

Recent Decisions: Federal Jurisdiction: The Abstention Doctrine

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ism," as determined by general practice among newspapers and periodicals of average caliber.⁴⁶ The rule of fair comment with respect to the official conduct of a public official has been replaced (in the author's view) by a *rule of fair mistake*.⁴⁷ This implies that while the requirement that the assertion be "comment" has been abrogated, the requirement that it be *fair* is still very much existent.

The burden of proof as to the matter of *malice in fact* is expressly placed upon the plaintiff.⁴⁸ The problem thus arises as to the nature and quantity of proof a plaintiff must produce before a defendant must come forward with rebuttal evidence and show proper and responsible journalistic techniques, when such defendant has pleaded "fair mistake." The Court did not deal with this evidentiary question. If, on the one hand, this means that the plaintiff (to reach the jury) must show that internal newspaper procedure (reporting, data checking, etc.) was not what it should have been, his burden may be difficult, practically, to sustain. If, on the other hand, it simply means that he must show that the true facts were readily available or that a simple check would have shown the error, the requirement would not appear too stringent. This latter alternative, it seems, would make the rule practically workable.

From the point of view of the trial court and the trial lawyer, therefore, what at first appears to be a clearly defined black letter rule leaves many questions unanswered. Whether this rule will be interpreted liberally, as has been suggested, or narrowly is a matter for future construction. It appears, nevertheless, that this test, like the *Roth*⁴⁹ test for obscenity, will involve judicial (trial and appellate) examination of individual cases on their facts rather than legal rules or syllogisms.

ROBERT A. MELIN

Federal Jurisdiction: The Abstention Doctrine—Two recent decisions illustrate the problems created in applying the abstention doctrine, which arose as a result of *Erie R.R. v. Tompkins*.¹ The doctrine is a self-limitation upon the jurisdiction of federal courts when they are presented with suits which deal with questions of unclear or undecided state law. In these cases, the federal courts, acting in matters

⁴⁶ The same sort of standard would apply, of course, to individuals and organizations other than newspapers seeking to invoke the privilege (*i.e.*, probable cause to believe in the truth of the charges and/or such investigation into their accuracy as all the circumstances indicate is necessary). It should be noted, however, that more than mere negligence or lack of reasonable care is required to hold a statement, otherwise meeting the requirements, to be unprivileged.

⁴⁷ The term "fair mistake" has been coined by the author in the belief that it succinctly expresses the new rule, as the term "fair comment" did the old rule.

⁴⁸ *New York Times Co. v. Sullivan*, *supra* note 2, at 726.

⁴⁹ *Roth v. United States*, 354 U.S. 476 (1957).

¹ 304 U.S. 64 (1937).

of equity, may "abstain" from jurisdiction until the parties to the suit have obtained a ruling on the unresolved issues from the state courts.

In *Keidan v. Universal C.I.T. Credit Corp.*,² the United States Court of Appeals for the Sixth Circuit dismissed the appellant's contention that the facts of the case demanded an invocation of the abstention doctrine. The controversy presented to the court involved the interpretation of a Michigan chattel mortgage statute in a bankruptcy proceeding. Since there was an absence of an authoritative Michigan decision, the appellant contended that the federal district court should not pass upon the question and relied upon two United States Supreme Court decisions, *Thompson v. Magnolia Petroleum Co.*³ and *Railroad Comm'n v. Pullman Co.*,⁴ to support this argument. In rejecting this contention, the court stated that the case came under the rule expressed in *Meredith v. Winter Haven*.⁵ These cases will be discussed later in this article.

In *United Serv. Life Ins. Co. v. Delaney*,⁶ the United States Court of Appeals for the Fifth Circuit was called upon to interpret an exclusion provision in an insurance contract. The court, in noting that "the guidance of the dim light of the Texas decisions leaves the meaning of the questioned clauses obscure,"⁷ decided to leave the construction of the Texas insurance contracts involved to the Texas courts. In making this decision, the majority relied upon the *Pullman* decision.⁸ The dissent, consisting of four judges, including Chief Judge Tuttle, stated that the mandate of Congress that the court decide diversity cases⁹ and the *Meredith* decision¹⁰ "makes plain our duty to decide these matters."¹¹ Circuit Judge John R. Brown, in a separate concurring opinion, declined to "guess it off" for Texas and stated that "it is judicial statesmanship of the highest and proper order for us to conclude that these questions . . . should be decided by courts who either know the answer or can write it if it has not yet been announced."¹²

The launching of the so called "abstention doctrine" is generally credited to the *Pullman* case.¹³ In that case, the plaintiff assailed a regulation of a state commission as unauthorized by Texas statutes and as violative of the federal constitution. In following a well-established policy of the Supreme Court in avoiding an adjudication upon consti-

² 327 F. 2d 616 (6th Cir. 1964).

³ 309 U.S. 478 (1940).

⁴ 312 U.S. 496 (1941).

⁵ 320 U.S. 228 (1943).

⁶ 328 F. 2d 483 (5th Cir. 1964).

⁷ *Id.* at 484.

⁸ *Railroad Comm'n v. Pullman Co.*, *supra* note 4.

⁹ 28 U.S.C. §1332 (1952).

¹⁰ *Meredith v. Winter Haven*, *supra* note 5.

¹¹ *United Serv. Life Ins. Co. v. Delaney*, *supra* note 6, at 485.

¹² *Id.* at 489.

¹³ *Railroad Comm'n v. Pullman Co.*, *supra* note 4.

tutional grounds whenever possible, the court ordered a stay of the proceedings in the federal court. The litigants were told to proceed in the Texas courts so that they could first determine whether the regulation was in fact authorized by the Texas statutes, for if it was not, a determination of the constitutional question would then be unnecessary. The court stated that "the reign of law is hardly promoted if an unnecessary ruling of a federal court is thus supplanted by a controlling decision of a state court."¹⁴

Two years later in the *Meredith* case,¹⁵ which dealt with a difficult question of Florida law concerning the validity of deferred interest coupons, the court declared that "we are of the opinion that the difficulties of ascertaining what the state courts may hereafter determine the state law to be do not in themselves afford a sufficient ground for a federal court to decline to exercise its jurisdiction to decide a case which is properly brought to it for decision."¹⁶

It appears from the decisions that, unless other circumstances are present, the difficulty in interpreting the state law, in itself, is not sufficient grounds for the abstention of jurisdiction by the federal courts. The Court in *Meredith* pointed out that "diversity jurisdiction was not conferred for the benefit of the federal courts or to serve their convenience."¹⁷

There have been numerous occasions where, in order to avoid needless conflict with the state courts and where it has been generally felt that the state court was a more appropriate forum to decide the controversy, a federal court has dismissed an action or refused to entertain it. The exceptions relate to the discretionary powers of a court of equity. Exercise of that discretion may require that the court withhold relief in furtherance of a *recognized defined public policy*. It is for this reason that federal courts have refused to interfere with state criminal prosecutions, unless moved by urgent considerations,¹⁸ and have declined to entertain actions of declaratory relief against state taxes.¹⁹ They also have sent trustees in bankruptcy into state courts to have complex questions of state law adjudicated,²⁰ and have refused to appraise domestic policy of the state governing its administrative agencies.²¹

It appears that none of the circumstances which have been required in the past before a federal court will abstain from jurisdiction were present in *Delaney*. There was no constitutional question presented in the case which might have been avoided by requiring the litigants to

¹⁴ *Id.* at 500.

¹⁵ *Meredith v. Winter Haven*, *supra* note 5.

¹⁶ *Id.* at 234.

¹⁷ *Ibid.*

¹⁸ *Douglas v. Jeanette*, 319 U.S. 157 (1942).

¹⁹ *Great Lakes Dredge & Dock Co. v. Huffman*, 319 U.S. 293 (1942).

²⁰ *Thompson v. Magnolia Petroleum Co.*, *supra* note 3.

²¹ *Buford v. Sun Oil Co.*, 319 U.S. 315 (1942).

proceed in the Texas courts, nor does it appear that the construction of an insurance contract requires abstention from jurisdiction by the federal courts due to any recognized and well-defined public policy. Though staying the proceedings in the federal court system until the Texas courts have been afforded the opportunity to determine the submitted questions may be "judicial statesmanship," this is of little consolation to the parties to the action. As previously pointed out in the *Meredith* case, diversity jurisdiction is not a rule of convenience for the federal courts, but a mandate of Congress. The responsibility of the federal courts to proceed in these matters, absent unique circumstances, has been urged by such respected authorities as the late Judge Charles E. Clark of the United States Court of Appeals for the Second Circuit.²²

In *Keidan*, the court accepted this responsibility and determined the issues presented to it for adjudication, though the court, unlike the court in *Delaney*, had authority for abstaining from jurisdiction in the bankruptcy proceeding under the *Thompson* case.²³ As aptly pointed out by the dissenting Justice Douglas in *Clay v. Sun Ins. Office*:

Some litigants have long purses, Many, however, can hardly afford one lawsuit, let alone two. Shuttling the parties between state and federal tribunals is a sure way of defeating the ends of justice. The pursuit of justice is not an academic exercise. There are no foundations to finance the resolution of nice questions of state law involved in federal court litigation. The parties are entitled—absent unique and rare situations—to adjudication of their rights in the tribunals which Congress has empowered to act.²⁴

WYLIE A. AITKEN

²² Clark, *Federal Procedural Reform and State's Rights*, 40 TEXAS L. REV. 211 (1961).

²³ *Thompson v. Magnolia Petroleum Co.*, *supra* note 3.

²⁴ *Clay v. Sun Ins. Office*, 363 U.S. 207, 228 (1959).