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FEDERAL COURTS-SUBSTITUTION OF PARTIES BY AMENDMENT UNDER THE FEDERAL RULES TO CORRECT A JURISDICTIONAL DEFECT

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FEDERAL COURTS—SUBSTITUTION OF PARTIES BY AMENDMENT UNDER THE FEDERAL RULES TO CORRECT A JURISDICTIONAL DEFECT—The plaintiffs, local officers of a union, sued to enjoin the national officers of the union from interfering with plaintiffs' union duties. Because the original complaint failed to show diversity of citizenship as a basis for federal jurisdiction, plaintiffs sought by amendment to substitute five nonresident members of the union as parties plaintiff and to change the action to a class suit. *Held,* the court had the power to permit such an amendment but, in the exercise of its discretion, it would not do so here. *National Maritime Union of America v. Curran,* (D.C. N.Y. 1949) 87 F. Supp. 423.

Under the present federal rules, a pleading may be amended to supply jurisdictional facts which the original pleading had failed to allege.[1] Rule 21 of the Federal Rules of Civil Procedure states: "Parties may be dropped or added by order of the court . . . on such terms as are just." While it has been held that this is not a substitution rule,[2] but contemplates the retention of a party or parties on the side to which the new party is added,[3] substitution has been permitted.[4] Although this substituting process is difficult to justify by a strictly logical analysis, practical considerations of economy of time and expense far outweigh the formalistic drawbacks. For those courts permitting substitution, the primary task is the selection of criteria to guide their discretion. Obviously, the amended pleading must not state a "new claim"; it must arise "out of the conduct, transaction, or occurrence set forth or attempted to be set forth in the original plead-

[1] Youngs Rubber Corp. v. C. I. Lee & Co., (2d Cir. 1930) 45 F. (2d) 103; Rohde v. Dighton, (D.C. Mo. 1939) 27 F. Supp. 149; Int. Allied Printing Trades Assn. v. Master Printers Union of New Jersey, (D.C. N.J. 1940) 34 F. Supp. 178; Moreschi v. Mosteller, (D.C. Pa. 1939) 28 F. Supp. 613. Cf. McMichael v. United States, (D.C. Ala. 1945) 63 F. Supp. 598.

[2] This view gains strength from the existence of rule 25 of the Federal Rules of Civil Procedure which is denominated "Substitution of Parties."

[3] Schwartz v. Metropolitan Life Insurance Co., (D.C. Mass. 1941) 5 Fed. Rules Serv. 15a.32, Case 2, 2 F.R.D. 167; United States v. Swink, (D.C. Va. 1941) 41 F. Supp. 98.

[4] In re Raabe, Glissman & Co., Inc., (D.C. N.Y. 1947) 71 F. Supp. 678; Keystone Telephone Co. v. United States, (D.C. N.Y. 1943) 49 F. Supp. 508; Hackner v. Guaranty Trust Co. of N.Y., (2d Cir. 1941) 117 F. (2d) 95.

ing."[5] The court in the principal case found that the change from an individual to a class suit was objectionable, even though prior cases had permitted this.[6] Also, the fact that the substituted parties had a less substantial interest than the original parties was found to be an obstruction. The real question as to whether this "lesser" interest was sufficient, at least, prima facie, to maintain the amended complaint was not directly answered. The following inquiries are submitted as being the pertinent considerations which should govern the court's decision: (a) Does the amended pleading state the same claim or controversy? (b) Is the amended pleading sufficient to invoke the jurisdiction of the federal court? (c) Would permitting the proposed substitution render the protection of the other party's substantive rights more precarious than if another original action were brought?[7] These tests would permit an amendment which merely alters the capacity in which a person sues, or is sued.[8] However, amendment to substitute a new person as defendant after the Statute of Limitations has run, not only would compel the substituted party to defend on a claim not otherwise maintainable, but also would conflict with the policy considerations underlying the Statute of Limitations; therefore, it is not permitted.[9]

In the principal case, the court questioned whether the five nonresidents of New York were proper persons to be representatives in a class action primarily involving the interests of the New York local union. Also, there was doubt as to the "good faith" in the allegation of the jurisdictional amount of $5,000 damage to each substituted plaintiff. Closely associated with the difficulty of change from an individual to a class action was the question of a change in the nature of the relief sought. While the amended complaint sought an injunction identical in content to the one originally requested, the court asserted that the nature of the requested relief was altered, as any irreparable injury suffered by the substituted parties would be necessarily different from the irreparable injury alleged by the original plaintiffs. If this reasoning were applied literally, it would preclude the use of substitution in all cases where an injunction is requested, for it is manifest that such a difference will always exist when a substitution of new parties is sought. It is submitted that this factor should be considered only insofar as it

[5] Rule 15(c) of Federal Rules of Civil Procedure. The court in Hackner v. Guaranty Trust Co. of N.Y., supra note 4, suggested this rule as an alternative basis, with rule 21 for the allowance of complete substitution.

[6] Moreschi v. Mosteller, supra note 1; Int. Allied Printing Trades Assn. v. Master Printers Union of New Jersey, supra note 1.

[7] In effect, these were the questions examined by the court in Hackner v. Guaranty Trust Co. of N.Y., supra note 4, before granting substitution.

[8] While not utilizing the suggested tests, the court permitted such amendment in Owen v. Paramount Productions, (D.C. Cal. 1941) 41 F. Supp. 557; *contra*, Schwartz v. Metropolitan Life Insurance Co., supra note 3. The court there rested its decision on Davis v. Cohen Co., 268 U.S. 638, 45 S.Ct. 633 (1925), which, it is submitted, encompassed totally different facts, and thus, should not have been considered. See also, United States v. Swink, supra note 3.

[9] Davis v. Cohen Co., supra note 8; Third Nat. Bank & Trust Co. v. White, (D.C. Mass. 1932) 58 F. (2d) 411.

establishes actual prejudice to defendant, rather than be conclusively presumed an irremovable obstacle to amendment.

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