

Michigan Law Review

Volume 62 | Issue 5

1964

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Recommended Citation

Mary M. Long, *Federal Civil Procedure-Venue-Effect of 1948 Judicial Code Definition of Corporate Residence on Venue Under the Jones Act*, 62 MICH. L. REV. 897 (1964).

Available at: <https://repository.law.umich.edu/mlr/vol62/iss5/9>

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FEDERAL CIVIL PROCEDURE—VENUE—EFFECT OF 1948 JUDICIAL CODE DEFINITION OF CORPORATE RESIDENCE ON VENUE UNDER THE JONES ACT—Plaintiff seaman, having been injured while serving on a vessel owned and operated by the defendant corporations, brought a civil action in federal district court alleging claims for negligence under the Jones Act,¹ for

¹ “Any seaman who shall suffer personal injury in the course of his employment may, at his election, maintain an action for damages at law, with the right of trial by jury Jurisdiction in such actions shall be under the court of the district in which the defendant

unseaworthiness, and for maintenance and cure. The venue provision of the Jones Act² requires that actions under it be brought in the district in which the defendant employer resides or in which his principal office is located.³ Plaintiff filed his complaint in the Western District of Pennsylvania although defendants were incorporated and maintained their principal offices in Louisiana. Defendants' motions to dismiss on the ground of improper venue were granted by the trial court. On appeal, *held*, affirmed. While in the 1948 revision of the Federal Judicial Code the definition of corporate residence for venue purposes was expanded to include any district in which a corporation is "doing business,"⁴ this definition is not applicable when determining where a corporate employer resides within the meaning of the venue provision of the Jones Act.⁵ *Leith v. Oil Transp. Co.*, 321 F.2d 591 (3d Cir. 1963).⁶

The purpose of the federal venue requirements is to limit the place in which an action may be brought to one which is convenient for the parties and the witnesses.⁷ In 1887 Congress restricted venue to the district of defendant's residence, except in diversity cases, where venue lay in the district of plaintiff's residence as well.⁸ Under this statute the residence of a corporation for venue purposes was held to be only in the state of incorporation;⁹ and, where the state of incorporation was divided into two or more

employer resides or in which his principal office is located." Merchant Marine Act of 1920 (Jones Act) § 33, 41 Stat. 1007, 46 U.S.C. § 688 (1958).

² It has long been settled that the word "jurisdiction" in the final sentence of § 33 of the Jones Act means "venue." *Panama R.R. v. Johnson*, 264 U.S. 375 (1924).

³ The venue provision of the Jones Act is controlling when a combined negligence and unseaworthiness claim is filed as a civil action. *Brown v. C.D. Mallory & Co.*, 122 F.2d 98 (3d Cir. 1941). The claim for maintenance and cure does not depend upon the Jones Act. However, the principles of pendent jurisdiction allow it to be pleaded and adjudicated with a related Jones Act claim in a civil action. *Romero v. International Terminal Operating Co.*, 358 U.S. 354, 380-81 (1959) (dictum). This presupposes that the forum is the proper one for the civil claim, and if the court finds that it does not have power to adjudicate the principal claim, the incidental power to hear the admiralty claim is also lacking. Principal case at 593.

⁴ "A corporation may be sued in any judicial district in which it is incorporated or licensed to do business or is doing business, and such judicial district shall be regarded as the residence of such corporation for venue purposes." 28 U.S.C. § 1391(c) (1958).

⁵ All other courts which have considered this question have reached the opposite conclusion. *Connolly v. Farrell Lines, Inc.*, 268 F.2d 653, 657 n.2 (1st Cir.), *cert. denied*, 361 U.S. 902 (1959); *Hutchison v. Pacific-Atl. S.S. Co.*, 217 F.2d 384 (9th Cir. 1954); *Garland v. Alaska S.S. Co.*, 194 F. Supp. 792 (D. Alaska 1961); *Franklin v. Tomlinson Fleet Corp.*, 158 F. Supp. 850 (N.D. Ill. 1957); *Phillips v. Pope & Talbot, Inc.*, 102 F. Supp. 51 (S.D.N.Y. 1952); *Mincy v. Detroit & Cleveland Nav. Co.*, 94 F. Supp. 456 (S.D.N.Y. 1950); *Neset v. Christensen*, 92 F. Supp. 78 (E.D.N.Y. 1950); *Bounds v. Streckfus Steamers, Inc.*, 89 F. Supp. 242 (D. Del. 1950); *Bagner v. Blidberg Rothchild Co.*, 84 F. Supp. 973 (E.D. Pa. 1949) (overruled in principal case by implication).

⁶ The court affirmed the denial of plaintiff's motion to amend the complaint so as to transform it into a libel in admiralty. Plaintiff was permitted within thirty days to move for a vacation of the order dismissing the complaint and a transfer of the action to a district of proper venue. Principal case at 594-95.

⁷ See *Neirbo Co. v. Bethlehem Shipbuilding Corp.*, 308 U.S. 165, 168 (1939).

⁸ Act of March 3, 1887, ch. 373, § 1, 24 Stat. 552.

⁹ *Shaw v. Quincy Mining Co.*, 145 U.S. 444, 453 (1892).

districts, then in the district where its official residence was designated by its charter or by state law, and, in the absence of such a designation, then in the district of its home office.¹⁰ With the rise of the modern corporation engaged in multifarious activities throughout the nation came a concomitant rise in the number of injuries resulting from such activities. The limitation of venue in a suit involving a corporate defendant to the state of incorporation unless the plaintiff was able to maintain a diversity action in his own state was more than merely inconvenient to the injured party; in practical effect, it frequently constituted an immunity from suit in other states of the corporation's activity.¹¹ In 1935 the situation was alleviated somewhat by the Supreme Court's decision in *Neirbo Co. v. Bethlehem Shipbuilding Corp.*¹² that a corporate defendant in a diversity case waives its venue privilege in the federal courts by securing a license to do business and appointing an agent for service of process in compliance with state regulations.¹³ However, this was not a complete solution, for many questions relating to the applicability of the rule remained unanswered.¹⁴ It was in such circumstances that section 1391(c)¹⁵ was added by Congress in the 1948 revision of the Judicial Code.

The question of the scope of the applicability of this section is not new, nor is it confined to the Jones Act. There are a number of general and special venue statutes which provide for the bringing of suit in the district in which the defendant resides. While the question of the applicability of the section 1391(c) definition of corporate residence has not been litigated with reference to all of them, the decisions in the cases where it has been presented exhibit no major, all-encompassing trend. Rather, the holdings seem to vary with the provision and with the court.¹⁶ The only Supreme

¹⁰ *Suttle v. Reich Bros. Constr. Co.*, 333 U.S. 163 (1948); *Galveston, H. & S.A. Ry. v. Gonzales*, 151 U.S. 496 (1894).

¹¹ *Neirbo Co. v. Bethlehem Shipbuilding Corp.*, 308 U.S. 165, 170 (1939).

¹² *Neirbo Co. v. Bethlehem Shipbuilding Corp.*, *supra* note 11.

¹³ Since the defendants were not licensed to do business in Pennsylvania, the *Neirbo* doctrine was not applicable to the principal case. Principal case at 592; see *Robinson v. Coos Bay Pulp Corp.*, 147 F.2d 512 (3d Cir. 1945).

¹⁴ This doctrine was held to extend to questions arising under the laws of the United States, e.g., *Oklahoma Packing Co. v. Oklahoma Gas & Elec. Co.*, 309 U.S. 4 (1940), but not to suits for patent infringement. *American Chem. Paint Co. v. Dow Chem. Co.*, 161 F.2d 956 (6th Cir. 1947); *Bulldog Elec. Prods. Co. v. Cole Elec. Prods. Co.*, 134 F.2d 545 (2d Cir. 1943). Some lower federal courts, however, would not find a waiver of venue by a corporation which had not secured a license to do business within a state. *Moss v. Atlantic Coast Line R.R.*, 149 F.2d 701 (2d Cir. 1945); *Robinson v. Coos Bay Pulp Corp.*, *supra* note 13. Whether it extends to a cause of action arising outside of the state depends on the state statute, *North Butte Mining Co. v. Tripp*, 128 F.2d 588 (9th Cir. 1942), and on the construction given such statute by the state court, *Sunshine v. Southland Cotton Oil Co.*, 74 F. Supp. 228 (W.D. La. 1947).

¹⁵ 28 U.S.C. § 1391(c) (1958).

¹⁶ As to the general venue provisions, § 1391(c) has been held to apply to 28 U.S.C. § 1393 (1958), which requires that suit be brought in the division in which the defendant resides or, if there are multiple defendants, in the division in which any of them resides. *Reeder v. Corpus Christi Ref. Co.*, 111 F. Supp. 756 (S.D. Tex. 1952); *Pan Am. Airways, Inc. v. Consolidated Vultee Aircraft Corp.*, 87 F. Supp. 926 (S.D.N.Y. 1949). It has been

Court decision in this area is *Fourco Glass Co. v. Transmirra Prods. Corp.*,¹⁷ which the court in the principal case relied upon unquestioningly as controlling. In the *Fourco* case the section 1391(c) definition of corporate residence was held inapplicable in the determination of where a defendant resides within the meaning of the special venue provision for patent infringement suits.¹⁸

The *Fourco* decision, however, need not necessarily be controlling in a Jones Act case. The functions of these two special provisions are not the same. In a patent infringement suit, the place where the defendant is incorporated or in which he committed the acts of infringement and has a regular and established place of business are manifestly the most convenient places for trial. The defendant is there, the witnesses are likely to be there, and the evidence will ordinarily be readily available. In a Jones Act case the only one benefited by the restriction of venue to the state of incorporation or place of principal office is the defendant, and the benefit to the defendant can consist only in the possible inconvenience to the plaintiff in having to sue in one of these two places. In fact, the construction given the Jones Act venue provision by the court in the principal case is likely to be deleterious to trial convenience. A shipping corporation with offices in most of the ports in which it does business does not necessarily have any greater knowledge concerning the accident in the state of incorporation or at its principal place of business than it has anywhere else. Depending on the circumstances of the accident, defendant may well be in a better position to defend in a district in which one of its other places of business is located. By the time of trial, witnesses are as likely to be in some distant port or aboard ship in the middle of an ocean as they are to be in the defendant's state of incorporation or near its principal place of business. Other evidence, too, may be anywhere in the world, leaving the parties in no better position

held to apply to 28 U.S.C. § 1397 (1958), the provision for interpleader actions, *Mosely v. Sunshine Biscuits, Inc.*, 110 F. Supp. 157 (W.D. Mo. 1952), and to 28 U.S.C. § 1401 (1958), providing for venue in stockholder's derivative suits, *Freiday v. Cowdin*, 83 F. Supp. 516 (S.D.N.Y. 1949).

Section 1391(c) has been held inapplicable to antitrust suits under § 12 of the Clayton Act, 38 Stat. 736 (1914), 15 U.S.C. § 22 (1958). *Goldlawr, Inc. v. Shubert*, 169 F. Supp. 677 (E.D. Pa. 1958). However, 28 U.S.C. § 1392(a) (1958), the general venue provision regarding defendants residing in different districts of the same state, has been held supplementary to the venue provisions of the antitrust laws. *Anderson-Friberg, Inc. v. Justin R. Clary & Son*, 98 F. Supp. 75 (S.D.N.Y. 1951). It is arguable that there ought to be a distinction in the application of these two general venue provisions to antitrust actions because § 1392(a) merely allows a defendant to be sued in a different district of the same state, whereas § 1391(c) may enable suit to be brought in a district far from that state, which may cast a considerable burden on the defendant. However, in *Phillips v. Pope & Talbot, Inc.*, 102 F. Supp. 51 (S.D.N.Y. 1952), Judge Weinfeld observed that the import of his holding in the *Anderson-Friberg* case was that the general venue provisions contained in §§ 1391-93 of the Judicial Code are supplementary to the venue provisions of the antitrust laws.

¹⁷ 353 U.S. 222 (1957).

¹⁸ "Any civil action for patent infringement may be brought in the judicial district where the defendant resides, or where the defendant has committed acts of infringement and has a regular and established place of business." 28 U.S.C. § 1400(b) (1958).

in one forum than another. Thus, while trial convenience is properly served by the restriction of venue in patent infringement suits, the result is likely to be just the opposite in Jones Act cases, and the possible inconvenience to the plaintiff is contrary to the manifest purpose of the Jones Act, which was to enlarge the rights and remedies of the seaman against his employer.¹⁹

The different histories of these two provisions also serve to point up the difference in the judicial and legislative attitudes toward them. When venue was restricted in 1887, the Supreme Court stated that the restriction did not apply to actions for patent infringement.²⁰ In response, Congress enacted the law requiring that suits for patent infringement be brought in the district where defendant was an inhabitant or had committed acts of infringement and had a regular and established place of business.²¹ In 1942 the Supreme Court held that a defendant in a patent action could not be sued in his joint defendant's district²² as provided by a general venue statute,²³ and in 1947 the *Neirbo* doctrine was held not to apply to suits for patent infringement.²⁴ When the Jones Act was passed, its venue provision was more liberal than that of the general venue statute, and Congress made no subsequent attempt to restrict it, as it had the patent infringement venue provision. The courts exhibited a similar inclination toward more liberal venue for Jones Act cases, as when the *Neirbo* doctrine was held applicable to them,²⁵ and when the rules of forum non conveniens and transfer of venue²⁶ were held to apply to cases arising under the Jones Act.²⁷ Thus, while the function of the patent infringement venue provision has consistently been viewed as restrictive, confining the choice of forum to those which are appropriate, the function of the Jones Act venue provision has been envisioned by both Congress and the courts as the enlargement of the choice of forums available to the injured seaman.

Viewing section 1391(c) as supplementary to the Jones Act would render superfluous the phrase "principal place of business" in the same manner that it would transform into surplusage the last clause of section 1400(b): "where the defendant has committed acts of infringement and has a regular and established place of business."²⁸ This lends support to the conclusion reached in the *Fourco* case, but it has no bearing on the principal case.

¹⁹ See GILMORE & BLACK, ADMIRALTY §§ 6-1 to 6-4, at 248-51 (1957).

²⁰ *In re Keasby & Mattison Co.*, 160 U.S. 221, 230 (1895) (dictum); *In re Hohorst*, 150 U.S. 653 (1893) (alternative holding).

²¹ Judicial Code of 1911, § 48, 36 Stat. 1100.

²² *Stonite Prods. Co. v. Melvin Lloyd Co.*, 315 U.S. 561 (1942).

²³ Judicial Code of 1911, § 52, 36 Stat. 1101.

²⁴ *American Chem. Paint Co. v. Dow Chem. Co.*, 161 F.2d 965 (6th Cir. 1947).

²⁵ *Antonana v. Ore S.S. Corp.*, 144 F. Supp. 486 (S.D.N.Y. 1956); *Gibson v. United States Lines*, 74 F. Supp. 776 (D. Md. 1947); *Bennett v. Standard Oil Co.*, 33 F. Supp. 871 (D. Md. 1940).

²⁶ 28 U.S.C. § 1404(a) (1958).

²⁷ *Le Mee v. Streckfus Steamers, Inc.*, 96 F. Supp. 270 (E.D. Mo. 1951); *Mincy v. Detroit & Cleveland Nav. Co.*, 96 F. Supp. 505 (S.D.N.Y. 1950); *Bounds v. Streckfus Steamers, Inc.*, 89 F. Supp. 242 (D. Del. 1950).

²⁸ 28 U.S.C. § 1400(b) (1958).

Section 1400(b) was undergoing revision and codification at the same time as section 1391(c); the Jones Act was not. It is not to be assumed that Congress would allow a meaningless phrase to remain in a statute being revised concurrently with the one which renders it meaningless. However, it is not uncommon for a later statute to affect the meaning of a prior one without repealing part of it. If this were not the intent, a contrary purpose would most likely be indicated, rather than left to inference.²⁹ However, there is no reference to venue under the Jones Act in the comprehensive notes accompanying the revised Judicial Code. Similarly, the report of the chief reviser of the Judicial Code,³⁰ to which great weight was attached in the *Fourco* case, does not bear on the principal case. In that report it was stated that mere changes in phraseology did not indicate an intent to work a change of meaning, but merely an effort to state the original meaning in clear and simple terms, and that any change in meaning would be clearly indicated in the reviser's notes appended to that section. From this the Court concluded that since the reviser's notes to section 1400(b)³¹ indicated that the changes therein were mere changes of phraseology, Congress did not intend section 1391(c) to modify section 1400(b). However, it seems that this report was given undue weight. Nowhere in it is the addition of entirely new sections mentioned. Thus, while the report is pertinent to the changes within section 1400(b) itself, it is not relevant to the question of the application of section 1391(c) to section 1400(b), for section 1391(c) was entirely new and had no reviser's notes appended to it. It follows a fortiori that this report is totally irrelevant to the question of the application of section 1391(c) to the Jones Act, which was not even being revised at that time.

The *Fourco* holding seems an inadequate basis for a decision involving the general applicability of section 1391(c) to other special venue provisions. In *Fourco* the Court completely ignored what Congress may have intended by adding section 1391(c), choosing instead to focus on what Congress intended by changing section 1400(b). General application of this holding to all special venue provisions may well thwart the legislative intent indicated by the addition of section 1391(c). Thus, *Fourco* should be viewed, not as having established a rule as to the general applicability of section 1391(c) (a question not actually considered by the court), but as having provided only a narrow rule regarding the applicability of section 1391(c) to a special venue provision which has a peculiar function and history.

Viewing all of the foregoing considerations in the light of the protective attitude long held toward seamen by the federal courts,³² the Supreme

²⁹ *Bagner v. Blidberg Rothchild Co.*, 84 F. Supp. 973 (E.D. Pa. 1949).

³⁰ Barron, *The Judicial Code 1948 Revision*, 8 F.R.D. 439, 445-46 (1949).

³¹ "Words in subsection (b) 'where defendant resides' were substituted for 'of which defendant is an inhabitant.' . . . Words 'inhabitant' and 'resident' as respects venue are synonymous." H.R. REP. NO. 308, 80th Cong., 1st Sess. A131 (1947).

³² Seamen have been viewed as "poor and friendless and apt to acquire habits of

Court's holding in the *Fourco* case does not make mandatory the conclusion reached by the court in the principal case. To the contrary, it is highly probable that the Supreme Court would look with favor upon a construction which would increase the availability of the Jones Act's benefits to the seaman by giving him a choice of forums limited only by the business activities of his employer.

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gross indulgence, carelessness, and improvidence. If some provision not be made for them at the expense of the ship, they must suffer the accumulated evils of disease and poverty and sometimes perish for want of suitable nourishment." *Harden v. Gordon*, 11 Fed. Cas. 480 (No. 6047) (C.C.D. Me. 1823) (Story, C.J.). Since *Calmar S.S. Corp. v. Taylor*, 303 U.S. 525 (1938), it has not been necessary for recovery that the seaman's illness or injury be causally related to his shipboard duties, and in 1943 the owner of the ship was held responsible for maintenance and cure for injuries incurred by the seaman while on shore leave. *Aguilar v. Standard Oil Co.*, 318 U.S. 724 (1943). "The 'poor and friendless seaman' is . . . the beneficiary of a system of accident and health insurance at the ship owners' expense more comprehensive than anything yet achieved by shorebound workers." *GILMORE & BLACK, op. cit. supra* note 19, § 6-6, at 254. In order that he might realize his liberal substantive benefits more fully, the seaman has enjoyed an increasing number of procedural advantages, most of which have arisen because of the civil remedy for damages granted by the Jones Act. The Supreme Court decided long ago that unseaworthiness and Jones Act negligence were but two grounds of recovery arising from the same cause of action and, although he may receive judgment on only one of them, he may plead both, go to trial on both, and go to the jury on both, *Baltimore S.S. Co. v. Phillips*, 274 U.S. 316 (1927), and that a seaman's prior acceptance of maintenance and cure does not preclude an action against his employer for damages under the Jones Act, *Pacific S.S. Co. v. Peterson*, 278 U.S. 130 (1928). A claim for maintenance and cure may be pleaded and adjudicated with a related Jones Act claim in a civil action. *Romero v. International Terminal Operating Co.*, 358 U.S. 354, 380-81 (1959) (dictum). And, where a maintenance and cure claim is joined with a Jones Act claim (both having arisen out of the same set of facts), the seaman is entitled to a jury trial as of right on the maintenance and cure claim even though the Jones Act claim be decided against him. *Fitzgerald v. United States Lines Co.*, 374 U.S. 16 (1963).