Michigan Law Review

Volume 55 | Issue 8

1957

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Recommended Citation

Robert J. Hoerner, *Federal Procedure - Jurisdiction - Minimal Diversity Permitted By the Federal Interpleader Act Satisfies Constitutional Requirements*, 55 MICH. L. REV. 1183 (1957).
Available at: https://repository.law.umich.edu/mlr/vol55/iss8/12

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FEDERAL PROCEDURE—JURISDICTION—MINIMAL DIVERSITY PERMITTED BY THE FEDERAL INTERPLEADER ACT SATISFIES CONSTITUTIONAL REQUIREMENTS—A disinterested Texas bank brought a federal interpleader action under 28 U.S.C. (1952) §1335 against a Texas widow and four joint claimants, three of whom were Texas citizens and the other a Tennessee citizen. On appeal from a summary judgment for the joint claimants, the widow argued that the court lacked jurisdiction. *Held,* affirmed. Congress intended that section 1335 should cover these "minimal" facts. The "complete diversity" requirement of *Strawbridge v. Curtiss*[1] is only a rule of statutory construction and not a constitutional requirement. *Haynes v. Felder,* (5th Cir. 1957) 239 F. (2d) 868.

The Supreme Court has never expressly decided whether the *Strawbridge* rule of complete diversity is required by the Constitution's grant of diversity jurisdiction,[2] or whether it was merely a construction of the Judi-

[1] 3 Cranch. (7 U.S.) 267 (1806).

[2] U.S. CONST., art. III, §2. "The judicial power shall extend . . . to Controversies—between citizens of different states." It is clear that in Strawbridge itself, Marshall put his decision solely on statutory grounds. "The words of the act of congress are, 'where an alien is a party, or the suit is between a citizen of a state where the suit is brought, and a citizen of another state.' The court understands *these expressions* to mean, that each distinct interest should be represented by persons, all of whom are entitled to sue, or may be sued, in the federal courts." Emphasis added.

ciary Act of 1789 which has been extended to that act's present successor, 28 U.S.C. (1952) §1332. The question is important because federal interpleader jurisdiction can be rested on two different statutes with differing jurisdictional requirements, section 1332 and section 1335. Interpleader based on rule 22 (1) of the Federal Rules of Civil Procedure must meet the jurisdictional requirements of section 1332,[3] the usual federal diversity provision, upon which the "complete diversity" rule of *Strawbridge* has been engrafted. Interpleader under section 1335, however, requires simply "two or more adverse claimants, of diverse citizenship as defined in section 1332. . . ." The Supreme Court left the constitutional question open in the leading case in this area, *Treinies v. Sunshine Mining Co.*[4] There a disinterested Washington plaintiff interpleaded Washington claimants with adverse Idaho claimants under section 1335's predecessor.[5] By disregarding the plaintiff's citizenship since he made no claim to the fund, the court found "complete diversity" between the two adverse claimants and thus avoided the constitutional problem. The court did not try to reconcile its decision with those cases basing jurisdiction under rule 22 (1) on diversity between plaintiff and claimants,[6] nor did it deal with the problems raised when plaintiff also claims the fund.[7] Other courts have also avoided the constitutional problem by using techniques of alignment[8] and ancillary jurisdiction.[9] In a number of cases, however, diversity jurisdiction under section 1335 or its predecessors has been found which seems irreconcilable

3 "The district courts shall have original jurisdiction of all civil actions . . . between: Citizens of different states."

4 308 U.S. 66 (1939).

5 49 Stat. 1096 (1936). The act required "two or more adverse claimants, citizens of different states. . . ."

6 E.g., Security Trust and Savings Bank of San Diego v. Walsh, (9th Cir. 1937) 91 F. (2d) 481; Rosetti v. Hill, (9th Cir. 1947) 162 F. (2d) 892, noted in 21 So. CAL. L. REV. 276 (1948); E. C. Robinson Lumber Co. v. Fort, (E.D. Mo. 1953) 112 F. Supp. 242, noted in 3 UTAH L. REV. 529 (1953). These courts reasoned that disregarding the plaintiff's citizenship was improper, for he has a real interest in escaping double liability. While these cases standing alone are consistent with Strawbridge as a constitutional doctrine, they are manifestly inconsistent with Sunshine. The plaintiff's interest is the same in both cases and should have the same jurisdictional significance. These cases and Sunshine taken together can be reconciled with Strawbridge as constitutional only if we say that Congress has the power to determine the parties between whom there must be "complete diversity." It can then be argued that diversity between plaintiff and claimants only is relevant under rule 22 (1), and that diversity between adverse claimants only is relevant under §1335, at least where the plaintiff is disinterested.

7 In this case it would be difficult to ignore the plaintiff's citizenship. See Chafee, "Federal Interpleader Since the Act of 1936," 49 YALE L. J. 377 at 397 (1940); Boice v. Boice, (3d Cir. 1943) 135 F. (2d) 919, affirming (D.C. N.J. 1943) 48 F. Supp. 183, held, no jurisdiction; Walmac Co., Inc. v. Isaacs, (1st Cir. 1955) 220 F. (2d) 108, question discussed but left open.

8 Kerrigan's Estate v. Joseph Seagram & Sons, (3d Cir. 1952) 199 F. (2d) 694. Cf. Fidelity & Casualty Co. of New York v. Wilson, (E.D. S.C. 1952) 105 F. Supp. 454.

9 Walmac Co., Inc. v. Isaacs, note 7 supra; Republic of China v. American Express Co., (2d Cir. 1952) 195 F. (2d) 230.

with *Strawbridge* as a constitutional requirement.[10] In these cases both the plaintiff and several adverse claimants were citizens of the same state, thus destroying "complete diversity" either between plaintiff and claimants, or between adverse claimants. All involved, however, at least one independent adverse claimant or group of claimants from a state different from that of any other claimant, who could sue or be sued by the others in a federal court. It is the absence of this feature which distinguishes the principal case. Since the Tennesseean claimed *jointly* with the three Texans, her citizenship could not be considered separately. Thus, neither of the two claiming parties could sue the other in a federal court,[11] for there were Texans in both groups. The court seems correct in calling these jurisdictional facts "minimal."[12] The Texas widow and the Tennessee joint claimant were, however, involved in a "controversy . . . between citizens of different States," and the court squarely held that the Constitution requires no more than this. The widow argued that since the wording of section 1332 and the Constitution are identical, the "complete diversity" requirement of section 1332 must also be required by the Constitution. The court rejected this argument, finding that the constitutional language could permissibly be given a broader scope than identical statutory language.[13] In view of the remedial nature of the successive interpleader acts,[14] the court concluded that section 1335 had extended diversity jurisdiction to the full extent of Congress' power,[15] and that the principal case fell within the act. It found that the only purpose of section 1335's reference to section 1332 was to incorporate its geographical definitions, and that the reference was not meant to extend section 1332's judicial gloss of "complete diversity" to section 1335. This interpretation seems justified since the reference to section 1332 was added in the 1948 codification, which was not intended to make "controversial substantive changes."[16] A minimal diversity require-

10 It should be pointed out that the constitutional problem was seldom discussed. See Blair Holdings Corp. v. Bay City Bank & Trust Co., (9th Cir. 1956) 234 F. (2d) 513; Cramer v. Phoenix Mutual Life Ins. Co., (8th Cir. 1937) 91 F. (2d) 141, cert. den. 302 U.S. 739 (1937); Pure Oil Co. v. Ross, (7th Cir. 1948) 170 F. (2d) 651. In Dugas v. American Surety Co., 300 U.S. 414 (1937), the Supreme Court treated the jurisdictional problem only in passing. Compare Westinghouse Electrical Corp. v. United Electrical Radio and Machine Workers of America, (W.D. Pa. 1950) 92 F. Supp. 841, with Sun Shipbuilding & Dry Dock Co. v. Industrial Union, (E.D. Pa. 1950) 95 F. Supp. 50.

11 In the cases cited in note 10 supra, at least one or more independent claimants could be found who could sue and be sued by all the others in a federal court. It can be argued either that this feature represents the minimum jurisdictional requirement under the Constitution, or that it represents the maximum jurisdictional grant of §1335. The court rejected both arguments.

12 Principal case at 874.

13 See Chafee, "Federal Interpleader Since the Act of 1936," 49 YALE L. J. 377 at 395 (1940).

14 See 3 MOORE, FEDERAL PRACTICE, 2d ed., §22.09, p. 3035 (1948).

15 *Accord:* Girard Trust Co. v. Vance, (E.D. Pa. 1946) 5 F.R.D. 109; Blackmar v. MacKay, (S.D. N.Y. 1946) 65 F. Supp. 48.

16 S. Hearings before a Subcommittee of the Committee on the Judiciary, 80th Cong., 2d sess., p. 15 (1948).

ment seems clearly useful in the interpleader area. The plaintiff bank could get no involuntary jurisdiction over the Tennesseean in a Texas court, and had the federal courts been denied it because of a "complete diversity" requirement, the bank faced the possibility of unwarranted double liability. It is to be hoped that when the Supreme Court does pass on the problems raised by this case, it will not make *Strawbridge* a constitutional straitjacket preventing Congress from adjusting the diversity requirement as necessary to meet real needs.

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