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NOTES

JURISDICTIONAL AMOUNT IN CIVIL RIGHTS CASES

Deprivations of civil rights committed under the color of state authority may be redressed in the federal courts. By virtue of Subsection 24(14)[1] of the federal Judicial Code, such cases are within the original jurisdiction of the dis-

[1] This subsection grants jurisdiction of suits "at law or in equity authorized by law to be brought by any person to redress the deprivation, under color of any law, statute, ordinance, regulation, custom, or usage of any State, of any right, privilege, or immunity, secured by the Constitution of the United States, or of any right secured by any law of the United States providing for equal rights of citizens of the United States, or of all persons within the jurisdiction of the United States." 36 Stat. 1092 (1911), 28 U.S.C.A. § 41(14) (1927).

trict courts without proof of the jurisdictional amount.[2] Where a suit is instituted against a federal officer for the alleged infringement of a constitutional right, however, Subsection 24(1)[3] alone is applicable. This provision requires that the matter in controversy exceed $3,000. Nevertheless, it has been commonly assumed that under this subsection federal courts have jurisdiction of causes arising from violation of social and political rights, and the courts have often applied it to cases where Subsection 24(14) apparently governed.[4] Such a case was *Giles v. Harris*;[5] and the dictum of Mr. Justice Holmes to the effect that the "deprivation of a man's political and social rights properly may be alleged to involve damage . . . . capable of estimation in money," has doubtless influenced writers such as Dobie who have simply stated that the difficulty of giving precise monetary valuation to the right involved does not defeat jurisdiction.[6]

Recent decisions do not warrant this conclusion. In *Hague v. CIO*,[7] although the district court and the circuit court of appeals took jurisdiction under Subsection 24(1), the Supreme Court relied entirely on Subsection 24(14). Mr. Justice Roberts stated that Subsection 24(1) would not support jurisdiction, there being no showing that the right to freedom of speech and opinion had the required value to the plaintiffs individually. But he cited with approval earlier cases[8] holding that money damages for invasion of similar rights might be claimed to an amount necessary to qualify for jurisdiction. His opinion thus suggests that while the amount claimed as damages for deprivation of a civil right will support jurisdiction, the value of the right itself may not.[9] Mr. Justice Stone, in a separate opinion, recognized the issue more explicitly: "There are many rights and immunities secured by the Constitution, of which freedom of

[2] Hague v. CIO, 307 U.S. 496 (1939).

[3] This subsection reads in part: "The district courts shall have original jurisdiction . . . . of all suits of a civil nature . . . . where the matter in controversy exceeds, exclusive of interest and costs, the sum or value of three thousand dollars, and (a) arises under the Constitution or laws of the United States, or treaties . . . . or (b) is between citizens of different States. . . . ." 36 Stat. 1091 (1911), 28 U.S.C.A. § 41(1) (1927).

[4] Gobitis v. Minersville School District, 24 F. Supp. 271 (Pa. 1938), rev'd on other grounds 310 U.S. 586 (1940).

[5] 189 U.S. 475, 485 (1903). This was a bill in equity to compel the board of registrars of Montgomery County, Alabama, to enroll the plaintiff and five thousand other Negroes on the voting lists. Although jurisdiction was sustained, equitable relief was denied.

[6] Dobie, Jurisdictional Amount in the United States District Court, 38 Harv. L. Rev. 733, 738 n. 11 (1925); Rose, Federal Jurisdiction and Procedure 182 (2d ed. 1922); 1 Moore, Federal Practice 521 (1938); cf. Federal Courts—Jurisdiction over Violations of Civil Liberties by State Governments and by Private Individuals, 39 Mich. L. Rev. 284 (1940).

[7] 307 U.S. 496 (1939) (a suit to enjoin state officials from restraining the exercise of the rights to freedom of speech and assembly).

[8] Wiley v. Sinkler, 179 U.S. 58 (1900); Swafford v. Templeton, 185 U.S. 487 (1902).

[9] But see Giles v. Harris, 189 U.S. 475, 485 (1903), where Wiley v. Sinkler, 179 U.S. 58 (1900), was cited in support of jurisdiction of an injunction proceeding.

speech and assembly are conspicuous examples, which are not capable of money valuation, and in many instances, like the present, no suit in equity could be maintained for their protection if proof of the jurisdictional amount were prerequisite."[10] In this instance, however, he deemed proof of the jurisdictional amount unnecessary inasmuch as the suit could be brought within the terms of Subsection 24(14), and he concurred with the rest of the court in sustaining jurisdiction under that paragraph only.

While the decision in the *Hague* case places new emphasis on Subsection 24(14) as a means of securing a hearing without proof of jurisdictional amount, the possibility of securing a forum for civil rights cases not involving state action has very likely been impaired. This result was demonstrated in a series of suits to test the constitutionality of the Emergency Relief Appropriations Act for 1941[11] as applied to WPA workers. Section 15(f) of this act provides that "no alien, no Communist, and no member of any Nazi Bund Organization shall be given employment or continued in employment on any work project prosecuted under the appropriations contained in this joint resolution and no part of the money appropriated in this joint resolution shall be available to pay any person who has not made or who does not make affidavit as to United States citizenship and to the effect that he is not a Communist and not a member of any Nazi Bund Organization. . . . ." Section 17(b) stipulates that "no portion of the appropriation made under this joint resolution shall be used to pay any compensation to any person who advocates, or who is a member of an organization that advocates, the overthrow of the Government of the United States." Several WPA workers, at least one of whom was not a member of the outlawed groups,[12] refused to sign the required affidavits on the ground that such a requirement constituted an invasion of their political freedom. For this refusal they were promptly dismissed. Suits to enjoin the enforcement of the statutory provision, alleging its unconstitutionality, were instituted in federal district courts in several states.[13] The defendant WPA administrators challenged jurisdiction, thus placing on the plaintiffs the burden of establishing jurisdiction to the satisfaction of the courts.[14] For this purpose the plaintiffs argued: 1) that refusal of jobs not only resulted in loss of wages but exposed the

[10] Hague v. CIO, 307 U.S. 496, 529 (1939).

[11] 54 Stat. 611 (1940), 15 U.S.C.A. §§ 721–28 (Supp. 1940).

[12] Long v. Somervell, 175 Misc. 119, 22 N.Y.S. (2d) 931 (S.Ct. 1940), aff'd without opinion 261 App. Div. 946, 27 N.Y.S. (2d) 445 (1941).

[13] Carroll v. Somervell, 116 F. (2d) 918 (C.C.A. 2d 1941); Cooney v. Legg, 34 F. Supp. 531 (Cal. 1940); Lambrou v. Miner, 36 F. Supp. 451 (Ill. 1940); Coyle v. Smith (unreported) (D.C. Wash. 1940); Craighead v. Lynch (unreported) (D.C. Pa. 1940).

[14] McNutt v. General Motors Acceptance Corp., 298 U.S. 178 (1936). The problem of securing jurisdiction for civil rights cases can be viewed as a problem of proof. If the court deems the allegation of amount to be colorable or if jurisdiction is challenged by the defendant, the plaintiff must show jurisdiction to the satisfaction of the court.

plaintiffs to the disdain and obloquy of the community, for which the defendants would be liable in damages;[15] 2) that the plaintiffs had been deprived of constitutionally guaranteed rights, the value of which exceeded $3,000; and 3) that the amount in controversy was not only the sum which each plaintiff had lost but the total amount of loss to members of that class. These arguments were systematically rejected, and the courts were unanimous in holding that, since the plaintiffs had not succeeded in supporting with evidence their jurisdictional allegations, there was no federal jurisdiction.

To secure jurisdiction for injunction proceedings[16] the value of the right which the plaintiff seeks to protect must exceed the jurisdictional amount.[17] In recent years the Supreme Court, in applying this rule, has made clear that not the value of the entire right but only the damage to the right caused by the allegedly illegal interference determines jurisdiction.[18] Where protection is sought for a property right, courts normally encounter little difficulty. Ordinarily plaintiffs are able to point to figures indicative of the value of the right; the amount of business transacted,[19] or the size of a tax sought to be enjoined may exceed the $3,000 requirement.[20] In civil rights cases where the plaintiffs claim protection for a property right of sufficient value, the courts will take jurisdiction. In *Gobitis v. Minersville School District*,[21] a suit by a parent to enjoin a school board from prohibiting the attendance of his children at public school because of their refusal to salute the flag, jurisdiction was upheld on the ground that the alternative facing the plaintiff, educating his children in a private school, would cost over $3,000.[22] And in a suit involving freedom of the press, *Grosjean v. American*

[15] Persons dismissed from their jobs for refusing to sign affidavits might well be assumed to be "Communists" or "Nazis" by the community. In view of the present political situation it has been recognized that these appellations carry such opprobrium as to constitute libel per se. Levy v. Gelber, 175 Misc. 746, 25 N.Y.S. (2d) 148 (S.Ct. 1941), noted in 8 Univ. Chi. L. Rev. 799 (1941).

[16] Injunctive relief is a remedy commonly sought for invasions of civil liberties. Minersville School District v. Gobitis, 310 U.S. 586 (1940); Hague v. CIO, 307 U.S. 496 (1939); Grosjean v. American Press Co., Inc., 297 U.S. 233 (1936).

[17] Glenwood Light and Water Co. v. Mutual Light, Heat and Power Co., 239 U.S. 121 (1915); Hunt v. New York Cotton Exchange, 205 U.S. 322 (1907); Dobie, Handbook of Federal Jurisdiction and Procedure 133 (1935).

[18] McNutt v. General Motors Acceptance Corp., 298 U.S. 178, 181 (1936); Healy v. Ratta, 292 U.S. 263 (1934). See Federal Jurisdictional Amount Requirement in Injunction Suits, 49 Yale L. J. 274 (1939).

[19] Gibbs v. Buck, 307 U.S. 66 (1939).

[20] Grosjean v. American Press Co., Inc., 297 U.S. 233 (1936); cf. Smith v. Adams, 130 U.S. 167 (1889); Wetsel v. Empire Gas & Fuel Co., 264 Fed. 865 (C.C.A. 5th 1920).

[21] 24 F. Supp. 271 (Pa. 1938), rev'd on other grounds 310 U.S. 586 (1940). The jurisdictional point was discussed only in the lower court.

[22] This approach might reach an absurdity if a plaintiff in order to establish jurisdiction were allowed to prove the cost of transportation to a foreign land where the right claimed could be exercised without interference.

Press Co., Inc.,[23] the amount of the newspaper tax attacked exceeded the jurisdictional amount. In most civil rights cases, however, pecuniary loss is more difficult to prove. The courts have accepted many of the early cases alleging deprival of the right to vote on the basis of the damages claimed by the plaintiff in good faith.[24] But if the burden is placed on the plaintiff to prove that his civil right is worth $3,000, the WPA cases demonstrate that he faces an almost impossible task. Quite obviously, a civil right is a member of that class of rights to which a pecuniary yardstick is hardly applicable.[25]

The alternative means of securing an adjudication of the constitutionality of the Emergency Relief Appropriations Act are not promising. Faced with the same difficulty of proving monetary loss due to the alleged wrong,[26] the plaintiffs are not able to secure a hearing in the federal district courts for an action for damages.[27] Lack of precedent for such suits in state courts strongly suggests that these tribunals cannot provide an adequate remedy against the enforcement of a federal statute alleged to be unconstitutional.[28] State judges would justifiably feel reluctant to interfere with the enforcement of a federal law.[29] Moreover, the path to a final adjudication of the constitutional issues would be long and expensive were the case drawn through the state courts before reaching the United States Supreme Court. The inevitable delay of this procedure may be contrasted

[23] 297 U.S. 233 (1936).

[24] Nixon v. Herndon, 273 U.S. 536 (1927); Wiley v. Sinkler, 179 U.S. 58 (1900).

[25] Cf. Greenough v. Independence Lead Mines Co., 45 F. (2d) 659 (D.C. Idaho 1930) (right of stockholder to examine books of corporation); In re Red Cross Line, 277 Fed. 853 (D.C.N.Y. 1921) (an agreement to arbitrate); 81 L. Ed. 189, 196 (1937). However, the state courts provide an adequate remedy in many of these cases.

[26] The WPA cases apparently assume that if common-law damages to an amount in excess of $3,000 could have been recovered there would have been jurisdiction in the injunction suits. See Carroll v. Somervell, 116 F. (2d) 918, 920 (C.C.A. 2d 1941); Lambrou v. Miner, 36 F. Supp. 451, 452 (Ill. 1940).

[27] The amount claimed by the plaintiff in good faith usually determines jurisdiction in an action for damages. Saint Paul Mercury Indemnity Co. v. Red Cab Co., 303 U.S. 283 (1938). However, when the court ignores the claim of invasion of a personal right and focuses its attention on the lost property right in the form of a job, the claim of jurisdiction will be deemed colorable when the job has not the requisite monetary value. See Carroll v. Somervell, 116 F. (2d) 918, 920 (C.C.A. 2d 1941).

[28] The state courts have held federal statutes unconstitutional. Hoxie v. New York, New Haven & Hartford R. Co., 82 Conn. 352, 73 Atl. 754 (1909). A companion case, Mondou v. New York, New Haven & Hartford R. Co., 82 Conn. 373, 73 Atl. 762 (1909), was appealed to the Supreme Court of the United States where it was reversed. Second Employers' Liability Cases, 223 U.S. 1 (1912). See Warren, Congress, The Constitution, and the Supreme Court 136–38 (1925). Liability in damages has been imposed by state courts upon federal officers for acts committed in pursuance of a federal statute. Johnson v. Jones, 44 Ill. 142 (1867). But there are apparently no cases in which state courts have enjoined federal officers.

[29] Cf. Long v. Somervell, 175 Misc. 119, 22 N.Y.S. (2d) 931 (S.Ct. 1940); Goldstein v. Sommervell, 170 Misc. 602, 10 N.Y.S. (2d) 747 (S.Ct. 1939) (injunction against WPA administrator to restrain him from fingerprinting WPA workers refused).

with the dispatch now characteristic of federal courts in the adjudication of issues of constitutionality involved in the enforcement of state or federal laws.[30] A three-judge court insures the plaintiff an adequate hearing at the trial stage. If the statute is held unconstitutional, direct appeal to the Supreme Court reduces the danger of obstructing enforcement of a statute that subsequently proves to be constitutional.

This problem of securing a forum to protect civil rights is not limited to the testing of the Emergency Relief Appropriations Act or closely allied statutes. Of course, only in the exceptional case will the individual affected have to initiate proceedings in order to secure judicial review,[31] since most statutes will affect the individual only when judicial proceedings are instituted against him. But judicial review subsequent to the enforcement of a statute does not constitute an adequate protection of constitutional rights and immunities. The mere threat of prosecution under a criminal statute may effectively restrict the exercise of rights guaranteed to the individual.[32] In this situation a suit to enjoin the enforcement of the statute is the only sure method of preventing infringement of the individual's rights.[33]

In a period when civil rights are likely to be imperiled, direct procedures for the enforcement of the constitutional guarantees without delay should be available. The requirement of $3,000 jurisdictional amount for suits in a federal court has proved an impediment to such enforcement. The solution of this problem is not difficult. Judicial recognition that civil rights have a value in excess of $3,000 since a jury could award that sum in a suit for damages[34] would be one solution. Legislative action to remove the jurisdictional amount requirement in suits in federal courts based on claims of constitutional right or privilege would be a more certain remedy. Precedent for such legislation exists in Subsection 24(14). In specifically providing for federal jurisdiction in the cases within the subsection, Congress acted in accordance with a widely felt sentiment

[30] 36 Stat. 557 (1910) as amended, 28 U.S.C.A. § 380 (1928); 50 Stat. 752 (1937), 28 U.S.C.A. § 380a (Supp. 1940).

[31] A proposed statute authorizing wire tapping, H.R. 4228, 77th Cong. 1st Sess. (failed of passage, June 30, 1941), would have raised a problem as to means of securing judicial review similar to that raised by the appropriation acts. Many persons whose wires were being tapped could question the constitutionality of the statute only in a suit against the officer acting under the proposed act.

[32] Where the penalty for not complying with a rate statute was so excessive as to forestall a test of its constitutionality, the penal provisions were held to be unconstitutional on their face. Ex parte Young, 209 U.S. 123, 146–48 (1908); Constitutionality of Penalties as to Litigants Challenging Substantive Provisions of Legislation, 44 Yale L. J. 1216 (1935); see Culp, Methods of Attacking Unconstitutional Legislation, 22 Va. L. Rev. 723, 754 (1936).

[33] Although a declaratory judgment action would also be an efficient remedy, the phrasing of the provisions of the Judicial Code providing for a three-judge court seems to preclude their use in some cases. Borchard, Declaratory Judgments 236 (2d ed. 1941).

[34] Wiley v. Sinkler, 179 U.S. 58, 65 (1900) (denial of the right to vote); Hynes v. Briggs, 41 Fed. 468, 471 (C.C. Ark. 1890) (false imprisonment).

that the federal courts were the best tribunals for the enforcement of civil rights secured by the Constitution.[35] Furthermore, in not providing for a minimum jurisdictional amount,[36] Congress evidently assumed every case involving invasion of civil rights by state authorities to be sufficiently important to deserve the attention of the federal courts. Allegations of unconstitutional action by federal officers would seem to call for similar treatment.

The ever present danger is that behind the decision on the jurisdiction there may lie a determination on the merits.[37] Extension of Subsection 24(14) to suits against federal officers not only would relieve the courts of an insoluble problem of valuation, but would remove this temptation to decide hard cases without giving the parties a hearing on the merits.

DEVELOPMENTS IN THE DOCTRINE OF *ERIE RAILROAD CO. V. TOMPKINS*. II*

EQUITY

The general proposition that federal courts should apply the doctrine of *Erie R. Co. v. Tompkins*[79] to reach the same result as would be reached by the local state court must here be qualified by a few considerations peculiar to equity. In the first place, it is not entirely clear that the *Erie* doctrine applies to equity cases at all. The Rules of Decision Act provides that "the laws of the several States . . . . shall be regarded as rules of decision in trials at *common law*."[80] In *Neves v. Scott*[81] it was stated, without reference to the then nine-year-

[35] Federal Courts—Jurisdiction over Violations of Civil Liberties by State Governments and by Private Individuals, 39 Mich. L. Rev. 284 (1940).

[36] The purpose of this pecuniary requirement is commonly said to be the prevention of clogging of the federal judicial machinery with petty cases. 1 Hughes, Federal Practice 312 (1931). It has also been suggested that this provision prevents small litigants from setting in motion machinery too expensive for their pocketbooks. But this theory does not seem consistent with the strict application of the statute by the courts. The desire to permit the small litigants to sue corporations without having his case drawn into the federal courts, certainly was a factor in increasing the jurisdictional amount to $3,000. 46 Cong. Rec. 1074, 1075 (1911).

[37] See Smithers v. Smith, 204 U.S. 632, 645–46 (1907); cf. Federal Jurisdictional Amount Requirement in Injunction Suits, 49 Yale L. J. 274, 283 (1939). It may be noted that several cases to test the right to WPA jobs have been accepted by the federal district courts without question of jurisdictional amount. Rok v. Legg, 27 F. Supp. 243 (Cal. 1939); Block v. Sassaman, 26 F. Supp. 105 (Minn. 1939); Spang v. Roper, 13 F. Supp. 840 (Pa. 1936). But the district courts, being able to determine jurisdiction on their own motion, 18 Stat. 472 (1875) as amended, 28 U.S.C.A. § 80 (1927), have no discretion in granting or denying jurisdiction. Wetmore v. Rymer, 169 U.S. 115, 122 (1898).

* This is the final instalment of this note. Part I appears in 9 Univ. Chi. L. Rev. 113 (1941).

[79] 304 U.S. 64 (1938).

[80] Rev. Stat. § 721 (1875), 28 U.S.C.A. § 725 (1928) (italics added).

[81] 13 How. (U.S.) *268 (1851).