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that the court, by the very act of setting up the judicial department, creates a state bar as an integrated whole. Such an integrated bar needs recognition only.[10]

If the supreme court has the power to integrate the bar, it also has, under the doctrine of implied powers, the right to do everything necessary to make integration effective.[11] A nominal fee, or suspension from practice on the failure to pay it, was held in *In re Gibson* as not denying equal protection and due process.[12] The court stated that a penalty designed solely to enforce payment of a bar integration fee was not void as arbitrary or unreasonable.[13]

The English bar was integrated early in its history, and during the past thirty-five years, some twenty-seven states have followed suit.[14] The discipline of unethical practitioners is only an incidental objective of the integrated bar. Rather, integration is designed to awaken an interest in the science of jurisprudence, improve the administration of justice, and to give the bar a true concept of its relation to the public and to the profession. Florida has stepped into line with the majority of states who view integration as a means of giving the bar this new and enlarged concept of its position in our social and economic pattern.

FEDERAL PROCEDURE—DIVERSITY OF CITIZENSHIP AS APPLIED TO CITIZENS OF THE DISTRICT OF COLUMBIA

The plaintiff corporation, organized under the laws of the District of Columbia, brought a civil action against a Virginia corporation in the Federal District Court of Maryland, jurisdiction being predicated upon an allegation of diversity of citizenship under the 1940 amendment to the Judicial Code.[1] This amendment provided in effect that citizens of the District of Columbia would be considered citizens of a state for purpose of diversity of citizenship. Defendant contended the statute was unconstitutional in that it extended jurisdiction beyond the limits of Article III, § 2 of the Constitution.[2] The trial court held that while this diversity met requirements under the Act of Congress, it did not comply with diversity requirements of the Constitution as to federal jurisdiction. *Held,* on certiorari to the Supreme Court, extension

10. *In re* Nebraska State Bar Association, *supra; In re* Day, 181 Ill. 73, 54 N. E. 646 (1899); *see In re* Branch, 70 N. J. L. 537, 576, 57 Atl. 431 (1904).
11. *E.g.*, Goer v. Taylor, 57 N. D. 732, 22 N. W. 898 (1924); Jackson v. Gallett, 30 Iowa 382, 228 Pac. 1068 (1924); State *ex rel.* McCloskey v. Greathouse, 55 Nev. 409, 36 P.2d 357 (1934); Dreidel v. City of Louisville, 268 Ky. 659, 105 S. W.2d 807 (1937).
12. 35 N. M. 550, 4 P.2d 643 (1931).
13. *Id.* at 650.
14. Petition of Florida State Bar Association, *supra* at 905.

1. 54 STAT. 143 (1940), 28 U. S. C. § 41 (1) (1946).
2. U. S. CONST. Art. III, § 2. "The judicial power shall extend . . . to controversies . . . between citizens of different States. . . ."

of diversity jurisdiction of federal courts to include citizens of the District of Columbia was not violative of the Constitution. *National Mut. Ins. Co. of District of Columbia v. Tidewater Transfer Inc.*, 69 Sup. Ct. 1173 (1949).

Prior to the 1940 amendment to the Judicial Code, decisions based on *Hepburn v. Ellzey*[3] had firmly established that the District of Columbia was not a "state" within the meaning of Article III, § 2 of the Constitution, and that the citizens of the District of Columbia were not entitled to bring actions into the federal courts on the basis of diversity of citizenship.[4] The construction given the word "state" and the view taken by Chief Justice Marshall in the *Hepburn* case had been criticized, but the courts were loathe to overrule it.[5]

In 1940, the amendment to the Judicial Code extended jurisdiction of federal courts to citizens of the District of Columbia and the Territories of the United States.[6] Passage of this amendment gave rise to three diverse views as to its constitutionality. One view placed the Act under Article III, § 2, contending that the word "state" should not be given the strict and narrow construction attached to it in the *Hepburn* case, but should be construed liberally to include the District of Columbia.[7] Another view upholding the validity of the amendment placed it under Article I, contending that since Congress has the power to legislate for the District of Columbia and the Territories, it must necessarily have the power to extend to them the privileges of using the Federal Courts in actions between parties of diverse citizenship.[8] The third view held the amendment invalid, not only on the basis of the *Hepburn* case, but also contending that even though under Article I Congress may legislate for the District of Columbia, its power is limited to those boundaries and cannot be extended beyond it to affect citizens of other states.[9]

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3. 2 Cranch 445 (U. S. 1805).

4. Hooe v. Jamieson, 166 U. S. 395 (1897); Barney v. Balto City, 6 Wall. 280 (U. S. 1868); Corp. of New Orleans v. Winter, 1 Wheat. 91 (1816); Anderson v. U. S. Fidelity Guaranty Co., 8 F.2d 428 (S. D. Fla. 1925).

5. *See* Watson v. Brooks, 13 Fed. 540, 543 (C. C. D. Ore. 1882).

6. Duze v. Wooley, 72 F. Supp. 422 (D. Hawaii 1947); Dykes and Keefe, *The 1940 Amendment to the Diversity of Citizenship Clause*, 21 TULANE L. REV. 171 (1946).

7. Pembia Consolidated Mining Co. v. Pennsylvania, 125 U. S. 181 (1888); Paul v. Virginia, 8 Wall. 169 (U. S. 1869); 46 COL. L. REV. 125 (1946); 21 TEX. L. REV. 83 (1942).

8. Glazier v. Acacia Mutual Life Ass'n., 55 F. Supp. 925 (N. D. Cal. 1944); Winkler v. Daniels, 43 F. Supp. 265 (E. D. Va. 1942). The judiciary committee of the House of Representatives recommended the act ". . . as a reasonable exercise of the constitutional power to legislate for the District of Columbia and Territories . . . ." H. R. REP. *No.* 1756, 76th Cong., 3rd Sess. 3 (1940); *see* Central States Co-ops v. Watson Bros. Transport Co., 165 F.2d 392, 399 (C. C. A. 7th 1947). *But see* National Mut. Ins. Co. of District of Columbia v. Tidewater Transfer Inc., 165 F.2d 531, 536 (C. C. A. 4th 1947).

9. Central States Co-ops v. Watson Bros. Transportation Co., *supra;* Mutual Benefit Health & Accident Ass'n. v. Dailey, 75 F. Supp. 832 (D. Md. 1948); Feeley v. Sidney S. Schipper Interstate Hauling System, 72 F. Supp. 663 (D. Md. 1947); Wilson v. Guggenheim, 70 F. Supp. 417 (E. D. S. C. 1947); Willis v. Dennis, 72 F. Supp. 853 (W. D. Va. 1947); Ostrow v. Samuel Brilliant Co., 66 F. Supp. 593 (D. Mass. 1946); Behlert v. James Foundation Inc., 60 F. Supp. 706 (S. D. N. Y. 1945); McGarry v. City of Bethlehem, 45 F. Supp. 385 (E. D. Pa. 1942).

These diverse views have been carried over to the instant case in the majority, concurring and dissenting opinions. Three Justices [10] of the majority opinion held that the diversity jurisdiction of the federal courts under Article III is not *limited* by that section; Congress has plenary powers under Article I to vest federal courts with jurisdiction. However, the concurring opinion vigorously dissented from this view, but upheld the act on the ground that the majority opinion had in effect [11] overruled the decision in *Hepburn v. Ellzey*, which gave the word "state" a narrow meaning for purposes of Article III, by saying the District of Columbia was a state for purposes of diversity of citizenship. The four dissenting justices in two opinions argued that Article I does not give Congress power to vest Article III courts with additional jurisdiction, and that the word "state" is limited in Article III, § 2.

In defining the source of federal jurisdiction, courts have often confused the source of federal *power* with the source of federal *jurisdiction*.[12] The exclusive source of federal authority is the Constitution. Article III confers some jurisdiction to the federal courts, but this does not necessarily mean that Article III is the exclusive source of federal judicial power. The Supreme Court has implicitly recognized this distinction in several cases,[13] and it has explicitly recognized that courts organized by Congress in the District of Columbia derive functional power from Article I rather than from Article III.[14] It is asserted that reliance upon Article I power to extend the privilege of using the federal courts in actions between parties of diverse citizenship to the people of the District of Columbia is a valid and realistic approach to the problem.

In view of the relative flexibility given to other words in Article III, § 2, the argument for a strict construction of the word "state" is rendered relatively impotent. Article III speaks of actions between *citizens*, and *corporations* are *nowhere* mentioned. But an irrebuttable presumption arises that all members of a corporation are citizens of the state where the corporation was organized.[15] Hence, for purposes of diversity of citizenship, a corporation is

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10. Jackson, J. announced the judgment of the Court and an opinion in which Black and Burton, J. J., joined, basing the validity of the Act on Article I. Rutledge and Murphy joined in the judgment, but strongly dissented as to the reasons assigned to support it by Jackson, J., their reason being that the Act is valid under Article III. Two dissenting opinions by Frankfurter and Vinson, J. J., in which Reed and Douglas, J. J. joined respectively, state that the Act is not within either Article I or Article III.

11. Justice Jackson, with whom Justice Black and Justice Burton concurred, expressly stated that they were not overruling Hepburn v. Ellzey.

12. *E.g.*, Hodgson v. Bomerbank, 5 Cranch 303 (U. S. 1809); *see* 55 YALE L. J. 600, 601 (1946); 47 HARV. L. REV. 133, 134 (1933); GEO. WASH. L. REV. 84, 86 (1933); 22 GEO. L. J. 91, 94 (1933); Katz, *Federal Legislative Courts*, 43 HARV. L. REV. 894 (1930).

13. Williams v. United States, 289 U. S. 553 (1933); United States v. Duell, 172 U. S. 576 (1899); United States v. Coe, 155 U. S. 76 (1894); Kendall v. United States, 12 Pet. 524 (U. S. 1838).

14. O'Donohue v. United States, 289 U. S. 516 (1933); *see* 2 GEO. WASH. L. REV. 84 (1933).

15. Doctor v. Harrington, 196 U. S. 579 (1905).

treated *as if it were* a citizen of the state where it is incorporated.[16] Likewise, national banks are, for purposes of private actions, ". . . deemed *citizens* of the State in which they are respectively located." [17] (Emphasis added). It is submitted that if illogical fictions such as these can extend jurisdiction by calling organizations "citizens for the purpose of diversity of citizenship," it is not too great a stretch to call the District of Columbia a "state" for the purpose of diversity of citizenship. Congress resorted to this fiction. In 1948, when it reënacted in substance the 1940 amendment, it included that, "The word 'state' as used in this section includes the Territories and the District of Columbia." [18]

The Territories and the District of Columbia are not states in the same sense as Florida, Michigan or New York, but they are defined territories with a distinct government and a settled population made up mainly of citizens of the United States. They are perhaps enough like states to be treated like them for the purpose of diversity of citizenship. As pointed out, jurisdiction based on fictions is not new. At least the present language appeals strongly to the lawyer's instinct to reach a fair result by giving an old word a new meaning.

MONOPOLIES—APPLICATION OF CLAYTON ACT TO FORBID EXCLUSIVE SUPPLY CONTRACTS

An injunction was sought by the United States Government to prevent defendant from enforcing or entering into exclusive supply contracts with any independent dealer in petroleum products and automobile accessories. The allegedly monopolistic contracts were of several types, but all provided that the dealer was to purchase from defendant all his requirements for one or more products. Defendant's sales of gasoline in the area resulting from such contracts were approximately $57,000,000 which sum constituted 6.7% of the total sale of gasoline for the area. The contracts were assailed as being violative of § 3 of the Clayton Act.[1] A decree enjoining defendant from enforcing or entering into such contracts was granted by the district court. On appeal, *Held,* sales by the defendant constituted a substantial volume of business; therefore, the exclusive requirements contracts probably substantially

16. Louisville, C., & C. Ry. v. Letson, 2 How. 497 (U. S. 1844).
17. 28 U. S. C. A. § 1348 (1948).
18. 62 STAT. 869 (1948), 28 U. S. C. A. § 1332(b) (1948).

1. "It shall be unlawful for any person . . . to . . . contract for sale of goods . . . whether patented or unpatented . . . on the condition . . . that the purchaser thereof . . . shall not deal in the goods . . . of a competitor . . . where the effect of such . . . contract . . . may be to substantially lessen competition or tend to create a monopoly . . ." 38 STAT. 731, 15 U. S. C. 14 (1914).