7-1-1955

Nonresident Administrators -- A Diversity Citizenship Problem

Paul Low

cision on the facts. And, finally, a listing and discussion of past fact situations, though of great value to historians, would be of very limited use to the attorney.

The approach employed attempted to utilize these other approaches, in part, but great stress was placed on the practical application of this rule in an effort to present it as the functional, social tool it is rather than as just another absolute legal rule. The conclusions reached are few, general, and (of necessity) deal in great part with the jurisprudential aspects of this constitutional rule.

The primary consideration of the courts is the purpose behind the passage of Article III, Section 16, and the relation of the questioned statute to this purpose. Order and reasonable notice being the two aims of this section, statutes which would seem to violate the letter of this rule have been upheld in the absence of confusion or lack of notice. By treating the "subject-title" rule in this manner, the evils intended to be affected by its passage are eliminated without creating a blind and arbitrary legal rule.

Advice to the legislator is also simple and general. The most glaring and prevalent legislative error has been the restrictive and/or insufficient title. The simple solution to this problem is, as presented in the suggested drafting outline in the text, more comprehensive and detailed titles. No statute has ever been voided due solely to the excessive length of its title. When doubt exists, the subject should be set out and labeled as such and the objects enumerated in such length and detail as to dispel all doubt.

There seem to be no improvements needed or changes desired in the way that the courts have interpreted and applied the "subject-title" rule. The only real need existing is that of remedying the apparent insensitivity of the legislature to the judicial attitude. When this sensitivity is developed in the legislature, consistent compliance with the dictates of Article III, Section 16 will follow as a matter of course.

Richard H. Parker

NONRESIDENT ADMINISTRATORS—A DIVERSITY CITIZENSHIP PROBLEM

Introduction

Decisions arising in the federal courts through diversity of citizenship[1] between adverse litigants have manifested a marked intent to conform to state law, where applicable, since the coming of *Erie R.R. v. Tompkins*.[2]

1. U.S. Const. art. III, § 2.
2. 304 U.S. 64 (1938).

In the *Erie* case and others that followed, the Supreme Court has made it quite clear that the federal courts are to guide themselves in diversity suits, strictly by the letter of the law of the state wherein the action is litigated. Nevertheless, there remains a reluctance in the federal courts to forego hearing certain diversity suits even in the face of such a mandate as *Guaranty Trust Co. v. York*.[4] In interpreting the nature of a state law the federal tribunals employ the test of "substance" or "procedure." The court can, by using this test, interpret a state law as procedural and therefore not applicable in federal courts.[5] This test is fundamentally sound when testing a state law of whose nature there can be no doubt. The inadequacy of this test, however, comes to light when the court is faced with a state law which in some aspects is substantive and in other aspects is procedural. The law may only be interpreted as either black or white, leaving without answer those problems involving laws constituting the gray areas bordering on the line of the "great divide"[6] between substantive and procedural law.

Why do the federal courts continue, in many cases, to apply and insist upon the accuracy of this rule of thumb in decisions tinged with gray? The trend in federal courts today is to give greater meaning and effect to state law in many fields. Nevertheless, on the subject of nonresident administrators the trend is to disregard state authority.[7]

Nonresident Administrators

It has been repeatedly held by the Supreme Court that suits can be maintained in federal courts by executors or administrators who are citizens of a foreign state, on the basis that they are the real parties in interest[8] and succeed to the rights of the testator or intestate. It makes no difference that the decedent could not have brought the same action in the federal courts; nor that the legatees or creditors of the decedent are citizens of the same state as the defendant.[9]

---

3. Angel v. Bullington, 330 U.S. 183 (1947); Guaranty Trust Co. v. York, 326 U.S. 99 (1945); Huddleston v. Dwyer, 322 U.S. 232 (1944); Palmer v. Hoffman, 318 U.S. 109 (1943); Klaxson v. Stentor, 313 U.S. 487 (1941); Cities Service v. Dunlap, 308 U.S. 208 (1939).

4. 326 U.S. 99 (1945).

5. Lupton's Sons v. Auto Club, 225 U.S. 489 (1912); B&O R.R. v. Baugh, 149 U.S. 368 (1893); Diederich v. American News Co., 128 F.2d 144 (10th Cir. 1942).

6. Guaranty Trust Co. v. York, 326 U.S. 99 (1945).

7. Erwin v. Barrow, 217 F.2d 522 (10th Cir. 1954); Harrison v. Love, 81 F.2d 115 (6th Cir. 1936); Hellrung v. Lafayette Trust Co., 102 F. Supp. 214 (N.D. Iowa 1950); Stewart v. Patton, 32 F. Supp. 675 (W.D. Tenn. 1940).

8. Fed. R. Civ. P. 17(a).

9. Mecom v. Fitzsimons Drilling Co., 284 U.S. 183 (1931; Memphis Ry. Co. v. Moore, 243 U.S. 299 (1917); Rice v. Houston, 80 U.S. 66 (1871); Coal Co. v. Blatchford, 78 U.S. (11 Wall.) 172 (1870); Huff v. Hutchinson, 55 U.S. (14 How.) 586 (1852); McNutt v. Bland, 43 U.S. (2 How.) 15 (1844); Irvine v. Lowry, 39 U.S. (14 Pet.) 298 (1841); Osborn v. Bank of U.S., 22 U.S. (9 Wheat.) 856 (1824); Childress v. Emory, 21 U.S. (8 Wheat.) 669 (1823); Browne v. Strode, 5 Cranch. 306 (U.S. 1809).

In *Rice v. Houston*,[10] the administrator was appointed in Tennessee while a resident there. Subsequently he became a permanent resident of Kentucky. Suit was then filed in the Tennessee federal court on the basis of diversity of citizenship, since the administrator was now a nonresident of Tennessee. On appeal, the Supreme Court held that since the law of Tennessee did not require the administrator to remain a Tennessee resident, his authority continued. Therefore, the requisite diversity existed for federal jurisdiction. In *Memphis Ry. v. Moore*,[11] an Arkansas citizen was appointed administrator of a Tennessee decedent. Suit was in the federal court on diversity. The case involved the construction of a Tennessee statute which provided that a nonresident of Tennessee who qualifies as an administrator, for the purpose of suing or being sued, shall be considered a citizen of Tennessee.[12] The Supreme Court held that the sole purpose of the act was to extend, to such administrators, who qualify, the privilege of bringing suit in the state courts, and was not intended to exclude nonresident administrators from seeking relief in federal courts.[13]

In the *Mecom v. Fitzsimmons Drilling Co.*[14] case, the plaintiffs attempted to keep the litigation in the state court. Mrs. Smith, the decedent's widow, was appointed administratrix of her husband's estate. As a resident of Oklahoma, she brought suit in the Oklahoma state court against the defendant, a Louisiana corporation. The case was removed to the federal district court on the basis of diversity of citizenship. Mrs. Smith dismissed the action and resigned as administratrix. Thereafter, Mecom, a Louisiana citizen, was duly appointed administrator and promptly filed suit in the Oklahoma state court. On defendant's motion the case was again removed to the federal court, for which Mecom brought error. The Supreme Court held that the cause should be remanded to the state court of competent jurisdiction since, in fact, no diversity of citizenship existed between the litigants, both plaintiff and defendant being citizens of Louisiana. The court further held that the diverse citizenship of the beneficiaries of the estate was not controlling in determining federal jurisdiction.

In *Erwin v. Barrow*,[15] a nonresident administrator, appointed under the laws of Oklahoma, brought suit in the federal district court to annul deeds executed and delivered by the decedent during his life time. On appeal, the circuit court ruled that the administrator, being the real party in interest,[16] could bring the suit even though his decedent could not.

---

10. 80 U.S. 66 (1871).
11. 243 U.S. 299 (1917).
12. Acts of Tenn. c. 501, p. 1344 (1903).
13. The court considered the decisions of the Tennessee Supreme Court in Southern Ry. v. Maxwell, 113 Tenn. 464, 82 S.W. 1137 (1904).
14. 284 U.S. 183 (1931).
15. Erwin v. Barrow, 217 F.2d 522 (10th Cir. 1954).
16. Note 8 *supra*.

In reaching this conclusion, the court determined that the following Oklahoma laws were inapplicable:

> Action for the recovery of any property, real or personal . . . may be maintained by and against executors and administrators in all cases and in the *same courts* (emphasis supplied) in which the same right might have been maintained by or against their respective testators and intestates.[17]

> Actions for the following causes must be brought in the county in which the subject of the action is situated . . . 4th, To . . . set aside a conveyance of . . . real property.[18]

The use of the words "same courts" in section 252[19] suggests the conclusion that the intent of the statute is to limit the right of an administrator to bring suit only in those courts which would have been available to the decedent. The decedent could have brought suit in the federal courts on the basis of diversity since he was an Oklahoma citizen. As such, a non-resident administrator is privileged under the state law to bring suit only in state courts. The intent of the Oklahoma law is to close its judicial doors to those litigants who do not comply with both statutes. The court also pointed out that section 131[20] is merely a venue statute and not substantive in nature. But, read in conjunction with section 252, it clearly shows the statutory intent to limit real property actions to the county wherein the land lies,[21] and to restrict real property actions to those counties, exclusive of federal jurisdiction.[22]

Here, then, is an example of a federal court circumventing a state law by giving it a "procedural" interpretation, thereby eliminating a function ordinarily exercised by state courts.

The Closed Door Doctrine

In diversity cases, the federal courts plainly hold themselves out as merely being just another state court,[23] and if the state's doors are closed to a litigant, so are the federal courts in that state.[24] The *Woods v.*

17. Okla. Stat. Ann., tit. 58, § 252 (1951).
18. *Id* tit. 12 § 131 (1951).
19. Note 17 *supra*
20. Note 18 *supra*.
21. See the following Oklahoma decisions: Harber v. McKeown, 195 Okla. 290, 157 P.2d 753 (1945) (the law vesting the court of a county in which real estate is situated with exclusive jurisdiction of action involving such real estate is controlling); State ex rel Murray v. Mortgage Corp., 175 Okla. 503, 53 P.2d 560 (1936) (venue is not waived); First National Bank v. Henshaw 169 Okla. 49, 35 P.2d 898 (1934) (holding that improper venue constitutes no jurisdiction); Snodgrass v. Snodgrass, 107 Okla. 140, 231 Pac. 237 (1824) (other parties have an interest besides an administrator).
22. Whether the state of Oklahoma in conformity with the Federal Constitution, can exclude federal courts from taking jurisdiction of this type case is not under consideration. The only question is whether this is the intent of the state law.
23. Woods v. Interstate Realty Co., 337 U.S. 535 (1949).
24. Guaranty Trust Co. v. York, 326 U.S. 99 (19453. *Cf.*, Cohen v. Beneficial Loan Corp., 337 U.S. 541 (1949); Ragan v. Merchant's Transfer Co., 337 U.S. 530 (1949); Woods v. Interstate Realty Co., 337 U.S. 535 (1949).

Interstate Realty,[25] case was a suit for broker's commission by a foreign corporation. The Supreme Court held[26] that such a corporation could not maintain a suit in the federal court because of diversity, since under state law[27] the corporation was precluded from maintaining any action in any "courts of this state" upon failure to qualify to do business in that state. When a stockholder bought a derivative action[28] in a federal court based on diversity of citizenship, it was held that the federal courts are bound to apply a statute[29] of the forum, which makes an unsuccessful plaintiff liable for all expenses of defense and requires security as a condition precedent for prosecuting the action.[30] In the decision, the court determined that the New Jersey law was substantive in nature and not in conflict with Rule 23 of the Federal Rules of Civil Procedure.[31] Therefore, the federal court was bound to follow the state law and close its doors to a plaintiff who could not post the security. The *Ragan v. Merchants Transfer Co.*,[32] was an action for wrongful death in the federal district court of Kansas, federal jurisdiction being based on diversity of citizenship. Service was had on the defendant after the Kansas two-year limitation for the action[33] had expired. The Supreme Court decided that as the action was barred in the state court, it was barred in the federal court, since Rule 3 of the Federal Rules of Civil Procedure[34] could not give longer life to a state-created substantive right than was given by the state law. If the state closed its doors, the doors of the federal court were also closed.

The danger in these decisions, however, is that the court persisted in relying upon the "procedure vs. substance" test. As eloquently as the court held those state laws to be substantive and controlling, so too could the court have otherwise decided that the laws were procedural. Earlier decisions support this conclusion.[35]

The *Guaranty Trust* case, appeared to discard this slide-rule method of administering justice. That action was based on diversity of citizenship, wherein the court held that when the equitable right was created and governed by state statute, the federal court was bound to recognize and

---

25. Note 23 *supra*.

26. Overruling Lupton's Sons Co. v. Auto Club of America, 225 U.S. 489 (1912) as being obsolete. There, a New York statute, LAWS OF N.Y. c. 563, § 15 (1890), prohibited suit in New York courts by foreign corporations which did not file a certificate of authority to do business. The court held the statute did not preclude suit in the federal court, where, under the general law, the contract was valid and enforceable.

27. MISS. CODE ANN. § 5319 (1942).

28. Cohen v. Beneficial Loan Corp., 337 U.S. 541 (1949).

29. NJSA 14: 3 - 15 to - 17 (1948).

30. *Id.*

31. FED. R. CIV. P. 23 (b).

32. 337 U.S. 530 (1949).

33. GEN. STAT. KAN. 60-306, 60-308 (1935).

34. FED. R. CIV. P. 3.

35. B & W Taxi Co. v. B & Y Taxi Co., 276 U.S. 518 (1928); Lupton's Sons Co. v. Auto Club, 225 U.S. 489 (1912); B & O R.R. v. Baugh, 149 U.S. 368 (1893) (wherein Justice Field dissented and strongly urged that state law should be presented, for the Constitution gives no power to the federal courts to replace state law).

follow it in determining the rights of the parties concerned. The procedural rule creates and defines the substantive right in many instances, and the federal courts can not diminish the effect of such state procedural law. The court now applied a different test, as stated in the opinion by Justice Frankfurter:

> And so the question is not whether a statute is deemed a matter of 'procedure' in some sense. The question is . . . *does it significantly affect the result of a litigation for the federal court to disregard a law of a state that would be controlling in an action upon the same claim by the same parties in a state court.* (emphasis supplied)[36]

In other words, the test determines the difference in result, assuming the same suit were litigated in both the state and federal court. This guidepost of what would be the "outcome" of the same case in a state court seems wise. It is perplexing, however, that the Supreme Court in the *Ragan* and *Woods* cases, although many times citing the *Guaranty Trust* case, nevertheless clung to the older theory, even though the newer and apparently more workable test would have produced the same decisions.

What has this to do with nonresident administrators in diversity suits, and why the concern?

Discrimination Against Residents

In considering what has been said thus far, we have concluded *first*, that nonresident administrators can bring actions in the federal courts on the basis of diversity of citizenship. *Secondly*, where the state courts have closed their doors to a litigant, the federal courts must also close their doors. *Thirdly*, the Supreme Court has developed a pragmatic test by which the federal courts can guide themselves in diversity suits, namely, what would be the "outcome" of the same suit in a state court. *Fourthly*, the federal courts have continually persisted in relying on the procedure-substance test in determining whether federal or state law is controlling in a suit founded on diversity of citizenship.

In the *Woods* case, the pertinent part of the statute precluded a corporation from suing in any "courts of this state." The court construed the words, to mean not only state courts, but also federal courts in that state. The statute under consideration in the *Erwin* case includes the words "same courts," in requiring the decedent's administrator to bring an action involving the annulment of a deed only in the courts in which his decedent could sue. The decedent could not bring suit in the federal courts, for his citizenship was the same as that of the defendant. Nevertheless, the circuit court construed the state law as not intending to preclude the administrator from bringing the local action in the federal district court. Further, the decedent would have been required to bring the action in the

36. 326 U.S. 99 at 109 (1945).

county where the realty in question was situated. This treatment of state law results in unjust discrimination against those interested parties, who, by misfortune, happen to be residents of the forum. By avoiding the test of what would be the "outcome," the court interpreted the venue statute to be merely procedural and not controlling. The facts of the *Memphis Ry.* case were much the same. However, it was decided in 1917, twenty-one years before the birth of the *Erie* Doctrine, and the court declared that irrespective of a state ruling, it would independently construct the statutory law of Tennessee.[37] Modern trends would seem to indicate that the case is no longer authoritative. There have been other decisions in the not-too-distant past which also seem questionable, and which resulted in divestment of state authority, and discrimination against state residents.[38] As late as 1945 in *Krisor v. Watts,*[39] a federal district court held that a Wisconsin statute of limitation was not controlling in the federal courts[40] as the action was not barred under the Federal Rules.[41]

Another distressing feature is the fact that federal courts will hear cases even when there is obvious collusion in an effort to gain federal jurisdiction.[42] In *Stewart v. Patton,*[43] a non-resident of Tennessee was appointed administrator in that state for the sole purpose of gaining access to the federal courts. Such motive was readily admitted by the plaintiff's attorney, and the plaintiff himself confessed to be a stranger to the action. Nevertheless, in following the *Mecom* decision, the court maintained that the collusion practiced by the plaintiff and his attorneys was immaterial. Another decision which resulted in the usurpation of state functions was *Hellrung v. Lafayette Trust Co.*[44] There, an Indiana statute[45] provided that suits shall not be filed against administrators, but instead, the claimants were required to file a statement of claim in the court in which the estate was pending. The plaintiff, a nonresident, filed suit in federal court for wrongful death. It was held that the Indiana law did not restrict the power of the federal court to hear and determine a death action against the administrator. Was it not the purpose of the Indiana statute to limit actions in an effort to speed up estate administration instead of having a possible string of suits pending in numerous courts against the administrator? Did not this decision result in discrimination against interested Indiana

37. 243 U.S. 299 at 301 (1917).
38. Diederich v. American News Co., 128 F.2d 144 (10th Cir. 1942) (holding an Oklahoma constitutional provision as not controlling in cases in the federal courts sitting in Oklahoma); Harrison v. Love, 81 F.2d 115 (6th Cir. 1936); Hellrung v. Lafayette Trust Co., 102 F. Supp. 822 (D.C. Ind. 1951); Krisor v. Watts, 61 F. Supp. 845 (D.C. Wis. 1945); Stewart v. Patton, 32 F. Supp. 675 (W.D. Tenn. 1940).
39. 61 F. Supp. 845 (D.C. Wis. 1945).
40. *Compare,* Guaranty Trust Co. v. York, note 4 *supra.*
41. Fed. R. Civ. P. 3.
42. Redditt v. Hale, 184 F.2d 443 (8th Cir. 1950); Harrison v. Love, 81 F.2d 115 (6th Cir. 1936); Stewart v. Patton, 32 F. Supp. 675 (W.D. Tenn. 1940).
43. 32 F. Supp. 675 (W.D. Tenn. 1940).
44. 102 F. Supp. 822 (N.D. Ind. 1951).

citizens who were bound to follow the state law.[45] Should not the district court have declined jurisdiction? The real purpose of conformity in diversity suits is more than merely deciding the outcome of a case. As stated by the court in *Weiss v. Routh*:[46]

> It is that the accident of citizenship shall not change the outcome: a purpose which extends as much to determining whether the court shall act at all, as to how it shall decide, if it does.

The situations outlined above are reminiscent of *Black & White Taxi v. Brown & Yellow Taxi*,[47] wherein the litigants were able to "go shopping" for the court which would be most sympathetic to them. The discriminatory possibilities of the *Black & White* situation were severely criticized by Justice Brandeis[48] in his repudiation of *Swift v. Tyson*,[49] as part of the "unconstitutional course."

To reflect, we see in the *Hellrung* case that a resident could not file an action against an administrator for wrongful death. In the *Erwin* case, a resident could not sue in the federal court. In the *Krisor* case the action in the state court would have been barred. Applying the "outcome" test of *Guaranty Trust*, it is not doubtful that the decisions should have been otherwise, for as stated in that case:

> Certainly, the fortuitous circumstances of residence out of state of one of the parties to a litigation ought not to give rise to a discrimination against others equally concerned but locally resident.[50]

Reaffirmation of State Powers

There must be some middleground established to overcome the federal pressure which works an injustice on residents in nonresident administrator cases, and which deprives the states of the privilege[51] of conducting internal affairs free from the fearful "brooding omnipresence" of the federal courts.

Three fairly recent lower federal court cases approach this middleground. In *Pierce v. Hildebrand*,[52] a California citizen brought suit in the federal district court of Iowa to be declared a one-sixth owner of the estate of the deceased. In declining jurisdiction of the case, the district court looked beyond the pleadings (defendants included the executor and eight other parties, all Iowa citizens) and arranged the parties according to their actual sides in the suit. The result showed Iowa citizens to be arrayed against Iowa citizens. Hence, no real diversity existed for federal jurisdiction, even though the plaintiff's and administrator's citizenship

45. Burn's Ann. Stat. Ind. § 6 - 1001 (1950).
46. 149 F.2d 193 at 195 (2d Cir. 1945).
47. 276 U.S. 518 (1928).
48. 304 U.S. 64 (1938).
49. 41 U.S. (16 Pet.) (1842).
50. 326 U.S. 99 at 112 (1945).
51. B & O R.R. v. Baugh, 149 U.S. 368 (1893).
52. 103 F. Supp. 396 (S.D. Iowa 1952).

was diverse. In so holding, the court emphasized the fact that it could not draw to it the administration of estates which were being handled by the state probate court.[53]

Another case in which jurisdiction was based on diversity of citizenship is *Hoosier Gas Co. v. Fox*.[54] The court would not apply federal procedural law to allow an injured person to maintain a counterclaim against the liability insurer, since the state law[55] and policy of Iowa requires as a condition precedent to filing suit against the insurer, that the injured party must obtain judgment against, and execution returned unsatisfied from, the insured tort-feasor.[56]

In *Bolitho v. Buck Express*,[57] it was held that when a plaintiff sues in a representative capacity, her capacity shall be determined by the laws of the state.[58] So, even where the requisite diversity exists, if the party does not have the capacity under the state law, such capacity can not be extended by the Federal Rules of Civil Procedure.[59]

Conclusion

To be effective, state law regarding nonresident administrators must, in some measure, be recognized and followed by the federal courts in diversity suits. The continued acceptance and pursuance of the decisions in the *Mecom* and *Memphis Ry.* cases, is not likely to end in justice, mainly because of the discrimination against state citizens. Being at the crossroads, perhaps the federal courts should alter their course and move in a direction which will give greater effect to state law and policy regarding the administration of estates by nonresidents. The failure of the federal courts to sufficiently recognize state law in this field has created and will continue to create evils no less impairing, for instance, than the *Black & White Taxi* case.

It is incumbent upon the federal courts to go beyond the formal pleadings of a suit. For the administrator, although considered the real party in interest for the purpose of maintaining or defending an action, is in reality a stranger to the benefits or costs that may accrue from such a suit. The parties to benefit should be considered as much as, if not more than, an administrator, particularly when determining whether the parties to a suit have the requisite diversity for federal jurisdiction. Those parties,

---

53. *Compare*, Hellrung v. Lafayette Trust Co., note 44 *supra*.
54. 102 F. Supp. 214 (N.D. Iowa 1950).
55. Iowa Code Ann. § 516.1; Rules 1 - 28 (1951).
56. The court holding that in view of the Erie Doctrine federal procedural law must give way to state law and policy in diversity suits.
57. 12 F.R.D. 189 (E.D. Pa. 1951).
58. Pa. R. Civ. P. Nos. 2201 and 2202(a); 20 P.S. Pa. § 320.1101 (1949). Here the plaintiff was administratrix *ad prosequendum* but state law required suit to be brought by general administratrix only.
59. Fed. R. Civ. P. 17(b).

including heirs, legatees, and beneficiaries, are not, under the law, the real parties in interest. Neverthelss, they have an "interest which is real." A slackening of the rigidness of rule 17(a) of the Federal Rules, in this respect, would aid greatly in developing a modern and just approach in deciding cases involving nonresident administrators.

It is further suggested that the federal courts adopt and apply the "outcome" test as described earlier. Such application would bridge the gap between substantive and procedural law. Every state law thus considered by the federal courts could be uniformly tested.

It is logically concluded that the ultimate results of the present federal policy, if followed, will end in large-scale removal from state courts of the litigation of all suits wherein one of the parties, by circumstance, is a nonresident administrator. It is further concluded that this would not be the result if the state laws governing decedent administration were primarily considered.

PAUL LOW

VALIDITY OF ARBITRATION PROVISIONS IN FEDERAL PROCUREMENT CONTRACTS

I. INTRODUCTION

The large number of federal procurement contracts, attended by numerous disputes involving these contracts, and the spectre of ever-lengthening dockets in the Federal Courts, has drawn attention to the validity of arbitration provisions which may be placed in a procurement contract.

The process of arbitration, as the term will be employed in this comment, is to be distinguished from a process provided for by a clause contained in many procurement contracts, which shall be termed the "determination clause." Under the determination clause the contracting officer, subject to review by some other government official in some instances, decides any dispute under the contract.[1]

Arbitration has been defined as ". . . a mode of settling differences through investigation and determination, by one or more unofficial persons selected as a domestic tribunal for the purpose, of some disputed matter submitted to them by contending parties for decision and award . . . ."[2] An arbitration proceeding is judicial in nature,[3] and the parties to an

1. 41 U.S.C. § 52.6 (appendix) providing for the handling of disputes; See 41 U.S.C. § 54.21, art. 12, which is the standard government supply contract disputes provision.

2. Housing Authority of New Orleans v. Henry Ericsson Co., 197 La. 732, 2 So.2d 945 (1941).

3. Puget Sound Bridge and Dredging Co., v. Lake Washington Shipyards, 1 Wash. 2d 401, 96 P.2d 257 (1939).