Michigan Law Review

Volume 46 | Issue 6

1948

PARTIES-POSTMASTER GENERAL AS INDISPENSABLE PARTY TO INJUNCTION AGAINST LOCAL POSTMASTER

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PARTIES—POSTMASTER GENERAL AS INDISPENSABLE PARTY TO INJUNCTION AGAINST LOCAL POSTMASTER—The Postmaster General, after a hearing in Washington, D.C., found petitioners' business fraudulent, and issued a fraud order directing respondent, the local postmaster, to stamp "fraudulent" on all mail addressed to petitioners and return it to the senders. The petitioners sued, without joining the Postmaster General, to enjoin respondent from carrying out the order. The federal district court dismissed the complaint, and the circuit court affirmed.[1] On certiorari, *held*, reversed. The Postmaster General is not an indispensable party if the decree restraining the local postmaster will give the relief desired without requiring any action on the part of the Postmaster General. *Williams v. Fanning*, 332 U.S. 490, 68 S.Ct. 188 (1947).

The ruling in the principal case is an effort on the part of the Supreme

[1] Williams v. Fanning, (C.C.A. 9th, 1946) 158 F. (2d) 95.

Court to eliminate a conflict existing in the federal circuits in postal fraud cases. This confusion was caused by the circuits' conflicting interpretations of a long line of Supreme Court decisions dealing with the indispensability of superior administrative officials as parties to actions to enjoin their subordinates.[2] In 1897 the Supreme Court held that the superior administrative officer was an indispensable party.[3] From 1897 to 1924, injunctive relief was granted regularly against minor officials without joinder of their superiors, and the indispensability point was not raised by either the court or the litigants.[4] In 1924 the Supreme Court revived the requirement of joinder of the superior officer,[5] in cases requiring the superior officer "to take action, either by exercising directly a power lodged in him or by having a subordinate exercise it for him." [6] Then in 1925, the Supreme Court denied that the superior officer was an indispensable party to the injunction action against his subordinate.[7] The conflict in the circuits followed thereafter on different theories.[8] The decision in the principal

[2] See Kalodner, "Indispensable Parties in the Federal Courts," 16 PENN. B.A.Q. 156 (1945). A ruling that the superior officer is indispensable limits the suit to Washington, D.C., where such officers normally reside, since the court cannot get jurisdiction over the non-resident superior unless he consents to suit or is served within the District. See 50 YALE L.J. 909 (1941).

[3] Warner Valley Stock Co. v. Smith, 165 U.S. 28, 17 S.Ct. 225 (1897). The court refused to order the issue of a land patent or to enjoin trespasses by government officials in the absence of the Secretary of the Interior, and as the purpose of the bill was to "control the action of the Secretary. . ." id. at 34), he was held to be an indispensable party.

[4] See 50 YALE L.J. 909 (1941), and 2 MOORE, FEDERAL PRACTICE 2156-2157 (1938). American School of Magnetic Healing v. McAnnulty, 187 U.S. 94, 23 S.Ct. 33 (1902); Leach v. Carlile, 258 U.S. 138, 42 S.Ct. 227 (1922).

[5] In Gnerich v. Rutter, 265 U.S. 388, 44 S.Ct. 532 (1924), the Commissioner of Internal Revenue was held to be an indispensable party in an action to enjoin a subordinate prohibition director from enforcing a restriction in a liquor permit already issued by the commissioner. Then followed Webster v. Fall, 266 U.S. 507, 45 S.Ct. 148 (1925), in which an Indian sued to compel payment of money withheld by an Indian agent, and as the power and responsibility of making the payments was in the Secretary of the Interior, he was held to be an indispensable party.

[6] 332 U.S. 490 at 493, 68 S.Ct. 188 at 189 (1947).

[7] Colorado v. Toll, 268 U.S. 228, 45 S.Ct. 505 (1925). The State of Colorado sued to enjoin a national park superintendent from carrying out regulations issued by the Secretary of the Interior, on the ground that their subject matter exceeded the authority ceded by the state. The injunction was granted without reference to the previous line of indispensability cases. As authority for its ruling, the court cited Missouri v. Holland, 252 U.S. 416 at 431, 40 S.Ct. 382 (1920), and Philadelphia Co. v. Stimson, 223 U.S. 605 at 619, 620, 32 S.Ct. 340 (1912). These latter cases set forth the independent rule that if the plaintiff's claim is that the minor official is acting beyond his statutory or constitutional authority, he may be enjoined in the absence of his superior. See also 50 YALE L.J. 909 at 915 (1941).

[8] In the Second Circuit the superior officer is held to be indispensable. See Alcohol Warehouse Corp. v. Canfield, (C.C.A. 2d, 1926) 11 F. (2d) 214 at 215, where Judge Learned Hand felt that enjoining a subordinate without binding his superior might expose the subordinate to a crossfire between the court and the superior.

case will eliminate the confusion to the extent that the federal courts are able to determine whether the relief requested can be obtained without action on the part of the superior officer.[9] Elimination of the indispensability rule will not prevent the Post Office Department from getting uniform interpretations of its rulings, nor will it inconvenience the department by having the hearing in a jurisdiction other than the District of Columbia.[10] The enforcement of a fraud order issued by the Postmaster General will invariably injure the plaintiff's business reputation and good will unless he can get an injunction immediately and the doctrine pronounced by the Supreme Court in the principal case insures to the plaintiff the means of getting this speedy relief.

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In National Conference on Legalizing Lotteries v. Goldman, (C.C.A. 2d, 1936) 85 F. (2d) 66, the court indicated that the superior might evade the terms of the decree by appointing a different subordinate to perform the act enjoined. The Postmaster General also is held a necessary party in the Ninth Circuit. See Neher v. Harwood, (C.C.A. 9th, 1942) 128 F (2d) 846. The Fifth and Sixth Circuits declare that the Postmaster General is not indispensable. Rood v. Goodman, (C.C.A. 5th, 1936) 83 F. (2d) 28; Jarvis v. Shackelton Co., (C.C.A. 6th, 1943) 136 F. (2d) 116. The federal district courts also have split on different theories of indispensability. For a collection of cases, see 2 MOORE, FEDERAL PRACTICE 2156-2157 (1938) and 1947 Supp., p. 51; 158 A.L.R. 1126 (1945).

[9] See 4 UNIV. CHI. L. REV. 342 at 343 (1937) where the writer suggests the best solution to the problem is a statutory enactment locating the venue of fraud order reviews in the plaintiff's district.

[10] An adequate defense may be prepared by departmental attorneys equipped with the records of the department and aided by government witnesses who are usually local. See Moody v. Johnston, (C.C.A. 9th, 1933) 66 F. (2d) 999 at 1003, where the court intimates that the cases are tried with the same care with which they would have been tried tried had the superior officer been made a party. Certainly, the inconvenience caused to the departmental assistants is greatly outweighed by the hardship caused by making the plaintiff present his defense and witnesses in Washington, D.C. In Bailey Gaunce Oil Co. v. Duncan, (D.C. La. 1934) 10 F. Supp. 280 at 281, the court declared that the added expense and inconvenience of bringing an action in Washington may result in the denial of a right to a trial on the merits. An additional difficulty is created if the suit must be brought in Washington in that the subordinate officer may be held to be indispensable, and he could raise the objections of improper venue and lack of jurisdiction over his person.