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Louisiana Practice - Issuance of Writs of Injunction - Validity of Legislative Limitations Upon the Courts

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submitted that the Louisiana courts, with the one exception noted, have implemented the true purposes of the Revised Statutes by their decisions.

John S. White, Jr.

LOUISIANA PRACTICE—ISSUANCE OF WRITS OF INJUNCTION—
VALIDITY OF LEGISLATIVE LIMITATIONS
UPON THE COURTS

Plaintiff employer brought suit against twenty-one named defendants individually, and as officers, agents, and members of a union to restrain them from trespassing on or damaging its properties, or from pursuing any course involving the intimidation, molesting, threatening, or abuse of petitioner's officers, agents, employees, or customers. The court sustained defendants' exceptions of prematurity and no cause of action because plaintiff had not complied with the requirements of the Louisiana "Little Norris-LaGuardia Act" of 1934.¹ The Supreme Court granted writs to review the trial judge's ruling. *Held*, exceptions overruled. A statute such as Act 203 of 1934 which limits the jurisdiction of courts in granting immediate injunctive relief when necessary for the protection of rights and property is "illegal and ineffective."² *Douglas Public Service Corp. v. Gaspard*, 74 So.2d 182 (La. 1954).³

1. LA. R.S. 23:841-849 (1950). In the declaration of public policy contained in Section 843 the reasons for limiting the issuance of injunctions in cases arising out of labor disputes are clearly stated: "Legal procedure that permits a complaining party to obtain sweeping injunctive relief that is not preceded by or conditioned upon notice to and hearing of the responding party or parties . . . is peculiarly subject to abuse in labor litigation. . . ."

Two of the most important provisions are Sections 841 and 844. Section 841 prohibits the issuance of any restraining order or temporary or permanent injunction to prohibit such things as becoming or remaining a member of a labor union or peaceful picketing, *etc.* Section 844 prohibits the issuance of temporary or permanent injunctions in labor disputes except after hearing testimony of witnesses in open court, with opportunity for cross-examination, *etc.*, and except after such findings of fact to the effect that unlawful acts have been threatened or committed, and that "substantial and irreparable injury to complainant's property will follow unless the relief requested is granted," *etc.* In no instance will a temporary restraining order be granted unless at least 48 hours' notice is given.

2. The court did not, in so many words, declare any portion of the act unconstitutional. In fact, the opinion does not make it clear whether or not the constitutional issue was raised at all, by either party to the suit.

3. For a discussion of the due process aspect and other ramifications involved in the case, see *The Work of the Louisiana Supreme Court for the 1953-1954 Term—Constitutional Law*, 15 LOUISIANA REVIEW 321 (1955).

Article VII, Section 2, of the Louisiana Constitution of 1921 gives the courts the power to issue all needful writs, orders, and processes in aid of their respective jurisdictions. However, the legislature has many times in the past formulated procedure to be used by the courts in the granting of various needful writs. For instance, before "The Injunction Act" of 1924,⁴ injunctions *pendente lite* could be issued *ex parte*⁵ and those injunctions were seldom dissolved until the case was tried on the merits. The Injunction Act replaced that procedure with explicit and detailed rules governing the granting of injunctions. It stated in part that no injunction shall be issued without notice to the opposing party⁶ and that a defendant must be given at least two days in which to show cause why a preliminary writ of injunction should not issue.⁷ Many other impediments to the obtaining of injunctive relief have been enacted by the legislature,⁸ and none have been questioned as to their validity. Some of these statutes have provided absolute prohibitions.⁹ For example, R.S. 47:1993 provides that no injunction shall be issued by any court to prevent any assessor from depositing assessment rolls. Certainly, a writ of *feri facias* is a needful writ to the courts' jurisdiction, and all legislative exemptions to seizure under the writ of *feri facias* can be construed as limitations to the power of the courts to issue that writ.¹⁰ As Justice Hawthorne points out in his dissent in the instant case, "The Legislature has from time immemorial regulated writs which the courts may issue, such as writs of arrest, attachment, sequestration, and provisional seizure."¹¹

The Supreme Court in the instant case quoted and discussed with approval the court of appeal decision in *Twiggs v. Journeymen Barbers, Hairdresser, Cosmetologists and Proprietors International Union of America, Local 496 AFL*,¹² which stated: "The powers granted to the trial judge by the Constitution must take precedence over any provisions of any sort of legislation which

4. La. Acts 1924, No. 29, p. 39; LA. R.S. 13:4062-4071 (1950).

5. Art. 304, LA. CODE OF PRACTICE of 1870; *American Nat. Bank v. Bauman*, 173 La. 336, 340, 137 So. 54, 55 (1931) ("Prior to the adoption of Act No. 29 of 1924, a rule nisi was not required in order to obtain a preliminary injunction, save in certain specified instances. . .").

6. LA. R.S. 13:4062 (1950).

7. LA. R.S. 13:4063 (1950).

8. LA. R.S. 17:2188, 26:106, 26:304, 30:13, 30:218, 38:1646, 39:834, 47:1993 (1950).

9. LA. R.S. 17:2188, 23:1635, 26:106, 26:304, 30:218, 39:834, 47:1993 (1950).

10. Arts. 644, 645, LA. CODE OF PRACTICE of 1870; LA. R.S. 20:33 (1950).

11. 74 So.2d 182, 189 (La. 1954).

12. 58 So.2d 298 (La. App. 1952) *cert. denied, ibid.*

runs counter thereto, whether such legislation pertains to capital, labor, or any other subject."¹³ The provision which the court of appeal held to be superseded by the Constitution is one of the absolute prohibitions contained in R.S. 23:841. Although all of those prohibitions are incorporated into R.S. 23:844(4),¹⁴ the remainder of that section consists of procedural requirements, the validity of which were not at issue in the *Twiggs* case. In the instant case the court confined the authority of the legislature to regulate the issuance of injunctions even further by invalidating the procedural requirements of R.S. 23:844 because they prevented the granting of "immediate" relief.¹⁵ There were no absolute prohibitions involved.

If the decision declaring the procedural provisions of R.S. 23:844 "illegal and ineffective" is not limited to the particular facts of the case, grave doubt will be cast upon all legislative limitations on the issuance of the various writs. Especially vulnerable to attack would be the many absolute prohibitions which the legislature has imposed.¹⁶ Surely the Supreme Court did not intend to cast such doubt upon the validity of these statutes. Because the Constitution itself contains no detailed procedural rules governing the issuance of writs by the courts, it would be unfortunate if the legislature were unnecessarily limited in its power to enact needed rules of procedure in this field. Therefore, it is hoped that the rule laid down in the instant case will be confined to the particular facts there involved.

Billy H. Hines

TORTS—PERSONAL INJURY OR WRONGFUL DEATH SUITS BY CHILD OR ADMINISTRATOR AGAINST PARENT

A minor driving the family automobile negligently caused the death of his minor sister. The administrator of the deceased's estate sued the father of the minors to recover damages for wrongful death. *Held*, suit dismissed. The Kentucky wrongful

13. *Id.* at 302, quoted with approval in *Douglas Public Service Corp. v. Gaspard*, 74 So.2d 182, 186 (La. 1954).

14. Before issuing an injunction the court must find as a fact that none of the relief to be granted is prohibited by LA. R.S. 23:841 (1950).

15. The court stated in *dictum* that "procedural statutes will be upheld in our courts so long as they do not violate our basic law." 74 So.2d 182, 187 (La. 1954). It is difficult to see how this statutory regulation violates "basic law" any more than do the numerous other statutes referred to above.

16. See note 9 *supra*.