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Statutory Change—Effect of Upon a Prior Consent Decree—Equity.—System Federation No. 91, Railway Employees' Dept. v. Wright

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ranty,[16] and if not, the law prescribes implied warranties of merchantability[17] and, in certain instances, of fitness for a particular purpose.[18]

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Statutory Change—Effect of Upon a Prior Consent Decree—Equity.—***System Federation No. 91, Railway Employees' Dept. v. Wright.***[1]**—In 1945 twenty-eight nonunion employees of the Louisville and Nashville Railroad sought an injunction and $140,000 in damages against the employer railroad and a number of unions representing the employees, alleging certain discriminatory practices directed towards them by reason of their nonmembership in the union. The parties entered into a consent decree and the plaintiffs received $5,000 in consideration thereof. The decree specifically enjoined discrimination against said plaintiffs because of their refusal to join or to continue membership in the unions. At the time of entry of the decree Sections 2(4) and 2(5) of the Railway Labor Act[2] were in effect. These sections specifically prohibited negotiations for the purpose of entering into a union shop agreement. The present action was instituted for the purpose of modifying this decree to allow the prior defendants to negotiate for a union shop. The petitioners relied on the 1951 Amendment to the Railway Labor Act[3]

[16] Williston, What Constitutes An Express Warranty In The Law of Sales, supra note 2.

[17] USA § 15(2): "Where the goods are bought by description from a seller who deals in goods of that description . . . there is an implied warranty that the goods shall be of merchantable quality." UCC § 2-314(1): ". . . a warranty that the goods shall be merchantable is implied in a contract for their sale if the seller is a merchant with respect to goods of that kind . . . ."

[18] USA § 15(1): "Where the buyer . . . makes known to the seller the particular purpose for which the goods are required, and it appears that the buyer relies on the seller's judgment . . . there is an implied warranty that the goods shall be reasonably fit for such purpose." UCC § 2-315: "Where the seller at the time of contracting has reason to know any particular purpose for which the goods are required and that the buyer is relying on the seller's skill or judgment to select or furnish suitable goods, there is . . . an implied warranty that the goods shall be fit for such purpose."

[1] 364 U.S. 642 (1961).

[2] Section 2(4) making it, ". . . unlawful for any carrier . . . to influence or coerce employees in an effort to induce them to join or remain or not to join or remain members of any labor organization. . . ."

Section 2(5) "No carrier . . . shall require any person seeking employment to sign any agreement . . . promising to join or not to join a labor organization; . . . ." 44 Stat. 577 (1926), 45 U.S.C. § 152 (1958).

[3] Section 2(11) ". . . any carrier . . . and a labor organization . . . shall be permitted—

> (a) to make agreements requiring as a condition of continued employment that . . . all employees shall become members of a labor organization. . . . Provided, that no such agreement shall require such condition of employment with respect to employees to whom membership is not available upon the same terms as are generally applicable to any other member or to employees with respect to whom membership was denied for any reason, other than failure of the employee to tender periodic dues, etc. . . ." 64 Stat. 1238 (1951), 45 U.S.C. § 152 (1958).

which permits such negotiation. The United States Court for the Western District of Kentucky received evidence to show that assaults, destruction of property and other malicious acts were directed against nonunion employees in 1955. The District Court gave weight to this evidence in determining that it should not as a matter of sound discretion modify the decree.[4] The decision was affirmed by the Court of Appeals for the Sixth Circuit.[5] HELD: The District Judge abused his discretion in failing to issue an order modifying the decree. Since the prior decree was based on protecting the statutory right of the employees only as it then existed, the subsequent change in law was a sufficient basis for modification. Upon this theory evidence of later discriminatory conduct was rendered irrelevant.

Three Justices dissented in part, holding that the decree should not be modified so as to deprive the original plaintiffs who were still in the employ of the railroad of their rights acquired under the decree. Since these plaintiffs had given up valuable rights in consenting to the decree, basic fairness required that this interest continue to be protected.

It would seem well-settled that an injunctive decree is res judicata as to the facts litigated therein, and to this extent may be considered final and conclusive.[6] However, it would also seem well-settled that a decree, whether permanent or temporary, and whether entered into by consent or after final adjudication of the cause, is subject to modification when the circumstances have so changed as to render continued enforcement inequitable.[7] In line with this basic reasoning many courts have held that a change in law in itself will be a sufficient change of circumstances to merit modification

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[4] 165 F. Supp. 443 (W.D. Ky. 1960).

[5] 272 F.2d 56 (6th Cir. 1960).

[6] United States v. Munsingwear, 340 U.S. 36 (1950); McGrath v. Potash, 199 F.2d 166 (D. C. Cir. 1952); Tilghman v. Werk, 39 Fed. 680 (S.D. Ohio 1889); Bloss v. Tacke, 59 Mo. 174 (1894); Barrett Foundry Co. v. Iron Works Co., 85 N.J. Eq. 359, 96 Atl. 490 (1915); Adams v. Snouffer, 88 Ohio App. 79, 119 N.E. 86 (1951); Pacific Tel. & Tel. Co. v. Henneford, 199 Wash. 462, 99 P.2d 214 (1939).

[7] United States v. Swift & Co., 286 U.S. 106 (1938); Ex parte Myers, 246 Ala. 460, 21 So. 2d 113 (1945); Sontag Chain Stores Co. v. Los Angeles, 18 Cal. 2d 92, 113 P.2d 689 (1941); Jackson Grain Co. v. Lee, 150 Fla. 232, 7 So.2d 143 (1942); Vulcan Detinning Co. v. St. Clair, 315 Ill. 40, 145 N.E. 657 (1924); Federal Land Bank of Louisville v. Glendening, 223 Ind. 596, 63 N.E.2d 143 (1945); Holloway v. People's Water Co., 100 Kan. 414, 167 Pac. 265 (1917); Emergency Hospital v. Stevens, 146 Md. 159, 126 Atl. 101 (1924); Newton Rubber Works v. De Las Casas, 198 Mass. 156, 84 N.E. 119 (1908); Avon Township v. Detroit United Ry. Co., 211 Mich. 34, 177 N.W. 953 (1920); Larson v. Minnesota Northwestern Electric Ry. Co., 136 Minn. 423, 162 N.W. 523 (1917); Santa Rita Oil Co. v. State Board of Equalization, 112 Mont. 359, 116 P.2d 1012 (1941); Lowe v. Prospect Hill Cemetery Assoc., 75 Neb. 85, 106 N.W. 429 (1905), aff'd on rehearing, 75 Neb. 100, 108 N.W. 978 (1906); McGuinn v. City of High Point, 219 N.C. 56, 13 S.E.2d 48 (1941); Degenhart v. Hartford, 59 Ohio App. 552, 18 N.E.2d 990 (1938); Ladner v. Siegel, 298 Pa. 487, 148 Atl. 699 (1930); Hodges v. Snyder, 45 S.D. 149, 186 N.W. 867 (1922); Uvalde Paving Co. v. Kennedy, 22 S.W.2d 109 (Tex. Civ. App. 1921); Edlis v. Miller, 132 W. Va. 147, 51 S.E.2d 132 (1948); Northern Wisconsin Co-op Tobacco Pool v. Bekkedal, 182 Wis. 571, 197 N.W. 936 (1924).

of a prior decree.[8] Other courts, however, would seem to impose the additional requirement that the change, whether of fact or law, be coupled with a showing by petitioners that they are suffering hardship so extreme and unexpected as to justify a finding that they would be victims of oppression if the decree were allowed to continue in full force.[9]

The present case would appear to be indistinguishable from that of *Pennsylvania v. Wheeling & Belmont Bridge Co.*,[10] the principle case in this area. In the latter decision the decree was designed to protect the public right to unencumbered navigation. The subsequent statute, however, manifested a clear Congressional intent to abridge this right.[11] Likewise in the present case the decree was designed to incorporate within it the legislative prohibition against union shops contained at that time in the Railway Labor Act. However, the later amendment displayed a clear intent to diminish the right which was the basis for issuance of the prior decree.[12] Thus in both cases it seems apparent that the decree was designed to protect a public right then recognized by law. However, through subsequent legislative action Congress evidenced an intent to modify this right. As a result their action went to the heart of the decree by declaring lawful that which had been previously adjudged unlawful.

Viewed in this light it would not seem that the present decision need be categorized as falling into either of the two seemingly contradictory lines of cases. Rather it might be interpreted merely as holding that the Court will not allow a decree, which is based on protecting a public right, to continue in force when subsequent legislative action has changed that very right which provided the foundation for the decree.

From this it might be further concluded that no precedent has been as yet established in the Supreme Court for the proposition that a change

[8] Newton Rubber Works v. De Las Casas, supra note 7 (Commissioners enjoined from building dams on river. Later statute gave Commissioners power to build dams.); Avon Township v. Detroit United Ry. Co., supra note 7 (Injunction against charging rates in excess of certain amounts. Later act made higher rates lawful.); Indiana Quartered Oak Co. v. F.T.C., 58 F.2d 182 (2d Cir. 1932) (Allowed modification of a perpetual injunction upon showing that F.T.C. had reversed, as to other parties, the ruling upon which the original decree was based.); and see Ladner v. Siegal, supra note 7, at 497, 148 Atl. at 702; Edlis v. Miller, supra note 7, at 161, 51 S.E.2d at 138.

[9] United States v. Swift & Co., supra note 7, at 119; Western Union Telegraph Co. v. Int'l Brotherhood of Electrical Workers, Local 134, 133 F.2d 955 (7th Cir. 1943) (Court held that despite change of law it would require nothing less than a clear showing of grievous wrong evoked by new and unforeseen circumstances.); National Popsicle Co. v. Hughes, 32 F. Supp. 397 (N.D. Cal. 1940) (Held subsequent adjudication that patents covered by decree were invalid did not change circumstances sufficiently to allow modification of decree prohibiting infringement of same.); Pacific Tel. & Tel. Co. v. Henneford, 199 Wash. 462, 92 P.2d 214 (1939) (Holding that a subsequent act declaring a tax valid will not be sufficient to set aside a prior decree enjoining collection of this tax.); Degenhart v. Hartford, 59 Ohio App. 552, 18 N.E.2d 990 (1938), see infra note 13.

[10] 59 U.S. (18 How.) 421 (1855).

[11] Id. at 430-32.

[12] Supra note 1, at 652-53.

of law will in all instances be sufficient grounds for modification of a decree based on prior law. Rather it need only be decided that such will be the Court's holding when the subsequent law specifically changes the public right which was the protected interest in the prior decree. Consequently the vitality of prior cases which rested in large part upon the reasoning of *Degenhart v. Hartford*[13] should not be considered diminished by the holding in this decision. In fact it may be that those cases which appear to espouse a contradictory rule of law can be distinguished and thereby reconciled with *Degenhart* by applying the reasoning of the Court in the instant case.[14]

EDWARD F. HENNESSEY, III

Taxation—Deductions for Interest.—***Knetsch v. United States.***[1]— In 1953 petitioner purchased a 30 year annuity bond in the face amount of $4,000,000, earning interest at 2½% annually. He made a small down payment and for the balance signed nonrecourse notes bearing 3½% interest, with the annuity pledged as the sole security. At the beginning of the year, after making advance interest payments on the notes, petitioner was allowed to borrow further sums, to the extent of the difference between the cash value of the annuity bond at the end of that year and the total amount of his indebtedness. Such loans were made at 3½% interest in 1953 and 1954. For these years petitioner claimed a deduction, under Section 23 of the 1939 Code, for interest paid, both on the principal notes and the additional loans.[2]

[13] Degenhart v. Hartford, supra note 9. (Funeral home located in an exclusively residential area was decreed an unlawful nuisance. Subsequent zoning change made funeral homes permissable in residential areas. Court, however, held that a broad change of law was not sufficient to show that the funeral home was not a nuisance.) And see cases cited supra note 9.

[14] See cases cited supra note 8.

[1] 364 U.S. 361 (1960).

[2] In effect the taxpayer has purchased a tax deduction at a cost to him of only a fraction of its value. The transaction, for the years 1953 and 1954, may be outlined as follows:

Payment by Petitioner			*Tax Deductions*
1953 Initial Payment		4,000	
1953 Prepaid Interest on Annuity		140,000	140,000
1953 Prepaid Interest on Cash Loan		3,465	3,465
1954 Prepaid Interest on Total Debt		143,465	143,465
1954 Prepaid Interest on Cash Loan		3,640	3,640
Gross Expenditures		294,570	
Less: Receipts			
1953 Cash Loan	99,000		
1943 Cash Loan	104,000	203,000	
Net Expenditure		91,570	
Total Claimed Deductions			290,570