Michigan Law Review

Volume 50 | Issue 4

1952

FEDERAL PROCEDURE-JURISDICTION-DETERMINATION OF AMOUNT IN CONTROVERSY IN CLASS ACTIONS UNDER FEDERAL RULE 23

James W. Callison
University of Michigan Law School

FEDERAL PROCEDURE—JURISDICTION—DETERMINATION OF AMOUNT IN CONTROVERSY IN CLASS ACTIONS UNDER FEDERAL RULE 23—Plaintiff owned 50

shares of common stock valued at $950. She brought an action in behalf of herself and all other stockholders to enjoin a sale of unissued stock by the corporation to its president, claiming a violation of her preemptive right. The district court ruled on the merits. On appeal, *held,* the plaintiff's interest was but a small fraction of the $3,000 required to invoke the jurisdiction of the federal courts.[1] Although the action was representative, the claims of other stockholders in a like situation could not be cumulated. *Ames v. Mengel Co.,* (2d Cir. 1951) 190 F. (2d) 344.

Prior to the Federal Rules of Civil Procedure,[2] the determination of the amount in controversy in a class action depended upon the nature of the right held by the class; the individual interests of the members of a class could be aggregated to meet the jurisdictional requirement[3] only if the right was held by them jointly. Federal Rule 23, however, raises a problem by distinguishing between the true, the hybrid, and the spurious class actions, and the stockholder's derivative action. In a true class action the interest of the class is joint and undivided,[4] though it may be separable among the members of the class.[5] Accordingly, in such an action the courts are unanimous in stating that the aggregate value of the class interest determines the amount in controversy.[6] On the other hand, in both the hybrid[7] and the spurious[8] class actions, the interests of the members of the class are several. Consequently, in these actions the jurisdictional minimum must be met by each party to the suit.[9] In the stockholder's derivative action, the rights enforced are those of the corporation and the benefits of the suit accrue to it.[10] Hence the interest of the corporation is the amount in contro-

[1] 28 U.S.C. (1948) §41 (1-28) (Jud. Code, §24, amended).

[2] 28 U.S.C. (1948) following §723c, Act of June 1934.

[3] Clay v. Field, 138 U.S. 464, 11 S.Ct. 419 (1891); Pinel v. Pinel, 240 U.S. 594, 36 S.Ct. 416 (1916).

[4] Giesecke v. Denver Tramway Corp., (D.C. Del. 1949) 81 F. Supp. 957 at 960; also see Moore's definition [2 MOORE, FEDERAL PRACTICE 2236 (1938)] as cited in Pentland v. Dravo Corp., (3d Cir. 1945) 152 F. (2d) 851 at 852.

[5] Giesecke v. Denver Tramway Corp., supra note 4, at 960.

[6] 2 BARRON AND HOLTZOFF, FEDERAL PRACTICE AND PROCEDURE §569 at 180 (1950); 2 MOORE, FEDERAL PRACTICE 2295 (1938); Giesecke v. Denver Tramway Corp., supra note 4, at 960; Andrews v. Equitable Life Assur. Soc. of U.S., (7th Cir. 1942) 124 F. (2d) 788 at 791.

[7] The hybrid action is where several plaintiffs having separate causes of action also have a right to a common fund or in common property. Penn Co. for Insurances v. Deckert, (3d Cir. 1941) 123 F. (2d) 979 at 983. For other cases, see 2 BARRON AND HOLTZOFF, FEDERAL PRACTICE AND PROCEDURE §562 at 145 (1950).

[8] The spurious action is a suit by one or more of a class, the members of which have separate and distinct interests or rights but are bound together by a common question of law or fact. Penn Co. for Insurances v. Deckert, supra note 7, at 983; also see MOORE, FEDERAL PRACTICE 2241 (1938).

[9] Giesecke v. Denver Tramway Corp., supra note 4, at 960; Koster v. Turchi, (D.C. Pa. 1948) 79 F. Supp. 268 at 273; also see 2 MOORE, FEDERAL PRACTICE 2295 (1938) and 2 BARRON AND HOLTZOFF, FEDERAL PRACTICE AND PROCEDURE §569 at 180, 181 (1950).

[10] Koster v. Lumberman's Mutual Cas. Co., 330 U.S. 518 at 522, 67 S.Ct. 828 at 831 (1947); Johnson v. Ingersoll, (7th Cir. 1933) 63 F. (2d) 86 at 87; 2 MOORE, FEDERAL PRACTICE 2253-2255 (1938).

versy.[11] Thus Rule 23, while making the class action device more useful by defining the possible types of such actions, has not affected the determination of the amount in controversy.[12] That determination still hinges on the nature of the right. It is obvious that the plaintiff in the principal case did not represent the defendant corporation, but rather only the stockholders. Since the rights in this situation were several, the court was correct in denying the right to aggregate. But as the decision shows, it is often extremely difficult to determine the type of class action being brought. As the amount in controversy depends upon this determination, the seemingly simple jurisdictional requirement becomes many-sided and confusing when applied to class actions. For this reason it would be desirable to relieve class actions of the conventional federal jurisdictional requirement that was designed for individual suits. It has been suggested that regardless of the type of representative action, the amount in controversy should be measured by the recovery to the class as a whole.[13] As the policy behind the amount in controversy requirement is simply to keep insignificant suits out of the federal courts, no reason appears why this rule cannot be adopted. Together with Rule 23, such a measure would assure easier and more effective use of the class action device. For these reasons, immediate congressional action in regard to the problem would be desirable.

James W. Callison

[11] Koster v. Lumberman's Mutual Cas. Co., supra note 10, at 522; Johnson v. Ingersoll, supra note 10, at 88. See 2 MOORE, FEDERAL PRACTICE 2274 and 2296 (1938). Actually the stockholder's derivative action is a true class suit [see 2 MOORE, FEDERAL PRACTICE 2274 (1938)]. As the interest being protected is the corporation's, it belongs in common to all the stockholders. Thus, this interest is equal in value to the aggregate interest of all the stockholders. It would seem the rule for determination of the amount in controversy could be stated either way. See Blume, "Jurisdictional Amount in Representative Actions," 15 MINN. L. REV. 501 (1931).

[12] See Fed. Rule 82; Andrews v. Equitable Life Assur. Soc. of U.S., supra note 6, at 791; Koster v. Turchi, supra note 9, at 273.

[13] Kalven and Rosenfield, "Contemporary Function of the Class Suit," 8 UNIV. CHI. L. REV. 684 at 704, note 66 (1941). Also see Blume, "Jurisdictional Amount in Representative Actions," 15 MINN. L. REV. 501 (1931).