

December 1947

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Recommended Citation

Donald P. Barrett, *Federal Injunctions against Proceedings in State Courts*, 35 CAL. L. REV. 545 (1947).

Available at: <http://scholarship.law.berkeley.edu/californialawreview/vol35/iss4/3>

Link to publisher version (DOI)

<http://dx.doi.org/https://doi.org/10.15779/Z38R790>

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California Law Review

Published Quarterly throughout the Year by Students of the
School of Jurisprudence of the University of California, Berkeley,
California. Indexed in Index to Legal Periodicals, Public Affairs
Information Service and in Current Legal Thought.

Subscription Price, \$4.00

Current Single Copies, \$1.25

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Comment

FEDERAL INJUNCTIONS AGAINST PROCEEDINGS IN STATE COURTS

Section 265 of the Judicial Code of the United States reads as follows:

The writ of injunction shall not be granted by any court of the United States to stay proceedings in any court of a State, except in cases where such injunction may be authorized by any law relating to proceedings in bankruptcy.¹

While the original purpose of this statute is open to much doubt, it is now considered that its function is primarily to prevent unseemly conflict between the state and federal courts.² Its true scope, however,

¹ 36 STAT. (1911) 1162, 28 U. S. C. (1940) § 379. This statute was originally enacted in 1793 without the bankruptcy exception, 1 STAT. (1793) 334. The bankruptcy exception was added by the revisers in 1874 (REV. STATS. (1874) § 720) and was based on the Bankruptcy Act of 1867, 14 STAT. (1867) 526. For discussions of the none-too-helpful legislative history of the original act, see *Toucey v. N. Y. Life Ins. Co.* (1941) 314 U. S. 118, 130; Taylor and Willis, *The Power of Federal Courts to Enjoin Proceedings in State Courts* (1933) 42 YALE L. J. 1169, 1170; Warren, *Federal and State Court Interference* (1930) 43 HARV. L. REV. 345, 347.

² *Hale v. Bimco Trading Co.* (1939) 306 U. S. 375; *Toucey v. N. Y. Life Ins. Co.*, *supra* note 1.

has been the subject of much litigation. Certain exceptions to its apparently clear mandate have been carved out by judicial construction. Others have been found in later-enacted legislation. It is the purpose of this note, first, to sketch out the judge-made exceptions, second, to indicate what trends are to be found in the recent cases, third, to discuss the statutory exceptions, and finally, to examine the possible effect of legislation currently being considered by Congress.

I. JUDGE-MADE EXCEPTIONS

The pre-1941 exceptions to section 265 may be categorized as follows: (1) the res exception which allowed injunctions against state court proceedings which sought to deal with a res under the jurisdiction of the federal court; (2) the relitigation exception which allowed injunctions against state suits which sought to unsettle rights that had been previously adjudicated in federal courts; (3) the ancillary exception which allowed a federal court to issue an injunction whenever its use could be considered ancillary to other relief being sought; (4) the void or fraudulent judgment exception which allowed a federal court to enjoin the enforcement of a void judgment, or one obtained by fraud; (5) the constitutional exception which allowed injunctions against the enforcement of unconstitutional state statutes; and (6) the possible exception applying to cases where the United States was a party-plaintiff. Of these six only the first four seem to have been affected by recent Supreme Court decisions. The impact of these cases will be discussed in Part II, *infra*.

Before considering these various exceptions in detail it is desirable to outline the present-day limits of the statute as it is applied to all cases. It is now settled that section 265 does not go to the jurisdiction of the federal courts, but instead relates purely to the equity of the particular bill.³ Thus, a district court has the power to decide on the merits whether a case is stated that falls within an exception to the statute. It is also clear that the prohibition applies not only to injunctions against state courts or their officers, but in addition to those directed solely at litigants enjoining them from further prosecution of their suits in state tribunals.⁴ Recent cases have also made clear that

³ *Smith v. Apple* (1924) 264 U.S. 274; *Woodmen of the World v. O'Neill* (1924) 266 U.S. 292. But see *Ex parte Schwab* (1878) 98 U.S. 240, 242.

⁴ *Oklahoma Packing Co. v. Gas Co.* (1940) 309 U.S. 4. If section 265 only prohibited injunctions running to the courts themselves it would have very little application, since courts do not ordinarily act on their own initiative. That the rule is contrary is implicit in nearly every case where section 265 has been successfully invoked. Unfortunately, however, in many cases where injunctions have been allowed despite section 265, this factor has been mentioned as though it had some bearing. Most of these cases involved the enjoining of the enforcement of void judgments or those obtained by fraud. *E.g.*, *Marshall v. Holmes* (1891) 141 U.S. 589; *McDaniel v. Traylor* (1905) 196 U.S. 415; *Simon v. Southern Railway* (1915) 236 U.S. 115; *Wells Fargo & Co. v. Taylor*

the statutory bar extends to the enjoining of steps taken to enforce a final judgment of a state court, *i.e.*, the word "proceedings" includes any action taken by a state court to enforce its judgment.⁵ There remains some doubt, however, as to whether the institution of suits in state courts may be enjoined.⁶

A. *The Res Exception*

It was early held that when a court of one jurisdiction took custody of specific property it withdrew that property from the reach of a court of another jurisdiction.⁷ From this rule it was but a short step to one which allowed the court first acquiring jurisdiction of the res to enjoin parties from disturbing its control by seeking the aid of process of other courts. Such injunctions were allowed by the federal courts despite section 265.⁸

Suits in state courts against federal receivers were usually considered to be within the res exception since it was felt that satisfaction of a state judgment would necessarily interfere with property under the jurisdiction of the federal court.⁹ However, some of the more recent cases have drawn a line between suits the object of which was considered to be direct interference with the res, and those that sought only to litigate the extent and validity of plaintiff's claim against the person whose property was being administered by the court.¹⁰

Many of the early cases discussing conflicting jurisdiction between state and federal courts contain broad statements to the effect

(1920) 254 U.S. 175. *Essanay Film Co. v. Kane* (1922) 258 U.S. 358, however, indicated that the true basis of these earlier cases was the fact that the state proceedings had gone to judgment before the injunction was sought. But this is ordinarily not enough to escape the bar of section 265. See note 5, *infra*.

⁵ *Hill v. Martin* (1935) 296 U.S. 393; see *Toucey v. N. Y. Life Ins. Co.*, *supra* note 1, at 136.

⁶ At least section 265 does not prevent the enjoining of the institution of suits to enforce unconstitutional state statutes. *Ex parte Young* (1908) 209 U.S. 123; *Truax v. Raich* (1915) 239 U.S. 33.

⁷ *Hagan v. Lucas* (1836) 35 U.S. (10 Pet.) 399; *Taylor et al. v. Carryl* (1857) 61 U.S. (20 How.) 583; *Freeman v. Howe et al.* (1860) 65 U.S. (24 How.) 450; *Watson v. Jones* (1871) 80 U.S. (13 Wall.) 679; *Porter v. Sabin* (1893) 149 U.S. 473; *Palmer v. Texas* (1909) 212 U.S. 118; *Lion Bonding Co. v. Karatz* (1923) 262 U.S. 77.

If the two courts are exercising essentially concurrent jurisdiction the court in which the bill is first filed obtains priority over the res. *Farmers' Loan & Co. v. Lake St. Rd. Co.* (1900) 177 U.S. 51; *Penn Co. v. Pennsylvania* (1935) 294 U.S. 189. However, if the courts are not of concurrent jurisdiction or the actions seek essentially different relief then the time at which actual or constructive possession is obtained determines priority. *Moran v. Sturges* (1894) 154 U.S. 256; *Harkin v. Brundage* (1928) 276 U.S. 36.

⁸ *Texas & Pacific Railway Co. v. Cox* (1892) 145 U.S. 593; *Oklahoma v. Texas* (1924) 265 U.S. 490.

⁹ *Texas & Pacific Railway Co. v. Cox*; *Oklahoma v. Texas*, both *supra* note 8. Similarly a federal court may not interfere with a state court receiver. *Barton v. Barbour* (1881) 104 U.S. 126; *Porter v. Sabin*; *Lion Bonding Co. v. Karatz*, both *supra* note 7.

¹⁰ See cases cited in notes 56 and 57, *infra*. This point is discussed further in Part II, *infra*.

that as between courts of concurrent jurisdiction, the first to obtain jurisdiction of the *subject matter of the action* and the parties thereto may retain it to the exclusion of the other until the issues in litigation are settled.¹¹ This language was broad enough to justify injunctions when the subject matter was not a physical res and indeed was so interpreted in many cases.¹² In *Kline v. Burke Constr. Co.*,¹³ however, the Supreme Court indicated that such language was not to be taken as of general application. In that case plaintiff brought suit for breach of contract in a federal court. Jurisdiction was based on diversity of citizenship. Defendant brought suit against plaintiff and plaintiff's surety in a state court for breach of the same contract. The Court held that the federal court could not enjoin the suit in the state court in view of section 265 since the proceedings in the state court did not tend to impair or defeat the jurisdiction of the federal court.¹⁴ The Court contrasted this case to a suit in rem where the control of the res is drawn to the court, as one in which an attempt by another court to exercise jurisdiction would necessarily impair the jurisdiction of the first court and hence justify an injunction against the later proceedings.¹⁵ Thus the subject matter that may be protected by injunction within the res exception must be something more than merely an in personam cause of action.

B. The Relitigation Exception

Several cases have held that section 265 does not prohibit the issuance of an injunction on a supplemental bill in order to secure to the successful litigant the fruits of his victory or to protect titles decreed by the federal court. Thus a discharged bankrupt has been allowed an injunction against a plaintiff in a state suit seeking to establish a claim previously discharged by the bankruptcy court;¹⁶ a purchaser at a judicial sale has succeeded in enjoining a state suit attack-

¹¹ *E.g.*, see *Peck et al. v. Jenness et al.* (1849) 48 U. S. (7 How.) 611, 624; *Harkrader v. Wadley* (1898) 172 U. S. 148, 164; *cf.* *Watson v. Jones*, *supra* note 7, at 715.

¹² *French, Trustee v. Hay* (1874) 89 U. S. 250; *Prout v. Starr* (1903) 188 U. S. 537, *semble*; *Ex parte Young*, *supra* note 6; *Looney v. Eastern Texas R. R. Co.* (1913) 247 U. S. 214; *Sharon v. Terry* (C. C. N. D. Cal. 1888) 36 Fed. 337, *aff'd on other grounds*, (1889) 131 U. S. 40; *cf.* *Rickey Land & Cattle Co. v. Miller & Lux* (1910) 218 U. S. 258.

¹³ (1922) 260 U. S. 226.

¹⁴ That Rule 13 of the Federal Rules of Civil Procedure dealing with compulsory counterclaims does not affect the holding in the *Kline* case, see *Red Top Trucking Corp. v. Seaboard Freight Lines* (S. D. N. Y. 1940) 35 Fed. Supp. 740.

¹⁵ An additional argument was rejected, that where diversity of citizenship exists, plaintiff has a constitutional right to a trial in the federal court which cannot be defeated by a cross-suit in a state court under conditions where removal is impossible. Thus the party who secures the first judgment may plead it as *res judicata* in the suit in the other court.

¹⁶ *Local Loan Co. v. Hunt* (1934) 292 U. S. 234 (the bankruptcy exception was inapplicable). *Contra*: *Sargent v. Helton* (1885) 115 U. S. 348, *semble*.

ing his title;¹⁷ and a successful defendant in a federal suit has been granted injunctions against parties seeking to reassert the same claims that were litigated in the federal courts.¹⁸

C. The Ancillary Exception

Language in some of the res and relitigation cases indicated that section 265 was never applicable when an injunction was sought in addition to other relief which the court had jurisdiction to grant.¹⁹ This suggestion, together with the reasoning of the cases holding that section 265 goes only to the equity of the particular bill, was used by many lower federal courts to justify a broad extension of the exceptions to section 265. These courts felt that when the bill before them could be supported under some other head of equity jurisdiction than merely enjoining a law suit, section 265 would be no bar to granting complete relief to the parties. In this situation an injunction was considered a proper means of preventing the defeat or impairment of their jurisdiction by suits in state courts.

Thus several cases have held that where plaintiff sues for cancellation or reformation of a contract for fraud, and a proper case for this type of relief is made out, defendant may be enjoined from instituting or continuing suits on the contract in the state courts.²⁰ Similar results have been reached where the equity jurisdiction has been based on the prevention of a multiplicity of suits,²¹ although here it

¹⁷ Julian v. Central Trust Co. (1904) 193 U. S. 93; Riverdale Mills v. Manufacturing Co. (1905) 198 U. S. 138.

¹⁸ *Ibid.*; Supreme Tribe of Ben-Hur v. Cauble (1921) 255 U. S. 356; King v. Realty Mortgage Co. (C. C. A. 5th, 1939) 107 F. (2d) 90, *cert. den.*, (1940) 309 U. S. 673; see Root v. Woolworth (1893) 150 U. S. 401, 411. *Contra*: Dial v. Reynolds (1877) 96 U. S. 340. The present scope of this exception will be considered further in Part II, *infra*.

¹⁹ Thus in Gunter v. Atlantic Coast Line (1906) 200 U. S. 273, the Court held that section 265 does not bar the issuance of an injunction in an ancillary proceeding brought to enforce a decree rendered in a cause over which the court had jurisdiction. That case involved an unconstitutional tax. Similar statements may be found in cases involving receivership or foreclosure proceedings. See Julian v. Central Trust Co., *supra* note 17, at 112; Riverdale Mills v. Manufacturing Co., *supra* note 17, at 195; see also Local Loan Co. v. Hunt, *supra* note 16, at 239. Later cases have indicated, however, that the mere fact that the injunction is ancillary to some other relief is not governing. Toucey v. N. Y. Life Ins. Co., *supra* note 1; Southern Ry. Co. v. Painter (1941) 314 U. S. 155.

²⁰ Brown v. Pacific Mut. Life Ins. Co. (C. C. A. 4th, 1933) 62 F. (2d) 711; New York Life Ins. Co. v. Truesdale (C. C. A. 4th, 1935) 79 F. (2d) 481; Jamerson v. Alliance Ins. Co. of Philadelphia (C. C. A. 7th, 1937) 87 F. (2d) 253, *cert. den.*, (1937) 300 U. S. 683; New York Life Ins. Co. v. Davis (W. D. Pa. 1933) 5 Fed. Supp. 316; Metropolitan Life Ins. Co. v. Schneider (D. N. J. 1940) 34 Fed. Supp. 220; Mutual Ben. Health & Accident Ass'n v. Teal (E. D. S. C. 1940) 34 Fed. Supp. 714; Equitable Life Assur. Soc. v. Saftlas (E. D. Pa. 1941) 38 Fed. Supp. 703, *aff'd*, (C. C. A. 3rd, 1942) 129 F. (2d) 326. *Contra*: Harnischfeger Sales Corp. v. National Life Ins. Co. (C. C. A. 7th, 1934) 72 F. (2d) 921.

²¹ American Optometric Ass'n v. Ritholz (C. C. A. 7th, 1939) 101 F. (2d) 883, *cert. den.*, (1939) 307 U. S. 647; Pacific Fire Ins. Co. v. C. C. Anderson Co. of Nampa (D. Idaho 1942) 42 Fed. Supp. 917; see Equitable Life Assur. Soc. v. Wert (C. C. A. 8th, 1939) 102 F. (2d) 10, 14.

seems that primary rather than ancillary relief is being granted. Also some courts held that the Declaratory Judgment Act²² created another situation where the injunction might be used as ancillary relief despite section 265.²³

D. The Void or Fraudulent Judgment Exception

Several early Supreme Court decisions held that a federal court might enjoin the enforcement of a state court judgment which had been obtained by fraud.²⁴ The rationale, since repudiated, was to the effect that section 265 was inapplicable since the state court proceedings could be considered terminated by final judgment, and because the injunction would not operate against the court but purely against the parties.²⁵ Later cases have broadened this exception to include injunctions against the enforcement of void judgments,²⁶ or those obtained by accident or mistake in situations where it would be an effrontery to equity and good conscience to enforce them.²⁷ The Court has since held, however, that section 265 bars an injunction against a state suit not yet gone to judgment although it appears that the state court has no jurisdiction over the person of defendant.²⁸

²² 48 STAT. (1934) 955 as amended by 49 STAT. (1935) 1027, 28 U. S. C. (1940) § 400.

²³ Standard Acc. Ins. Co. v. Alexander, Inc. (N. D. Texas 1938) 23 Fed. Supp. 807, *aff'd on other grounds*, (C. C. A. 5th, 1939) 103 F. (2d) 500; Maryland Casualty Co. v. Tighe (N. D. Cal. 1939) 29 Fed. Supp. 69, *aff'd on other grounds*, (C. C. A. 9th, 1940) 115 F. (2d) 297; Standard Acc. Ins. Co. v. Grimmett (W. D. La. 1939) 32 Fed. Supp. 81; Continental Casualty Co. v. National H. Distributors (E. D. Wis. 1940) 32 Fed. Supp. 849; *cf.* Pacific Fire Ins. Co. v. C. C. Anderson Co. of Nampa, *supra* note 21. The Supreme Court has now definitely held, however, that the Declaratory Judgment Act creates no exception to section 265. Md. Casualty Co. v. Pacific Co. (1941) 312 U. S. 270. *Accord*: Maryland Casualty Co. v. Consumers Finance Service (C. C. A. 3rd, 1938) 101 F. (2d) 514; Till v. Hartford Accident & Indemnity Co. (C. C. A. 10th, 1941) 124 F. (2d) 405; Commercial Standard Ins. Co. v. Blankenship (M. D. Tenn. 1941) 40 Fed. Supp. 618, *aff'd on other grounds*, (C. C. A. 6th, 1943) 134 F. (2d) 784; Firemen's Fund Ins. Co. v. Crandall Horse Co. (W. D. N. Y. 1942) 47 Fed. Supp. 82.

The present status of the ancillary exception is discussed further in Part II, *infra*.

²⁴ Marshall v. Holmes; McDaniel v. Traylor; Wells Fargo & Co. v. Taylor, all *supra* note 4.

²⁵ Both of these grounds have been separately repudiated. See notes 4 and 5, *supra*. Prior to Marshall v. Holmes, *supra* note 4, the Supreme Court had several times indicated that a federal court might exercise equitable jurisdiction to declare a state judgment void. Gaines v. Fuentes *et al.* (1875) 92 U. S. 10; Barrow v. Hunton (1878) 99 U. S. 80; Nongué v. Clapp (1879) 101 U. S. 551; Johnson v. Waters (1884) 111 U. S. 640; Graham v. Boston, Hartford & Erie R. R. Co. (1886) 118 U. S. 161; Arrowsmith v. Gleason (1889) 129 U. S. 86. Although in only some of these cases was relief granted, the jurisdiction was recognized. It was thus but a short step to implement the federal judgments by injunction, and the Court was apparently loath to allow section 265 to stand in the way of complete relief.

²⁶ Simon v. Southern Railway, *supra* note 4; Atchison Ry. Co. v. Wells (1924) 265 U. S. 101.

²⁷ National Surety Co. v. State Bank (C. C. A. 8th, 1903) 120 Fed. 593; see Wells Fargo & Co. v. Taylor, *supra* note 4, at 185.

²⁸ Essanay Film Co. v. Kane, *supra* note 4. The rule may be otherwise when jurisdiction over the subject matter is lacking. Bowles v. Willingham (1944) 321 U. S. 503

E. The Constitutional Litigation Exception

In *Ex parte Young*²⁹ the Supreme Court held that an injunction was proper against the institution of suits brought to enforce an unconstitutional state statute. Although the opinion did not mention section 265 it was stated in a dictum that an injunction would not be allowed to stay state proceedings if commenced before the federal action. Later cases considering the issue have generally followed the suggested distinction, at least when the same parties are involved in both state and federal litigation.³⁰ However, if the federal injunction suit is commenced first, section 265 appears to be no bar to enjoining subsequent suits brought in state courts to enforce the unconstitutional statute.³¹ In this situation the federal court is allowed to protect its prior-acquired jurisdiction.

The bar of the statute runs only to injunctions against judicial proceedings. Thus if a state court is acting in a legislative or administrative capacity, section 265 affords it no protection.³² However, considerations of comity have led the Court to deny injunctions until state administrative remedies are exhausted³³ unless irreparable injury will occur in the meantime.³⁴ If other restrictive legislation is inapplicable, and irreparable injury is not immediately involved, the result seems to be that a federal injunction will be allowed only during the interval following termination of state administrative procedure and before state judicial enforcement is begun.³⁵

(discussed in Part III, *infra*). Cf. *Western Union Telegraph Co. v. Tompa* (C. C. A. 2d, 1931) 51 F. (2d) 1032, holding that while the state suit could not be enjoined during its pendency, an injunction might issue at once to prohibit the enforcement of the judgment when obtained. It seems doubtful whether this extension of the void or fraudulent judgment exception would be approved by the Supreme Court today. This exception is discussed further in Part II, *infra*.

²⁹ *Supra* note 6.

³⁰ *Monomotor Oil Co. v. Johnson* (1934) 292 U. S. 86; *Hill v. Martin*, *supra* note 5; *Kohn v. Central Distributing Co.* (1939) 306 U. S. 531; *Central R. Co. of New Jersey v. Martin* (C. C. A. 3d, 1940) 115 F. (2d) 968, *cert. den.*, (1941) 313 U. S. 568; *Birch v. McColgan* (S. D. Cal. 1941) 39 Fed. Supp. 358; *Carras v. Monaghan* (W. D. Pa. 1946) 65 Fed. Supp. 658; see *Mickey v. Kansas City, Mo.* (W. D. Mo. 1942) 43 Fed. Supp. 739, 742; *Taylor and Willis, op. cit. supra* note 1, at 1191. But see *Keegan v. State of New Jersey* (D. N. J. 1941) 42 Fed. Supp. 922, 924.

³¹ *Prout v. Starr*; *Looney v. Eastern Texas R. R. Co.*, both *supra* note 12; see *Missouri v. Chi.*, *Burl. & Quincy R. R.* (1916) 241 U. S. 533, 543. These cases are another source of the erstwhile general ancillary exception.

³² *Prentis v. Atlantic Coast Line* (1908) 211 U. S. 210; *Public Service Co. v. Corboy* (1919) 250 U. S. 153; *Okla. Gas Co. v. Russell* (1923) 261 U. S. 290.

³³ *Prentis v. Atlantic Coast Line*, *supra* note 32; *Henderson Water Co. v. Corp. Comm.* (1925) 269 U. S. 278; *Porter v. Investors Syndicate* (1932) 286 U. S. 461.

³⁴ *Okla. Gas Co. v. Russell*, *supra* note 32; *Pacific Tel. Co. v. Kuykendall* (1924) 265 U. S. 196; *Porter v. Investors Syndicate*, *supra* note 33.

³⁵ *Bacon v. Rutland R. R. Co.* (1914) 232 U. S. 134; *City Bank Co. v. Schnader* (1934) 291 U. S. 24.

The original basis of the line drawn in *Ex parte Young* may well have been the theory that the court first acquiring jurisdiction of the subject matter in dispute could prevent other courts from depriving it of the right to decide the questions involved. Since this doctrine has now been rejected, except in the res cases, the rule should be re-examined. It is at odds with the general requirement of immediately threatened irreparable injury. The actual pendency of state enforcement suits is the best evidence of threatened injury, and the interference with the state governments is virtually the same whether injunctions are issued before or after state judicial action has commenced. Unless section 265 is interpreted as not to bar the institution of any suits, the constitutional exception should be made general or dropped altogether.

*Hale v. Bimco Trading Co.*³⁶ illustrates one situation where the prior commencement of a state suit does not prevent an injunction against the enforcement of an unconstitutional state statute. In that case mandamus was brought in the state court to compel members of the state road department to enforce a statute requiring inspection of imported cement. While the state suit was pending, a third party commenced an action in the federal district court to enjoin enforcement of the statute. The state court then granted a stay in the mandamus suit pending final determination by the federal courts of the validity of the law in question. The Supreme Court held that section 265 had no relevance. It is true that the stay of the mandamus suit prevented the federal injunction from interfering with an order of the state court.³⁷ However, the decision is based on the additional ground that a person not a party to the state action cannot be deprived of his right to injunctive relief in the federal courts where such relief is necessary to prevent enforcement of an unconstitutional statute. To hold otherwise, it was reasoned, would make the state judgment binding on per-

³⁶ *Supra* note 2.

³⁷ Ordinarily the simultaneous existence of orders issued by different courts requiring contradictory performance on the part of a litigant should create as much conflict as two orders attempting to deal with the same property. However, the federal courts have been less willing to defer to prior state jurisdiction in the former situation. *Riggs v. Johnson County* (1867) 73 U.S. (6 Wall.) 166; *United States v. Council of Keokuk* (1867) 73 U.S. (6 Wall.) 514; *Amy v. The Supervisors* (1870) 78 U.S. (11 Wall.) 136. These cases involved a conflict between a state injunction and a federal mandamus. In *Hunt v. N. Y. Cotton Exchange* (1907) 205 U.S. 322, however, the Court enjoined defendant from receiving market quotations from Western Union, even though defendant had previously secured an order from the state court requiring that Western Union furnish this service. See also *Bank of Kentucky v. Stone* (C. C. D. Ky. 1898) 88 Fed. 383, *aff'd by a divided court*, (1899) 174 U.S. 799, where the court enjoined tax certification although a state mandamus suit was pending. These last two cases probably reflect the then-current view that section 265 is inapplicable when only the parties are enjoined. See in this connection *Miller v. Climax Molybdenum Co.* (C. C. A. 10th, 1938) 96 F. (2d) 254, discussed *infra* note 87. *Contra*: *Reisler v. Forsyth* (D. N. J. 1937) 21 Fed. Supp. 610; *Stenger v. Stenger Broadcasting Corporation* (N. D. Pa. 1939) 28 Fed. Supp. 407.

sons not before the court.³⁸ This reasoning suggests a possible exception of general application which will prevent the use of section 265 to deny to a person a hearing on any issue in which he has an interest, or to deny to him a right derived from the Constitution or laws of the United States.

F. The Possible Exception Where Injunctions Are Sought by the United States

In the lower federal courts there is some authority for the view that section 265 has no application when the United States or its officers seek to enforce rights in the federal courts. One theory advanced is that the United States is not required to rely on state courts for relief, and therefore regardless of section 265 the federal courts may grant injunctions when necessary to protect federal interests.³⁹ Another suggested theory is that section 265 is only applicable to private litigation and does not come into play when the enforcement of federal statutes is involved.⁴⁰ The Supreme Court has not yet held, however, that the bar of the statute is never applicable to suits brought by the United States. In cases involving this question other reasons for granting⁴¹ or denying injunctions have been found.⁴² The Court has also indicated that the United States has no overriding right to have its interests litigated in federal courts if to do so would require interference with property in the custody of a state court.⁴³ Whether section 265 alone, however, is sufficient ground for denying the federal government relief in its own courts is still open to question.

³⁸ Many of the cases cited in note 37, *supra*, might be supported on this ground. *Cf. Chase National Bank v. Norwalk* (1934) 291 U. S. 431; *Everglades Drainage Dist. v. Florida Ranch & D. Corp.* (C. C. A. 5th, 1935) 74 F. (2d) 914.

³⁹ *United States v. Inaba* (E. D. Wash., 1923) 291 Fed. 416; *United States v. Babcock* (D. Ind. 1925) 6 F. (2d) 160, *modified with injunction sustained on other grounds*, (C. C. A. 7th, 1925) 9 F. (2d) 905; *United States v. McIntosh* (E. D. Va. 1932) 57 F. (2d) 573, (E. D. Va. 1932) 2 Fed. Supp. 244, *reh'g den.*, (E. D. Va. 1933) 3 Fed. Supp. 715, *appeal dismissed*, (C. C. A. 4th, 1934) 70 F. (2d) 507; *United States v. Phillips* (N. D. Okla. 1940) 33 Fed. Supp. 261, *vacated on other grounds*, (1941) 312 U. S. 246; *United States v. Western Fruit Growers* (S. D. Cal. 1940) 34 Fed. Supp. 794, *modified*, (C. C. A. 9th, 1941) 124 F. (2d) 381; *United States v. Cain* (W. D. Mich. 1947) 72 Fed. Supp. 897; see *United States v. Lee* (1882) 106 U. S. 196, 222, *semble*; *United States v. Dewar* (D. Nev. 1937) 18 Fed. Supp. 981, 983. *Contra: United States v. Land Title Bank & Trust Co. et al.* (C. C. A. 3d, 1937) 90 F. (2d) 970.

⁴⁰ *Brown v. Wright* (C. C. A. 4th, 1943) 137 F. (2d) 484.

⁴¹ *Bowles v. Willingham*, *supra* note 28; *Porter v. Dicken* (1946) 328 U. S. 252; *Porter v. Lee* (1946) 328 U. S. 246; *Fleming v. Rhodes* (1947) 331 U. S. 100; all discussed *infra*, Part III.

⁴² In *United States v. Parkhurst-Davis Co.* (1900) 176 U. S. 317, the United States sought to enjoin the enforcement of a judgment against certain Indians alleged to be wards of the government. The Court found the Indians to be subject to the jurisdiction of the state courts, and hence held that section 265 was a complete bar to the suit.

⁴³ *U. S. v. Bank of New York Co.* (1936) 296 U. S. 463. An injunction against the state suit was denied in this situation in *United States v. Certain Parcels of Land, Etc.* (S. D. Cal. 1945) 62 Fed. Supp. 1017. *Contra: United States v. Inaba*, *supra* note 39.

II. RECENT LIMITATIONS ON THE JUDGE-MADE EXCEPTIONS

In 1941 in *Toucey v. N. Y. Life Ins. Co.*⁴⁴ and *Southern Ry. Co. v. Painter*⁴⁵ the Supreme Court called an abrupt halt to extensions of the exceptions to section 265. In the *Toucey* case plaintiff sued for reinstatement of his insurance policy and for recovery of disability benefits. Defendant removed the suit to the federal court where judgment went in its favor. Plaintiff then assigned his claim to a resident of the District of Columbia who brought suit in a state court on the same claim previously litigated. Defendant then moved in the federal court for an injunction against this new suit. The Supreme Court held such an injunction improper since there was no relitigation exception to section 265.

In *Southern Ry. Co. v. Painter* plaintiff brought suit in a federal court in Missouri under the Federal Employers' Liability Act. Defendant secured an injunction in a Tennessee state court enjoining plaintiff from continuing her suit in the Missouri federal court or from suing in any court not located either in Tennessee or North Carolina. A cross-injunction against further proceedings in the Tennessee suit issued by the Missouri federal court was sustained by the circuit court of appeals. The Supreme Court reversed, holding that Congress has endowed the federal courts with no such protective jurisdiction either generally or in the specific instance of claims arising under the Federal Employers' Liability Act.⁴⁶ The vindication of any federal right was said to lie with the Supreme Court on appeal from the final judgment of the state court sustaining the state injunction.⁴⁷ Thus the Court has now made it clear that there is no general power in the federal courts either to enforce their decrees or to protect their jurisdiction to litigate issues before them if to do so will require the enjoining of proceedings in state courts.

The reasoning and the dicta in the *Toucey* case are extremely interesting. Mr. Justice Frankfurter, writing for the majority, reviewed generally the effect of section 265 on the power of federal courts and catalogued the legislative and judicial exceptions that have been recognized. The only judge-made exception of which he approved was the so-called res exception, and at one point in the opinion he states that it is the only exception that has been imbedded in section 265 by judicial construction. On the other hand he appeared to over-

⁴⁴ *Supra* note 1.

⁴⁵ *Supra* note 19.

⁴⁶ *Accord*: *Bryant v. Atlantic Coast Line R. Co.* (C. C. A. 2d, 1937) 92 F. (2d) 569.

⁴⁷ This would seem to overrule cases like *Hunt v. Seeley* (C. C. A. 5th, 1940) 115 F. (2d) 205, where a federal court enjoined a state suit the purpose of which was to enjoin the execution of a federal judgment.

rule by name only one previous decision of the Supreme Court.⁴⁸ However the existence of any general exception allowing injunctions whenever they may be considered ancillary to other relief seems definitely denied, since the Court in rejecting the relitigation exception refused ancillary relief in one of the situations where it had been previously considered fully proper.⁴⁹

Also, the status of the exception allowing injunctions against the enforcement of state judgments obtained by fraud or those that are void seems open to doubt today. The *Toucey* decision pointed out that the basis of this exception was doubtful since it had been rested on the proposition that the bar of section 265 only operated until judgment had been rendered in the state suit. The discussion of the question was then dropped, since those cases were not in point so far as the *Toucey* case was concerned. However, the Court justified overruling its previous decision upholding the relitigation exception on the ground that the exception had not become so deep-seated that substantial interests had clustered about it or parties had shaped their litigation in view of it. It further stated that Congress had not by implication approved the relitigation exception by re-enactment of section 265 in 1911 or by its silence thereafter. On the other hand the void or fraudulent judgment exception had been enunciated by the Court long before the Judicial Code was enacted in 1911 and has been recognized or affirmed in many cases since. It is thus hard to predict how the Court would rule on the question today, however unsound it might feel the original rationale of the exception to be.⁵⁰

As has been noted, the *Toucey* case appeared to overrule only one previous decision of the Supreme Court. This was accomplished not only by laying to one side certain decisions not squarely in point but also by adopting a rather expansive attitude toward the res exception. Thus three decisions that would have seemed to be authority for the proposition that section 265 does not prohibit the issuance of injunctions to secure to litigants the fruits of their victories were cited as illustrations of the extent to which a federal court's exclusive control over the res may require use of the injunction to effectuate its decrees in rem.⁵¹ The rationale of the res exception that has been laid down,

⁴⁸ Supreme Tribe of Ben-Hur v. Cauble, *supra* note 18.

⁴⁹ See Part I., B., *supra*. The classification of exceptions used in this note is to some extent arbitrary in that ancillary injunctions in general have been treated separately from ancillary injunctions involved in res or relitigation cases. This has been done because the lines being drawn by the Court and those suggested by proposed legislation are based on other facts than the merely ancillary nature of the injunction.

⁵⁰ At least one district court feels that the void judgment exception is still valid. *United States v. Cain*, *supra* note 39.

⁵¹ *Julian v. Central Trust Co.*; *Riverdale Mills v. Manufacturing Co.*, both *supra* note 17; *Local Loan Co. v. Hunt*, *supra* note 16.

and which was recognized in the *Toucey* case, is that unseemly conflict between the state and federal courts must be avoided. Hence, the court first acquiring actual or constructive possession of or jurisdiction over the res may enjoin parties from seeking to interfere with such possession or jurisdiction through the aid of process of other courts. Since the underlying purpose of section 265 is now considered to be the avoidance of conflict between courts, the res exception is considered but a logical extension of this purpose, hence as not really in conflict with it.⁵² It would seem to follow that the res exception should only operate while the court is actually exercising jurisdiction over the res or while the res remains under the control of an officer of the court. Nevertheless, the *Toucey* case includes in its classification of cases illustrating the res exception, cases in which injunctions had been allowed against state suits seeking to relitigate rights in specific property, although the property involved had long since passed out of the immediate control of the federal court.⁵³ Similarly *Local Loan Co. v. Hunt*⁵⁴ was treated as a res case. In that case an injunction against a state suit on a claim discharged in bankruptcy was allowed. The bankruptcy exception was not involved. While bankruptcy adjudication may be considered as in rem, it is difficult to see how the res exception rationale could justify an injunction in the *Hunt* situation.⁵⁵

Thus the *Toucey* case, marking as it does a rather abrupt change in the attitude of the Court, has raised many questions as to the present scope of the res exception to section 265. Federal injunctive power has been sharply curtailed. It remains to be seen whether the Court will go further and apply section 265 to all cases where there is not the possibility of more or less immediate physical conflict between the officers of different courts, or whether some arbitrary line will be drawn that will allow the use of the injunction when decrees in rem are to be enforced but not otherwise.

An examination of some of the cases dealing with litigation against receivers or trustees or the persons whose property they are administering suggests that the Court may adopt the more restrictive limits

⁵² *Toucey v. N. Y. Life Ins. Co.*, *supra* note 1, at 135.

⁵³ *Julian v. Central Trust Co.*; *Riverdale Mills v. Manufacturing Co.*, both *supra* note 17.

⁵⁴ *Supra* note 16.

⁵⁵ Aside from the res rationale, the *Hunt* and *Toucey* cases may be distinguished on their facts on the ground of the adequacy of the remedy at law. Thus in the *Hunt* case it was clear that ultimate relief in the state suit could not be secured short of an appeal to the United States Supreme Court, while there was no showing in the *Toucey* case that the state court would not give effect to a plea of res judicata. The reasoning of the *Toucey* case does not seem to suggest, however, that the applicability of section 265 rests on some relative standard of the inadequacy of the remedy at law.

on injunctive power. A distinction has been drawn between suits by which it is sought to litigate rights in property in the possession of an officer of another court, and suits by which it is sought to disturb the actual control of that court over the property. Thus it has been held that a court may have jurisdiction to litigate the rights of various claimants to property held under the jurisdiction of another court⁵⁶ while it does not have jurisdiction to entertain a suit which seeks to wrest the property from the control of the other court.⁵⁷ Although in many of these cases section 265 was not in issue, they do illustrate one situation where the courts have drawn a line based on more or less physical power over the res. The same factors that have supported this distinction would seem to be the ones behind the res exception. Perhaps then the same rules should govern, at least when relitigation is involved.

In this connection the case of *Mandeville v. Canterbury*,⁵⁸ decided in 1943, is of interest. Plaintiff, claiming an interest in a trust estate, sued in a federal court for construction of the will setting up the trust and to have the trustee directed to turn over some of the trust property. Defendant then sued in the state courts of the states where the land comprising the trust corpus was situated for constructions of the will as it affected the land in those states. The circuit court of appeals upheld an injunction against these state suits on the ground that suits dealing with the administration of trusts fall within the res exception, reasoning that although the physical res was beyond the territorial jurisdiction of the court, it could be considered as under the control

⁵⁶ *Commonwealth Co. v. Bradford* (1936) 297 U. S. 613; *General Banking Co. v. Harr* (1937) 300 U. S. 433; *United States v. Klein* (1938) 303 U. S. 276; *General Exporting Co. v. Star Transfer Line* (C. C. A. 6th, 1943) 136 F. (2d) 329; see *Princess Lida v. Thompson* (1939) 305 U. S. 456, 466. It has been held that an injunction may not issue in federal equity receivership proceedings against a state suit on a contract claim when the state suit was started before the receivership proceedings and does not seek to interfere with assets in the hands of the receiver. The state judgment will be binding on the federal court so far as it determines the extent of the liability. *Riehle v. Margolies* (1929) 279 U. S. 218.

⁵⁷ *People's Bank v. Calhoun* (1880) 102 U. S. 256; *Barton v. Barbour*, *supra* note 9; *Texas & Pacific Railway Co. v. Cox*, *supra* note 8; *Porter v. Sabin*; *Lion Bonding Co. v. Karatz*, both *supra* note 7; *Oklahoma v. Texas*, *supra* note 8; *U. S. v. Bank of New York Co.*, *supra* note 43; *cf. Heidritter v. Elizabeth Oil-Cloth Co.* (1884) 112 U. S. 294. But if action is brought in the state court for statutory winding up of an insolvent insurance company, the state court has enough jurisdiction to request that the federal court having prior jurisdiction in equity receivership, cede its jurisdiction so that the statutory procedure may be followed. *Penn Co. v. Pennsylvania*, *supra* note 7.

The res in case of a corporate receivership includes all corporate causes of action; hence a federal court cannot entertain a stockholder's derivative suit when the corporation is in state receivership. *Porter v. Sabin*, *supra*.

Although a bond may become a substituted res, *Munroe v. Raphael* (1933) 288 U. S. 485, it apparently does not operate to allow the court of the other jurisdiction to then take control of the property released by the bond. *Palmer v. Texas*, *supra* note 7.

⁵⁸ (1943) 318 U. S. 47.

of the court by reason of the court's jurisdiction over the trustee.⁵⁹ The Supreme Court reversed, however, reasoning that the suit must be considered as purely in personam at least to the extent that it sought to litigate the title to land lying in other states;⁶⁰ the control of the res was not necessary to the exercise of the court's power; and that in any case adjudication of the land titles in state courts would not interfere with or impair the jurisdiction of the federal court.⁶¹ Thus both suits may proceed simultaneously. The judgment first obtained may be pleaded as *res judicata* in the other suit.

In *American B. Shoe & Foundry Co. v. Interborough R. T. Co.*,⁶² however, the second circuit court of appeals held that the doctrine of the *Julian*⁶³ and *Hunt*⁶⁴ cases was not affected by anything that was said in the *Toucey* case,⁶⁵ and that hence an injunction was proper against an obligee of a defunct street railroad who was seeking to assert a claim in the state court against the city which had purchased the railroad property at a judicial sale in conjunction with receivership proceedings in the federal court. Although the receivership proceedings had long since terminated, the district court was held to have power to protect the title of the purchaser at its sale. The third circuit has recently expressed a similar view.⁶⁶ Thus the law may still be that a

⁵⁹ (C. C. A. 7th, 1942) 130 F. (2d) 208.

⁶⁰ Thus *Rickey Land & Cattle Co. v. Miller & Lux*, *supra* note 12, appears to be definitely overruled *sub silentio* if it had not already been overruled by the *Toucey* case. In that case a Nevada federal court was allowed to enjoin a California suit dealing with California water rights on the ground that the federal court had acquired jurisdiction of the subject matter first.

⁶¹ *Cf. Pacific Live Stock Co. v. Oregon Water Bd.* (1916) 241 U. S. 440, which held that a state administrative proceeding to determine the rights of all parties to the waters of a river did not trench upon the jurisdiction of a federal court determining water rights between only a few of the parties, since it could not be said that the subject matters of the two suits were substantially the same.

In *Denver-Greeley Valley Water Users Ass'n v. McNeil* (C. C. A. 10th, 1942) 131 F. (2d) 67, the court held that an injunction would not be proper against state suits to have certain lands declared tax exempt and certain tax sale certificates declared invalid, because there was no res involved, although the federal court had ordered the taxes collected and the tax sale certificates paid into court. Similarly plaintiff in a suit upon a judgment may not have an injunction against a state suit seeking to have the judgment sued upon declared void. *Indemnity Ins. Co. v. Smoot* (App. D. C. 1945) 152 F. (2d) 667, *cert. den.*, (1946) 328 U. S. 835. But it has been held that a federal court may protect the title of an administrator to his office under appointment of a state court by enjoining a suit to have him removed, when the effect of the removal would be to nullify the validity of federal litigation concerning trust funds. *Mississippi Valley Trust Co. v. Franz* (C. C. A. 8th, 1931) 51 F. (2d) 1047.

⁶² (C. C. A. 2d, 1943) 136 F. (2d) 681, *cert. den.*, (1943) 320 U. S. 756.

⁶³ *Supra* note 17. The *Julian* case involved protection of a federally decreed title.

⁶⁴ *Supra* note 16.

⁶⁵ See also the dictum in *Beneficial Loan Co. v. Noble* (C. C. A. 10th, 1942) 129 F. (2d) 425, 427, which approves the *Hunt* case although not mentioning the possible effect the *Toucey* case may have upon it.

⁶⁶ *In re United Gas Corporation* (C. C. A. 3d, 1947) 162 F. (2d) 409.

federal court may by injunction protect its decrees in rem but not its decrees in personam.

III. STATUTORY EXCEPTIONS

In the *Toucey* case the Court listed the statutory exceptions that Congress had made to section 265 up to that time. These are: (1) the bankruptcy exception found in the statute itself;⁶⁷ (2) the removal exception;⁶⁸ (3) the interpleader exception based on the Interpleader Act of 1926;⁶⁹ (4) the limitation of shipowners' liability exception based on the Act of 1851;⁷⁰ and (5) the exception created by the Frazier-Lemke Act for the benefit of farmers in financial difficulty.⁷¹ Of these, the bankruptcy and interpleader exceptions are the only ones based on express statutory language that an injunction may issue regardless of section 265. The other three were implied from the language in the respective acts which prohibited further proceedings in the state courts. Since the *Toucey* case the Court has recognized another statutory exception in the provisions of the Emergency Price Control Act. This will be discussed at greater length below. Of the others only the removal exception will be considered further here.

It is well established that an injunction may issue against the continuation in the state court of a suit that has been removed.⁷² It has also been held that a suit on a bond given in a state replevin action may be enjoined when the replevin action has been removed.⁷³ Likewise the enforcement of a state judgment may be enjoined when the

⁶⁷ See discussion, *supra* note 1.

⁶⁸ This exception is discussed *infra*.

⁶⁹ 44 STAT. (1926) 416. This Act provides in part: "Notwithstanding any provision of the Judicial Code to the contrary, said [district] court shall have power to issue its process for all such claimants and to issue an order of injunction against each of them, enjoining them from instituting or prosecuting any suit or proceeding in any State court or in any other Federal court . . ." This provision was retained in the Interpleader Act of 1936, 49 STAT. (1936) 1096, 28 U. S. C. (1940) § 41(26). See *Dugas v. American Surety Co.* (1937) 300 U. S. 414, 428; *Treinius v. Sunshine Min. Co.* (1939) 308 U. S. 66, 74. In *Agricultural Ins. Co. v. The Lido of Worcester* (D. Mass. 1945) 63 Fed. Supp. 799, it was held that if an interpleader action does not come within the statute an injunction is barred.

⁷⁰ 9 STAT. (1851) 635, 46 U. S. C. (1940) § 185. This Act provides that after proper procedural steps are taken, "all claims and proceedings against the owner . . . shall cease". This language has been interpreted to allow injunctions against such proceedings. See *ADMIRALTY RULE 51*, 28 U. S. C. (1940) foll. 723; *Providence & N. Y. SS. Co. v. Hill Mfg. Co.* (1883) 109 U. S. 578, 599.

⁷¹ 47 STAT. (1933) 1473, 11 U. S. C. (1940) § 203, provides in part: ". . . the following proceedings shall not be instituted, or if instituted . . . , shall not be maintained, in any court . . ." See *Kalb v. Feuerstein* (1940) 308 U. S. 433, 441.

⁷² *Dietzsch v. Huidekoper* (1880) 103 U. S. 494; *Traction Company v. Mining Company* (1905) 196 U. S. 239; see *Chesapeake & Ohio Ry. Co. v. McCabe* (1909) 213 U. S. 207, 217; *Ches. & Ohio Ry. v. Cockrell* (1914) 232 U. S. 146, 154.

⁷³ *Dietzsch v. Huidekoper*, *supra* note 72.

judgment was rendered after the case had been removed.⁷⁴ On the other hand, the Removal Act does not justify an injunction against a new suit on the same cause of action, instituted after the removed suit has gone to judgment.⁷⁵ A more difficult problem is presented when plaintiff, whose suit has been removed, dismisses his removed state suit in the state court and brings a new suit in the state court while the original suit is still pending in the federal court. By joining nondiverse defendants or suing for less than the jurisdictional amount, plaintiff may be able to prevent removal of the new suit. Does the Removal Act allow an injunction in this situation? The Act provides that after the proper procedural steps are taken, "It shall then be the duty of the State court to . . . proceed no further in such suit."⁷⁶ This language does not justify drawing a line between a new suit brought while the original suit is still in progress and one brought thereafter. Nevertheless some of the lower federal courts have drawn this line and enjoined the second suit when the cause of action was substantially the same, and the federal litigation was still in progress.⁷⁷ Although the quoted language, which has been said to be the basis of the removal exception,⁷⁸ does not warrant this distinction, it may be justified by the general intent of the Removal Act to allow trial in a federal court. This would be defeated if plaintiff were allowed to secure a judgment first in the state court which he could plead as *res judicata* in the federal suit. If the judgment is obtained first in the federal court, then it may be pleaded as *res judicata* in any later suit, and the effect given it will be subject to review by the United States Supreme Court.⁷⁹

The most recently recognized statutory exception to section 265 is perhaps the most interesting, because it was implied from language not heretofore considered by the Supreme Court in this connection. This exception was found in section 205(a) of the Emergency Price Control Act⁸⁰ which authorized the administrator to secure injunc-

⁷⁴ *Ammond v. Pennsylvania R. Co.* (C. C. A. 6th, 1942) 125 F. (2d) 747, *cert. den.*, (1942) 316 U. S. 691; *cf. French, Trustee v. Hay*, *supra* note 12, where an injunction was allowed against a suit brought in another state upon an intermediate order of the state court from which the action was removed. This case is often cited as illustrative of the removal exception, although the decision appears to be based on other grounds.

⁷⁵ *Toucey v. N. Y. Life Ins. Co.*, *supra* note 1.

⁷⁶ 36 STAT. (1911) 1095, 28 U. S. C. (1940) § 72.

⁷⁷ *Reliable Transfer Co. v. Gallahar* (S. D. Ga. 1944) 54 Fed. Supp. 395, *aff'd*, (C. C. A. 5th, 1944) 145 F. (2d) 551. *Contra: Honolulu Oil Corporation v. Patrick* (C. C. A. 9th, 1934) 71 F. (2d) 654; *Wise v. Bolster* (W. D. Wash. 1940) 31 Fed. Supp. 856.

⁷⁸ *Toucey v. N. Y. Life Ins. Co.*, *supra* note 1, at 133.

⁷⁹ *Dupasseur v. Rochereau* (1874) 88 U. S. (21 Wall.) 130; *Hancock National Bank v. Farnum* (1900) 176 U. S. 640; *Deposit Bank v. Frankfort* (1903) 191 U. S. 499; *Virginia-Carolina Chemical Co. v. Kirven* (1909) 215 U. S. 252; *Stoll v. Gottlieb* (1938) 305 U. S. 165.

⁸⁰ 56 STAT. (1942) 23; 50 U. S. C. SUPP. V (1946) § 925 (appendix).

tions against violations of his orders in any court of general jurisdiction. In *Bowles v. Willingham*⁸¹ the Court held that an injunction would be proper against a state suit which sought to enjoin the issuance of a rent order under the Act. Although the Court found in section 205(a) an implied amendment to section 265, it also pointed out that Congress had given exclusive jurisdiction to the Emergency Court to determine the validity of the administrator's orders. The Court then reasoned that since section 265 was designed to avoid conflicts in jurisdiction, it was inapplicable here because the state court had no jurisdiction of the action before it. The decision thus raised the question of whether an implied exception will be found whenever Congress has deprived the state court of jurisdiction,⁸² or provided for enforcement of a federal statute by injunction, or only when both of these factors are present.⁸³ For the Emergency Price Control Act the question was answered in *Porter v. Dicken*.⁸⁴ There the Court stated that lack of jurisdiction in the state court and the provision for federal injunctions against violations were alternate grounds for the holding in the *Willingham* case, and that section 205(a) of the Act was a general exception to section 265. An injunction was allowed although it could not be said that the state court lacked jurisdiction of the eviction proceedings before it.⁸⁵

The *Dicken* case thus raises some interesting questions as to how far the Court will go in finding other exceptions in similar legislation. Most administrative agencies have to look to the courts for the enforcement of their orders. Does the grant of jurisdiction to enforce these orders allow the court to enjoin state court proceedings in violation thereof? Here the case is weaker than one where the statute expressly authorizes an official to seek an injunction against a violation of law or an order made in pursuance thereof, although one circuit court issued such an injunction partially, at least, on the ground of finding an implied amendment to section 265.⁸⁶ Another factor of

⁸¹ *Supra* note 28.

⁸² Mere lack of jurisdiction over a party is, however, not enough to avoid section 265, *Essanay Film Co. v. Kane*, *supra* note 4, unless perhaps the party is a member of a class such as Indian wards of the government, over which the state courts have no jurisdiction. See *United States v. Brooks* (N. D. Ind. 1940) 32 Fed. Supp. 422, 424.

⁸³ Both factors were present and an injunction was granted in *Western Fruit Growers v. United States* (C. C. A. 9th, 1941) 124 F. (2d) 381. In that case the state suit was one to have an administrative order under the Agricultural Marketing Act of 1937 declared invalid. The Act provided for general injunctive enforcement by the federal courts, and the circuit court felt that the state court had no jurisdiction to attack the validity of the order involved.

⁸⁴ *Supra* note 41.

⁸⁵ *Accord*: *Porter v. Lee*; *Fleming v. Rhodes*, both *supra* note 41.

⁸⁶ *National Labor Relations Bd. v. Sunshine Mining Co.* (C. C. A. 9th, 1942) 125 F. (2d) 757, (1942) 52 YALE L. J. 150; *cf. In re United Gas Corporation*, *supra* note 66.

still uncertain importance is whether the statute allows only a government official to seek an injunction or extends the privilege to any one with an interest in the matter.⁸⁷ A third factor is the background against which the statute was enacted. In the *Dicken* case the administrator was able to make a strong argument for the necessity of the injunction to carry out the purposes of the Act. It may be that the Court will be less willing to imply an exception where it can be shown that an injunction is not so necessary to effectuate the purposes of the legislation.⁸⁸ In this respect it may also be important whether or not the state courts have been given concurrent enforcement jurisdiction. Although this factor was considered of no moment in the *Dicken* case, many of the lower courts have put considerable emphasis upon it,⁸⁹ and certainly a stronger argument can be made that Congress intended an exception when the enforcement jurisdiction is exclusively with the federal courts.

IV. CONCLUSION: PROPOSED LEGISLATION

Section 265 has had a long and varied history. The departure of the courts from its apparently clear mandate prior to the *Toucey* case led some commentators to believe that the statute had almost, if not quite, been entirely buried.⁹⁰ The situation today is confused. The Court appears to be limiting the judge-made exceptions while expanding the legislative ones. In the former field, since the whole growth has been judicial, there are no legislative guides to indicate where the

⁸⁷ To the extent that injunctions are sought by the government, the general question is raised of whether section 265 ever applied. See discussion in Part I, F., *supra*. Cf. *Miller v. Chimax Molybdenum Co.*, *supra* note 37, where the court approved an injunction sought by a shipper against a suit which was part of a plan to circumvent an order of the Interstate Commerce Commission. There was general statutory authority to enjoin acts in violation of such orders on the complaint of any interested party. Unfortunately the court got around section 265 by deciding that no proceedings were enjoined, but merely the acts of the parties. A similar result was reached where violation of the anti-trust laws was involved in *Katz Drug Co. v. W. A. Shaeffer Pen Co.* (W.D. Mo. 1933) 6 Fed. Supp. 212. The latter decision was based, however, on the theory, now outmoded, that section 265 is no bar to implementing specific jurisdiction granted by Congress.

⁸⁸ In the eviction cases under the Price Control Act, very prompt action by the administrator was necessary to avoid having the issues become moot. *Porter v. Lee*, *supra* note 41.

⁸⁹ *National Labor Relations Bd. v. Sunshine Mining Co.*, *supra* note 86; *In re Standard Power & Light Corporation* (D. Del. 1943) 48 Fed. Supp. 716 (liquidation by Securities and Exchange Commission under Public Utility Holding Company Act of 1935 held exclusive method provided by Congress, hence liquidation suit by shareholder under Delaware law may be enjoined); see *Sprague Electric Co. v. Cornell Dubilier Elect. Corp.* (D. Del. 1945) 62 Fed. Supp. 1, 6 (section 265 would be no bar to suit to enjoin violation of Sherman Act since federal courts have exclusive enforcement jurisdiction). See also (1942) 52 *YALE L. J.* 150.

⁹⁰ *Durfee and Sloss, Federal Injunction against Proceedings in State Courts* (1932) 30 *MICH. L. REV.* 1145. These authors felt that most of the decisions applying section 265 were in fact merely applying rules of comity.

lines should be drawn. In the latter field one gets the impression that the courts are not determining what Congressional intent was, but are only trying to determine what it would have been had the problem been considered. It seems clear that unambiguous legislation would be desirable.

A bill to enact Title 28 of the United States Code, introduced at the last session of Congress, proposed amending section 265 to read as follows:

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.⁹¹

The reviser's notes indicate that the last clause is intended to reinstate the relitigation exception and restore the law to its condition prior to the *Toucey* case.⁹² The aid-of-jurisdiction clause is intended to insure the validity of the removal exception.⁹³ Unfortunately the wording does not seem too clear in this respect. The proposed statute can certainly be interpreted to negative any legislative exception that is not express, leaving the aid-of-jurisdiction clause operative only as a codification of the older cases holding section 265 inapplicable when an injunction was necessary to protect the jurisdiction of the federal court. On the other hand, if the aid-of-jurisdiction clause will be operative to preserve the removal exception it may also serve to protect the rest of the exceptions the Court has found in other legislation. Whether it will allow generally ancillary injunctions seems unclear. An argument can certainly be made that a cross-injunction against a state suit enjoining a federal suit would be allowed.

Another solution might be merely to repeal section 265 altogether and leave the whole problem to the courts to be solved on general principles of comity.⁹⁴ Short of this, however, any amendment should properly solve more questions than it raises. The proposed revision does not appear to have this virtue.

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⁹¹ H. R. 2055, 80th Cong. 1st Sess. (1947) § 2283, p. 139. The proposed revision is discussed in Note (1947) 60 HARV. L. REV. 424, 436.

⁹² H. R. REP. No. 308, 80th Cong. 1st Sess. (1947) § 2283, pp. A181, A182.

⁹³ *Ibid.*

⁹⁴ See note 90, *supra*.