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treated as if it were a citizen of the state where it is incorporated. Likewise, national banks are, for purposes of private actions, "... deemed citizens of the State in which they are respectively located." (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." 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. 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


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).
lessened competition and were illegal under the Clayton Act. *Standard Oil Co. of California v. United States*, 69 Sup. Ct. 1051 (1949).

Section 3 of the Clayton Act renders illegal contracts by which the buyer is required to purchase certain products of the seller as a condition of buying the seller’s patented products (tie-in contracts) and contracts requiring the buyer to purchase specified products exclusively from the seller (requirements contracts) *where the effect of such contracts may be to substantially lessen competition*. The agreements prohibited by the section are specifically defined but when such contracts are illegal is a matter of deciding when their effect may be to substantially lessen competition.

It has been held that § 3 was intended to prevent only a probable, rather than any remotely possible, lessening of competition. In determining what was to constitute a probable lessening of competition, it was indicated that, instead of following the “rule of reason” employed in judging cases under the Sherman Act, whereby it was necessary to show either factual proof of the agreements or that the agreements were illegal per se, it was necessary to find a standard specifically applicable to § 3. Despite its disavowal of the necessity of following the “rule of reason test,” it was felt necessary to have some showing as to the economic consequences of the agreements defined in § 3. A standard for determining a probable substantial lessening of competition was adopted which required either: (1) factual proof as to the economic consequences of the agreement; or, (2) a showing that the seller controlled a large percentage of the market, from which showing the court could infer that the probable effect of the agreements was a substantial lessening of competition.

In *International Salt Co. v. United States*, involving agreements tying the sale of non-patented to patented products, the court discarded the necessity of showing either economic consequences or dominance of a large percentage of the market. It was there held sufficient to show that the business of the seller was not “insignificant” or “insubstantial” for the court to find that the probable effect of the agreements was a substantial lessening of competition.

8. As to when a market is substantial *compare* *United States v. Yellow Cab Co.*, 332 U. S. 218 (1947), with *United States v. Columbia Steel*, 334 U. S. 495 (1948).
10. *Id.* at 396.
The court did not state whether this broad application of § 3 was to be used only in the case of tying contracts or to cover requirements contracts as well. Subsequently, in *United States v. Columbia Steel*, the court cited the *International Salt Case* as standing for the proposition that contracts are illegal per se upon a showing that the seller's business is substantial, but then adds that all exclusive requirements contracts are not invalid until factual proof of economic consequences or dominance of a large part of the market is shown. It would appear from this dictum that the court had decided to adopt two standards of legality pertaining to § 3. One standard, applying only to tying contracts, would require only a showing of a substantial volume of business affected in order for the court to determine that the effect of the contracts is a substantial lessening of competition. The other standard, applying to requirements contracts, would require either a showing of economic consequences or a showing of dominance of a large percentage of the market.

However, in the principal case, the court has refuted all previous indications of adopting two standards of legality. It applies the stringent rule of the *International Salt Case* to a case involving only requirements contracts with no patented products involved holding such contracts illegal upon a showing that the seller's business is substantial. The finding that the business of defendant was substantial was sufficient for the court to determine that the effect of the requirements contracts was a probable lessening of competition.

The court did not apply the *International Salt* rule blindly, but gave consideration to the possible economic advantages offered to the small dealer through requirements contracts as contrasted with the lack of advantages of tying contracts. Stating that actual proof of effect of the agreements was impossible of being accurately weighed by the court, the standard of *International Salt*, requiring only that the volume of business be substantial, was adopted as the test of legality of requirements contracts under § 3.

The effect of the decision is to deny the use of requirements contracts to big business solely because of its bigness. As to determining that point in size at which requirements contracts become illegal, the decision dispenses with the comparative method based on percentage control of the total market, and substitutes a quantitative point based only on the seller's volume of business. This quantitative point is that point at which the volume of business becomes substantial. The decision does not dispel the mist surrounding the interpretation of substantial. It only decides that $57,000,000, though only 6.7% of the total sales, is a substantial volume of business. No indication is given as to what will be considered substantial in future decisions.

11. Supra.
12. Id. at 523.