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RESTRICTIONS ON FEDERAL JURISDICTION—THE 1958 AMENDMENT TO THE JUDICIAL CODE

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Delay and congestion in the federal courts has been a subject of great concern to judges, lawyers and lawmakers for a considerable period of time. Particularly since World War II, the problem has become more acute, inasmuch as the civil caseload of the federal courts has increased seventy-five percent since 1941. In the seventeen year interim, the number of civil cases filed has risen from 38,000 in 1941 to 62,000 today. For the same period the median time interval from issue-to-trial has increased from five to nine months. Furthermore, over thirty-eight percent of all civil cases in the federal courts are subject to an unwarranted delay of from one to four years between the date of filing and the time of trial.¹ Not only does this situation cause undue hardship and suffering, but it may result in inadequate settlements for those who can not afford to wait for a judicial determination.

As an outgrowth of this increasingly troublesome situation, the Judicial Conference of the United States, in 1950, appointed the Committee on Jurisdiction and Venue to determine what measures might be taken to alleviate the problem.² Various measures were considered by the Committee, among which were:

1. Increasing the number of judges in the district court.
2. Abolition or retention of jurisdiction in cases based on diversity of citizenship.
3. Abolishing or specifically defining corporation "citizenship."
4. Increasing requisite amounts for federal jurisdiction in cases involving diversity of citizenship and federal questions.³

Although the backlog of cases has risen more than 125 per cent, the number of judges has increased only twenty-five per cent in 1941. There is little question that there is a crying need for increasing the roster of federal judges. It is a matter of common knowledge that, while increasing judgeships will somewhat lighten the pressure of cases in the federal courts, the limiting of diversity of citizenship and federal question jurisdiction, as well as the streamlining of court administration, are of paramount importance in solving the problem.

Congress has added fifty-one district judges since 1941 in an effort to cope with increasing litigation in the federal courts. As the problem con-

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1. Warren, *Delay and Congestion in the Federal Courts*, 42 J. AM. JUD. Soc'y. 6 (1958).

2. JUD. CONF. OF U.S. ANN. REP., Sept. 25-27, 1950, at 23.

3. JUD. CONF. *supra* note 2, at 27.

tinued to grow congressional efforts⁴ turned towards relieving the delay and growing congestion of cases by the enactment of legislation designed to relieve the federal courts by further limitations on jurisdiction. To achieve this end, several noteworthy amendments and additions were made to the Judicial Code by the congressional enactment of July 25, 1958.

JURISDICTIONAL AMOUNT

In establishing federal jurisdiction, the amount in controversy plays a considerable role. This general requirement affects the jurisdiction of the federal courts in cases arising under the Constitution, laws and treaties of the United States, as well as those cases in which jurisdiction is founded upon diversity of citizenship. A jurisdictional amount requirement has been coupled with federal question cases and diversity of citizenship cases from the inception of the congressional grant of jurisdiction to the federal *nisi prius* courts.

Federal Question

In 1875 Congress gave current jurisdiction to the lower federal courts of cases arising under federal law.⁵ Since that time the question of jurisdiction has been subject to a jurisdictional amount requirement.⁶ As litigation increased, the initial amount of 500 dollars was raised to 2,000 dollars by the Judiciary Act of 1887, and to 3,000 dollars in 1911.⁷ There it remained until Congress, by its legislation of July 25, 1958, amended section 1331 (a) of Title 28 to provide:

The district courts shall have original jurisdiction of all civil actions wherein the matter in controversy exceeds the sum or value of \$10,000, exclusive of interest and costs, and arises under the Constitution, laws or treaties of the United States.⁸

The 10,000 dollar amount, of course, also applies in removal situations, since removal is keyed to original jurisdiction. In this regard, it is interesting to note that this question has been raised recently. In *Lorrain Motors, Inc. v. Aetna Cas. & Sur. Co.*,⁹ an action was filed in the state court prior to

4. 104 CONG. REC. 11502 (daily ed. June 30, 1958). Similar provisions were before Congress as early as 1932. See article by members of the University of Chicago law faculty, *Limiting Jurisdiction of Federal Courts—Pending Bills*, 31 MICH. L. REV. 59-72 (1932).

5. The federal courts were first vested with their constitutional jurisdiction in this area by the Midnight Judges Act which used virtually the language of the Constitution and required no jurisdictional amount. Act of Feb. 13, 1801, § 11, 2 Stat. 89, 92. This grant was repealed by the Act of March 8, 1802, 2 Stat. 132.

6. Act of March 3, 1875, § 1, 18 Stat. 470. Wechsler, *Federal Jurisdiction on and the Revision of the Judicial Code*, 13 LAW & CONTEMP. PROB. 216, 225 (1948), states the opinion that the jurisdictional amount requirements as applied to federal question cases has no place in judging the propriety of the original jurisdiction in any case involving rights asserted under federal law.

7. 24 Stat. 552-553 (1887); Judicial Code of 1911, 36 Stat. 1091-1095 (1911).

8. 72 Stat. 415; 12 U.S. CONG. NEWS 2333 (1958).

9. 27 U.S.L. WEEK 2132 (E.D.N.Y. Sept. 16, 1958). But see *Kieffer v. Travelers Fire Ins. Co.*, 27 U.S.L. WEEK 2223 (U.S. Oct. 31, 1958) (Where the court held that jurisdictional amount of 10,000 dollars does not apply to a diversity suit removed from a state court after amendment's enactment but commenced in state court prior to the enactment date). It is the writer's opinion that this is the better reasoned opinion.

the enactment date of the act, but was subsequently removed to the federal court, where the petition for removal was denied. In construing section 3 of the act,¹⁰ the district court ruled that the "lack of specificity" in section 3 would indicate that "the established principle is that no civil action is subject to removal unless the action is one in which the federal court could have exercised original jurisdiction at the time of removal."¹¹

Although the plaintiff must be prepared to meet the burden of proving the jurisdictional amount in the first instance, another element has been added to the amount in controversy, which does not affect jurisdiction, but attaches to the amount which the plaintiff recovers. To deter the filing of inflated claims, Congress has further amended section 1331 to provide:

Except when express provision therefor is otherwise made in a statute of the United States, where the plaintiff is finally adjudged to be entitled to recover less than the sum or value of \$10,000, computed without regard to any setoff or counterclaim to which the defendant may be adjudged to be entitled, the district court may deny costs to the plaintiff and, in addition, may impose costs on the plaintiff.¹²

In the application of section 1331 (b), the trial judge may find helpful the following statement of the House Committee on the Judiciary:

This provision will apply only to amounts determined by a verdict or a final judgment decided by the court; not to compromise agreements. In deciding whether to deny costs and/or impose costs on the plaintiff, the court will undoubtedly take into consideration whether the amount claimed was made in good faith or whether it was made simply to get into federal court. It will also take into consideration the fact, if it be a fact, that the plaintiff's net recovery has been reduced by setoff or counterclaim, the validity of which the plaintiff contested in good faith.¹³

Diversity of Citizenship

The act of July 25, 1958, also made several changes in section 1332 further limiting diversity of citizenship as a ground for invoking federal jurisdiction.

In 1789, by the First Judiciary Act, Congress fixed the amount in controversy necessary to jurisdiction in diversity questions at 500 dollars. The Law of the Midnight Judges reduced the amount to 400 dollars in 1801, but it was raised to 500 dollars again in the following year. It remained at 500 dollars until 1887 when it was increased to 2,000 dollars. It was raised again to 3,000 dollars by the Judicial Code of 1911 and remained unchanged until

10. Sec. 3 of the act provides: "This Act shall apply only in the case of actions commenced after the date of the enactment of this Act."

11. See note 9 *supra*.

12. See note 8 *supra*.

13. H.R. REP. No. 1706, 85th Cong. 2d sess. 5 (1958).

1958 when Congress provided that the matter in controversy must exceed 10,000 dollars in cases wherein diversity of citizenship is involved.¹⁴

Similarly aimed at deterring the filing of inflated claims in order to bring the actions in the federal courts, section 1332 contains a provision comparable to section 1331 (b), which gives the court discretionary power to deny or assess costs to the plaintiff when the sum recovered is not commensurate with the jurisdictional amount of 10,000 dollars.

Section 1332 (b) varies from the previously stated provision in that it specifically excludes removal cases by limiting the assessment or denial of costs to those suits "where the plaintiff files the case originally in the federal courts. . . ." ¹⁵ While this insertion was added in the course of debate on the floor of the House, legislative history indicates that the condition was to have been inferred, and that the absence of the phrase was an oversight. Section 1331 (b) should also be construed so as not to apply to cases where the original action was brought in the state court.¹⁶

CORPORATIONS AND DIVERSITY OF CITIZENSHIP

For more than one hundred years the federal courts have relied upon the fiction that, for the determination of diversity of citizenship, the stockholders of a corporation were presumed to be citizens of the state which had chartered that corporation. Not since the rejection of the *Letson* opinion,¹⁷ which stated that a corporation was "entitled to be deemed" a citizen and that it was "substantially" a citizen, have the courts said, or implied, that it was or could be a citizen. The effect of the fiction has been, for all practical purposes, to provide the corporation with the citizenship of its chartering state.¹⁸ Congress has laid bare this fiction by providing in section 1332 (c) that:

For the purposes of this section and section 1441 of this title, a corporation shall be deemed a citizen of any state by which it has been incorporated and of the state where it has its principal place of business.¹⁹

Even though corporate citizenship is now a fact, we find that the problems of multi-state incorporations are left unresolved. It is not known whether or not the use of the phrase "in any state by which it has been incorporated" may possibly be construed to deny jurisdiction in those

14. Judiciary Act of 1789, 1 Stat. 78-80; 2 Stat. 89-92 (1801); 2 Stat. 132 (1802); Judiciary Act of 1887, 24 Stat. 552-553, as corrected, 25 Stat. 433 (1888); 36 Stat. 1091-1095 (1911); 72 Stat. 415 (1958).

15. See note 8 *supra*.

16. CONC. REC., *supra* note 4, at 11504-5, 11508.

17. *Louisville, Cincinnati & Charleston R.R. v. Letson*, 43 U.S. (2 How.) 497 (1844).

18. *Marshall v. Baltimore & Ohio R.R.*, 57 U.S. (16 How.) 314 (1853); see also McGovney, *A Supreme Court Fiction*, 56 HARV. L. REV. 853 (1943) and Green, *Corporations as Persons, Citizens and Possessors of Liberty*, 94 U. PA. L. REV. 202 (1946).

19. See note 8 *supra*.

instances where a citizen of state X sues a corporation, incorporated under the laws of states X and Y, in state Y. Without authority it is, and has been suggested that:

In a suit to which a multiple incorporated association is a third party, the action be considered as one by or against citizens of all the states of incorporation joined, and subject to the limitations of *Strawbridge v. Curtiss* that there must be diversity between each party plaintiff and each party defendant.²⁰

Such a construction should, of course, gain favor among those who seek to limit federal jurisdiction.

By providing "principal place of business" as an additional measure of corporate citizenship, Congress removed the unfair advantage that mere diversity of citizenship gave the out-of-state chartered corporation over its adversary. The ability of these corporations to remove litigation to the federal courts has often placed the plaintiff in a position of embarrassment or inconvenience. The burden is a financial one as well as one of inconvenience in having to travel considerable distances. Added to this is the onerousness of transporting witnesses to testify on behalf of the plaintiff.²¹

As to what constitutes principal place of business for the purposes of this act, it has been suggested that there is "ample precedent in the decisions of our courts and in federal statutes such as the Bankruptcy Act," to guide the courts in construction of the phrase.²²

As to this suggestion, one glance at the record makes it apparent that construction of principal place of business will not be a simple matter. One of the leading authorities in the field of Bankruptcy has stated:

The question of what constitutes the principal place of business of a corporation is one of fact to be determined in each particular case. . . . There is some conflict in the cases as to whether the principal place of business is located at the general executive offices where the business affairs of the corporation are managed or in the district of the factories, mills, or mines of the corporation.²³

Although the articles of incorporation, or business license may specify the principal place of business, such indicia may be disregarded in favor of the place where the manager, assets, or main operation of the corporation is located.

STATE WORKMEN'S COMPENSATION

Heretofore, cases arising under state workmen's compensation acts which are court administered have been removable to the federal courts, thereby depriving states of control over the administration of matters which

20. Note, 44 HARV. L. REV. 1106, 1110 (1931).

21. CONG. REC., *supra* note 4, at 11507.

22. H. R. REP., *supra* note 13, at 4.

23. COLLIER, BANKRUPTCY MANUAL, 2.04 (2d ed. 1954).

normally should come under the purview of their own regulations.²⁴ By prohibiting such removal, Congress has left the choice of forum to the complainant by providing:

A civil action in any state court arising under the workmen's compensation laws of such state may not be removed to any district court of the United States.²⁵

Section 1445 of Title 28 of the U.S. Code, which was entitled and dealt with "Carriers; non-removable actions," has been amended and is now entitled "Non-removable actions," thus deleting the word "Carriers" from the caption. The 1958 provision added subsection (c) which includes state workmen's compensation cases. As previously pointed out, this addition leaves the choice of forum to the employee, so that the complainant may elect to file any civil action arising under the workmen's compensation laws of the state in the state court. This provision is analogous to similar provisions in the Federal Employer's Liability Act, the Jones Act, and the Railway Employer's Liability Act, in which Congress has recognized the inadvisability of permitting removal of cases which are similar to the workmen's compensation cases of the states.²⁶

24. See ANNOT. 60 A.L.R. 2d 1262 (1958).

25. See note 8 *supra*.

26. S. REP. NO. 1830, 85 Cong., 2d sess. 6 (1958).