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Federal Procedure - Diversity of Citizenship as Applied to Citizens of the District of Columbia and Territories

B. R. D.

FEDERAL PROCEDURE—DIVERSITY OF CITIZENSHIP AS APPLIED TO CITIZENS OF THE DISTRICT OF COLUMBIA AND TERRITORIES—Plaintiff, a citizen of the District of Columbia brought suit against defendant, a municipal corporation formed and existing under the laws of Pennsylvania, in the District Court of the United States for the Eastern District of Pennsylvania, on a claim exceeding $3,000, exclusive of interest and costs. Defendant excepted to the jurisdiction of the court *ratione materiae* on the ground that a citizen of the District of Columbia is not a citizen of a state within the meaning of the Constitution, and therefore cannot maintain an action in the federal courts based solely on diversity of citizenship. *Held,* that the amendment to the judicial article passed April 20, 1940, giving citizens of the District of Columbia the right to maintain actions in the federal courts based on diversity of citizenship alone is unconstitutional as it exceeds the jurisdiction granted to the federal courts by the Constitution. *McGarry v. City of Bethlehem,* 45 F. Supp. 385 (E. D. Pa. 1942).

The above opinion was rendered May 15, 1942. Just four months before, on January 16, 1942, the Federal District Court for the Eastern District of Virginia had occasion to pass on the very same act, in a case on "all fours" with the principal case.[1] In this case the district judge held the same amendment to be constitutional. Thus within a period of four months we find two lower federal courts handing down contra opinions, based exclusively upon the constitutionality of the above act.

Prior to the passing of this act, the federal courts had held in an unbroken line of cases[2] that a citizen of the District of Columbia was not a citizen of a state within the meaning of the word as used in the judicial article of the Constitution.[3] Congress, seeing the injustice of the situation, passed the following act, the constitutionality of which is now involved:

> "Be it enacted by the Senate and the House of Representatives of the United States of America in Congress assembled, That clause (b) of paragraph (1), section 24, of the Judicial Code . . . be, and the same is hereby, amended to read as follows:

1. Winkler v. Daniels, 43 F. Supp. 265 (E. D. Va. 1942).

2. Hepburn & Dundas v. Ellzey, 6 U.S. 445, 2 L.Ed. 332 (1805); Corporation of New Orleans v. Winter, 14 U.S. 91, 4 L.Ed. 44 (1816); Barney v. Baltimore, 73 U.S. 280, 18 L.Ed. 825 (1868); Pannill v. Roanoke Times Co., 252 Fed. 910 (W.D. Va. 1918); Duehay v. Acacia Mut. Life Ins. Co., 70 App. D.C. 245, 105 F.(2d) 768 (1939).

3. U.S. Const. Art. III, § 2: "The judicial power shall extend to all Cases, in Law and Equity . . . between citizens of different States. . . ."

"'(b) Is between citizens of different states, or citizens of the District of Columbia, the Territory of Hawaii, or Alaska, and any state or Territory.'"[4]

Upon reading the act, the question that comes to the reader's mind is the same as was raised in the two cases previously mentioned: namely, has Congress exceeded the power granted to the federal courts under Article 3, Section 2 (the judicial article) of the Constitution. It has always been recognized that Congress, having the power to create and abolish the lower federal courts, also has the power to limit the jurisdiction that might be conferred upon them.[5] But it has been equally recognized that Congress cannot grant jurisdiction that exceeds the boundary set out by the judiciary article of the Constitution.[6] Chief Justice Marshall spoke of this as early as 1809, when in *Hodgson and Thompson v. Bowerbank*[7] he said: "turn to the article of the constitution of the United States, for the statute cannot extend the jurisdiction [of the federal courts] beyond the limits of the constitution." And as Judge Love later said in *United States v. Burlington & Henderson County Ferry Company*,[8] "In order to give jurisdiction to a federal court . . . the constitution and the statute law must concur. . . . the constitution as the fountain, and the laws of congress as the streams from which and through which the waters of jurisdiction flow to the courts."

It would seem clear from the above jurisprudence that the act of 1940 is unconstitutional in that it exceeds the jurisdiction expressly granted to the federal courts in the Constitution. This is exactly what the learned district judge of Pennsylvania held in the principal case.[9] However in the case decided four months previously, the district judge of Virginia held it constitutional, as before stated. He based this decision upon Article 1, Section 8 of the Constitution and not upon the judiciary article from which the jurisdiction of the federal courts had always emanated and

4. 54 Stat. 143 (1940), 28 U.S.C.A. § 41(1) (Supp. 1942).

5. U.S. Const. Art. III, § 1: "The judicial Power of the United States, shall be vested in one Supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish."

6. Sheldon v. Sill, 49 U.S. 441, 12 L.Ed. 1147 (1850); Kline v. Burke Constr. Co., 260 U.S. 226, 43 S.Ct. 79, 67 L.Ed. 226, 24 A.L.R. 1077 (1922).

7. 9 U.S. 303, 3 L.Ed. 108 (1809).

8. 21 Fed. 331, 334 (S.D. Iowa 1884).

9. McGarry v. City of Bethlehem, 45 F. Supp. 385 (E.D. Pa. 1942). Judge Moore was reluctant to pass upon the act's constitutionality, but declaring to have found no other cases that had considered the amendment, he adherred to the past jurisprudence of the Supreme Court and held it unconstitutional. He was undoubtedly in error as to other cases, for the Virginia case was decided exactly four months prior to this decision.

from which the Pennsylvania judge held that it must come. This section gives Congress the right, among other things, to "exercise exclusive Legislation in all Cases whatsoever, over such District . . . as may . . . become the Seat of the Government of the United States." The Virginia court's decision here has the effect of saying that a grant of jurisdiction to the federal courts need not be expressly found in the judiciary article, *but may be impliedly found in any other article of the Constitution.* Assuming this reasoning to be correct, for the sake of argument, it is nevertheless hard to visualize how declaring a citizen of the District of Columbia a citizen of a state for purposes of suing in the federal court has any connection whatsoever with the right to legislate. Furthermore, this line of reasoning if once accepted may later run into sharp repercussions, for through it the jurisdiction of the federal courts can be extended beyond expectation.[10]

Nevertheless, whether the reader agrees with the liberal decision handed down by the Virginia court, he must agree that this result is the only just and equitable one. Why should not a citizen of the District of Columbia be allowed the same privileges as a citizen of any state in suing and being sued in a federal court except for the reason that the framers of the Constitution did not provide for it? The injustice of the situation can be seen from the following example. Suppose *A* and *B* are driving through California. *A* is a citizen of Virginia and *B* is a citizen of the District of Columbia. *C*, a famous son and citizen of California, collides with them and injures each of them to the extent of $3,500. Since the amount involved exceeds $3,000, exclusive of interest and costs, and there is a diversity of citizenship, *A* could serve *C* in California and bring suit in the California federal court. *B* would not be so fortunate. He could bring suit against C (assuming personal service could not be obtained upon C outside of that state) only by submitting himself to the jurisdiction of the state courts of California, thereby exposing himself to any favoritism which *C* might have with the courts of that state. In the writer's mind, there is no reason why *B* should suffer this injustice simply because he resides in the District of Columbia.

10. In this same Section 8 of Article I, Congress is also given the right to "make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof." Using the Virginia judge's reasoning almost any grant of jurisdiction by Congress to the federal courts could be upheld by this article.

One can only speculate as to what the Supreme Court will hold when it has occasion to pass on this amendment.[11] In view of past jurisprudence it would seem that the amendment's constitutionality is doomed; however, with the liberal court which we have today, there is a good chance that the statute will be upheld. Undoubtedly the result reached by a decision upholding it would be just; but the question that presents itself in the writer's mind is whether the result will justify the means. Such reasoning could have the effect of extending the jurisdiction of the federal court far beyond its present bounds.

B. R. D.

MINERAL RIGHTS—PRESCRIPTION AQUIRENDI CAUSA—The land in question was sold by the original owner to Sanders, who sold it to Lewis on December 23, 1919, reserving all mineral rights. On November 1, 1920, Lewis sold the land to Goree, the present plaintiff, not mentioning the reservation of mineral rights; and the plaintiffs in good faith took and maintained actual possession of the land to date of suit, July 27, 1942.

Sanders, who had reserved the mineral rights in the land, leased his mineral rights on February 14, 1919, to Smitherman who on April 23, 1921, leased to the Ohio Oil Company. Two wells were drilled by the Ohio Oil Company in 1922 and oil was produced from 1922 until September 1931, after which no drilling took place. The plaintiffs knew of this drilling on the land, but claimed the ownership of the mineral servitude by ten years prescription acquirendi causa under Article 3482. The defendants contended that possession under Article 3487[1] must be *continuous* and *uninterrupted;* that the drilling operations upon the premises from 1922 until 1931 constituted a use of their servitude; that the plaintiff's possession was thereby interrupted; and that therefore the plaintiff's possession was not continuous and uninterrupted

11. It will be noted that the amendment passed April 20, 1940, applied to territories as well as the District of Columbia. At the time this note was written, however, no cases could be found which had passed upon this phase of the act. It could be upheld under the reasoning used in Winkler v. Daniels, 43 F. Supp. 265 (E.D. Va. 1942), since Article 4, Section 3 of the Constitution gives Congress the right to "make all needful Rules and Regulations respecting the Territory . . . belonging to the United States." It could be declared unconstitutional under *McGarry v. City of Bethlehem,* however. Therefore, any decision which the Supreme Court may reach as to the District of Columbia would be equally applicable to the territories, and vice versa.

1. Art. 3487, La. Civil Code of 1870.