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Federal Courts--The Scope of Pendent Jurisdiction

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> It would be convenient if it should be held that, since the judgment is binding under the amended rule on the entire class, the claims for or against the whole class are in controversy. This would be an entirely realistic view, and one consonant with the stated purpose of the amount in controversy requirement, to avoid having the federal courts "fritter away their time in the trial of petty controversies." A good deal of ancient learning will have to be forgotten, however, if this practical and sensible result is to be reached.[34]

Since their inception, federal courts have dealt with the problem of when to aggregate the similar claims of several plaintiffs or defendants, in order to satisfy statutory minimum jurisdictional amount requirements. The traditional right of each person to have his day in court seems to conflict with the practical necessity of solving a mutual problem with the least amount of litigation. Through the years the courts have set up various standards by which to judge this issue, and each has subsequently been discarded as vague, confusing and unworkable. New Rule 23, however, seems to provide a liberal, more workable manner in which to consolidate cases for the greater convenience of both courts and parties. Such a flexible rule has been desperately needed for some time; yet now that it is here, many courts seem unwilling to break with traditional concepts formed under now defunct rules which were largely unworkable even in the less complicated days in which they were formulated. One can only hope that this view of the new rule as being substantially the same as the old is only a temporary setback, not a trend, and that the well-reasoned arguments of the text-writers will serve to finally, albeit belatedly, end the torturous practice of case by case fact study to determine when to aggregate.

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A minor was injured in an automobile accident in Pennsylvania in which all parties involved were residents of Pennsylvania. For purposes of creating federal jurisdiction, a New Jersey guardian was

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[34] 2 BARRON & HOLTZOFF, FEDERAL PRACTICE AND PROCEDURE (Wright ed.), § 569 (Supp. 1966). The author adds that if the "ancient learning" prevails, we shall be right back to the inherent difficulties of "joint" and "common" of "which it was a purpose of the amended rule to avoid."

appointed for the minor to create diversity of citizenship. An action to recover for the minor *P's* injuries was then instituted in the appropriate federal court. The minor's mother, who lacked diversity, joined in the suit in her own right, seeking out-of-pocket medical expenses. *D* moved to dismiss the mother's claim. *Held,* motion granted. The district court in granting *D's* motion stated that where the court had jurisdiction of the minor's action solely by reason of diversity of citizenship between the guardian appointed to prosecute the minor's claim and the *D,* the minor's mother who lacked diversity from the *D* could not, as a matter of right, join her claim for out-of-pocket medical expenses. The court thus refused to allow the application of pendent jurisdiction as a matter of right *McSparron v. Weist,* 270 F.Supp. 421 (E.D. Pa. 1967).

The concept of pendent jurisdiction in our federal courts has been subject to a constant evolution and liberalization since its inception.[1] The factual situation in this case confronted the court with a difficult decision of whether judicial economy and expediency dictated a further liberalization of pendent jurisdiction as opposed to placing definite limitations on its applicability. In restricting its applicability, the decision offers an opportunity to explore generally the merits of pendent jurisdiction, particularly as applied to federal jurisdiction gained by diversity of citizenship.

The federal courts are courts of limited jurisdiction.[2] This limited jurisdiction as conceived by the Constitution has two branches: one grounded on the nature of the parties; the other, on the character of the issues. With respect to the first branch, the federal courts have original jurisdiction of civil actions between citizens of different states.[3] The underlying purpose of diversity jurisdiction is to provide a safeguard within the federal judicial system against the prejudices of local courts and local juries.[4]

There has been an abundance of criticism concerning the value and need for federal diversity jurisdiction. Justice Frankfurter recorded his criticism when he referred to "the mounting mischief

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[1] The doctrine of pendent jurisdiction gives a federal court the power over any claim for relief not otherwise subject to its jurisdiction so long as it derives from a common nucleus of operative fact with a federal claim that is properly within the power of the court as outlined in the Constitution. Newman v. Freeman, 262 F.Supp. 106 (E.D. Pa. 1966).

[2] U. S. CONST. art. III, § 2; 28 U.S.C.A. §§ 1332-33 (1966).

[3] *Id.*

[4] Riley v. Gulf, M. & O.R.R., 173 F.Supp. 416 (S.D. Ill. 1959).

inflicted on the federal judicial system by the unjustifiable continuance of diversity jurisdiction."[5] It is argued that diversity cases cause undue congestion in the federal courts.[6] In addition, federal judges under the rule of *Erie R. R. v. Thompkins*[7] are required to apply state law and thus must decide difficult questions on which only the state courts can speak authoritatively.[8] In the face of the mounting criticism, Congress has shown no inclination to abolish this jurisdiction. Thus, the federal courts must attempt to resolve its problems.

In determining whether diversity jurisdiction exists, nominal parties are disregarded.[9] However, a general guardian who has a legal right to sue and represent one who has an equitable interest is not regarded as a nominal party, and the citizenship of the guardian determines jurisdiction.[10] In *Fallot v. Gouran,*[11] a New Jersey guardian brought suit in a federal court on behalf of an incompetent Pennsylvania citizen and the court held that "the means for determining the existence of diversity jurisdiction in a situation such as this is not by looking to the citizenship of the incompetent but to the citizenship of the guardian, if he has capacity to sue."[12] And in *Johnstone v. O'Connor,*[13] the court ruled that the defendant was not entitled to a dismissal of the action even though a guardian was appointed for the sole purpose of obtaining the diversity of citizenship requisite to bringing action in federal court.[14]

The foregoing authorities indicate that a valid federal claim under diversity of citizenship jurisdiction was asserted in the guardian's action in the present case. The propriety of the court taking jurisdiction in addition to the asserted non-federal claim of the minor plaintiff's mother provided the troublesome issue.

Early in our judicial history, *Osborn v. Bank of the United States*[15] declared that once a valid federal claim was asserted and federal jurisdiction was established, the federal court could decide all related state questions that were necessary to the final disposition of the

[5] Lumbermen's Mut. Cas. Co. v. Elbert, 348 U.S. 48, 54 (1954).
[6] C. WRIGHT, FEDERAL COURTS § 23 (1963).
[7] 304 U.S. 64 (1938).
[8] *Id.*
[9] Wood v. David, 59 U.S. (18 How.) 467 (1855); Carneal v. Banks, 23 U.S. (10 Wheat.) 181 (1825).
[10] Mexican Cent. Ry. v. Eckman, 187 U.S. 429 (1903).
[11] 220 F.2d 325 (3d Cir. 1955)
[12] *Id.* at 327.
[13] 164 F.Supp. 66 (E.D. Pa. 1958).
[14] *Id.*
[15] 22 U.S. (9 Wheat.) 204 (1824).

case.[16] Although the roots of pendent jurisdiction can be traced to the *Osborn* case and later decisions,[17] the commonly recognized source of the doctrine of pendent jurisdiction is *Hurn v. Oursler.*[18] The *Hurn* doctrine, as it is often referred to, formulates a two-part criterion for the proper application of the principle of pendent jurisdiction. A federal court has jurisdiction over purely local or state issues when the case involves first, a substantial federal question, and secondly, when the federal and non-federal claims are part of a "single cause of action."[19] It is generally conceded that the "single cause of action" requirement is satisfied when the federal and non-federal claims rest upon facts that are substantially the same.[20]

To further illustrate the application of pendent jurisdiction, it has been held that where a federal court has jurisdiction of a cause of action based on alternative theories of recovery, one arising under federal law and one under state law, then it has jurisdiction to dispose of the entire controversy even though the federal claim is decided adversely to the party asserting jurisdiction.[21] And in such a case, the court ruled that the "single cause of action," requisite to applying pendent jurisdiction is satisfied when substantially identical facts will support both theories of recovery.[22]

At first glance, the facts of the principal case indicate that the requirements for pendent jurisdiction were satisfied and the court was wrong in dismissing the mother's pendent claim; that is, diversity of citizenship constitutes a proper federal question and liability on both claims rests on substantially the same facts. However, there is an additional aspect of pendent jurisdiction which makes the concept flexible and enables the courts to prevent abuse of its application. The doctrine of pendent jurisdiction involves a discretionary element which merits careful consideration in every case. The Supreme Court has recently held that pendent jurisdiction need not be exercised in every case in which it is found to exist.[23] "[P]endent jurisdiction is a doctrine of discretion, not of plaintiff's right."[24] Judge Magruder

[16] *Id.*
[17] Siler v. Louisville & Nashville R.R., 213 U.S. 175 (1909).
[18] 289 U.S. 238 (1933).
[19] *Id.*; United Mine Workers v. Gibbs, 383 U.S. 715 (1966).
[20] Armstrong Co. v. Nu-Enamel Corp., 305 U.S. 315 (1938); Kleinmon v. Betty Dain Creations, Inc., 189 F.2d 546 (2d Cir. 1951).
[21] Dann v. Studebaker-Packard Corp., 288 F.2d 201 (6th Cir. 1961).
[22] *Id.*
[23] United Mine Workers v. Gibbs, 383 U.S. 715 (1966).
[24] *Id.* at 726; Moynahan v. Pari-Mutual Employees Guild, 317 F.2d 209 (9th Cir. 1963); Massachussetts Universalist Convention v. Hildreth & Rogers Co., 183 F.2d 497 (1st Cir. 1950).

in his concurring opinion in *Strachman v. Palmer*,[25] counseled that "[f]ederal courts should not be overeager to hold on to the determination of issues that might be more appropriately left to settlement in state court litigation . . . ."[26]

In *McSparron*, the court expressed its awareness of the problems that could result if the recent *Newman v. Freeman*[27] precedent, a factually similar case, but which granted pendent jurisdiction on motion to join after suit had begun, were to be construed as allowing pendent jurisdiction as a matter of right. It thus appears that the *McSparron* court was cognizant of the need for this discretionary power and properly refused the mother's pendent claim.

The expansion of the doctrine of pendent jurisdiction has been justified on the grounds of judicial economy, convenience and fairness to litigants. The beneficial aspects of this doctrine make possible a complete remedy for the adjudication of the plaintiff's rights while avoiding piecemeal litigation. The essence of a successful application of this doctrine is a balancing process which should encompass discretion by the court in the weighing of the various problems involved. The federal courts should remain cognizant of the adverse effects of an infringement upon state court integrity. Since there is no general Congressional authorization for pendent jurisdiction, it appears that in each particular case, provided the requirements of the *Hurn* doctrine are satisfied, the federal courts have a wide discretion in deciding whether pendent jurisdiction is proper and expedient.

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Malpractice—Sterilization Operation

Ps, a mother of nine and her husband, employed *Ds*, three physicians, to perform a sterilization operation upon the wife. The operation was suggested by *Ds* to prevent deterioration of the wife's physical condition which would result from the birth of another child. Subsequently the wife became pregnant. Prior to the birth of the

[25] 177 F.2d 427 (1st Cir. 1949).

[26] *Id.* at 433. *See also* Note, *The Evolution and Scope of the Doctrine of Pendent Jurisdiction in the Federal Courts*, 62 COLUM. L. REV. 1018 (1962); 46 ILL. L. REV. 646 (1951); Note, *Pendent Jurisdiction: An Expanding Concept in Federal Court Jurisdiction*, 51 IOWA L. REV. 151 (1965).

[27] 262 F.Supp. 106 (E.D. Pa. 1966).