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CONSTITUTIONAL LAW-FEDERAL COURTS-CITIZENSHIP IN THE DISTRICT OF COLUMBIA AS A BASIS FOR DIVERSITY OF CITIZENSHIP JURISDICTION

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CONSTITUTIONAL LAW—FEDERAL COURTS—CITIZENSHIP IN THE DISTRICT OF COLUMBIA AS A BASIS FOR DIVERSITY OF CITIZENSHIP JURISDICTION —Plaintiff, a District of Columbia corporation, sued defendant, a Nebraska corporation, in the Municipal Court of Chicago, Illinois. Defendant removed the case to a federal district court pursuant to the provisions of an amendment to the judicial code extending the jurisdiction of the federal courts to suits and controversies between citizens of the District of Columbia and citizens of any state or territory.[1] From an adverse judgment defendant appealed, raising for the first time in the case the question of constitutionality of the amendment conferring jurisdiction. *Held*, the amendment is unconstitutional. Judge Evans dissented.[2] *Central States Cooperatives, Inc. v. Watson Brothers Transportation Co., Inc.* (C.C.A. 7th, 1947).

The majority concluded that the outer limits of federal jurisdiction are prescribed by Article III, section 2,[3] which extends jurisdiction in diversity cases only to suits between citizens of different states. The court then concluded that the amendment is invalid, inasmuch as a citizen of the District of Columbia is not a citizen of a state. Six of the eight courts which have passed on the amendment have agreed with the majority,[4] while two courts, relying largely on the "necessary and proper clause," have upheld the amendment.[5] There are three possible arguments in favor of validity. (1) It might be contended that all federal courts are of a dual nature, constitutional and legislative. While Article III limits the jurisdiction of the former, it provides no limitations which apply to the latter.[6] It has been decided that the courts of the District of Columbia are constitutional courts for some purposes[7] and legislative courts for others.[8] The court in the principal case rightly concluded, however, that such a dual nature could be conferred by Congress only on courts of the District and not

[1] 1 Stat. L. 73 (1789) as amended by 54 Stat. L. 143 (1940), 28 U.S.C. (1940) § 41 (1) (b).

[2] Judge Evans in his dissent argued that equality of citizens accords with the spirit of the Constitution, that it is inconsistent to deny this right to the many citizens of the district, and that the meaning of "state" as used by the majority was too narrow.

[3] "The judicial power shall extend . . . to controversies . . . between citizens of different States."

[4] McGarry v. City of Bethlehem, (D.C. Pa. 1942) 45 F. Supp. 385; Behlert v. James Foundation of New York, (D.C. N.Y. 1945) 60 F. Supp. 706, 46 COL. L. REV. 125 (1946), 55 YALE L. J. 600 (1946); Ostrow v. Samuel Brilliant Co., (D.C. Mass. 1946) 66 F. Supp. 593; Feely v. Schupper Interstate Hauling System, (D.C. Md. 1947) 72 F. Supp. 663; Wilson v. Guggenheim, (D.C. S.C. 1947) 70 F. Supp. 417; Willis v. Dennis, (D.C. Va. 1947) 72 F. Supp. 853.

[5] Winkler v. Daniels, (D.C. Va. 1942) 43 F. Supp. 265; Glaeser v. Acacia Mutual Life Assn., (D.C. Cal. 1944) 55 F. Supp. 925. On the desirability and constitutionality of the amendment see 29 GEO. L. J. 193 (1940).

[6] Clinton v. Englebrecht, 13 Wall. (80 U.S.) 434 (1872); Ex parte Bakelite Corp., 279 U.S. 438, 49 S.Ct. 411 (1929); Katz, "Federal Legislative Courts," 43 HARV. L. REV. 894 (1930).

[7] O'Donoghue v. United States, 289 U.S. 516, 53 S.Ct. 740 (1933), involving diminution of a judge's salary.

[8] Keller v. Potomac Electric Power Co., 261 U.S. 428, 43 S.Ct. 445 (1923); Postum Cereal Co. v. California Fig Nut Co., 272 U.S. 693, 47 S.Ct. 284 (1927).

on all federal courts. (2) Congress, pursuant to its plenary powers over the District, might be able to secure to its citizens the constitutional privileges of citizens of states. The federal courts were given diversity jurisdiction in order to alleviate fears of prejudicial treatment from state courts,[9] and such fears would exist in regard to citizens of the District. Furthermore, the Supreme Court has sometimes treated the District as a state,[10] although generally it has refused to do so.[11] This argument was rejected in the principal case, the court stating that the broad powers of Congress over the District did not confer power to legislate for the whole nation so as to implement Article III. It was also pointed out that citizens of states are not entitled to diversity jurisdiction as a matter of right. (3) In view of the present trend toward liberal interpretation of the Constitution, it could reasonably be held that the phrase, "shall extend to all cases between citizens of different states," is not exclusive and that the outer limits of jurisdiction based on diversity of citizenship are subject to legislative implementation. Those courts denying the right of citizens of the District to diversity jurisdiction have taken it for granted, without discussion, that the phrase is exclusive. But this line of precedent begins with *Hepburn v. Ellzey*,[12] and it should be noted that Chief Justice Marshall stated therein that the diversity problem is a subject for legislative and not for judicial consideration. Where two equally valid interpretations are possible, the Court should be and has been influenced by the interpretation adopted by Congress and utilized in legislation. In view of the necessity for this amendment,[13] and the natural reluctance of the Supreme Court to declare an act of Congress unconstitutional,[14] it is quite possible that if appealed the decision in the principal case will be reversed and the amendment to the judicial code sustained.

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[9] Polk's Lessee v. Wendell, 5 Wheat. (18 U.S.) 292 (1820).

[10] For purposes of the full faith and credit clause, Art. IV, sec. 1, the District is treated as a state [Embry v. Palmer, 107 U.S. 3, 2 S.Ct. 25 (1882)]; so also for purposes of the Commerce Clause [Stoutenburgh v. Hennick, 129 U.S. 141, 9 S.Ct. 256 (1889)]. For other cases in which the District was held to be a state and cases where it was not so held see 29 GEO. L. J. 193 (1940).

[11] For purposes of diversity the District has never been considered as a state. Hepburn v. Ellzey, 2 Cranch (6 U.S.) 445 (1805); Cameron v. Hodges, 127 U.S. 322, 8 S.Ct. 1154 (1888); Hooe v. Jamieson, 166 U.S. 395, 17 S.Ct. 596 (1897); Merrill v. Atwood, (D.C. R. I. 1924) 297 F. 630; Duehay v. Acacia Mut. Life Ins. Co., 70 App. D.C. 245, 105 F. (2d) 768 (1939).

[12] 2 Cranch (6 U.S.) 445 (1805).

[13] The problem is national in scope, for just as a citizen of the District cannot sue a citizen of another state in a federal court on grounds of diversity, neither can the latter so sue the former. Furthermore, the Federal Interpleader Act is inapplicable if any of the parties involved is a citizen of the District. Mutual Life Ins. Co. v. Lott, (D.C. Cal. 1921) 275 F. 365. See Chafee, "The Interpleader Act of 1936," 45 YALE L. J. 963 at 975-6 (1936); Chafee, "Federal Interpleader Since the Act of 1936," 49 YALE L. J. 377 at 408 (1940).

[14] Only one act of Congress has been declared unconstitutional since 1936. Tot v. United States, 319 U.S. 463, 63 S.Ct. 1241 (1943) declared a section of the Federal Firearms Act unconstitutional.