

Injunctions--Federal Anti-Injunction Statute--Private Party Held "Expressly Authorized" by Securities Exchange Act to Seek Stay of State Court Proceedings (Studebaker v. Gittlin, 360 F.2d 692 (2d Cir. 1966))

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circulation potential of a sensational trial to the interests of responsibility and fundamental fairness. To many commentators on the problem, this fact has been the basis upon which to call for positive restrictions upon the press. This call for action seems, however, to be both futile, in constitutional terms, and unnecessary in practical terms. Where the press is unwilling to exercise such self-restraint, the trial court is inherently able to take steps calculated to neutralize the effects of such press activity. As the Court pointed out in *Sheppard*, criticism is too often mistakenly directed at the lack of remedies available to the trial court, and all too rarely at the real problem, *i.e.*, the failure of courts to insist upon their effective use whenever necessary to preserve an accused's right to a fair trial. Where their protection is effectively employed, the problem of a non-conforming member of the news media can be effectively solved.



INJUNCTIONS — FEDERAL ANTI-INJUNCTION STATUTE — PRIVATE PARTY HELD "EXPRESSLY AUTHORIZED" BY SECURITIES EXCHANGE ACT TO SEEK STAY OF STATE COURT PROCEEDINGS. — In an action brought by a corporation, a federal court enjoined defendant-shareholder from utilizing stockholders' authorizations which he had solicited and obtained in violation of the Securities and Exchange Commission proxy regulations. Defendant was attempting to make use of these authorizations in a New York State court proceeding in which he sought to secure inspection of the corporation's shareholder list. On appeal, defendant contended, *inter alia*, that the injunction was issued in violation of the federal anti-injunction statute. The Court of Appeals for the Second Circuit, in affirming the district court, *held*, that in view of the Securities Exchange Act provisions authorizing the Commission to bring suit to restrain violations of its regulations, injunctive relief sought by a private party for the same purpose was within the "expressly authorized" exception of the anti-injunction statute. *Studebaker v. Gitlin*, 360 F.2d 692 (2d Cir. 1966).

With the exception of the general limitations placed on the federal judicial power by Article III, the federal constitution does not prohibit the federal courts from enjoining actions in state courts. In 1789, the Judiciary Act granted the federal courts a general power to issue all writs.¹ Shortly thereafter, however, Congress limited this power by providing that a writ of injunction shall not be granted "to stay proceedings in any court of a state" ² Although the legislative history of this act is somewhat

¹ 28 U.S.C. § 1651 (1964).

² Act of March 2, 1793, ch. 22, § 5, 1 Stat. 333.

obscure,³ there has been no uncertainty as to the import of its words.⁴

Despite the clear mandate of the act, exceptions threatened to erode the effect of its proscription. In addition to several recognized legislative exceptions to the act,⁵ the cases carved out exceptions where both a federal and a state court attempted to litigate the rights in a *res* already in the custody of the federal court;⁶ where the enforcement of fraudulently obtained state court judgments was sought;⁷ and, where the state courts were being used in an attempted relitigation of a federal action.⁸

In 1941, however, the Supreme Court in *Toucey v. New York Life Ins. Co.*,⁹ reversed the trend of judicially created exceptions to the anti-injunction statute. Although the issue presented in *Toucey* was limited to whether a federal court had the power to stay proceedings in a state court when the matter had already been adjudicated in a federal court, the Court took the opportunity to comment extensively on the scope of the anti-injunction statute.¹⁰ It noted and seemed to accept the prevailing view that several statutes passed by Congress subsequent to the anti-injunction statute had amended it by implication¹¹ (despite the fact that not all of these statutes expressly authorized the enjoining of state court actions by federal courts).¹² It was also made clear in *Toucey* that the anti-injunction statute does not preclude the use of the injunction to restrain state proceedings seeking to interfere with property in the custody of the federal court. The Court then stated that it chose not to discuss the other previous case-law exceptions to the act, but implied that their value as precedent was questionable. Finally, the Court reached the primary issue and held that the federal courts may not enjoin a state proceeding even to prevent relitigation of issues which had been previously determined in a federal court.

³ See Barrett, *Federal Injunctions Against Proceedings in State Courts*, 35 CALIF. L. REV. 545 (1947); Durfee & Sloss, *Federal Injunctions Against Proceedings In State Courts: The Life History Of A Statute*, 30 MICH. L. REV. 1145 (1932); Warren, *Federal and State Court Interference*, 43 HARV. L. REV. 345, 348 (1930).

⁴ *Toucey v. New York Life Ins. Co.*, 314 U.S. 118, 132 (1941).

⁵ *E.g.*, Interpleader Act of 1926, 28 U.S.C. § 2361 (1964); Bankruptcy Act of 1898, 66 Stat. 422 (1952), 11 U.S.C. § 29 (1964).

⁶ *Julian v. Central Trust Co.*, 193 U.S. 93 (1904).

⁷ *Simon v. Southern Ry.*, 236 U.S. 115 (1915).

⁸ *Supreme Tribe of Ben-Hur v. Cauble*, 255 U.S. 356 (1921); *Looney v. Eastern Tex. R.R.*, 247 U.S. 214 (1918).

⁹ *Supra* note 4.

¹⁰ *Id.* at 126.

¹¹ *Id.* at 132-34.

¹² See Note, *Incompatibility—The Touchstone Of Section 2283's Express Authorization Exception*, 50 VA. L. REV. 1404, 1408-10 (1964).

Three years after its decision in *Toucey*, the Supreme Court, in *Bowles v. Willingham*,¹³ was called upon to review the issue of whether an injunction sought under the Emergency Price Control Act of 1942¹⁴ was an exception to the anti-injunction mandate. In *Bowles*, a landlord had obtained a temporary injunction from a state court restraining the issuance of certain rent orders by the Office of Price Administration. Thereafter, the Administrator, pursuant to section 205(a), brought suit in a federal district court seeking to enjoin further prosecution of the state court proceeding. Section 205(a) gave the Administrator the general authority to seek injunctions but it made no mention of the enjoining of state court proceedings. The Supreme Court reversed the district court's refusal to issue the injunction and held that the Emergency Price Control Act was an implied legislative amendment to the anti-injunction statute. In what appeared to be an alternate holding, the Court stated that since Congress preempted jurisdiction in favor of the Emergency Court of Appeals, to the exclusion of state courts, the rule expressed in the anti-injunction statute was not applicable. Two years later, the Court attempted to eradicate some of the uncertainty engendered by this alternate holding. In *Porter v. Dicken*,¹⁵ involving a similar factual situation, the Court explicitly stated that a provision for an application for an injunction by the Price Administrator was an implied legislative exception to the broad prohibition of the anti-injunction statute, thereby eliminating the need for the "alternate" holding of *Bowles*.¹⁶

In 1948 Congress chose to re-enter the area of federal-state interference by enacting Section 2283 of the United States Code, the present "stay of state court proceedings" statute. Congress provided that:

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*.¹⁷

¹³ 321 U.S. 503 (1944).

¹⁴ Emergency Price Control Act, ch. 26, 56 Stat. 23 (1942).

¹⁵ 328 U.S. 252 (1946).

¹⁶ The Court stated that the alternate holding of *Bowles* was unnecessary to support its decision. *Supra* note 15, at 255 n.1.

¹⁷ 28 U.S.C. § 2283 (1964). (Emphasis added.) The statute of 1793 was re-enacted in the Revised Code of 1875, Rev. Stat. § 720 (1875), and at that time an exception was added pertaining to bankruptcy proceedings. It was again enacted in 1911, Act of March 3, 1911, ch. 231, § 265, 28 U.S.C. § 379 (1940).

The last of the three exceptions has created the least difficulty in application.¹⁸ The legislative intent was generally understood to restore the law as it appeared before the *Toucey* decision, *i.e.*, a state court will be subject to a federal court injunction when it entertains an action or proceeding concerning issues between the parties which have been previously litigated in a federal court.¹⁹ In contrast to the above exception, the "expressly authorized" and "in aid of its jurisdiction" exceptions to section 2283 have caused enormous difficulties, both in interpretation and application. The two most noteworthy cases which the Supreme Court has decided in this area since the enactment of the present anti-injunction statute are *Capital Serv. Inc. v. NLRB*²⁰ and *Amalgamated Clothing Workers of America v. Richman Bros. Co.*²¹

In *Capital Service*, a manufacturer obtained a state court injunction against a union which was picketing stores which sold his product and, at the same time, filed a complaint with the NLRB. The Board issued an unfair labor practice complaint based on the union's conduct and obtained two injunctions in a federal district court. The first enjoined any picketing by the union pending final adjudication by the Board, and the other enjoined *Capital Service* from enforcing the state court order. The Supreme Court, in affirming the validity of the issuance of both injunctions, held that the latter injunction lay within the "where necessary in aid of its jurisdiction" exception to the anti-injunction statute. The Court stated that where a federal court has already assumed jurisdiction and

where Congress, acting within its constitutional authority, has vested a federal agency with exclusive jurisdiction over a subject matter and the intrusion of a state would result in conflict of functions, the federal court may enjoin the state proceeding in order to preserve the federal right.²²

This case is to be contrasted with the ruling of the Supreme Court in *Richman*, where the injunction was sought not by the NLRB, but by a private party. An employer, without filing a complaint with the NLRB, sought a state court injunction alleging common-law conspiracy and restraint of trade. Thereafter, the union

¹⁸ *Jacksonville Blow Pipe Co. v. Reconstruction Fin. Corp.*, 244 F.2d 394 (5th Cir. 1957); *Berman v. Denver Tramway Corp.*, 197 F.2d 946 (10th Cir. 1952); *Jackson v. Carter Oil Co.*, 179 F.2d 524 (10th Cir.), *cert. denied*, 340 U.S. 812 (1950). *But see* *Southern Cal. Petroleum Corp. v. Harper*, 273 F.2d 715 (5th Cir. 1960).

¹⁹ H.R. Rep. No. 308, at A 181-82. See MOORE, COMMENTARY ON THE JUDICIAL CODE ¶0.03 (49), at 410-11 (1949).

²⁰ 347 U.S. 501 (1954).

²¹ 348 U.S. 511 (1955).

²² *Supra* note 20, at 504.

sought a federal district court injunction to discontinue the state court proceedings, asserting that the matter was within the exclusive jurisdiction of the NLRB. The Supreme Court held that a private party's allegation of federal pre-emption will not be sufficient to overcome the proscription of the anti-injunction statute. The Court stated that while the Taft-Hartley Act authorizes the NLRB to apply to a district court for injunctive relief in certain cases, it does not "expressly authorize" private parties to do so. In considering the "in aid of its jurisdiction" exception, which had formed the basis for the holding in *Capital Service*, the Court reasoned that since the district court had no jurisdiction until it was invoked by the NLRB, "such nonexistent jurisdiction therefore cannot be aided."²³ Thus, the state court action was allowed to proceed undeterred by federal court intervention and the mandate of the anti-injunction statute was followed.

In the instant case,²⁴ defendant brought suit in a state court to secure a copy of the corporation's stockholder list. Under New York law, in order to obtain such a list from a foreign corporation, a shareholder must receive written authorizations representing at least five per cent of the outstanding stock.²⁵ The defendant had acquired a sufficient number of authorizations, but in so doing he violated the SEC proxy rules regarding the pre-filing²⁶ of these solicitations and their informational content.²⁷ On the basis of these violations, the plaintiff-corporation obtained an injunction in a federal district court preventing defendant from making use of the authorizations in the state court proceeding. On appeal, defendant contended, *inter alia*, that the injunction was issued in violation of the anti-injunction prohibition of section 2283.

In a carefully reasoned opinion, the Court held that the injunction, when issued, did not violate section 2283 and that defendant would not be allowed to make use of the written authorizations until such time as he complied with the SEC regulations.²⁸ The Court first noted the Supreme Court's recent decision in *J. I. Case Co. v. Borak*,²⁹ which held that a stockholder may assert

²³ *Supra* note 20, at 519.

²⁴ *Studebaker v. Gittlin*, 360 F.2d 692 (2d Cir. 1966).

²⁵ N.Y. Bus. Corp. Law § 1315.

²⁶ 17 C.F.R. § 240.14a-6 (1964).

²⁷ 17 C.F.R. § 240.14a-3 (1964).

²⁸ The state court in *Gittlin v. Studebaker Corp.*, 49 Misc. 2d 964, 268 N.Y.S.2d 897 (Sup. Ct. 1966), decided subsequent to the district court's determination, held that despite the injunction, the plaintiff had a common-law right to inspect the corporation's books without the authorizations. The appellate division later reversed, holding that due to the federal court's injunction the plaintiff could not solicit proxies and, hence, there was no need for the plaintiff to see the stockholders list. *Gittlin v. Studebaker Corp.*, 25 App. Div. 2d 822, 269 N.Y.S.2d 143 (1st Dep't 1966).

²⁹ 377 U.S. 426 (1964).

a derivative claim on behalf of the corporation based on a transaction proposed in an allegedly misleading proxy statement. The Court in the instant case resolved that since a stockholder could assert a derivative claim, then logically a corporation could bring such a suit in its own behalf. The Court ruled that the authorizations obtained were within the ambit of the proxy regulations, since any letter which is part of "a continuous plan" intended to culminate in proxy control, such as was the admitted intention of the stockholder, directly involves the Commission rules.

After ascertaining that the shareholder violated the proxy regulations and that plaintiff-corporation had standing to bring suit, the Court reached the issue of the applicability of the anti-injunction statute. In the main, it relied heavily upon *Bowles v. Willingham*³⁰ and *Amalgamated Clothing Workers of America v. Richman Bros. Co.*³¹ The Court favorably compared the congressional policies underlying the injunctive provisions of the Securities Exchange Act,³² and the Emergency Price Control Act of 1942, the statute which formed the basis for the decision in *Bowles*. Both sections provide for the general power to seek injunctions to prevent violations of the statute and the regulations promulgated thereunder. *Richman* was cited as implying that orders sought by the NLRB to restrain state court proceedings would fall within the "expressly authorized" exception to the anti-injunction statute. Presumably, the Court accepted the view that the combination of exclusive federal jurisdiction, such as that of the NLRB, and the broad power to seek injunctive relief was sufficient to overcome the proscription of the statute.

On the basis of these Supreme Court decisions, the Court in the instant case reasoned that if the SEC had attempted to enjoin the use of the authorizations in the state court proceeding, the injunction would have been readily issued.³³ Relying on the

³⁰ *Supra* note 13.

³¹ *Supra* note 21.

³² Compare materials at footnotes 13 and 14 *supra*, with the provisions of the Securities Exchange Act. Section 21(e) of the act permits the Securities and Exchange Commission to bring an action in any district court of the United States to enjoin violations of the act. 63 Stat. 107 (1949), 15 U.S.C. § 78u(e) (1964). "The SEC has, on its own, no statutory power to compel the correction or prevent the use of materials violating the proxy rules." Note, 31 U. CHI. L. REV. 328, 334 (1964). Section 14(a) provides for the regulation of proxy solicitation. 48 Stat. 895 (1934), 15 U.S.C. § 78(n) (1964). If informal methods fail to secure compliance, the SEC must look to the courts to enjoin the practices that violate the act. It is clear that at the behest of the SEC, in a proper case, the courts will enjoin the solicitation of proxies. See, *e.g.*, *SEC v. May*, 229 F.2d 123 (2d Cir. 1956); *SEC v. Transamerica Corp.*, 163 F.2d 511 (3d Cir. 1947); *SEC v. O'Hara Re-election Comm.*, 28 F. Supp. 523 (D. Mass. 1939).

³³ *Supra* note 24, at 697-98.

rationale of the *Borak* case, the Court concluded that, if a private party may bring suit on the basis of the SEC proxy rules, and the SEC would not have been prevented from obtaining injunctive relief, a private party could seek a similar remedy.

If the policy of the anti-injunction statute is superseded by the need for immediate and effective enforcement of federal securities regulations and statutes, the fact that enforcement here is by a private party rather than the agency should not be controlling.³⁴

The Court ruled that the facts presented were sufficient to bring the injunction within the scope of the "expressly authorized" exception to the statute. However, there are several factors in the case which seemingly cast doubt on the validity of this determination. The decision is based on the assumption that had the SEC brought the suit, rather than a private party, the Court would have been compelled under the cases construing the "expressly authorized" exception to grant injunctive relief. This reasoning is primarily premised on an inference made by the Supreme Court in *Richman* that the combination of *exclusive federal* jurisdiction and the general power to seek injunctive relief might have been sufficient to constitute an "expressly authorized" exception to the statute. Assuming, *arguendo*, that the inference drawn is correct, the question remains whether or not the subject matter of the instant case involved an area of exclusive federal jurisdiction. The answer would appear to be in the negative.

Under the Business Corporation Law of New York, Section 1315, a shareholder must obtain authorizations representing at least five per cent of the outstanding stock in order to secure a stockholder list. Clearly, if New York wished to do so, it could reduce this number to four per cent, three per cent or even zero per cent; this is entirely the prerogative of the state and it may exercise it at any time.³⁵ While it is true that in requesting the prerequisite authorizations from the other shareholders, there was an incidental violation of SEC rules, the fact persists that the main thrust of the state court proceeding was the demand for a stockholders list. The granting of access to such a list is not an area of exclusive federal jurisdiction; rather, it is a right founded in the common law of many states and only peripherally affected by their various statutes.³⁶ Therefore, the inference which has been drawn from

³⁴ *Supra* note 24, at 698.

³⁵ See, e.g., CAL. CORP. CODE § 3003; MISS. CODE ANN. § 1104 (1942).

³⁶ *Supra* note 28. In regard to the confrontations between the various state requirements and the Commission Rules, see *Alabama Gas Corp. v. Morrow*, 265 Ala. 604, 93 So. 2d 515 (1957). The court there stated: "It is our view that the provisions . . . which [make] it unlawful to solicit proxies in contravention of the rules and regulations of the Securities

Richman, and so heavily relied on by the Court in *Gittlin* for its conclusion that the SEC could have successfully maintained a request for injunctive relief, appears to be inapplicable since the subject matter did not involve an area of exclusive federal jurisdiction.

In addition, the fact that a private party, and not the Commission, brought suit should have been considered controlling. It is true that the Supreme Court in *Borak* indicates that a private party, as a general rule, has the right to enforce the Securities Exchange Act and the regulations thereunder. However, *Borak* should not have been extended to the proposition that a private party should be able to effectively restrain state court proceedings involving a relatively minor infraction of the SEC regulations. After a complaint has been filed, the Commission has the responsibility, in its discretion, for deciding whether the relief requested by the complaining party should be pursued.³⁷ It would seem that even the most flagrant violation of the act might, in the discretion of the Commission, be allowed to continue where it was not in effect causing any substantial harm or was not at variance with the national interest. Indeed, the failure of the Commission to act after due deliberation has been construed by the courts in several instances to mean that the infraction was not of sufficient import to warrant the relief requested.³⁸ Since a proxy fight generally involves a bitter contest between groups who have substantial financial interests at stake,³⁹ perhaps the best solution would be to allow only the SEC to seek injunctive relief when it becomes necessary in the opinion of its staff of experts.

The usual procedure under the Securities Exchange Commission rules is for the party seeking relief to lodge a complaint with the Commission. Hearings are held wherein the Commission

and Exchange Commission . . . should not be construed as depriving a stockholder of rights [under the Alabama statute] which . . . [statute] does not in any way relate to the manner of soliciting proxies. We do not consider it to be a defense to the instant proceeding, which merely seeks to obtain the names of stockholders, that the proxies and accompanying material which may be hereafter sent out to stockholders may have to comply with the rules and regulations of the Securities and Exchange Commission." *Alabama Gas Corp. v. Morrow*, *supra* at 607, 93 So. 2d at 518.

³⁷ *Pierce v. SEC*, 239 F.2d 160, 163 (9th Cir. 1956). "The Commission is given the duty to protect the public. What will protect the public must involve, of necessity, an exercise of discretionary determination. This Court ordinarily should not substitute its judgment of what would be appropriate under the circumstances in place of the Commission's judgment as to measures necessary to protect the public interest."

³⁸ *Kauder v. United Bd. & Carbon Corp.*, 199 F. Supp. 420, 423-44 (S.D.N.Y. 1961).

³⁹ *Mack v. Mishkin*, 172 F. Supp. 885, 886 (S.D.N.Y. 1959).

investigates the charges made. Then the Commission, in its discretion, may bring suit in the district court for injunctive relief. Presumably, private parties who do not wish to wait for the SEC to act, can now, under this decision, go directly to a district court to obtain injunctive relief against a state court proceeding. It can be argued that this is the better result. Mere staff deficiencies in the investigative processes may cause the Commission to delay in instituting action on its own where injunctive relief is needed. Also, the Commission may be hesitant to seek an injunction against a state court proceeding. Advocates of allowing private litigants to seek injunctive relief against state court proceedings directly in the federal courts, point out that permitting such actions will supplement the enforcement efforts of the SEC. This theory rests on the ground that "an individual claiming a violation on the part of an adversary in a proxy contest who could not convince the SEC to bring an action would have no redress if the private action were disallowed."⁴⁰ If recognition of a private action under Section 14(a) of the Securities Exchange Act rests on a conception of the private party helping the SEC to enforce the act, then the remedies afforded the private party should be the same as those available to the SEC.

Nevertheless, the SEC's expertise should be controlling in a situation such as that in the instant case where the alleged violation pertained only to the pre-filing and informational content requirements. The pre-filing requirements are in essence a mere formality. Because of the large number of such applications received each year by the Commission, they are generally subjected to only a superficial examination.⁴¹ In cases such as this, where there is a simple request for a written authorization to examine the shareholders list, there appears to be insufficient reason to adhere to the strict formality of informational content found in a proxy request. Perhaps where a more substantial question is involved where the Commission's inaction would be tantamount to an abuse of discretion, an injunction sought in the federal district courts might be justifiable, but not on facts such as these.

The Court also relied on *Bowles*, but this decision appears distinguishable from the instant case. In *Bowles*, the federal agency sought the injunction in order to protect a government policy of great national interest and importance, *i.e.*, the enforcement of price restraints during a period of crisis. In the instant case, no national interest was involved and a private party sought the injunction. In addition, it was recognized in the instant case

⁴⁰ Note, 31 U. CHL. L. REV. 328, 337 (1964).

⁴¹ See Armstrong, *The Role of the Securities and Exchange Commission in Proxy Contests of Listed Companies*, 11 BUS. LAW. 110, 122 (1955).

that the proscription of the anti-injunction statute is at its strongest where only the interests of private parties are involved.⁴²

The Court in the instant case, finding that the litigation came within the "expressly authorized" exception to section 2283, never reached the question whether the case might fall within the "in aid of its jurisdiction" exception. It appears that it would not, since in regard to this exception, it has been the long recognized legislative intent "to make clear the recognized power of the Federal courts to stay proceedings in State cases removed to the district courts."⁴³

However, the related problem in the instant case is whether a federal court may grant an injunction, not in aid of its own jurisdiction, but rather in aid of the jurisdiction of a federal agency. The "in aid of its jurisdiction" exception is one that has been narrowly construed⁴⁴ and, if applied in the instant case, would provide an unjustifiable extension. Although in *Capital Service* the Court supported the injunction in aid of its jurisdiction, the facts are distinguishable from the instant case. In *Capital Service*, the Court granted one injunction restraining the union's picketing and another enjoining the petitioner from enforcing the state court injunction. The injunction was necessitated by the fact that an apparent conflict would exist between two outstanding injunctions. If the federal court was to have unfettered power to issue appropriate relief it had to be freed of all restraints by the other tribunal, but in the instant case there was no apparent conflict between the federal and state courts. The Court's issuance of an injunction would not aid the jurisdiction of the SEC or of the federal court. The Court has not assumed jurisdiction over the primary issues litigated in the state court but merely asserts that certain authorizations, incidental to a state action to obtain the corporation's shareholder list, were procured illegally.

The third exception to the applicability of the anti-injunction statute, viz., the provision made for the protection of federal judgments, is also inappropriate, since it is considered applicable only when there is a prior federal judgment.

The passage of the anti-injunction statute was clearly meant to be a reiteration of the prior statute plus a codification of judicial precedent prior to *Toucey*. If a case does not come within one of the statutory exceptions, it seems that a federal court may not issue an injunction which will interfere with a state court proceeding. Since the instant case does not appear to come within any of the statutory exceptions, it is, in effect, a judicially added exception in violation of the restrictive policy of Congress.

⁴² *Supra* note 24, at 697.

⁴³ *Supra* note 19.

⁴⁴ *T. Smith & Son, Inc. v. Williams*, 275 F.2d 397, 407 (5th Cir. 1960).

Proceedings deemed to be exclusively within the ambit of state jurisdiction should not be interfered with by a federal injunction premised solely on grounds not germane to the issues litigated. Instead, parties should be encouraged to exhaust state remedies before availing themselves of the aid of a federal court. This decision, if generally followed, would tend only to promote federal-state clashes rather than implement the explicit policy of the anti-injunction statute which is to avoid such conflict.



TAXATION — ESTATE TAXES — WHERE GRANTOR HAS POWER TO ACCUMULATE TRUST INCOME SUCH INCOME IS TAXABLE TO HIS ESTATE. — The grantor of a trust, as cotrustee, had the power to distribute or accumulate trust income. The executors brought a refund action after the Commissioner of Internal Revenue included in grantor-decedent's gross estate both the original trust corpus and the accumulated income arising from the principal. In reversing the decision of the Court of Appeals for the Seventh Circuit, the United States Supreme Court *held* that income accumulated pursuant to the exercise of the grantor's power, in addition to the original transfer of trust property, constituted a taxable transfer within the meaning of the Internal Revenue Code. *United States v. O'Malley*, 383 U.S. 627 (1966).

Under the Internal Revenue Code of 1954¹ and its predecessor,² a decedent's gross estate for estate tax purposes includes the value of all property of which a *transfer*³ by trust or otherwise has been made under any of the following circumstances: (1) the transfer is in contemplation of death;⁴ (2) the transfer is subject to certain retained⁵ life interests;⁶ (3) the transfer is intended to take effect in possession or enjoyment at or after the grantor's

¹ INT. REV. CODE OF 1954, §§ 2035(a), 2036(a), 2037(a), 2038(a)(1), (2).

² Int. Rev. Code of 1939, §§ 811(c)(1), 811(d)(1).

³ Such a transfer does not include "a bona fide sale for an adequate and full consideration in money or money's worth." INT. REV. CODE OF 1954, §§ 2035(a), 2036(a), 2037(a), 2038(a)(1), (2).

⁴ It should be noted that a gift in contemplation of death, for Code purposes, is not necessarily one arising from "a reasonable fear that death is *near at hand*. . . . It is sufficient if contemplation of death be the inducing cause of the transfer whether or not death is believed to be near." *United States v. Wells*, 283 U.S. 102, 109 (1930).

⁵ The retained power must be for the transferor's life "or for any period not ascertainable without reference to his death or for any period which does not in fact end before his death." INT. REV. CODE OF 1954, § 2036(a).

⁶ The interests retained are either

(1) The possession or enjoyment of, or the right to the income from, the property, or