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FEDERAL COURTS — JURISDICTION — DIVERSITY OF CITIZENSHIP — REALIGNMENT OF PARTIES — Plaintiff, a New York corporation, was trustee under a mortgage deed to secure a bond issue executed by *A*, an Indiana corportation, in 1902. In 1906, *B*, an Indiana corporation, was formed, its franchise providing, inter alia, that after the expiration of twenty-five years, the company should be wound up and its property conveyed to *C*, the city of Indianapolis, subject to *B's* "outstanding legal obligations." In 1913, *A* leased all of its plant property to *B* for a term of ninety-nine years, *B* agreeing to pay as rental the interest on *A's* outstanding bonded indebtedness, and a six per cent return on *A's* common stock. In 1935, pursuant to the franchise, *B* conveyed its entire property to *C*, including that covered by its lease from *A*. *C* refused to regard itself bound by this lease, and plaintiff brought an action in the federal district court praying (1) that the lease from *A* to *B* be declared valid and binding upon the defendants, and as such be deemed part of the security for the performance of the mortgage obligations; (2) that *C* be ordered to perform all of *B's* obligations in the lease and to pay directly to plaintiff all of the interest payments as they come due; (3) that judgment for overdue interest be entered against the defendants "liable therefor"; (4) that plaintiff be awarded costs and attorneys' fees. The district court realigned *A* as a plaintiff and dismissed the suit for want of jurisdiction. The circuit court of appeals reversed, and certiorari was denied by the Supreme Court. On remand to the district court, it was held that the lease was not enforceable against *B*, or *C*, and judgment for the amount of unpaid interest was entered against *A*. Holding that the lease was valid and enforceable against *B* and *C*, the circuit court of appeals again reversed, and certiorari was granted by the Supreme Court. *Held*, four judges dissenting, that on the merits the question whether the lease is valid and binding on *C* is the primary and controlling matter in dispute, and everything else in the case is incidental to this dominating controversy. With respect to this controversy, *A* and *C*, citizens of the same state, are on opposite sides, so the requisite diversity of citizenship is lacking. *City of Indianapolis v. Chase National Bank of City of New York*, 314 U. S. 63, 62 S. Ct. 15 (1941).

It is well settled that to sustain diversity jurisdiction there must be a substantial controversy [1] between citizens [2] of different states,[3] and that the court will look beyond the pleadings and arrange the parties according to their real interests in the controversy.[4] In the principal case it seems clear that the plain-

[1] 36 Stat. L. 1098 (1911), 28 U. S. C. (1940), § 80.

[2] A corporation is a "citizen" of the state of its incorporation for the purpose of suing and being sued in the federal courts. Barrow Steamship Co. v. Kane, 170 U. S. 100, 18 S. Ct. 526 (1898).

[3] 36 Stat. L. 1091 (1911), 28 U. S. C. (1940), § 41 (1).

[4] This doctrine was first applied in connection with the removal of a cause from a state court to a federal court under the Removal Act of 1875. Removal Cases, 100 U. S. 457 (1879). Later, the doctrine was extended to cases originating in the federal courts. Pacific R. R. v. Ketchum, 101 U. S. 289 (1879). Annotation, 132 A. L. R. 193 (1941).

tiff and the mortgagor were in accord with respect to the validity and enforcement of the lease against the city; and, inasmuch as the mortgagor would be liable only as a surety on the mortgage debt if it were found that the city had assumed and agreed to pay the debt,[5] the question of liability for overdue interest was incidental to the issue whether the lease was binding upon the city.[6] This single issue, i.e., whether the city was bound by the lease, appears to "permeate this litigation." This being so, it is not surprising that the Court has realigned the mortgagor with the plaintiff, for it has been consistently held by the federal courts that in determining whether there is a substantial controversy between a plaintiff and a particular defendant, the court will look to "the principal purpose of the suit." [7] Since, after the realignment, one of the parties on one side of the controversy was a resident of Indiana, in which state all the parties on the other side were resident, the required diversity did not exist.[8] The dissenting justices were of the opinion that the controversy between the plaintiff and the mortgagor as to the overdue interest was a substantial one within the meaning of the law defining diversity jurisdiction, and therefore there should have been no realignment. However, as the majority opinion points out, it did not appear in the principal case that the plaintiff was primarily interested in securing relief against the mortgagor for the overdue interest. If it had appeared to the majority that the plaintiff was really interested in having the mortgagor held liable for the overdue interest, undoubtedly there would have been no realignment. The holding of the majority in the principal case is in accord with the rule that the statute conferring diversity jurisdiction upon the district courts is to be strictly construed.[9] Because the original reason [10] for diversity jurisdiction no longer exists [11] and because diversity cases take up a large part of the time of the federal courts

[5] 41 C. J. 737 (1926), and cases there cited.

[6] See the principal case, 314 U. S. 63 at 73, footnote 3. But even though the plaintiff might maintain a separate action against the mortgagor, it is doubtful whether it could maintain a separate action against the city regarding the binding effect of the lease as the dissenting opinion suggests. In such an action, i.e., against the city, it seems that the mortgagor would be a "necessary party," 21 C. J. 273 (1920), and the separate action would fail if the mortgagor were not brought in, Evans v. Gorman, (C. C. Ark. 1902) 115 F. 399, and if it were brought in, the result would be the same as that reached in the principal case.

[7] East Tennessee, V. & G. R. R. v. Grayson, 119 U. S. 240, 7 S. Ct. 190 (1886); Merchants' Cotton Press & Storage Co. v. Insurance Co. of North America, 151 U. S. 368, 14 S. Ct. 367 (1894); Sutton v. English, 246 U. S. 199, 38 S. Ct. 254 (1918).

[8] Strawbridge v. Curtiss, 3 Cranch (7 U. S.) 267 (1806).

[9] Healy v. Ratta, 292 U. S. 263, 54 S. Ct. 700 (1934); Shamrock Oil & Gas Corp. v. Sheets, 313 U. S. 100, 61 S. Ct. 868 (1941).

[10] The object of conferring diversity jurisdiction upon the federal courts was to avoid the partiality, or suspicion of partiality, which might exist if a plaintiff of one state were compelled to resort to the courts of the state of which the defendants were citizens. 27 R. C. L. 17 (1920).

[11] Frankfurter, "Distribution of Judicial Power Between United States and State Courts," 13 CORN. L. Q. 499 at 521 (1928). To the same effect see Friendly, "The Historical Basis of Diversity Jurisdiction," 41 HARV. L. REV. 483 (1928).

which might better be spent on litigation involving federal questions,[12] this rule of strict construction seems justified. Perhaps it would be more desirable to effect a divestment by appropriate legislation [13] rather than by "the confusing process of judicial constriction," [14] but since Congress has consistently failed to enact such legislation, the next best thing would seem to be a divestment secured by the rule of strict construction.

[12] Frankfurter, "Distribution of Judicial Power Between United States and State Courts," 13 CORN. L. Q. 499 (1928). For a statistical study showing that a large proportion of the litigation in the federal courts is diversity of citizenship litigation, see Clark, "Diversity of Citizenship Jurisdiction of the Federal Courts," 19 A. B. A. J. 499 (1933).

[13] Prior to 1931 the proposals to limit diversity jurisdiction were of three types: (1) to withdraw diversity jurisdiction entirely, (2) to raise the jurisdictional amount from $3,000 to $10,000, (3) to abolish the rule of Swift v. Tyson, 16 Pet. (41 U. S.) 1 (1842), i. e., the rule that in diversity cases the federal courts need not follow state decision law. Yntema and Jaffin, "Preliminary Analysis of Concurrent Jurisdiction," 79 UNIV. PA. L. REV. 869, note 7 (1931). It is noteworthy that it was the Supreme Court, in Erie R. R. v. Tompkins, 304 U. S. 64, 58 S. Ct. 817 (1938), and not Congress which finally did away with this rule of Swift v. Tyson. For more recent attempts to restrict the diversity of citizenship jurisdiction, see FRANKFURTER and SHULMAN, CASES ON FEDERAL JURISDICTION AND PROCEDURE, rev. ed., 216, note 1 (1937).

[14] This view, expressed in the dissenting opinion of the principal case, is based on the theory that since Congress has conferred diversity jurisdiction on the federal courts, it is for Congress to decide whether or not there continues to be a reason for the federal courts to retain that jurisdiction.