . . to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress." REV. STAT. §1979 (1875), 8 U. S. C. §43 (1942).

¹⁴ Cooper v. Hutchinson, 88 F. Supp. 774 (D. N. J. 1950).

statute.¹⁵ Further, in the *Toucey* case, Justice Frankfurter listed the statutes which were express authorizations for stay of state court proceedings, and no mention was made of the Civil Rights Act.¹⁶

The Act was passed to provide a method of enforcing the provisions of the Constitution, mainly the rights guaranteed by the fourteenth amendment.¹⁷ It would seem that if the Act had been considered an express exception to the "anti-injunction" statute, it would have been raised in those cases where the court refused to enjoin unconstitutional proceedings in a state court because of the "anti-injunction" statute. It has never been so used.¹⁸

The Civil Rights Act provides that a violator ". . . shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress." Comparing this with the terms of the other acts declared to be express exceptions to the "anti-injunction" statute, it becomes obvious that no such construction was intended of the Civil Rights Act. For instance, the original Interpleader Act provided that "notwithstanding any provisions of the Judicial Code to the contrary, said . . . court shall have the power . . . to issue an order . . . enjoining them from instituting or prosecuting any suit or prosecuting any suit or proceeding in any state court."¹⁹ Another reads: ". . . all claims

¹⁵ *Aultman & Taylor Co. v. Brumfield*, 102 Fed. 7 (C. C. N. D. Ohio 1900), *appeal dismissed*, 22 Sup. Ct. 938 (1901). This case also disapproved a dictum in *Touchman v. Welch*, 42 Fed. 548, 557 (C. C. D. Kan. 1890) which expressed the opinion that the Civil Rights Act was an exception to the "anti-injunction" statute. *Hemsley v. Meyers*, 45 Fed. 283 (C. C. D. Kan. 1891). *Cf.* *International Longshoremen's & Ware. Union v. Ackerman*, 82 F. Supp. 65 (D. Hawaii 1948), where an injunction against pending criminal proceedings in the territorial court was issued, based upon, among other things, the Civil Rights Act. Evidently there was no appeal from this decision. In a later case decided by the Court of Appeals, *Alesna v. Rice*, 172 F. 2d 176 (9th Cir. 1949), in which an injunction was sought against a territorial court of Hawaii, the injunction was refused, the court stating "Nor does the complaint allege any of the facts which the decision of the District Court found in (the *Ackerman* case)." This seems to be a "back handed" approval of the *Ackerman* decision.

¹⁶ Also, no leading article on the subject has mentioned the Civil Rights Act when listing the Congressional exceptions. See MOORE, COMMENTARY ON THE U. S. JUDICIAL CODE ¶0.03(49) p. 410; Barrett, *Federal Injunction Against Proceedings in State Courts*, 35 CALIF. L. REV. 545, 559 (1947).

¹⁷ See *Hague v. C.I.O.*, 307 U. S. 496, 510 (1938).

¹⁸ *In re Sawyer*, 124 U. S. 200 (1888); *cf.* *Douglass v. City of Jeanette*, 319 U. S. 157, *rehearing denied*, 319 U. S. 782 (1943); *Hague v. C.I.O.*, 307 U. S. 496 (1938).

¹⁹ Interpleader Act of 1926, 44 STAT. 416 (1926), amending the Interpleader Act of 1917, 39 STAT. 927 (1917). This provision was retained in the Interpleader Act of 1936, 49 STAT. 1096, 28 U. S. C. §41(26) (1936). See *Treinies v. Sunshine Mining Co.*, 308 U. S. 66, 74 (1939). In the new Judicial Code the wording was changed. Since the "anti-injunction" statute had been amended, there was no "provision of the Judicial Code to the contrary." The Act now reads: ". . . a district court may issue its . . . order restraining (the claimants) from instituting or prosecuting any proceeding in any State . . . court. . . ." 62 STAT. 970, 28 U. S. C. §2361 (1949); see 28 U. S. C. A. §2361, Reviser's note (1949).

and proceedings . . . shall cease";²⁰ and others have similar wording clearly indicating that an exception was intended.²¹

It is true that injunction has been used in many cases to prevent *enforcement* of unconstitutional state statutes or city ordinances, or to restrain the *enforcement* of valid acts in an unconstitutional manner. The Civil Rights Act has formed the basis for such action.²² But, it is to be noted that in these cases *no proceedings* had been instituted and therefore such action did not come within the purview of the "anti-injunction" statute.²³

It thus seems that the court's position is rather tenuous in holding that the Civil Rights Act constitutes an express exception to the "anti-injunction" statute.

(2) *Is it ever proper for a federal court to enjoin criminal proceedings in a state court, once the proceedings have been instituted?*

This question has presented itself almost exclusively in cases where injunction was sought to restrain prosecution under an alleged unconstitutional state statute or city ordinance,²⁴ or, as in the principal case, where acts of state officers are alleged to be unconstitutional.²⁵ Few of these cases have mentioned the "anti-injunction" statute,²⁶ most being decided upon general rules of equity practice.

The equitable rule, as often stated, is that courts of equity do not ordinarily restrain criminal prosecutions. This rule is limited by two exceptions: first, criminal proceedings will be enjoined when irreparable injury to property is threatened; and second, criminal proceedings will

²⁰ Limitation on shipowners liability, based on the Act of 1851, 9 STAT. 635 (1851). See *Providence & N. Y. S. S. Co. v. Hill Mfg. Co.*, 109 U. S. 578, 599 (1883).

²¹ *Frazier-Lemke Act*, 47 STAT. 1473 (1933), 11 U. S. C. §203 (1940) ". . . the following proceedings shall not be instituted, or if instituted . . . , shall not be maintained, in any court. . ."; *Emergency Price Control Act*, 56 STAT. 23 (1942), 50 U. S. C. App. §925 (1944) ". . . he may make application to the appropriate court for an order enjoining such acts or practices. . ."

²² See *Douglas v. City of Jeanette*, 319 U. S. 157, *rehearing denied*, 319 U. S. 782 (1943); *Hague v. C.I.O.*, 307 U. S. 496 (1938).

²³ See note 26 *infra*. 13 CYCLOPEDIA OF FEDERAL PROCEDURE §6676 (2d ed. 1944).

²⁴ *Ex parte Young*, 209 U. S. 123 (1908); *Watson v. Buck*, 313 U. S. 387 (1940); *Beal v. Missouri Pac. R.R.*, 312 U.S. 45 (1940); *Spielman Motor Sales Co. v. Dodge*, 295 U. S. 89 (1934); *Hygrade Provision Co. v. Sherman*, 266 U. S. 497 (1924).

²⁵ *Essanay Film Mfg. Co. v. Kane*, 258 U. S. 358 (1922); *Reagan v. Farmers Loan & Trust Co.*, 154 U. S. 362 (1894).

²⁶ The issue has been raised in the following cases, and in each case the court held that the statute applied to criminal proceedings which were actually *pending* in the state courts, but not to those which were *threatened*. *Jewel Tea Co. v. Lee's Summit, Mo.*, 198 Fed. 532, 539 (D. C. Mo. 1912), *aff'd*, 217 Fed. 965 (8th Cir. 1914); *Kansas City Gas Co. v. Kansas City*, 198 Fed. 500, 525 (D. C. Mo. 1912); *St. Louis & S. F. R.R. v. Allen*, 181 Fed. 710, 722 (C. C. D. Ark. 1910).

be enjoined when an equity action is pending, and the criminal action is commenced by one of the parties to the equity action to determine the same right that is in issue in the equity action.²⁷ Both appear, on the surface, to be exceptions to the "anti-injunction" statute as well as to the equitable rule, and such is the opinion of at least one writer.²⁸ However, a close examination of the cases will reveal that only the second can accurately be so classified.

The first exception concerns, in reality, a question of what constitutes a proceeding in a state court. In stating this exception to the rule, the courts have failed, in most cases, to differentiate between *threatened proceedings* and *pending proceedings*. As a practical matter, however, the word "proceeding" as used in this connection contemplates threatened proceedings. Thus, courts have scrupulously avoided enjoining criminal proceedings which were actually pending in a state court, unless the case came within the second exception.²⁹ Strict adherence to this equitable policy has made unnecessary resort to the "anti-injunction" statute.³⁰

The second exception to the equitable rule is not inconsistent with the provisions of the "anti-injunction" statute. Prior to the passage of the amended statute, federal courts could enjoin state court proceedings which sought to exercise jurisdiction over persons or things, over which the federal court had already acquired jurisdiction.³¹ This rule,

²⁷ Packard v. Banton, 264 U. S. 140, 143 (1923).

²⁸ Barrett, *Federal Injunction Against Proceedings in State Courts*, 35 CALIF. L. REV. 545, 551 (1947). The author does, however, make a distinction between pending actions and threatened actions, treating only the latter as an exception to the "anti-injunction" statute. See also Warren, *Federal and State Court Interference*, 43 HARV. L. REV. 345, 375 (1930).

²⁹ Looney v. Eastern Texas R.R., 247 U. S. 214, 221 (1917); Prout v. Starr, 188 U. S. 537, 544 (1902).

³⁰ In Cline v. Frink Dairy Co., 274 U. S. 445 (1927), injunction was granted against threatened prosecutions under an unconstitutional state statute, but the court refused to enjoin a proceeding which had been instituted. The court quoted *Ex parte Young* 209 U. S. 123 (1908) in support ("But the federal court cannot, of course, interfere in a case where the proceedings were already pending in a state court."), and disapproved a dictum in *Davis & Farnum Co. v. Los Angeles*, 189 U. S. 207 (1903) which stated a contrary view. *Accord*, *Caldwell v. Sioux Falls Stock Yards Co.*, 242 U. S. 559 (1917). See Note, 10 MINN. L. REV. 153 (1926). *Contra*, *International Longshoremen's & Ware. Union v. Ackerman*, 82 F. Supp. 65 (D. C. Hawaii 1948).

³¹ As to "things" there has never been any controversy, this being the so-called res exception, recognized as valid by the *Toucey* case; but as to "persons" there has been a divergence of authority. If the "person" is under the authority of a court of another jurisdiction, then this is also an exception. *Ponzi v. Fessenden*, 258 U. S. 254 (1922). But if a mere right or liability between persons is concerned, a different question is presented. In the *Toucey* case it was said that the "first come, first served" doctrine of cases similar to *Prout v. Starr*, 188 U. S. 537 (1902) was discarded by *Kline v. Burke Const. Co.*, 260 U. S. 226 (1922) where it was held that mere in personam actions did not come within this exception. These cases are the "ancillary" cases which were questioned by the *Toucey* case, and later incorporated into the amended act. See note 32 *infra*.

expressly incorporated in the amended act,³² thus includes the second exception to the equitable rule.

Since the instant case is not of the latter type, and as the criminal proceedings had already been instituted, the inference of the court that it could enjoin the proceedings violates the provisions of the "anti-injunction" statute as well as the long standing equitable doctrine.

Nevertheless, the court's action in *Cooper v. Hutchinson*, in refusing to grant injunction, and in remanding to the district court pending a ruling by the state court on the constitutional issues was not detrimental to either party. It did not delay the state's administration of criminal justice, and resulted in disposition of the case without necessity of appeal to the New Jersey Supreme Court.³³ This is not the first time such relief has been employed,³⁴ and it appears that it is to be preferred to dismissal or an order enjoining the court proceedings where the propriety of injunction is questionable.

RICHARD DEY. MANNING.

Liens—Priority of Federal Claims Over Attachments

A creditor brought an action on an unsecured promissory note and on the same day attached four parcels of real estate belonging to the debtor to secure payment of any judgment recovered in the action. After levy of the attachment, which was duly recorded, a federal tax lien¹ on all of the debtor's property, including the previously attached real estate, was recorded. Subsequently, the creditor recovered judgment in his action on the promissory note. In a suit to determine priority of liens on the real property, a California district appellate court found that the attachment was a *specific* and *perfected* lien, and following the general rule of "first in time of recordation, first in priority," the attachment was superior to the federal tax lien.² The California Supreme Court declined to hear the case and the United State Supreme Court granted certiorari. By a unanimous vote, the Supreme Court held that the federal tax lien was superior to the *contingent* or *inchoate* attach-

³² ". . . except . . . where necessary in aid of its jurisdiction. . . ." 62 STAT. 968, 28 U. S. C. §2283 (1948).

³³ Following the decision of the instant case, the trial judge issued a rule to show cause to the parties involved. This was never heard, as the three New York attorneys voluntarily requested permission to withdraw from the case, which permission was granted.

³⁴ *Railroad Comm. of Texas v. Pullman Co.*, 312 U. S. 496 (1941) (first case in which this type of relief used); *A. F. of L. v. Watson*, 327 U. S. 582 (1946); *Specter Motor Service, Inc. v. McLaughlin*, 323 U. S. 101 (1944).

¹ INT. REV. CODE §§3670-3672.

² *Winther v. Morrison*, 93 Cal. App. 2d 608, 209 P. 2d 657 (1949).