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Federal Jurisdiction - Workmen's Compensation Suits Filed Originally In Federal Courts - Amount In Controversy

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children as part of their general obligation to support but it is strongly implied.[11]

Current income seems to have become the accepted criterion for determining the ability to pay alimony. In some instances, current income has been adequate to meet a substantial award without looking to luxury assets; in those instances, the courts have granted awards consistent with the standard of living of the parties.[12] In many cases where the obligor has had moderate income and no luxury assets, the payment of the award may have served to reduce drastically his standard of living. The instant case indicates that even where the amount requested has been to cover expenses necessary to life and health, such as food, lodging, and medical care, the courts do not seem inclined to set the award so high as to force the parent to liquidate even luxury assets. This is justified where the amount requested is higher than current income of an obligor living on a bare subsistence level. It is perhaps less justified where the award is more than the current income of an obligor owning valuable luxury assets. It is submitted that where the award is to cover those basic necessities, *e.g.*, food, lodging, and medical care, the court might consider the existence of luxury assets in determining ability to pay.

Leila Obier Cutshaw

FEDERAL JURISDICTION — WORKMEN'S COMPENSATION SUITS FILED ORIGINALLY IN FEDERAL COURTS — AMOUNT IN CONTROVERSY

Defendant filed a workmen's compensation claim with the Texas Industrial Accident Board against his employer's insurer,

11. Other jurisdictions have so held. Matthews v. State, 126 So.2d 245 (Miss. App. 1961); Osborn v. Weatherford, 27 Ala. App. 258, 170 So. 95 (1936). See 54 C.J.S. *Maintenance* 904 (1948). French commentators were of the opinion that the alimony obligation included expenses occasioned by sickness. See 1 PLANIOL, CIVIL LAW TREATISE (AN ENGLISH TRANSLATION BY THE LOUISIANA STATE LAW INSTITUTE) no. 681 (1959). See also 2 BAUDRY-LACANTINERIE ET HOUQUES-FOURCADE, TRAITÉ THEORIQUE ET PRATIQUE DE DROIT CIVIL no 2077 (2d ed. 1900); 9 AUBRY ET RAU, DROIT CIVIL FRANCAIS n° 553 (6th ed. 1953). In defining the obligation to support, *Las Siete Partidas* provided for "all other things necessary for them, and without which men can not live" but does not mention care of the insane specifically. Tit. XIX, Law 2. Spanish writers also include medical care in the obligation to support, again according to ability to pay. 4 VALVERDE Y VALVERDE, DERECHO CIVIL ESPAÑOL 537 (1926).

12. Williams v. Barnette, 226 La. 635, 76 So.2d 912 (1954); Wilmot v. Wilmot, 223 La. 221, 65 So.2d 321 (1953); Wilson v. Wilson, 129 So.2d 61 (La. App. 3d Cir. 1961).

alleging total and permanent incapacity and claiming the maximum statutory recovery of $14,035. After administrative hearings the Board made an award of $1,050. Pursuant to the Texas statute, which provided a trial de novo to the parties if either wished to contest the board award,[1] plaintiff insurer immediately filed this diversity action in federal court. Plaintiff denied defendant's right to *any* recovery under Texas law, but alleged defendant's $14,035 claim to be the matter in controversy. Defendant moved to dismiss on the ground that the amount in controversy was only $1,050, the amount of the award, and thus insufficient to meet the federal jurisdictional requirement that the amount in controversy exceed "the sum or value of $10,000, exclusive of interest and costs."[2] Alternatively, defendant filed a counter-claim for $14,035.[3] The federal district court dismissed plaintiff's complaint.[4] The court of appeals reversed,[5] finding the requisite amount present.[6] On certiorari to the United States Supreme Court, *held,* affirmed. In a federal court action by an insurer to set aside a workmen's compensation award by a state administrative board, where the state statute allows complete de novo litigation of the workman's right to recover any claims arising out of his injury, the jurisdictional amount is that claimed in good faith by the plaintiff in his com-

1. TEXAS ANN. CIV. STAT. art. 8307, § 5 (Vernon, 1956).

2. 28 U.S.C. § 1332(a) (1958). Subsequent to the filing of the insurer's action in federal court, but before making his motion to dismiss that action, the worker filed a similar suit in state court in which he claimed $14,035.

3. The counterclaim was designated by defendant as compulsory. With exceptions not applicable here, FED. R. CIV. P. 13(a) requires a party to file a counterclaim arising out of the transaction or occurrence that is the subject of the opposing party's claim.

4. The district court's decision is not reported, but it is said by the court of appeals to have been based entirely upon National Sur. Corp. v. Chamberlain, 171 F. Supp. 591 (N.D. Tex. 1959). See 275 F.2d 148, 150 (5th Cir. 1960). In *Chamberlain,* where the facts were parallel to those in the instant case except that the worker in that case had filed his state court action prior to the insurer's federal action, the district judge dismissed the plaintiff's complaint on the basis that the Board award should determine jurisdiction and that it was inadequate in that case to place a sufficient amount in controversy to satisfy the federal jurisdictional requirements. It was also said that the federal courts "should decline the exercise of jurisdiction even if the jurisdictional amount were involved in cases where an appeal is filed in the State court within the time provided by State law" in order to give effect to the 1958 prohibition of removal of state workmen's compensation actions to federal courts. 171 F. Supp. 591, 598 (N.D. Tex. 1959). *Chamberlain* appears to have been the first Texas federal court case to consider in depth the effect of the 1958 amendment (see note 9 *infra* and accompanying text) on Texas workmen's compensation actions filed originally in federal court.

5. 275 F.2d 148 (5th Cir. 1960).

6. It was held by the court of appeals that the 1958 statute prohibiting removal did not apply to an original action filed by the insurer, and that federal court jurisdiction over Texas workmen's compensation cases was "special" so that the federal courts were bound by the state rule which held the amount in controversy in such cases to be the amount of the claim before the Board. *Ibid.*

plaint, notwithstanding that the board award may have been for less than the required jurisdictional minimum. In addition, although *removal* of workmen's compensation actions from state court is prohibited by federal statute, there is federal jurisdiction of an insurer's action filed *originally* in federal court. *Horton v. Liberty Mut. Ins. Co.*, 367 U.S. 348 (1961).

In 1958 Congress took steps to relieve the growing congestion in federal courts by reducing the number of cases over which the federal courts had jurisdiction.[7] As part of that plan, Congress raised the minimum jurisdictional amount from $3,000 to $10,000,[8] and prohibited the removal of state workmen's compensation cases from state to federal courts.[9] The latter provision, although primarily aimed at reducing crowded dockets,[10] was also justified in the Senate Report as a method of removing a coercive procedural weapon from the insurer's use by giving the workman the choice of federal or state forum.[11]

The Texas workmen's compensation statute[12] allows either

7. Both the House and Senate Reports on the legislation use the following language: "In the years following World War II the judicial business of the United States district courts increased tremendously. Total civil cases filed are up 75 percent. . . . Most of the increase has occurred in the diversity of citizenship cases. . . . In adopting this legislation, the committee feels . . . that it will ease the workload of our federal courts." S. Rep. No. 1830, 85th Cong., 2d Sess. 2-3 (1958); H.R. Rep. No. 1706, 85th Cong., 2d Sess. 2-3 (1958). One of the principal features of the legislation, aimed particularly at reducing diversity jurisdiction, is the provision that a corporation should be considered for purposes of diversity jurisdiction as a citizen of the state of incorporation as well as a citizen of the state in which the corporation's principal place of business is located. See 28 U.S.C. § 1332(c) (1958).

8. 72 Stat. 415 (1958), amending 28 U.S.C. §§ 1331, 1332 (1952).

9. 72 Stat. 415 (1958), amending 28 U.S.C. § 1445 (1952). In its amended form 28 U.S.C. § 1445(c) (1958) reads: "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."

10. S. Rep. No. 1768, 85th Cong., 2d Sess. 3 (1958); S. Rep. No. 1830, 85th Cong., 2d Sess. 6-9 (1958); 104 Cong. Rec. 12683 (1958) (remarks of Representative Smith after he had suggested the amendment prohibiting removal): "Those cases have resulted, in those particular states . . . in a great deal of congestion in the Federal courts. . . . I had a letter the other day from [a federal district judge in Texas who said] . . . it hampered his work, the time taken up with these compensation cases, in view of the peculiar state law in the State of Texas." THE ANNUAL REPORT OF THE PROCEEDINGS OF THE JUDICIAL CONFERENCE OF THE UNITED STATES 15 (1957), in reporting its approval of an early version of the provision, stated that "the United States district courts in Texas, Alabama, and New Mexico receive a substantial number of such cases by removal and the district courts of Louisiana receive some such cases."

11. S. Rep. No. 1830, 85th Cong., 2d Sess. 9 (1958): "Very often cases removed to the Federal courts require the workman to travel long distances and to bring his witnesses at great expense. This places an undue burden upon the workman and very often the workman settles his claim because he cannot afford the luxury of a trial in Federal court. . . . [T]he workman [under this legislation] has the option to file his case in either the Federal or State court. If he files in the State court it is not removable to the Federal court."

12. TEXAS ANN. CIV. STAT. arts. 8306-8309 (Vernon, 1956).

the workman or the insurer to bring suit "to set aside" an award of the administrative board.[13] However, as the statute is interpreted by the Texas courts *no judicial action is required* for the setting aside of an award; as soon as suit is filed and the court acquires jurisdiction the board award is automatically vacated and no longer in force.[14] Since the trial is de novo the real effect of suit is to allow the entire controversy to be brought before the court for a full civil trial on the facts as well as the law,[15] with the burden of proof as to the right to compensation resting upon the workman-claimant even when the insurer institutes the suit.[16] Moreover, the claimant, although limited to the cause of action alleged before the board, may claim and recover any compensation up to the maximum allowed by law.[17] Therefore, it would appear that when an insurer brings an action "to set aside" an award of the board his suit, as interpreted by the Texas courts, is in the nature of a declaratory action; he seeks a declaration of non-liability as to all claims arising out of the

13. *Id.* art. 8307, § 5, provides in relevant part: "Any interested party who is not willing and does not consent to abide by the final ruling and decision of said Board shall . . . file with said Board notice that he will not abide by said final ruling and decision. And he shall . . . after giving such notice bring suit in the county where the injury occurred to set aside said ruling and decision, and said Board shall proceed no further toward the adjustment of such claim. . . . Whenever such suit is brought, the rights and liability of the parties thereto shall be determined by the provisions of this law . . . and the court shall . . . determine the issues in such cause, instead of the Board, upon trial de novo, and the burden or (sic) proof shall be upon the party claiming compensation. . . . In case of recovery, the same shall not exceed the maximum compensation allowed under the provisions of this law. If any party to such final ruling and decision of the Board, after having given notice as above provided, fails . . . to institute and prosecute a suit to set the same aside, then said final ruling and decision shall be binding upon all parties thereto."

14. Southern Canal Co. v. State Bd. of Water Eng'rs, 159 Tex. 227, 318 S.W.2d 619 (1958) (dictum); Texas Reciprocal Ins. Ass'n v. Leger, 128 Tex. 319, 97 S.W.2d 677 (1936); Zurich Gen. Acc. & Liab. Ins. Co. v. Rodgers, 128 Tex. 313, 97 S.W.2d 674 (1936) (pointing out that the award was no longer enforceable by the claimant who had invoked the court's jurisdiction to set aside the award even though a nonsuit was subsequently taken); Southern Cas. Co. v. Fulkerson, 45 S.W.2d 152 (Tex. Comm. App. 1932); Texas Employer's Ins. Ass'n v. Nitcholas, 328 S.W.2d 338 (Tex. Civ. App. 1959).

15. Lone Star Gas Co. v. Texas, 137 Tex. 279, 298, 153 S.W.2d 681, 692 (1941): "Power to try a case de novo vests a court with full power to determine the issues and rights of all parties involved, and to try the case as if the suit had been filed originally in that court." In Liberty Mut. Ins. Co. v. Wright, 196 S.W.2d 349, 351 (Tex. Civ. App. 1946), error ref., it is stated: "[W]e have found no instance in which a final award of the Board or any part of a final award of the Board was declared to be binding on the court or the parties in the trial de novo, except in the sense that the entering of a final award by the Board is a condition prerequisite to the exercise of jurisdiction by the court."

16. TEXAS ANN. CIV. STAT. art. 8307, § 5 (Vernon, 1956); Texas Reciprocal Ins. Ass'n v. Leger, 128 Tex. 319, 97 S.W.2d 677 (1936).

17. Hartford Acc. & Indem. Co. v. Choate, 89 S.W.2d 205 (Tex. Comm. App. 1936); United States Fid. & Guar. Co. v. Baker, 65 S.W.2d 344 (Tex. Civ. App. 1933); Texas Indem. Ins. Co. v. Bridges, 52 S.W.2d 1075 (Tex. Civ. App. 1932), error ref.

cause of action alleged by the claimant before the board, and he subjects himself to liability for those claims, which may far exceed the board award. These interpretations of the statute by the Texas courts would appear to be binding on the federal courts under the doctrine of *Erie R.R. v. Tompkins*.[18]

In order for a federal court to have jurisdiction of a particular action the value of the matter in controversy must exceed the statutory minimum.[19] In *Saint Paul Mercury Indem. Co. v. Red Cab Co.*[20] the Supreme Court said "the rule governing dismissal for want of jurisdiction . . . is that . . . the sum claimed by the plaintiff controls if the claim is apparently made in good faith."[21] This rule, known as the plaintiff-viewpoint rule,[22] is that generally applied.[23] The "good faith" element required in the assertion of the plaintiff's claim has been interpreted to mean only *legal* good faith, as "it must appear *to a legal certainty* that the claim is really for less to justify dismissal." (Emphasis added.)[24] In an action for declaratory relief from the claims of another, a situation persuasively similar to that in the instant case, the potential liability from which the plaintiff seeks relief is determinative of the jurisdictional amount as a result of the application of the plaintiff-viewpoint rule.[25] Another outcome of the use of the plaintiff-viewpoint rule is that a defendant's counterclaim, constituting no part of the plaintiff's cause of action, should never be allowed to provide the jurisdictional amount for that action.[26] Furthermore, it has been well

18. 304 U.S. 64 (1938). See, *e.g.*, the following cases interpreting *Erie*: Cities Service Oil Co. v. Dunlap, 308 U.S. 208 (1939); Klaxon Co. v. Stantor Elec. Mfg. Co., 313 U.S. 487 (1941); Guaranty Trust Co. v. York, 326 U.S. 99 (1945).

19. Sheldon v. Sill, 49 U.S. 441 (1850). A mere allegation of the jurisdictional facts by the party attempting to invoke federal jurisdiction will suffice unless his allegations are questioned by the other party or by the court, in which case the invoking party must bear the burden of proving the requisite facts. McNutt v. GMAC, 298 U.S. 178 (1935).

20. 303 U.S. 283 (1938).

21. *Id.* at 288.

22. Perhaps the foremost proponent of the plaintiff-viewpoint theory, Professor (later judge) Dobie, states the rule thusly: "The amount in controversy in the United States District Court is always to be determined by the value to the plaintiff of the right which he in good faith asserts in his pleading that sets forth the operative facts which constitute his cause of action." DOBIE, FEDERAL JURISDICTION AND PROCEDURE 133 (1928).

23. 1 MOORE, FEDERAL PRACTICE ¶ 0.91[1] (2d ed. 1960). See Cowen, *Federal Jurisdiction Amended*, 44 VA. L. REV. 971, 973 (1958).

24. Saint Paul Mercury Indem. Co. v. Red Cab Co., 303 U.S. 283, 289 (1938). See Vance v. W. A. Vandercook Co., 170 U.S. 468 (1898).

25. 6 MOORE, FEDERAL PRACTICE ¶ 57.23 (2d ed. 1960); 1 ANDERSON, ACTIONS FOR DECLARATORY JUDGMENTS 197 (2d ed. 1951).

26. 1 MOORE, FEDERAL PRACTICE ¶ 0.98 (2d ed. 1960); DOBIE, FEDERAL JURISDICTION AND PROCEDURE 144 (1928).

settled that jurisdiction once invoked by the filing of a proper complaint will not be destroyed by subsequent events which might have defeated jurisdiction had they occurred before the filing of the complaint.[27]

Application of the plaintiff-viewpoint rule in the instant case could have led to opposite results depending upon what the Court considered to be the true object of the plaintiff's suit. The Court could have decided that the object sought to be gained by the plaintiff was freedom from a $1,050 liability, in which case there would have been no federal jurisdiction.[28] On the other hand, it could have said that the object sought by the action was freedom from a $14,035 claim. The Court adopted the latter approach, and then applied the plaintiff-viewpoint test, finding that the plaintiff's allegation that a $14,035 claim was in controversy satisfied jurisdictional requirements. It was made clear that the test being applied was a federal test, and not the state test relied on by the court of appeals.[29] The Court also felt that Congress had passed the 1958 amendment prohibiting removal of workmen's compensation actions only after careful study and that a prohibition of original federal court filings by insurers could not be inferred from the removal prohibition, regardless of the apparently conflicting policy expression in the Senate Report. It was then held that a federal court could still acquire diversity jurisdiction of an original action brought by a workmen's compensation insurer.

A vigorous dissent[30] found cause to disagree with the Court as to the nature of the plaintiff's action. The essence of the action was considered by the dissent to be the setting aside of a $1,050 award.[31] The dissent then reasoned that since the value

27. 1 MOORE, FEDERAL PRACTICE ¶ 0.91[3] (2d ed. 1960). Jurisdiction is not destroyed, *e.g.*, by a subsequent lowering of the plaintiff's claim below the jurisdictional minimum. Saint Paul Mercury Indem. Co. v. Red Cab Co., 303 U.S. 283 (1938).

28. Such a determination was the basis of the district court's holding. In National Sur. Corp. v. Chamberlain, 171 F. Supp. 591, 597-98 (N.D. Tex. 1959), it is said that "the amount in controversy in this suit is the value of the right of plaintiff . . . to be free from the $2,000 liability fastened upon it by the award of the Industrial Accident Board." See note 4 *supra*.

29. The Court relied on Shamrock Oil & Gas Corp. v. Sheets, 313 U.S. 100 (1941), for the proposition that the amount in controversy was to be determined by federal standards. There it was said: "[T]he removal statute, which is nationwide in its operation, was intended to be uniform in its application, unaffected by local law definition or characterization of the subject matter to which it is to be applied. Hence the Act of Congress must be construed as setting up its own criteria, irrespective of local law, for determining in what instances suits are to be removed from the state to the federal courts." *Id.* at 104.

30. Chief Justice Warren and Justices Clark, Brennan, and Stewart dissent.

31. 367 U.S. 348, 358 (1961): "At the time respondent filed its complaint,

of the object of the suit was only $1,050 the Court was predicating federal jurisdiction upon a predicted counterclaim.[32] Thus, the dissent inferred that the defendant could have defeated federal jurisdiction by denying that he would make a claim in excess of the jurisdictional amount. The minority also adopted the position that the 1958 removal prohibition had shown a congressional intent to limit original filings by insurers, in that otherwise the workman would not be protected in his right to choose the forum. Furthermore, it was urged that if the Court was correct in treating the plaintiff's action as essentially one for declaratory relief then use should have been made of the discretionary refusal of jurisdiction given the federal courts by the Federal Declaratory Judgments Act.[33]

Whatever criticism may be made of other portions of the decision, it appears clear that the Court did not consider itself to be departing from the plaintiff-viewpoint theory. Once the Court had made the not unreasonable determination that the object of the plaintiff's suit was a declaration of non-liability from a $14,035 claim,[34] the facts would fit snugly into the plaintiff-viewpoint test, establishing jurisdiction.[35] For this reason it

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there was enforceable against it a liability in the amount of $1,050. If petitioner defaulted, the District Court would set aside the Board award." The same feeling seems to be the basis of most of the criticism of the Court's decision. See Notes, 11 DE PAUL L. REV. 130 (1961), 36 TUL. L. REV. 148 (1961) (semble). *Cf.* Professor Moore's discussion of the decision of the court of appeals in 1 MOORE, FEDERAL PRACTICE ¶ 0.93[5.-3] (2d ed. 1960). It is submitted that the dissent and others critical of the Court on this basis have not given sufficient weight to the Texas decisions that the award is vacated by the mere bringing of the suit and without any action by the Court. See Bickel, *The Supreme Court 1960 Term*, 75 HARV. L. REV. 40, 168-70 (1961).

32. 367 U.S. 348, 358 (1961): "It seems impossible to avoid the conclusion that the Court is allowing diversity jurisdiction to be predicated upon a counterclaim which might possibly be filed by petitioner. . . . [I]f the complaint, insufficient to meet the jurisdictional standards, alleges that a possible compulsory counterclaim, sufficient to meet such standards, may be filed by the defendant, federal jurisdiction attaches."

33. 28 U.S.C. §§ 2201, 2202 (1958). See BORCHARD, DECLARATORY JUDGMENTS 312 (2d ed. 1941).

34. It would appear that the Court's view that the potential liability of the plaintiff is the amount in controversy was also held by those federal courts which interpreted the Texas Workmen's Compensation Act before 1958. See General Acc. Fire & Life Assur. Corp. v. Mostert, 131 F.2d 596 (5th Cir. 1942).

35. 367 U.S. 348, 353 (1961), where it was said: "No denial of these allegations in the complaint has been made, no attempted disclaimer or surrender of any part of the original claim has been made . . . , and there has been no other showing, let alone 'to a legal certainty,' of any lack of good faith on the part of the respondent in alleging that a $14,035 claim is in controversy." The above language upon cursory examination might appear to imply that the finding of the requisite amount in controversy is being based on the fact that the counterclaim was for the amount of the original claim. However, the Court was showing the total absence of evidence of lack of good faith on the part of the plaintiff in alleging the defendant's claim to be $14,035. Resort to facts disclosed at trial in

would appear that the Court was not concerned with the counterclaim itself as a vehicle of jurisdiction, and that a counterclaim for less than $10,000 would not have defeated jurisdiction properly invoked by the filing of a complaint meeting the jurisdictional requirements. Once it is recognized that the Court considered the plaintiff's action as involving a $14,035 claim it becomes apparent that the instant case serves as an endorsement of the plaintiff-viewpoint test.

The Court's refusal to infer from the 1958 amendment a congressional intent to prohibit original federal court actions by workmen's compensation insurers appears correct. Such an intent presumably would have been made manifest had it existed, and it is noteworthy that Congress had before it statistical data on original federal court filings by such insurers when it chose expressly to prohibit only removal of workmen's compensation actions.[36] However, to *exercise* jurisdiction upon a finding that original diversity jurisdiction is present in such actions, as the Court did, is to beg the question. The real issue here, left unanswered by the Court, is whether there is or may be any basis for refusing to exercise that jurisdiction which admittedly exists. Myriad judicial language can be found exhorting the federal courts to stay strictly within the bounds of federal jurisdictional statutes, but the context of such statements is almost invariably one in which the courts are being exhorted not to *extend* federal jurisdiction beyond those limits.[37] On the other hand, there have been many examples of refusal by the federal courts to exercise in particular cases that jurisdiction which had been granted by Congress.[38] Furthermore, the simplest and most

testing good faith is sanctioned in Saint Paul Mercury Indem. Co. v. Red Cab Co., 303 U.S. 283, 290 (1938): "In a cause instituted in federal court the plaintiff chooses the forum. He knows or should know whether his claim is within the statutory requirement as to amount. His good faith in choosing the federal forum is open to challenge not only by resort to the face of his complaint, but by the facts disclosed at the trial, and if from either source it is clear that his claim never could have amounted to the sum necessary to give jurisdiction there is no injustice in dismissing the suit."

36. S. Rep. No. 1768, 85th Cong., 2d Sess. 3 (1958); S. Rep. No. 1830, 85th Cong., 2d Sess. 8 (1958).

37. In Healy v. Ratta, 292 U.S. 263, 270 (1934), the Court says: "Due regard for the rightful independence of state governments, which should actuate federal courts, requires that they scrupulously confine their own jurisdiction to the precise limits which the statute has defined." The important element of the theory is that if the federal courts *go beyond* that jurisdiction granted them by Congress then the courts may well be impinging on rights of the individual states. See Lockerty v. Phillips, 319 U.S. 182 (1943); Kline v. Burke Const. Co., 260 U.S. 226 (1922).

38. Leiter Minerals Inc. v. United States, 352 U.S. 220 (1957); Burford v. Sun Oil Co., 319 U.S. 315 (1943); Railroad Comm'n v. Pullman Co., 312 U.S. 496 (1941); Prentis v. Atlantic Coast Line Co., 211 U.S. 210 (1908).

widely accepted method of justifying such refusal, *viz.*, discretionary refusal to grant relief under the Federal Declaratory Judgments Act[39] where such relief would be improper or against public policy,[40] was suggested by the dissent and went unanswered by the Court. Since the Court clearly considered the plaintiff's action as declaratory in nature, and since the Court did recognize that the Senate Report was concerned with the hardship placed on a workman by a trial in federal court, the dissent's suggestion was at least germane. As a result of the Court's apparently unqualified exercise of jurisdiction in this case, it would seem to be of no importance whether a similar state court action brought by the workman was in existence either before or after the bringing of the federal court action by the insurer. Therefore, the insurer is put to little disadvantage, if any, by the removal prohibition. In cases in which he might once have sought removal he may now simply bring a concurrent federal action and begin a race to judgment.[41] The workman is accordingly under an even greater procedural disadvantage than he would have been subjected to by mere removal, for he may now be forced to participate in two separate suits conceivably carried on in widely separated locales. It is not difficult to visualize the shrinkage in settlement value of the claim of a workman faced with such an alternative. In this regard the decision in the instant case appears to have left serious problems unanswered, with the result that a major policy behind the 1958 removal amendment has been effectively emasculated.

James R. Craig

INSURANCE — INSURABLE INTERESTS

Plaintiff, a finance company employee, allegedly made an oral promise to her employer in order to induce him to loan her brother money with which to purchase an automobile. The promise was to the effect that she would repay the loan if her brother defaulted. The finance company made the loan, plaintiff's brother purchased an automobile, and subsequently the automobile was destroyed in an accident. Plaintiff brought the instant action on a policy of collision insurance which named

39. 28 U.S.C. §§ 2201, 2202 (1958).
40. BORCHARD, DECLARATORY JUDGMENTS 312 (2d ed. 1941).
41. Since both actions would be in personam they would be able to proceed concurrently under the rule of Kline v. Burke Const. Co., 260 U.S. 226 (1922).