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Federal Jurisdiction

Maynard Jackson

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FEDERAL JURISDICTION

69¢

M. H. J.



MADE IN U. S. A.

No. 31-086

TWO SUBJECT NOTEBOOK

100 SHEETS

COLLEGE
RULED

NAME _____

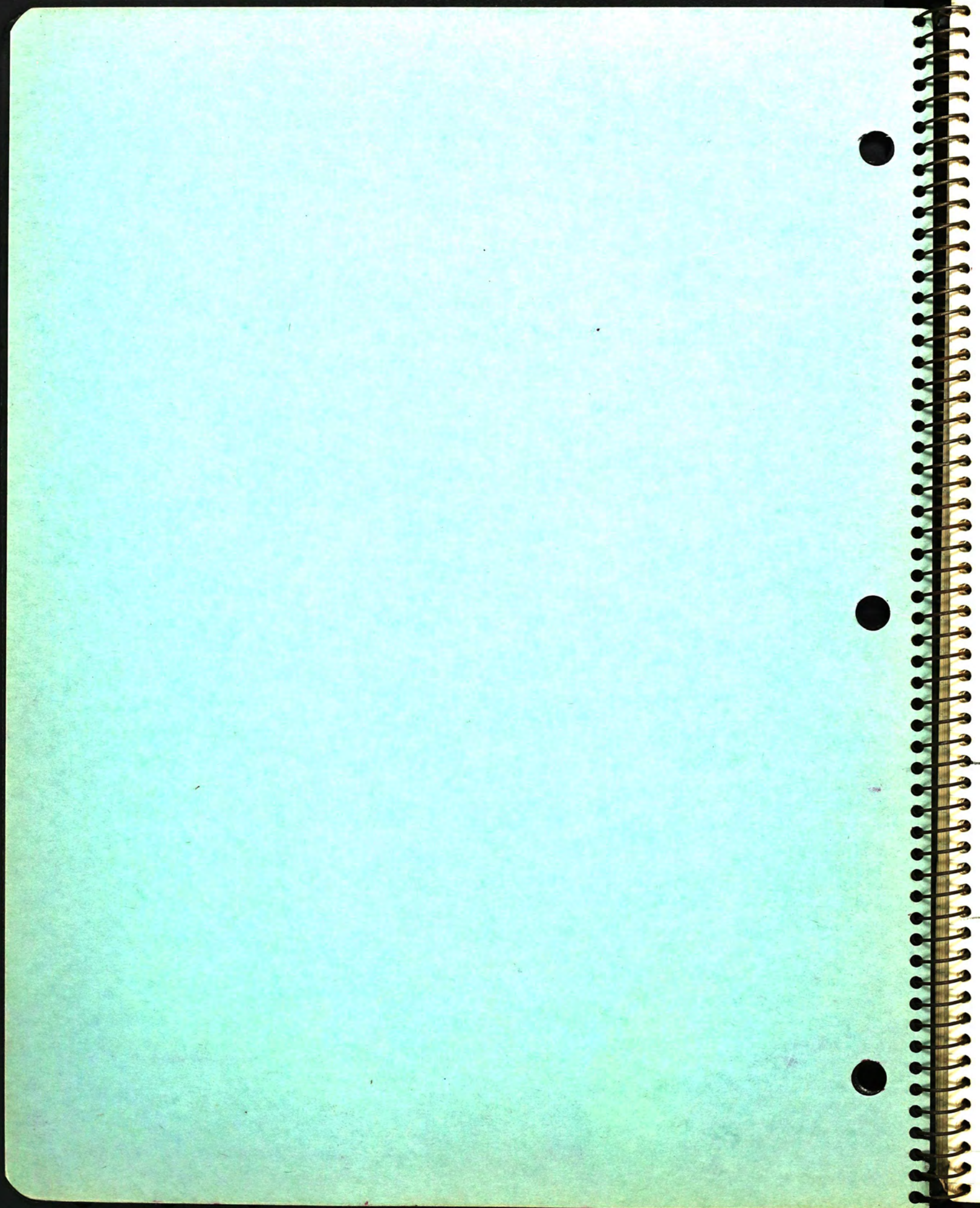
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FED. JURISDICTION

FALL, 1963

MRS. S. J. DEDMOND



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Title 28 U.S.C. is the "Bible" here because this course is entirely statutory. Get copy of fed. rules, too.

References

New Hornbook - Wright on Fed. Courts. Also, Brunner, U.S. Courts; Fins, Fed. Juris. & Procedure.

Get chart of Judicial System of the U.S.

References

THE hornbook is Moore in eight vols.

See also Stern and Dressman, Sup. Ct. Practice (2d Ed.) (Early part of course)
Wolfson & Kurland on Juris. of Sup. Ct. (early part of course).

Wilkerson

286-9572

304 U.S. 64

ERIE DOCTRINE:

HOLDING

Two significant developments in 1938:

(1) F.R.C.P. (1938) - abolished procedural differences between Eq. & law & provided simplified rules of procedure.

(2) Erie R.R. v. Tompkins, 304 U.S. 64 (1938) - held there is no general fed. C.L. The substantive law of the state must be followed by the fed. ct. & whenever a state-created right is involved in the case.

This resulted in more consistency between state and fed. decisions. But, some fed. cts. just refuse to follow the state law.

Advantages to ^{litigants in} fed. courts:

- (1) Larger jury verdicts, and fed. appellate cts. usually allow them to stand.
- (2) The F.R.C.P. make practice before fed. cts. easy.

Six (6) major divisions of this course:

- (1) Organ. of fed. ct. system.
- (2) Juris. of fed. cts.
- (3) Removal from state to fed. ct.
- (4) Venue & service of process.
- (5) Relationships between state & fed. courts.
- (6) Procedure.

Juris. is ltd. in the fed. courts. Fed. cts. can ^{only} exer. that juris. ~~and~~ spelled out in Art. III, sec. 2 of the U.S. Const. (28 U.S.C. § 1251).

A question of fed. juris. can be raised at any time and at any stage of the proceeding. Even the ct. can raise, of its

12(h)(2) - "... that, whenever it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter, the court shall dismiss the action."

on motion, the question of fed. juris. 7.R. 12(h)(2) specifically excludes the question of fed. juris. of the subject matter.

From viewpoint of juris
Cases may be classified in three (3) groups:

- (1) Those that must be tried in state courts (i.e., exclusive state juris.)
- (2) Those wh must be tried in fed. cts. (exclusive fed. juris.) i.e.
- (3) Cases wh may be tried in either fed. or state cts. (i.e., concurrent juris.)

(a) On div. of cit. is the basis of juris, removal is permitted only when the D is a non-resident of the state where the case is brought.
28 U.S.C. § 1440 - 1441.

Limitation

Fed. cts. have judicial power only over "cases and controversies."

Art. I, sec. 8 gives Congress power to create "superior"

cts."

Art. II, sec. 2 gives the Pres. power to appoint fed. judges.

Art. III, sec. I vests the judicial power of the U.S. in the Sup. Ct. & such other cts. as Congress shall establish.

28 U.S.C. § 1251

Art. III, sec. 2 = the judicial power of the U.S. ~~is~~ Nine (9) categories of fed. juris.

- (1) Fed. questions.
- (2) Ambassadors, etc.
- (3) Admiralty & maritime.
- (4) On U.S. is a party.
- (5) Between two or more states. (excl. orig. juris. in U.S. Sup. Ct.)
- (6) Between ("b") one state (against) & citizens of another state. (orig. but not excl. juris. in U.S. Sup. Ct.)
- (7) Between citizens of different states.
- (8) Between citizens of same state re land typed. grant.
- (9) Between U.S. and a foreign state.

Chisholm v. Georgia + 2
Dollor 419, held that #6 was valid. But, much controversy was stirred up

Ex Parte Young also permitted suit against state officials, holding that such a suit would not be against the State.

so that ~~Amendment~~ XI was passed so that #6 is no longer true. But, Ex Parte Young, 209 U.S. 123, permitted that state officials could be restrained from exer. their discretionary powers under state statutes, and that they can be restrained until a competent court can pass upon the constitutionality of the statute. 28 U.S.C. § 2284 did not affect Ex Parte Young.

* Organ. of Fed. Ct. System *

See Moore, Commentary on Judicial Code. (p. 777)

(CHAP 10) (SEC. 2) * THE SUPREME COURT *

The Sup. Ct. has orig. juris. in all cases

1. Affecting Ambassadors, other public ministers and Consuls, and
2. Those in which a State shall be a party.

(1) U.S. Sup. Court - top Ct. has one Chief Justice + 8 associate justices. Any 6 justices = quorum for Court business. See 28 U.S.C. 1-5 (pp. 777, 778 ckt.) Has appellate and some orig. juris. Art. III, sec. 2 outlines juris. of the Sup. Ct. The orig. juris. is granted cannot be taken away by Congress.

Power of Congress over
Appellate Juris.

However, since it is not
exclusive (111 U.S. 759
Borst v. Levin), other cts.
may be invested w/
concurrent juris.

The appellate juris.
is stated to be subject to
any exceptions or regu-
lations Congress shall
make. Para. 2 of Art. III,
sec. 2.

Ex Parte McCordle (p. 778)
(Habeas corpus case) The affirm-
ation of appellate juris. im-
plies the negation of all
such juris. not affirmed.
Held, that Congress had
the power to take
away the appellate
juris. of the Sup. Ct.
in this case.

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* Appeals from Fed. Cts. (District) *

Known as direct appeals
or they go from the
Dist. cts. straight to the
Sup. Ct. Usually re
matters of public im-
portance. * There are four
classes of direct appeals.
(1) Cases arising under
18 U.S.C. 3731 (Criminal
code). The govt. may
take direct appeal on

DIRECT APPEALS

28 U.S.C.A. § 1252 (D/A
from decisions invalidating
Acts of Congress) p. 782 cr.

The Dist. Ct. has dismissed information, dismissed an indictment or arrested a conviction (judgment) provided that any one of those is done pursuant to a statute, [this is under the Criminal Appeals Act, 18 U.S.C. 3731.] or where the dist. Ct. sustains a plea in bar by D and it does not place him in jeopardy.

Effect of Erroneous Appeals by Govt.

If the govt. appeals erroneously, it will be certified to the proper court of appeals. 18 U.S.C. 3731 ("saving clause"). U.S. v. Jones, 345 U.S. 377.

Same if erroneously taken to the Ct. of appeals or it should have been directly appealed to the Supreme Court.

Hard cases: on Dist. Ct. dismisses the crim. case on the ground that the indictment fails to state a charge under the statute. The issue is that Ct. construing the statute or ruling on the

PRESUMPTION

Effect of unclear grounds
of district court's de-
cision.

sufficiency of the plead-
ing?

(Y is a presumption
against fed. juris. So,
all doubts will be
resolved against the
finding of fed. juris.
U.S. v. Carter, 231 U.S.
492 - decision non-
reviewable as based
on the construction of
the statute since the
ruling may as well
have rested on the
court's ruling of the
insuff. of the indict-
ment. See also 245 F.
2d 420 (1957); Borden Case,
308 U.S. 188 (on sheet -
same case).)

U.S. v. Borden lays down
the grounds of direct
appeal under the
Criminal Appeals Act
(18 U.S.C. 3731). See p. 147, *infra*.

See 290 U.S. 357 - Sup. Ct.
will send case back to
dist. Ct. for certificate
stating the grounds
of the holding on the
Dist. Ct. has not made
same clear.

Remand for cer-
tification of
grounds of de-
cision.

RULE

So, the decision must be based SOLELY on the question of the statute's validity or ^{construction} for it to be direct appeal under §3731.

See also 313 U.S. 299.

What constitutes
"construction" of a
fed. statute:

313 U.S.

(1) Further, on The Dist. Ct. says, taking all the gov't. alleges as true, the statute still has not been violated, that = a construction of the statute and qualifies for direct review. (2) See also 316 U.S. 1 - on DIST. CT. disregards the stat. and fails to apply the stat. to the facts of the indictment = construction of stat. and quals. for direct review.

Limited
Review on
Direct Appeal

On DIST. CT. poses its decision on constr. of the stat., the Sup. Ct. is td. to consid. of the question of that constr. and the whole record is not open to review (under 18 U.S.C. §3731).

All of the above points are brought out in U.S. v. Borden.

10
RULE OF
CONSTRUCTION

254
Acquittal for
insuff. evid.
- NO APPEAL
Raising
MODE OF "DIRECT
APPEAL
QUESTIONS"

Administrative
Regulations

Test:

Appeals by (Carroll
Case, 354 U.S. 394) the
govt. are not favored.
See 258 F.2d 625

If D is acquitted on
ground of insuffi-
cient evid., no appeal
may be taken by govt.

DIRECT APPEAL

① A question w/in 18 U.S.C. 3731
may be raised by:
~~Motion~~ Motion before trial
testing suff. of indict-
ment, or motion in
arrest of judgment.

(A.) (335 U.S. 77) Criminal
contempts.

(B.) "Probably" (330 U.S. 585 -
Pennfield v. S.E.C.) directly
appealable on crim.
and civil contempt
citations are mixed.

U.S. v. Thersky, 361 U.S.
431 at 434-438 - (5/4/59)
(1959) - are admin. reg.
"statutes" w/in 18 U.S.C.
3731? Held, on the
regs. are inextricably
interwoven w/ the stat.
The regs. are properly
"statutes" and allow direct

Appeal.

Procedure of direct appeal:

(A) Notice of appeal in office of clerk of ^{dist. Ct.} Fed. Ct. within 30 days after judgment is entered. See F.R. Crim. P., 37 (a)(b) + Sup. Ct. Rules 11.

28 USC § 1252

(2) (A) ^{or} Any act of Congress has been held unconstitutional by any final or interlocutory judgment or order by any court of the U.S. in a civil action to which the govt. (U.S.) or its ^{officers or (as such)} agents is a party, can be direct appeal by anyone. 28 U.S.C. 1252 + 2403. See 351 U.S. 487 (later vacated + withdrawn - 351 U.S. 1 - on other grounds) - Reed v. Cupboard (?).

when govt. =
"PARTY"

28 U.S.C. 2403 - govt. will be deemed a "party" even if it intervenes after commencement of action. See 304 U.S. 243, I.L.G.W.U. v. Donnelly Co.

28 U.S.C. 2101(a)

304/243

Heming v. Rhodes

was an act of Congress (p. 786)
held unconst. w/in the
meaning of 28 U.S.C. 1252?
No, but it was un-
const. to apply the
stat. (to these parties)
retroactively.

Rule of
Law
and
Holding

So, under 1252, the
~~stat.~~ unconst. of the stat.
in question may arise
by questioning the stat.
itself - OR its applica-
tion to a set of factors
given parties, and either
will qualify for
direct appeal.

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(B) 28 U.S.C. 1257 - permits
an appeal to U.S. Sup. Ct.
from a state ct. ruling
sustaining a state statute
wh conflicts w/ a fed. stat.
or treaty. - It has
been ruled that on the
application of the state stat.
conflicts, that will
justify review, too. (Like
Fleming holding re §1252.)

"APPLICATION" OF STATUTE

If the ct. does not hold
a stat. unconst. on its

face, the Ct. must look at its application to the particular facts to see if it has been an unconstitutional application of the statute.

Frankfurter dissented from Fleming holding and went in favor of a narrow ~~interpretation~~ interpretation of §1252. History has shown that he was not borne out by Congress.

Pre-judgment
Review by
Certiorari

① Sup. Ct. can review specific questions of law before C.C.A. renders final judgment. Called EXPEDITIOUS REVIEW BY CERTIORARI.

In an appeal under 1252, the whole case is before (362 U.S. 17) the Court. (~~Amended~~)

Quorum = any 6 of the 9 Justices.

Sec. 2109 - if Court cannot raise quorum on case on direct appeal, the case can be re-mitted to C.C.A. and its decision will be final.

③ THREE - JUDGE COURTS

28 U.S.C.A. §1253 - Direct appeals from Decisions of three-judge courts.

* Three classes of cases that must be heard by 3-judge dist courts:

- (1) Action to enjoin enforcement of fed. stats. on ground of unconst.
- (2) Same of state stats.
- (3) Suits to enjoin temp or permanently orders of I.C.C. Sec. 2325.

See 28 U.S.C.A. 2283 re 3-judge dist. courts.

APPEALS FROM 3-JUDGE COURTS
Appeal from 3-judge courts is as of right.

See R.C.A. v. U.S. 195 F. Supp. 660 (D.C. Del. 1950) aff'd. 341 U.S. 412 (1950).

Appeal must be within 30 days under any statute allowing appeal as of right from any interlocutory order or judg., but 60 days from any final judg. 2101 (a) & (b).

2101 (a)
(b)

Procedure:

- (1) Notice filed w/ clerk of dist. ct.
- (2) Pay appeal fee (\$500).

Parts of appeal ^{notice} papers:

- (1) Scope of appeal.
- (2) Designation of parts of record to be appealed.
- (3) Questions presented by appeal.

* Writ of Supersedeas (per. S.Ct. Rule 18) may be applied for — stays the proceedings pending the appeal. Only time you need not appeal for this is in case of appeal from conviction on capital ~~crime~~ offense crime. — Maintains the status quo during appeal. Appellate Ct deemed to have inherent power to issue this writ.

W/in 20 days after receipt of notice of appeal, any other party may file a CROSS-DESIGNATION on appeal. S. Ct. Rule 12, Fed. Rule 33.

Clerk of dist. Ct. ~~also~~ pre- pares the papers comprising the transcript (S.Ct. Rule 12). Appellant prepares Jurisdictional Statement per S.Ct. Rule 15 (pp. 784 - 785 cbk.).

See Fins, Fed. Juris. & Proc.
pp. 164 - 169

W/in 60 days after
filing notice, appellant
must file transcript w/
clerk of the S. Court. At
that time, the atty. for
appellant (S.Ct. Rule 52
(a)) enters a formal ap-
pearance and pays clerk
\$100⁰⁰ for docket fee.

Expediting Act -

1. Sherman Antitrust Act
2. Interstate Commerce Act
3. Fed. Communications Act.

(4) The fourth class of cases
from wh direct appeal
may be taken is
the Expediting Act cases
(see sheet). The three
listed acts = the Ex-
pediting Act w/ two
features:

(1) Certification by Atty. Gen.
that the case is of
great public importance.
Rarely used today.

(2) Cases hereunder can
be appealed only to U.S. Sup. Ct.

Scope of Expediting Act Appeals

These appeals are
ltd. to specific questions
and the S.Ct. will
review findings of fact
only if they are
CLEARLY ERRONEOUS
(Fed. Rule 53 [or 52?]).

325/

326 U.S.1 - appeal may be

by U. S., a party or an intervenor.

* (B) Appeals from Courts of Appeal *

* (1) Certiorari *

Majority of cases.
Initiated by either party, called petitioner. Discretionary writ.
~~The petition should~~ must set out:

CONTENTS OF PETITION

" 28 U.S.C.A. §1254, CTS. OF APPEALS; CERTIORARI; APPEAL; CERTIFIED QUESTIONS.

Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods:

(1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree;

(2) By appeal by a party relying on a state stat. held by a court of appeals to be invalid as repugnant to the Constitution, treaties or

(1) Tech. bases of Ct's. juris. to review.
(2) Reasons why that juris. should be exercised in the particular case. Usual - by an accompanying brief argues this (not an argument on the merits). Also served on opposing counsel, and no oral argument will be granted.

If petition is granted, it will stand as docketed.

Only one limit on power of Court to review here under 1254 (1): must come from the C.C.A.

~~and some~~ 1254 (2) - Review by Appeal *

As a matter of right.

Requirements:

(1) Appellant relying on

laws of the U. S., but such appeal shall preclude review by writ of certiorari at the instance of such appellant, and the review on appeal shall be restricted to the Federal questions presented;

(3) By certification at any time by a court of appeals of any question of law in any civil or criminal case as to which instructions are desired, and upon such certification the Supreme Court may give binding instructions or require the entire record to be sent up for decision of the entire matter in controversy."

State Stat. ^{C.C.A.} has held the stat. unconst. or invalid.

(3) There must be a fed. question presented, and appellant must be able to win on that rather than any other ground. Must be "substantial" fed. question.

May also be raised by cert.; but he cannot do both.

Appeals:

- (1) Review as of right.
- (2) Ltd. scope of review.

Certiorari:

- (1) Chance that it will be denied (discretionary w/ Ct.) See Sup. Ct. Rules, rule 19.
- (2) Full scope of review.

Bradford Electric Light Co. v. Clapper (p. 791)

Issue: whether, as an appeal has been taken, the petition for writ of cert. can be entertained? Held, yes here.

"If the case is one in which the C. C. A. has not denied the validity of a state stat. upon the ground

2103 - ~~date~~ ^{date} ~~st.~~

specified, no appeal will lie, and the effect will only be dismissal. - HELD, in a case in a C.C.A. where no appeal lies, although one has been improvidently taken, application may be made for a writ of cert. under 240(c) of the Judicial Code so long as it is within the time ltd. (90 days).

Improper
Appeal from
State Court

But, 2103 provides that the appeal papers from a judg. of a STATE court, where appeal is improper, will be ~~be~~ considered by the Court as ~~a~~ a petition for certiorari.

Improper
Appeal from
Federal
Court

2101 (c) - on appeal is improvidently taken from a fed. ct., it can be dismissed and the moving party must file new papers as petition for certiorari if he wishes review.

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28 U.S.C. 1254 -

* Cases in Courts of Appeal may be re-viewed by:

- (1) Writ of Cert.
- (2) Appeal
- (3) Certification (now obsolete)

Taking of the appeal precludes review by writ of cert. and review shall be restricted to fed. questions. But, the Bradford case sensibly held that appeal precludes review by writ of Cert. only on appeal. in fact does lie, not on appeal is improvidently taken. If appeal does in fact lie, but is improperly executed, review by writ of cert. is precluded. See 371 U.S. 11 (1962), Wellons v. Dillon.

House v. Mayo (p. 794)

Sup. Ct. could not review this under §1254 (1) because that sec. extends only to cases "in a C.C. of A. or in the U.S. C.A.D.C." and this case was never "in" the Ct. of appeals, for want of

a cert. of probable cause.

But, 28 U.S.C.A. §1651 empowers the Sup. Ct. "to issue all writs ~~not~~ [necessary or appropriate in ~~the~~ aid of their respective jurisdictions] + agreeable to the usages and principles of law." This relates to the common law power of ^{writ of} cert. of Sup. Ct. The statutory power to issue writs of cert. does not apply here because the case was never "in" a C.C.A.
See 318 U.S. 578.

Quaere:
EXTRAORDINARY WRITS
DIRECTED TO STATE
COURTS —

Can U.S. issue extraord. writs to STATE courts? =
Held yes on case has (358 U.S. 57 [1958], Dean v. Hickman) come w/in the juris. of the Sup. Ct.

Such a writ can be issued even before the case reaches it (325 U.S. 196 [1945]) on the case is one wh could come before it.

But, the propriety of doing same may be questioned. De Biers Mining Co. case, 325 U.S. 212 (1945).

325 (212) (1945)

Some extraordinary writs:

- (1.) Mandamus
- (2.) Prohibition
- (3.) Certiorari
- (4.) Habeas corpus.

Sup. Ct. rules 30 & 31 govern applications for writs issuing under §1651, and they are put on the miscellaneous dockets.

Mandamus

See 160 U.S. 247 - if matter is within discretion of lower Ct., not reviewable by mandamus.

Mandamus would only require the exer. of discretion anyway.

See 346 U.S. 379, Bankers v. Holland - an extraord. writ does not replace appeal except on appeal may not be taken.

319 U.S. 21 at 25 - these writs are within discretion of Ct. and will be granted only in exceptional circumstances. e.g., 280 U.S. 142; 342 U.S. 163 & 805; 306 U.S. 486; 325 U.S. 163 (Am. L.R.B.)

U.S. 196, ~~In re H.L.H.B.~~; 325 U.S. 312; *Ex Parte Peru* 318 U.S. 578.

But, on abuse of discretion is so aggravated & the absence of other (309 U.S. 634) writs so apparent, these writs may issue, 272 U.S. 701.

See 287 U.S. 241, *Ex Parte U.S.* - mandamus issued on lower ct. sought to defeat Sup. Ct's appellate juris.

Appellate Jurisdiction Over State Courts

Art. III, U.S. Const., covers appellate juris. of Sup. Ct., but does not say of what courts (fed. or state) the Court has appellate juris. *Martins v. Hunter's Lessee* challenged this over state court, but Marshall, Harlan et al said that the Sup. Ct. has appellate juris. over state cts.

Requirements:

- (1) Validity of stat. (fed.) must be drawn into question.
- (2) and (3) (See U.S. Ct. A. 1257, p. 797).

Criteria governing Sup. Court's review:

- (1) U.S. Const.
- (2) Statutes
- (3) Doctrine of Judicial Restraint

PRINCIPLES:

- (1) Sup Ct. will not review a state decision on state law.
- (2) Fed. question must be properly raised below.
- (3) Fed. question must control the outcome of case. If the state decision rests on indep. adequate state grounds, it is not reviewable.
- (4) The fed. question presented must be substantial.

The above principles are self-imposed limitations on appellate power of Sup. Ct. over state courts.

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Other rules:

(1) Only "final judgs. or decrees" are reviewable.

(2) Only judgs. of the highest cts. of the state in which a decision could have been had in the particular case, can be reviewed.

(3) Crim. and civil cases are reviewable.

(4) If appeal is improvidently taken, the appeal papers will be deemed pet. for writ of cert. 28 U.S.C. A. § 2103.

(5) Every petition must contain an assignment of errors and a stmt. of jurisdiction.

Zucht v. King (p. 798)

(q.s. 1-279 1- review by writ of cert. to U.C. Sup. Ct.)

San Antonio, Tex. ordinance required vaccination of all kids before they could be permitted to attend school.

The fed. question must be substantial; and where a long line of Sup. Ct. cases had decided the validity of a stat. already,

See def. of "substan-
tial" - 187 U.S. 308
at 311 (1902); 262
U.S. 710; 262 U.S.
710 (again).

Any question to that effect
would not be substan-
tial.

However, here it
was a substantiated question
(fed.) re the alleged
unconst. exercise of au-
thority under a valid
ordinance, but, that
was improperly
raised by writ of
error. Should have
been raised by writ
of cert.

See 206 S.W. 2d 547
(Mo.), appeal dismissed
332 U.S. 852 for want of
substantial federal
question. The Sup. Ct.
will deem "sub-
stantial" any question
properly put and not
previously decided
by the Sup. Ct.

The Court has broad
discretion over granting or
denial of appeals. Often
it will decide on the
basis of its estimate
of the state of the sub-
stantive law on the
point.

The Court has self-imposed certain restrictions:

- (1) No Advisory opinions (244 U.S. 346)
- (2) No Political questions. [Cf. Baker v. Carr (apportionment decision), 369 U.S. 81, 82 Sup. Ct. 691]
- (3) No Moot questions.

Reasons for self-imposed restrictions:

- (1) Policy of giving lower cts. oppor. to dispose of ~~all~~ issues has led to requirement (321 U.S. 414 at 446) that the questions must be seasonably raised, even requires now that a litigant anticipate a change in judicial construction wh. will raise ~~all~~ questions (Herndon v. G.).

Herndon v. Georgia (p. 800)

"Seasonably Raised"

The fed. question must have been raised in a proper and timely manner in the state court for review to be granted. (See 278 U.S. 63 at 67) by the Sup. Ct.

See Reese v. Ga.
350 U.S. 85
(for exception)

General Rule and Exception

Beck case
369 U.S. 541 (1962)
at 549-553 -
re waiver of fed.
question by failure to
preserve on appeal.
333 U.S. 571, Parker v.
Ill. - appealing to wrong
court (1948)

"The long-established rule is that the attempt to raise a fed. question after judgment, upon a petition for rehearing, comes too late, unless the court actually entertains the question and decides it."

So, as a practical matter, raise the fed. question at every stage of the proceeding.

The fed. question must be raised according to the state rules, and it must be properly and timely raised, EXCEPT on the state rules are designed to prevent raising of fed. questions or don't allow proper methods or time. See Reese v. Ga., 350 U.S. 85.

The fed. question can be waived by failure to preserve it on appeal (e.g., by not assigning it as error). See Beck Case, 369 U.S. 541

at 549-553 (1962).

Herndon Exception
to
"Reasonably raised"

Read thru p. 824.

The Herndon Case did bring out an exception to the rule v., raising the fed. question on pet. for re-hearing:

where the fed. question, as applied by the lower Ct., unexpectedly arose from its unanticipated act in giving to the State a new construction which threatened state rights.

But, the Court held that Herndon case did not fit this exception.

Herb

v. Pitcairn

(p. 806)

Rule

A decision of the State Ct. rested on an "adequate independent state ground" the Sup. Ct. will not review it even though a fed. question may have been involved.

Remand
for
Clarification

NOTE: Here, the record was ambiguous and the Ct. sent it back to make it affirmatively appear ~~on what~~ ground the State Ct. rested its decision.

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Lim. on federal juris:

- (1) Constitutional
- (2) Statutory
- (3) Judicially created.

Xst questions must be:

- (1) Re-asserted at every step of litigation to preserve them. Dorrance case, 287 U.S. 660 (1932)
- (2) Must be timely raised.

287/660 (1932)
Sup. Ct. Policy

Sup. Ct. has policy of avoiding review of Xst questions by disposing of case on any other grounds available. Thus, the specific Xst question must be specifically involved. Thus:

Proper
 Pleading of
 Constitutional
 Question on
 Appeal
 from
 State
 Court

- (1) Gn. allegation re "unconstitutionality" (233 U.S. 658 [1914]) will be assumed to refer to state constitution.
- (2) Complainant must specifically say he invokes the FEDERAL const. and must state the section involved.
- (3) Where allegation of the provision violated not suffi;

Must state what right specifically has been violated.

296 U.S. 176:

(4) Assertion of fed. Xth question must comply w/ State practice & procedure.

231 U.S. 583

Sup. Ct. Policy

Another policy of Sup. Ct.: minimizing ~~assertion~~ of fed. invalidation of State legis. This:

(A) One seeking invalidation of state stat. on fed. Xth grounds must exhaust all state remedies and show same. Ex Parte Hawke, 321 U.S. 114. This means exhaustion of all those still available to petitioner at time he seeks ~~for~~ invalidation of state stat. 28 U.S.C. § 2254 covers this pt. (see p. 434 cbk.) See 344 U.S. 86, Sweeney v. Woodall (harsh decision: Negro involved in extradition back to Alabama and writ of H/c in asylum state was denied).

(b) Ct. will not decide ?? of Xth nature unless absolutely (196 U.S. 283) essential to decision of the case.

(c) Ct. will not anticipate

yet? in advance (103 U.S. 33) of ~~deciding it~~ necessity of deciding it.

* (d) where case can be decided on ground (211 U.S. 45, Berea College v. Ky.) which will not involve yet question, the Ct. will so do.

Herb v. Pitcairn (p. 806) (cont'd.)

Q. Did decisions of State Sup. Ct. rest on fed. ground so as to be reviewable by the U.S. Sup. Ct. by writ of cert.? = The record was ambiguous, and Sup. Ct. saw fit to ~~continue~~ the case and allowed the petitioners time to request Ill. Sup. Ct. to clarify the grounds of decision. Later, it was decided that an action is timely commenced on action, under F.E.L.A., is begun in a Ct. (State) who juris., provided it is a transfer statute.

* There are two questions that arise out of decisions arising out of state courts, and they are:

(1) Is state decision based on non-fed. ground?

(2) Is the non-fed. ground adequate?

If "yes" to both, Sup. Ct. will decline to review.

(296 U.S. 207,
Fox Film) →

Criteria of "adequate independent non-fed. ground."

(1) Broad enough to sustain judgment w/o reference to fed. question.

(2) Must be independent of fed. ground.

(3) Must be tenable.

Four cases on the above can arise:

(1) On state ct. expressly states two grounds of decision.

(2) On based solely on non-fed ground but fed question was properly asserted. Here, Sup. Ct. will not be precluded from looking at the fed. (228 U.S. 672 at 676-680) ground just because state ct. did not.

(3) Fed & non-fed questions were properly raised, but State Ct. does not specify which. Sup. Ct. ~~may~~ presume the non-fed ground as basis or non-fed ground is adequate to support judgment. 293 U.S. 52. Same if State Ct. is ambiguous. 309 U.S. 357. on ambiguous, Sup Ct may vacate judg. & remand for clarification or allow petitioner to request clarification.

(4) the State Ct. expressly bases its decision on fed. grounds, Sup. Ct. will review, even though State Ct. could have based decision on adequate indep. State (non-fed) ground. 323 U.S. 192

Two methods (before appeal or pet. for certiorari) to seek clarification: (by counsel)

- (1) Amend. of the judg.
- (2) Certificate of clarification, stating the basis of decision.

323/192

Methods available to Sup Ct to get clarification of ground of ambiguous state ct. decision:

(1) Dismissal; petitioner (351 U.S. 292) has burden of showing basis of Sup. Ct. juris.

(2) Vacate & remand for clarification. 354 U.S. 393 (1957)

(3) Continue & allow parties to seek clarification. Herb v. Pitcairn. The preferable method from petitioner's point of view.

(4) If Sup. Ct. deter. that any state (non-fed.) ground possible, in the case would be insubstantial, the Sup. Ct. will take juris. & review. See Williams v. Kaiser, p. 813.

N.A.A.C.P. v. Alabama (p. 818)

Rule A new state rule cannot be invented to defeat fed. question.

Issue: Whether Ala., w/o violating due process clause of 14th Amendment, can compel production of membership lists of N.A.A.C.P.?

Held, no. Right of free association must, under the circumstances, be protected by

cont'd anonymity of members.

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U.S. Court of ~~Appeals~~ Claims

An Art. III court - derives
juris. from U.S. Const.
not from the legislature.

Sits in D.C. - Has one chief
justice and 5 associate
justices. Sits only in Banc.

Handles all claims v. U.S.
except tort claims.

See 28 U.S.C.A. § 1255.

Division of author. re
applicability of 28 USCA
§ 1252 to court of claims.

§ 1255 - methods of review of
decisions of court of claims.

U.S. Customs Court

Has headquarters in N.Y.C.
Reviews customs decisions.
May go to any port city
in U.S.

An art. III court. Covered
by 28 USCA 251-255, 1581-

251-255
1581-1583

1583. 1 Chief Justice + 8 associates. They sit 3 at a time.

Court of Customs and Patent Appeals

Sits only in banc. Covered by §1252 wh allows direct appeals to U.S. Sup. Ct.

U.S. Tax Court

Not a true court; an admin. agency. Under Exec. Dept.

1 chief + 16 associates justices. Some decisions are final, others reviewable.

U.S. Ct. of Military Appeals

More admin. than judicial. Reviews courts martial.

(Chap. XI) * ORIGINAL JURIS. OF THE SUPREME CT. *

28 U.S.C.A. §1251
ORIGINAL JURIS.

Orig. Juris (OJ) cannot be taken away w/o constitutional amend. Marbury v. Madison.

Methods of settling disputes between states:

(1) Resort to Sup. Ct. of U.S.

U.S. v. Ariz.
214 F.2d 389 (1954) -
Fed. Tort Claims Act.

(2) Interstate compacts -
require consent of Congress.
(3) War - no longer.

State can be sued:

- (1) By another state.
- (2) By U.S.A.
- (3) By no one else w/o consent.

U.S. can be sued w/o consent:

(1) In K cases (Tucker Act:
28 U.S.C.A. 791, 1346, 1402, 1491-1494,
1503, 2071, 2072, 2401, 2402, 2411,
2412, 2501, 2506, 2504-2511).

(2) Torts cases (U.S. Torts
Claims Act - 28 U.S.C.A. 1291, 1346,
1402, 1504, 2110, 2401, 2402,
2411, 2412 + 2671-80).

* 11th Amend. prohibits suits
v. states by citizens of another
state; and the case of Ex
parte Reyes, 123 U.S. 443 (1887)
held that the U.S. Sup. Ct. will
look behind the nominal
party to determine the real party
in interest to see if the
11th Amend. attached.

11th Amend. does not
cover counties or mun-
icipalities nor govt. corps.
sued under the act of their
incorps.

Ex parte Reyes
123 U.S. 443 (1887)

State cannot be sued w/o consent by federally chartered corp.

States cannot sue on behalf of their citizens for collection of debts owed those citizens.

See p. 5 for Art. III.

U.S. v. Texas

(p. 827)

The principle of Sovereign Immunity did not apply here to Texas because Texas had waived it when Texas ratified the Constitution. Further, to deny the Sup. Ct. jurisdiction here would make the only alternative war, and that's unthinkable.

State cannot sue U.S. w/o consent (Kansas v. U.S., 204 U.S. 331) except on the U.S. has waived its immunity. Minn. v. Hitchcock, 202 U.S. 60.

Kan. v. U.S.
204 U.S. 331

Minn. v. Hitchcock
202 U.S. 60

Principality of Monaco v. Miss. (p. 832)

A state is immune from actions by foreign states except where the state has consented.

Art. III. creates another problem: what kinds of cases fall within the orig. jurisd. of the Sup. Court?

Kansas

v. Colorado

(p. 840)

State v. State within jurisd. (orig. + ~~exclusive~~) of Sup. Ct.

But, what law shall be applied? Not clearly settled, but the Ct. applies "fed. common law." Quare Erie v. Tompkins which denied existence of fed. common law. Source of fed. c.l. not clearly defined anywhere. It's an amalgam of fed., state & interstate law.

Sup. Ct. will take into account similar law in cases between private individuals who are similar.

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What kinds of suby. matters are appropriate for disposition by Sup. Ct.?

To what extent must or may a state act in behalf of its citizens?

A state is acting in its

quasi-sovereign (part proprietary, part governmental) capacity when it seeks restraint of pollution of its air.

When is a state a "state" w/in the meaning of 28 U.S.C. 1251?
108 U.S. 76

* Ct. will look beyond the mere legal title of case to deter. the ownership of the beneficial interest. N.H. v. La. 108 U.S. 76. * Further, if state is acting in behalf of only a group of its citizens rather than its citizens as a whole, the Sup. Ct. will not have orig. juris because that would not fall w/in 28 U.S.C. 1251.

Okla. Ex Rel. Plunson v. Cook (p. 85)
TEST Not enough that state is or has acquired legal title to the prop; the state must show a direct and independent interest of its own. (like state court and fed. dist. Ct. rules re "real party in interest.")
A suit by a state in the name of an indiv. is deemed to be a suit by that indiv.

"Real party in interest"

A "real party in interest" is one who stands to gain or lose

by the suit.

(See cases on 844 & 848)

263 U.S. 365 - a State cannot act as quasi-sovereign for past wrongs to her citizens, but may have continuing wrongs enjoined. Ga. v. Tenn. Copper Co., 206 U.S. 230 (1907).

Harlan's concurring opinion in Ga. v. Tenn. Copper Co., S.J.D. agrees to some degree. <But, ct. may think it owes a greater duty to a state than to private persons.>

Wis. v. Pelican Ins. Co. (p. 854)

"The juris. conferred by the Constitution upon this Court, in cases to which a State is a party, is limited to controversies of a civil nature."

Reed

Not w/in orig. juris. of the Court. Mere fact that a state is a party does not qualify the action for orig. juris. The Court will not enforce the PENAL laws of a state via orig. juris.

<Domicile is always deter. by the law of the forum.>

Texas v. Florida

(p. 858)
Bill in the nature of interpleader to seek the Sup. Ct.

Interpleader

The equity juris. was founded on avoidance of the risk of loss resulting from the threatened prosecution of multiple claims.

to pass on question of domicile to avoid multiple inheritance taxation. Court found decedent was domiciled in Mass.

So, the Court will not hear interpleader unless substantial question is also presented.

Q. Was there a justiciable case or controversy presented here by the pleadings? = Held, yes. Comes within the equity juris. of the Court because of a real risk of loss and no adequate remedy offered by law. The taxes claimed were more than the net estate.

Mass. v. No.

(p. 869)

"To constitute a justiciable controversy, it must appear that the complaining State has suffered a wrong through the action of the other State, furnishing ground for judicial redress, or is asserting a right against the other State which is susceptible of judicial enforcement according to the accepted principles of the C.L. or equity system of jurisprudence."

There was no justiciable case or controversy within meaning of Art III of the Const. Further, Court implied that Mass. had an adequate remedy at law.

Here, the Court talks of convenience of the Court (U.S. Sup. Ct.) and not of the convenience of the litigants. This was another manifestation of the doctrine of "judicial restraint" and "limiting jurisdiction."

According to the accepted principles of the C.L. or equity system of jurisprudence.

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"PARENS PATRIAE" - FATHER (OR PARENT) OF THE COUNTRY;
REFERRING TO THE SOVEREIGN POWER OF GUARDIANSHIP OVER
PERSONS UNDER DISABILITY. (BLACK'S LAW DICT., 4TH ED., p. 1269).

Ga. v. Penn. R.R. Co.

(p. 871)

Ga. was acting in 4
different capacities among
which was that of
quasi-sovereign; and the
Court said that since
Ga. was acting as parens
patriae, it was within the
Court's purview of orig. juris.

* (SEC. I)

COURTS OF APPEALS

*

Majority of cases stop here.
Judges vary from 3 to
9 depending on the amt.
of business in each cir-
cuit. e.g., 4th Cir. has
5 judges. 11 circuits (10
named and 1 for D.C.)

28 U.S.C.A. 1291

On the pt. to their business:

1. Dist. Cts.
2. Admin. agencies' decisions.

Appeals
from some
Interlocutory
Orders

Some interlocutory orders
of fed. dist. cts. are
appealable to C.C.A. (28 U.S.C.A.
§1292); those granting or refus-
ing injunctions. ("Interlocutory orders
of the dist. cts. granting, continuing, modify-
ing, refusing or dissolving injunctions,
or refusing to dissolve or modify
injunctions, except on a direct review
may be had in the Sup. Ct." - etc.).

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Certain interlocutory orders may be appealed under 28 USC A 1292.

Govt. Cannot appeal from acquittal in a crim. case.

Appeals in Civil Cases

28 USC A §1291 - Final decision of a Dist. Ct. may be appealed as of right except on a direct review may be had in the Sup. Ct.

"Final" - a judg. is final on:

(1.) It disposes effectively of the whole litigation leaving no further questions for dett.

(2.) Puts it beyond the power of the rendering Ct. to control the case after the end of that term of Ct. 324 U.S. 29, Catlin case.

Some decisions that are not final:

(1.) Striking (196 F.2d 1015) one of several defenses.

(2.) Order refusing to direct transfer of case. 182 F.2d 329, Ford Co. case (1950), cert. den. 340 U.S. 851

(3.) Order of trial Ct. dismissing (253 F.2d 28) an amended complaint for failure to comply w/ rules re pleadings.

(4.) Order overruling motion to dismiss 262 F.2d 855.

Baltimore Contractors, Inc.

v. Bodinger - 75 S.Ct. 249.

(1955)

- Action, instituted in state Ct. & removed

to fed. Dist. Ct. on basis of div. of cit., for an accounting under a K. D

moved for a stay under the Arbitration Act. The

Dist. Ct. refused the stay & the U.S.C.A. 2d Cir. dismissed D's appeal, 216

F.2d 192, and D got cert. to Sup. Ct. The Sup. Ct.

held that clause in K was not an amt to arbitrate

& its consequent order denying a stay, was

not a refusal of an "injunction" w/in stat.

giving Cts. of appeals

juris. of appeals from interlocutory orders granting, continuing, modifying, refusing or dissolving injunctions. Affirmed. (Black & Douglas, JJ. dissented.)

Congress has long expressed a policy v. piecemeal appeals.

Sup. Ct. is not authorized to approve or declare judicial modification of appellate juris.

It is better judicial practice to follow the precedents which limit appealability of interloc. orders, leaving Congress to make such amendments as it may find proper.

Statute granting right of appeal from interloc. orders affecting injunctions does not authorize appeals to simplify litigation.

(5) Order denying motion to remand to a state Ct. after action (241 F.2d 511) had been removed to fed. Ct.

Appeals from Crim. Cases - Final Decisions.

(1) By Defendant -

Appeal is of right under § 1291. within 10 days from rendition of decision. Notice of appeal served on appellee by clerk of dist. Ct. Rule 37(a) F.R.Cr.P. and see F.R.Cr.P. 38 and 39 (required!)

(2) 18 U.S.C.A. § 3731 - By Government - Crim. Appeals Act

28 U.S.C.A. § 1292 - INTERLOCUTORY ORDERS: APPEALS FROM

4 are four classes:

- (1) Affecting injunctions.
- (2) Receivership actions.
- (3) Admiralty cases.
- (4) Patent infringement.

When an appeal is taken from an interloc. order, it does not (201 U.S. 156 [1906]) automatically stay proceedings w/ the remainder of the case in the dist. Ct.

I. Injunctions

(A) T.R.O.

(B) Prelim. or interlocutory

(C) Final or permanent

II. Stay of Proceedings.

There is no provision for ^{interloc.} appeal from a T.R.O. A T.R.O. is often gotten ex parte and is often (F.R.C.P. 65(b)) only an initial move in an action seeking to permanent enjoin. 186 F.2d 676, for example of a T.R.O. (160 F.2d 512, and see this, too, re length of time.) 103 F.Supp. 978, Upmestown Steel Case - disposition of T.R.O. in discretion of the trial judge.

28 U.S.C.A. §1292 was enacted in 1958 allowing interlocutory appeals. One may be appeal from prelim. injunction under §1292 of title 28.

So, 1292 = stat. exceptions to the c.c. rule against piecemeal appeals and the requirement of "final judg." of §1291.

Baltimore Contractors, Inc. v. Bodinger (p. 749)
Stay of proceedings ≠ final judg.
nor does it qualify as an "injunction" from which interlocutory appeal may be taken under 1292.

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Certification of Appealability

See 167 F. Supp. 185 (1958) for interpretation of 1292: strict and see 260 F.2d 431 (1958) - 4 must be certification by Dist. Ct. that the questioned order is appealable, and this must be within 10 days, not 13 days as here. Appeal denied in both cases.

265 F.2d 205 (1958, 9th Cir.) - allowed appeal. 268 F.2d 38 - same case on appeal.

1292 is strictly interpreted and applied only in exceptional cases.

~~Shars, Roebuck & Co. v. Mackey (p. 756)~~

Bodinger Case (cont'd.) - equitable action here for an accounting.

Refusal to stay an equitable action is not the "refusal of an injunction" as to permit an appeal under 1292, nor a "final judg." under 1291.

This case reaffirmed the Enelow case: Enelow v. N.Y. Life Ins. Co., 293 U.S. 379, 55 S.Ct. 310.

When the stay of proceedings is like an injunction obtained at C.L. to enjoin proceedings

or Cow, that = an injunction.
 — Quere this due to abolition
 of law and equity as separate.
Enlow case held that on
 motion for deter. first of an
 eq. defense was granted
 and demand for jury trial
 was refused, that = an
 "injunction" from wh an inter-
 locutory order could be taken.
 Thus, when 1292 was enacted
 a couple of years later, the
 holding was in point.
 See F.R.C.P. 54 & 55.

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Five reviewable ^{by appeal} types of inter-
 locutory decrees — see 28 USC
§1292 for four, 11 USC §§47-
 48 (bankruptcy) for the fifth.

Where first
 hearing equitable
 defense =
 injunction

Enlow case (before fed. rules) and
Edleson case (after fed. rules) held
 that on an action brought that's
 triable to jury and D asserts defense
 not triable to jury, and judge
 decides to hear and try the
 defense first, that = an in-
 junction staying the prosecution
 of the main action, and that
 decision is revis 1292 and is
 reviewable by appeal im-
 mediately.

In Morgantown case, the orig. action was in eq. for reformation of an ins. policy. D filed legal counter-claim, and Ct. denied jury trial and ~~heard~~ heard the c-c first. ~~Appealed~~ held, not appealable because the judge was not enjoining the c-c, but merely deciding the way he would hear the suit. Like a Chancellor deciding whether he wants to use or not use a jury as was often done in early law.

TEST OF "FINAL ORDER"

Compare: ("final order")

- (1) Catlin case
324 U.S. 229 (1945)
- (2) Brown Shoe Co.
370 U.S. 294 (1962)

Some orders may be treated as final and appealable as such. No sure test of what = a final order, judg. or decree, but the Sup. Ct. has said that it's an adjudication of all merits of nothing remaining but the execution of the judgment.

The final judg. rule is sometimes inappropriate in certain cases, and the Sup. Ct. will there take a pragmatic approach as to what is a final order, judg. or decree under §1291.

Rule 54(b) Certificate of Appealability

⊗ F.R. 54(b) helps to clarify "final order, judg. or decree." Concerns multiple claims and multiple parties. (It is really unwise to apply the "final judg. rule" here, and before the last amend. of 54(b), the "final judg. rule" was applied). When can one appeal from a partial disposition of a multiple claim so that the $\frac{1}{2}$ won't bar the appeal? — Now, after the amendment and under 54(b), a judgment is presently appealable when the Dist. Ct., per 54(b), has made "an express deter. that it is no just reason for delay" and has given "an express direction for the entry of judgment."

This would be a 54(b) certificate as distinguished from a 1292(b) ~~certificate~~. — Thus, the party affected is on notice that the time for appeal is ripe, and that litigant must appeal, if at all, within 20 days thereafter. This 54(b) certificate is said to be discretionary, but by all accounts on that discretion:

(1) Ct. of appeals (216 F.2d 153) may dismiss an appeal that has been certified by the Dist. Ct. if the

court of appeals finds the
dist. ct. judge abused
his discretion.

(2) Dist. ct.'s cert. not conclusive
on question of finality.

(3) Dist. ct. cert. not con-
clusive on question of
whether this was a multiple
claim action. ~~multiple~~
~~party action~~ *

If the claim
merely presents many
variants of the same
claim, (267 F.2d 178) not
within 54(b) and certificate
of appeal by dist. ct. will
not be binding. 224 F.2d 198.

— See Sears, Roebuck & Co. case,
p. 756.

1292(b) really broadens the
interlocutory orders reviewable
by appeal; and a certificate
under this section will
not allow appeal on a
54(b) certificate is required.

What =
"Multiple Claims"
under Rule
54(b)?

224 F.2d 198

Assignment - Chap. I.

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Had EXCLUSIVE
juris. over matters
arising under the
E.P.C.A.

Emergency Court of Appeals -
set up during war to insure
review of Admin. of the
Emergency Price Control Act and
that commission. Staffed by
some dist. judges and a
circuit judge who alternated.
This court no longer
sits. See 321 U.S. 144, Davis
v. Bowles; 328 U.S. 39; 329 U.S.
531. - Also had juris. over
two other acts later on:

[Would not entertain any
actions seeking to enjoin
enforcement of the E.P.C.A.]
② Defense Production Act, 50
U.S.C. § 2061; ③ 62 U.S. Stats. at
large 3893 + 44 (1948), Housing Act,
amended by acts of 1949 and
1950.

Court had its final session
on 12-6-61.

④ U.S. Court of Military Appeals
- (10 U.S.C. 867) the final court
of resort for courts martial
a quasi-admin. court. In-
dependent but works w/ the
Defense Dept., J.A.G. and the
General Counsel of the Treasury
(Coast Guard). Juris. over any
accused person (military) who
has received a year's confinement.

10 USC 867

or disciplinary discharge or both; all cases assessing death penalties; all cases involving regular and flag officers; decisions of the J.A.G. and Gen. Counsel of Treasury Dept. - All decisions are final and there is no direct appeal therefrom (maybe other modes of review, however).

* (CHAP. I.) "JUDICIAL POWER" over "CASES & CONTROVERSIES"

Two ways to get into fed. cts.:

- (1) Original ~~complaint~~ suit by a P, or
- (2) Removal by D.

Fed. juris. is ltd. and certain requirements must first be met.

You may have to decide whether it is more advantageous or less to go into federal courts. But the first question is always whether the federal court is available. That depends on three things:

- (1) Jurisdiction
- (2) Venue
- (3) Process.

Three
Requirements
for Federal
Cognizance

All three must be satisfied.

If you are suing two or more Ds who live in different states, no venue. But, venue and service ~~and~~ of process may be waived. Sec 12 (b) and (h), F.R.C.P.

Service of process = juris. of the person and may be waived. * But, juris. over the subject matter can never be waived. 12(h).

Jurisdiction —

DEFINITION

(1) Power of fed ct to hear and deter. the case and controversy.

(2) Entirely stat. — 260 U.S. 226, p. 324 ckt.

(3) Subject matter must come w/in purview of the stat. investing the ct with juris.

(4) On stat. authorizes action based on div. of Ct., the fed. ct. applies the substantive law of the state wherein it sits. 304 U.S. 69, Erie v. Tompkins.

ERIE DOCTRINE

The ^{limits} juris. of fed. cts. are set out in: Title 28, secs. 1331 to 1359.

Two important bases of juris.

- (1) Fed. question.
- (2) Diversity of citizenship.

See Art. III, sec. 2.

#1 called cases "arising under" fed. stats. or the Const.

Sources of fed. juris. -

- (1) Art. III of U.S. Const.
- (2) Judiciary Act of 1789 set up by 1st Congress. Since then Congress has set up other stats. covering the same matters. Subsequent fed. acts (latest 1948) have been interpreted to mean that all cases not covered thereby are not within the fed. juris.

EFFECT
OF
ART. III

The Const. sets the outer limits of fed. juris. and specific statutes define that juris. within those bounds. Art. III restricts Congress but puts no duty on Congress to act.

Hodgson v. Bowerbank

(p. 8)

The Jud. Act gives juris. to the (fed.) courts in all suits in which an alien is a party. Here, record showed D = alien, but not clear that P = citizen.

HOLDING

~~Since the~~ U.S. Const., Art. III, sec. 2 requires that one of the parties must be a state or a citizen, and no clause permits both P & D to be aliens. Thus, the stat. cannot extend the juris. beyond the limits of the Const.

⊗ So, you must show that the case falls within the Const.

Sheldon v. Sill (1850)

(p. 8)

P = assignee of note. D = citizen of Mich. Creditor of D = Mich. who assigned to P, of N.Y.

D contended that the Jud. Act (sec. 11) bars the suit because it is a "suit to recover the contents of any promissory note ... in favor of an assignee...." D alleges that under the "assignee clause", an assignee could sue only if his assignor could have sued. - Ct. rejected

holding

P's argument saying that the juris. may be ~~be~~ held by stat. or

Collusive
Assignments
1351

so long as w/in the gen. purview
of the Const. granted by the Const. - The
assignee clause was
abolished in 1948, and
only collusive assign-
ments to create juris.
are barred. 28 U.S.C. 1359.
- Stat. cannot be in con-
flict w/ the Const. unless
its confers powers not
specifically conferred by
the Const.

Goldstone v. Payne

D = N.Y. P = Idaho (p. 11)
assignee of citizen of N.Y.
When was the
question of fed. juris.
first raised here? After
judgment and on appeal.

Holding

Juris over the subject
matter can never be
waived and may be
raised for the first time
even in the Sup. Ct. of U.S.
But, juris. over the parties
may be waived. This
principle applies to state
courts too.
P could sue in state court.

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Rule

On fed. ct. has no juris. over a ~~primary suit~~ ^{matter}, and a counterclaim is raised over wh the court would otherwise have juris, the fed. ct. still would not have juris.

Rule:
Precedent

Sub Silentio ^{DOCTRINE} - On a ques. of juris. is passed over sub-silentio (under silence), the case is not a precedent on juris. in subsequent cases having similar facts and claims. See dissent of Hastie, J.; 210 F.2d 623, Assoc. of Westinghouse Employees v. Westinghouse.

Waiver of
Juris. of the
Person:
Counterclaims

A D waives objection to juris. over the person by filing of a permissive counterclaim. (16 F.R.D. 388 Contra) 299 F.2d 666, ^{at 668-669} - no waiver w/ compulsory cc.

(We move on now to a consideration of more limitations on fed. judicial power.)

Moss v. Mella

(p. 14)

Rule
of
Law

Representative case by a state cannot be maintained on the action ~~is~~ against the fed. govt.

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A fed. taxpayer
lacks standing to
challenge the ex-
penditure of fed. funds.
But, if a fed. taxpayer
cannot, who can?
That has never
been answered.

Frothingham (one of the Ps)
had no standing to enjoin
the fed. appropriation
statute. Her interest
was too remote.

The Mass. case (by
were two cases heard
together) was declined
for lack of juris. be-
cause the Court will
not decide political
questions.

Two doctrines were used
to avoid deciding X-ability
of a statute:

(1.) Political questions are
not the scope of ~~the~~
the Courts (or fed. ct.)
jurisdiction ("No case or controversy").

(2.) To challenge legis.
or official acts, the party
must have a special
interest (standing) rather
than an interest of a
part of the public in general.
i.e., must have standing to
sue.

Judicial Self-Restraint

Ware v. U.S. 3 U.S. 198, when
the issue is one in which
the final decision rests
on the executive department,
the Court will not take
juris. i.e., pol. questions. - This

(non-justiciable
questions)

Doctrine of
Judicial
Self-restraint

as judicial self-restraint.

Some examples of pol. ?? -

(1) Foreign affairs
Three reasons for jud. re-
straint:

(a) Cong. places the re-
sponsibility on the Exec.

(b) Would be intolerable
to have divided
voices in dealing
w/ foreign countries.

(c) The pol. depts. have
info. and special
competence wh. dictates
the necessity of un-
reviewable author.
on their part. (Expertise).

(2) Constitutional guarantee
of the republican form
of govt. 223 U.S. 118; 139
U.S. 449, In re Duncan
(Fuller, J.)

(3) Questions re policy concern-
ing the admission and
deportation of aliens.
189 U.S. 86. Left to Exec. branch.

(4) Discretionary acts of U.S. Pres
333 U.S. 103. Expertise here.

(5) Questions under Art. V of
U.S. Const. (Amending the Constitution).

(6) State laws re voting
and registration. - No
longer true (Op. county
unit system) 369 U.S. 186,

Baker v. Carr
369 U.S. 186 (1962)

Baker v. Carr.

Standing to Sue

342 U.S. 426, Doremus v Bd. of Ed.

Any one seeking to challenge the validity of a stat. must show he is in danger of substantial injury from the operation of the stat. Only upon that showing will one have a "minimum litigable interest" (i.e., standing to sue).

No standing to challenge State expenditures under State statute.

In Doremus case, the fed. prohibition, v. one questioning the validity of a fed. spending stat., was extended to a suit by a state citizen against a state questioning a state spending statute.

* A stat. imposing taxes is treated differently from a stat. directing expenditures.

Standing not ltd. to suits by taxpayers.

No requirement of standing.

does not mean necessarily that the stat. is directed against the party seeking to sue. See Society of Sisters case. It does mean that one cannot challenge the validity ~~the~~ of a stat. that injures or threatens to injure someone other than the one ^{complaining} ~~complaining~~. 235 U.S. 571.

Ripeness -

Another facet of jud. restraint. e.g. Birth control cases. See n. 6, p. 18, esp. Poe v. Ullman.

So, there are three limitations on jurisdiction:

- (1) Constitution
- (2) Statutes
- (3) Judicial Self-Restraint.

Rule

In Poe v. Ullman, the court held that on the pol. machinery is at a deadlock, the Court will restrain itself until the deadlock is broken and the suing party is substantially injured or so threatened.

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Muskrat v. United States (p.19)

Some "old group" Cherokees * sued U.S. to deter whether Congress had power to pass certain statutes.

Issue: whether Congress had power to give, under the juris. of Art. III, sec. 2, juris. to the Court of Claims to deter the validity of an act of Congress and to the Sup. Ct. to review the decisions thereof.

Held, no. The question here was not presented in the form of case or controversy. The Court said this would have called for a merely advisory opinion:

See 333 U.S. at 118(?)

Execution is not a necessary adjunct of every case.

- (1) No execution would have issued here.
- (2) All the Ps wanted was a declaration of rights.
- (3) No true adversary litigants.

This really seems to be a facet of jud. self-restraint rather than a lack of juris., although the Court has taken the latter position.

No C. Sup. Ct. will give advisory opinions.

Fed. appellate juris. does not depend on the court from which appeal is taken, but upon the nature of the case involved.

Constitutional Courts - courts created by virtue of the power granted to Congress under Art. III.

Legislative Courts - courts created under ~~other~~ power of Congress granted under other than Art. III.

* Case or Controversy *

The criteria:

- (1) Between adversary parties rather than collusive suits.
- (2) Involve valuable legal rights rather than mere trivial rights.
- (3) Legal rights must be threatened w/ imminent invasion rather than speculative impairment.
- (4) Must be of such a nature that the grant of relief to the injured party must be upon the remedial power of the courts.

- (5) Must present a question of the type traditionally decided by courts.
- (6) Decision must be final rather than subject to review by legislature.

These requirements must exist at the outset of the litigation and continue throughout the litigation.

Effects of ^{judg. of} civil litigation

1. All matters in litigation are closed to re-exam. under principle of res judicata.
2. The judg. gives a new op wh may be enforced in another juris.
3. judg. normally includes an award of damages or one of the reg. forms of relief.

#3 here was the basis of early decisions to the effect that Art. III courts were incapable of giving declaratory judgments and that #3 was a necessary part of "case" or "controversy". 273 U.S. 70 reversed this idea (1927); but in the same year

The Sup. Ct. ruled itself by saying (Stone, J.) that #B is not an indispensable adjunct of "case" or "controversy".

* DECLARATORY JUDGMENTS *

FED. DECLARATORY JUDGMENTS ACT - followed the Tenn. case and successful operation of D.J. acts in 34 states.

(p. 25)

Aetna Life Ins. Co. v. Haworth

C. (P) says the policies are no longer in effect; D (insured) says they are.

P seeks declaration that it would not be liable. Court held this was a real justiciable controversy here.

D.J. Act affects procedure only, the Court said, and that the Const. did not freeze procedure, thus allowing Congress to make innovations and changes. But, actually, there are some cases that can be heard under the D.J. Act that would not be heard otherwise.

D.J. Act does not itself confer jurisdiction nor create any

Substantial rights. Juris.
must still exist and
be shown.

When fed. juris exists,
 the D.T. act allows
 some actions to be
 maintained that could
 not have been main-
 tained under traditional
 forms.

316 U.S. 491 - exer. of
juris. over D.T. case
is discretionary.

Rule 57, F.R.C.P., must be
read along w/ D.T. act.

The D.T. action is neither
 purely eq. nor purely
 legal, but partakes of
 both.

Re burden of proof,
 under D.T. act, see 216
 F. 2d 209 (3d Cir. 1954)

United Public Workers v. Mitchell (p. 32)

No justiciable "case" or
 "controversy" here because
 it was a purely theoreti-
 cal dispute. The appel-
 lants had not yet viola-
 ted the Hatch Act.

The Court is more
 cautious and more

27 M.C.L.L. 353 -
re D.J. READ!

conservative in allowing
D.J. in the field of public
laws rather than
public rights as in Actua
Life Ins. Co. case

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There are many advantages to D.J.s; e.g., avoids delays in biz, prevents circuitry of actions, decides for all times the comparative rights of the parties thereto.

You have a right to jury trial if legal claims are involved - D.J.

Existence of other adequate relief does not bar D.J.

D.J. may be joined w/ other actions.

P need not show that he is entitled to a D.J. favorable declaration. Thus, rarely will demurrer or motion to dismiss lie.

Ord. rules of procedure apply. ⊗ Complaint or petition for declar should contain:

- (1) Declara. of juris.
- (2) Existence of bona fide disputes between adverse parties re substantial legal rights.

(3) Facts calling for exer. of Ct's juris. to grant the D.T.

(4) That a D.T. is sought under the particular stat. involved.

(5) Prayer for declaratory relief, specifying, either affirmatively or negatively, the facts on which relief would be based (the rights violated or duties breached) and any further relief sought.

FED. JURISDICTION Limitation:

NO LEGISLATIVE OR ADMINISTRATIVE POWERS

Another limitation on federal juris. of courts is that they may not exercise legislative powers nor administrative powers.

Where the scope of review could be upheld, the nature of the scope of power on review depends on the nature of the function of the court below.

The nature of the function performed below depends on the character of the proceeding.

below, not the ~~actual~~ character of the tribunal.

If a legislative function has been performed by a tribunal below, it can be no review by any "Constitutional" court.

Whether a function is legis. or admin., or judicial, depends on the facts of each case. However, on discretion is required to decide the matter below, that is legis. or admin.

270 U.S. 568 - naturalization proceedings = judicial action.

325 U.S. 561 - right-to-practice-law proceeding = judicial.

However, on discretion is called for, but the stat. sets out standards and guides for its exercise, the function by the tribunal below would not necessarily be legis. or admin.

Keller v. Potomac Electric Power (p. 39)

Congress has power to confer legis. powers or functions on the courts of the Dist. of Columbia.

As to the D. of C., Congress possesses a debat authority, ~~over the Dist.~~ and may clothe the courts of the District, not only w/ the juris. and powers of fed. courts in the several states, but w/ such authority as a state may confer on her courts.

However, such legis. or admin. juris. it is well settled, cannot be conferred on this court either directly or by appeal, nor on any other court formed under Art. III ("constitutional courts").

This is another lim. on fed. jud. power.

The ideal characteristics of "case or controversy" are:

- (1) definite present dispute,
- (2) about ascertained issues of law or fact, and
- (3) Between parties w/ a practical interest in the outcome.

A matter is admin. if:

- (1) It calls on judge for discretionary opinions in fields other than legal.

(2) It calls for making a rule for the future rather than deciding matters already accrued.

(3) ~~It~~ It calls upon the Ct. to make the order the admin. agency should have made rather than merely declare same valid or invalid.

(4) It subjects the Ct's order to revision ~~by~~ by legis. or ~~admin.~~ action.

A fed. Ct. can review an admin. decision only when the ~~review~~ review is by stat., confined to legal ~~stat~~ questions. [Quere, however, why the fed. Ct. could not hear admin. orders if they confine their review to legal questions of their own initiative.]

O'Donoghue v. U. S.

Issue #1 (p. 45) was answered YES.
Issue #2 (p. 45) was answered NO.

Attributes of Xth courts:

- (1) Life tenure upon good behavior.
- (2) Security of salary (can't be diminished).
- (3) Cannot and cannot be required to review admin. or legis. decisions.

Territorial courts (Guam, Puerto Rico and Virgin Islands) have no attributes of Xth cts.

Ct. of Claims and Ct. of Patent Appeals have been declared by Cong. to be Xth cts., but that has not been before the U.S. Sup. Ct. yet.

The Xth cts. are:

- (1) All fed. dist. courts
- (2) fed. cts. of appeal
- (3) U.S. Sup. Ct.
- (4) Courts of D.C.

Courts of D.C. are hybrid courts because they don't have attribute #3 of Xth cts., but are generally deemed Xth courts.

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Four divisions of fed. jud. system:

(1) Constitutional courts under Art. III, the Jud. Clause. U.S. Cts. of appeal, fed. dist. cts. and U.S. Sup. Ct.

(2) Territorial Courts

- (a) Puerto Rico
- (b) Guam
- (c) Virgin Islands.

(3.) Special Legislative Courts

(a) Ct. of Claims (28 USC 171)

(b) Ct. of Patent Appeals
(28 USC 211)

(c) Customs Ct. (28 USC 251)

Due to the sections above of USC, these courts have been said to be Art. III cts. due to the amendments of 1953.

(4.) Fed. cts. for D.C.

(a) U.S. Dist. Ct. for D.C.

(b) U.S. Ct. of Appeals for D.C.
These are hybrid courts.

Nat. Mut. Ins. Co. of D.C. v. Tidewater Transfer Co. (p. 56)

28 USC 1332 (a)(1) implements Art. III, sec. 2 - "between citizens of different states."

A D.C. corp. v. Va. corp in Md. fed dist ct. D also chartered in Md.

Held, a citizen of D.C. is a citizen of a "state" for diversity ~~case~~ purposes.

Congress had power to confer the juris. on fed. courts of D.C.

Jackson's opinion rests on a novel theory that Congress may confer juris. under Art. I on fed. inferior cts.

outside the D.C.

Rutledge and Murphy concurred but on different grounds. They said that the leading case saying that D.C. was not a "state" should be overruled.

Both above views held that the statute was valid (28 USC 1332 (a)(1)).

28 USC 1332 (d) states, due to 1956 amendment, that the word "states" includes Puerto Rico, Dist. of Columbia, et al.

So Jackson extended the logic of the O'Donoghue case ~~by~~ by making ALL fed. cts. somewhat hybrid, even those outside the Dist. of Columbia.

28 N.E.L.R. 128 - on Tidewater case
175 F.2d 952 (1949)

See

48 Mich.L.R. 999
50 Col.L.R. 535

Chap. II "FED. QUESTION JURISDICTION"

See Brann, pp. 20-30, 54-63, 70-103; See also 49 Mich. L.R. 73.

"The judicial power shall extend to all cases, in law and Equity, arising under this Constitution, the laws of the United States, and treaties made, or which shall be made, under their authority..."

Here, Art. III, sec. 2, cl. 1 is the ruling law.

When can fed. question cases be begun in the lower fed. cts. So, now we are concerned w/ orig-inal federal question jurisdiction.

The ruling statute = 28
"USCA §1331."

Osborn

v. Bank of the U.S. (p. 74)

28 USCA §1331. FEDERAL QUESTION; AMT. IN CONTROVERSY; COSTS.

(a) The dist. cts. shall have orig. juris. of all civil actions wherein the matter in controversy exceeds the sum or value of \$10,000, exclusive of interest and costs, and arises under the Const., laws, or treaties of the United States.

The act of Congress which created the Bank ~~of~~ charter was a "law" of the U.S.; thus the charter was a "law" under which arose this case w/in meaning of Art. III, sec. 2, cl. 1.

Orig. Ingredient Test - If a fed. question is the basis of a case, the fact that other non-fed. questions are involved in-identally will not matter.

So, any case involving a federally chartered corp.

"arises under" the laws of the U.S. (But see p. 84, *infra*)

Thus, it was held that Congress had given the jurisdiction to the court, and that Congress did so valley.

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JURISDICTIONAL
AMOUNT

Even gen. fed. question suits require the juris. amt. of \$10,000, except on specifically excepted.

OSBORN
HOLDING

Any suit by a fed. chartered corp. is a "case arising under" because the scope of its chartered powers is an original ingredient. Osborn case.

Clearly today the Osborn case would stand due to §1331, but that stat. came 50 odd years later. Typically Marshall, Ch. J., was construing broadly and not foresight.

POTENTIAL
FED. QUESTION
TEST

If it is merely possible that the fed. question will arise the fact that it does not

arise will not deprive the court of jurisdiction. Each action brought by the Bank of the U.S. potentially involved a fed. question. (This "potential fed. question" test is not so strong today and has been ltd.)

A case "arises under" fed. laws, X or treaties whenever either party's rights involve a fed. question. This view of Marshall is still true.

CAUSUS FOEDERIS - FED. QUESTION.

Johnson, J., dissented from Osborn holding saying that "arising under" means that a case will actually involve and raise a fed. question (literal reading of the X), and really that's a more plausible view. But, Marshall was intentionally reading the X broadly.

Cohens v. Virginia, 19 U.S. 264 (1821).
 antedated Fed. Judiciary Act of 1875.
 Marshall said a case "arises under" whenever it involves a construction of

a fed. law or treaty or the X, and that Cong., therefore, had the power to confer orig. juris. on the fed. cts. to hear and deter. the case.

Goldwashington v. Kears,
96 U.S. 199 (1879) - Marshall's language was repeated.

Thus, the orig. appellate juris. of fed. cts. over cases of "arising under" ^{fed. question} (Cohens v. Va.) was applied to fed. question juris. in the lower fed. cts.

FEDERAL CORPORATIONS

These are corps. created by fed. charter.

General
Rule

An action by or "against" (by cases) a corp. organ. under an act of Congress, comes under "cases arising under" (But see p. 84, infra).

Act of 1882 (§1348 of 28 U.S.C.) made the rule of Osborn inapplicable to fed. chartered banks.

Act of 1915 excepted from Osborn doctrine fed. chartered R.R. corps.

See Wright on
Fed. Cts.

Act of 1925 (§1349) excepted any fed. chartered corp. unless the govt. owns $\frac{1}{2}$ of the capital stock.

Three types of fed. corps.

(1) Eligible Corporations

Charitable corps. w/o any capital stock (Boy Scouts, D.A.R., Red Cross). Since 1958, fed. cts. have juris. over these corps. under diversity of cit. and juris. ant. Will be treated as a citizen of the state or it has its principal place of biz.

(2) (241 U.S. 595; 59 F.2d 350) Corps. for profit w/ capital stock owned by private persons. Since 1958 (274 F.2d 620), fed. cts. have juris. due to div. of cit. and juris. ant. A citizen of state or it has principal place of biz.

(3) Corps. or govt. owns more than $\frac{1}{2}$ of the capital stock — w/o in orig. fed. question juris. ~~and div. of cit. & juris. ant.~~ 28 U.S.C. 1331. Citizen of any state or it is chartered and does biz. Brought under §1331 by virtue of §1349.

632
12
77 F.2d 50 (4th Cir. 1935)

28 USCA §1348. BANKING ASSOCIATION AS A PARTY.

The dist. cts. shall have orig. juris. of any civil action commenced by the U.S., or by direction of any officer of, against any nat'l. banking ass'n., any civil action to wind up the affairs of any such ass'n., and any action by a banking ass'n. established in the district for which the ct. is held, under chapter 2 of title 12, to enjoin the Comptroller of the Currency, or any receiver acting under his direction, as provided by such chapter.

All nat'l. banking associations shall, for the purposes of all other actions by or against

(4) Fed. Reserve Banks -

After 1958, fed. cts. have juris. regardless of amt. involved same before 1958 due to 12 USC §632 (see 77 F.2d 50 (4 Cir. 1935)). So, this is special fed. question juris.

(5)

National Banks federally incorporated.

Only div. of cit. juris. ~~and only~~ over these types of actions (§1348):

(a) Any civil action ~~by~~ a federal official, U.S. agency or the U.S. v. a n.b.a.

(b) Any civil action to wind up the affairs of a nat'l. banking ass'n.

(c) Any civil action brought by a banking ass'n. in a dist. on the fed. ct. sits, to get an injunction. Juris. Amt. must be present.

Here, if the case falls within the three specific categories, div. of cit. need not be satis. nor amt. That would satisfy fed. question juris.

If a case here does not fall within any of the above three §1348 specific cases (a, b, or c)

PRES. JOHN F. KENNEDY
ASSASSINATED 11/22/63
IN DALLAS, TEXAS.

● them, he deemed
citizens of the States in
which they are re-
spectively located.

Better
Interpretation

241

235

it must satis. div. of cit.
and amt. under \$1332.

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Osborn Case - Johnson's dissent says
that the charter gives
the bank the capacity to sue
and be sued, but did not
confer federal juris. -
This is the better inter-
pretation and later was
adopted. See 241 U.S. 295.

Marshall's majority opin-
ion also said that
Congress had the power
to confer the juris, too.
Marshall, how-
ever, was really
construing the X, Art. III
sec. 2. It was no gen.
fed. juris. statute. Thus,
Marshall's broad inter-
pretation was appro-
priate, leaving it to
Congress to adopt or re-
strict the breadth of in-
terpretation.

(6) F.D.I.C. - 12 U.S.C.A. 1319 -
Fed. question juris. See stat
here for exception.

(7) Private Corps. of D. of C.,
territories of U.S. and
Commonwealth of Puerto
Rico - div. of cit.
 juris. here, not fed.
question juris.

Summary:
 Gen. Rule

In summary, therefore,
 except for note banks
 and fed. chartered corps.
 in which govt. owns
 more than $\frac{1}{2}$ of the
 capital stock, the mere
 fact that the corp.
 is fed. chartered has
 no bearing on fed.
 juris. — This is
 contrary to the broad
 holding of Osborn.

Albright v. Teas (p. 81)

28 USCA § 1338: PATENTS, COPY-
 RIGHTS, TRADE-MARKS, AND UNFAIR
 COMPETITION.

(a) The dist. cts. shall have
 orig. juris. of any civil action
 arising under any Act of Congress
 relating to patents, copyrights
 and trade-marks. Such juris.
 shall be exclusive of the cts.
 of the states in patent and
 copyright cases.

(b) The dist. cts. shall
 have orig. juris. of any

28 U.S.C. 1338 gives exclu-
 sive juris. to fed. cts.
 for cases involving
 patents.

This was an action
 for b/rk involving money
 allegedly owed due
 to certain assigned letters
 patent.

Held, "the suit re-
 mains one on the K to re-
 cover royalties, and not
 a suit upon the letters patent."

civil action ~~arising~~ asserting a claim of unfair competition when joined w/ a substantial and related claim under the copyright, patent or trade-mark laws.

True
Test
of
"arising under"

It arises solely upon the K and not upon the patent laws of the U.S."

The test laid down was that a case "arises under" when a party "asserts any right, privilege, claim, protection, or defense founded, in whole or in part, on any law of the U.S." The Osborn "ingredient test" has been rejected, this case saying that it is not suff. that the fed. question be a potential or collateral ingredient; it must meet the test aforementioned.

Fribelman v. Packard (p. 85)

Federally
created c/a:
Rule

If Congress creates a c/a by statute, that is suff. to follow any case involving that stat. directly to be "arising under".

This was a case really against the fed. marshal on his bond, a bond required by a fed. stat.

If P v. Marshall for

tres. in state court, and D - Marshall set up the bond - stat. as ground for removal to fed. ct., it would be no fed. question if the fed. stat. is only collaterally involved. If the essence of the case is, on the bond, however, fed. question would be satisfied.

Joy v. St. Louis (p. 87)
(No div. of sit. here.)

P claims this action arises under the laws of the U.S. because he bases his claim on land whose title derives from a fed. grant. Court held No, the mere pleading of the above will not satis. "arising under."

Rule of Pleading

[A fed. question must appear on the face of the complaint well pleaded.]

The only question involved here was that of accretion, and that ~~it~~ would be governed by local sand

law.

This was an action in ejectment. It is not essential to ~~set~~ set out P's chain of title via pleading in an action of ejectment. A gen. allegation of ownership will suffice.

Rule

The mere fact that a party may participate a possible defense of D based on fed. law will not satisfy.

"arising under", and that would not be a matter well pleaded.

This did not even satisfy the Osborn "potential ingredient" test.

3 DSC. 63

Rule:
Judgments
185 F.2d
369
(1950)

The mere fact that a judgment was recovered in a fed. Ct. will not mean that a suit on that judgment is within §1331

See 241 U.S. 551.

Fed. question must appear in a well pleaded complaint. Thus, an action to enjoin poss. of land held under

See Moore v. Miller,
(N.C.) 179 N.C. 396
same case.

And see 146 N.C. 18.
McIntosh, sec. 1065 at
p. 577

fed. grant = fed. question.
But, on P's not ~~in~~
in poss., no fed. question
because P' would have
action of ejectment at
law, and you need
not plead title in
action of ejectment. Thus,
the fed. grant of the
land would not arise
because if it were
pleaded, it would not
be "well pleaded."
See Moore v. Miller, 179 N.C. 396.

L. & N. R.R. v. Mottley (p. 89)

Juris. was raised
at appellate level ex
mero motu.

Here, P was seeking
spec. perf. of a K w/ the
R.R. for satis. of certain
lost claims against the R.R.

Held, the fed. question
must be presented in the
P's. well pleaded com-
plaint. P. cannot create
orig. fed. juris. by anticipating
a defense that may
raise a fed. ques-
tion.

It must be fed. juris.
in limine (at the beginning),

if at all.

General Rule

The question of fed. jurisd.^(or, judicial power) whenever in fact finally decided, must be decided as of the time when the case first seeks to enter the fed. system and on the facts appearing in the record at that time. i.e., we need not go to judgment before juris. can properly be questioned.

Fed. Question Jurisdiction

Three requirements:

(1) Fed. question must be a part of P's case rather than a part of D's defense. This limitation cannot be circumvented by anticipating D's defense.

(2) Must involve substantial fed. question.

(3) The fed. question must be the pivotal point of the case. i.e., the ~~the~~ right, title, privilege or immunity involved must be capable of being defeated by one construction of the Const. or law of the U.S., or

sustained by the opposite construction.

Some cases lay down the rule that the mere fact that the right, privilege, title or immunity derives from a fed law will not necessarily suffice. "arising under", but that it will "arise under" only when the fed. law is to be construed, interpreted or questioned re its validity.

This test is contrary to "substantial ingredient" test.

McGoon v. Northern Pac. Ry. Co. (p. 91)

28 USC §1337. Commerce and anti-trust regulations.

The dist. Ct. shall have orig. juris. of any civil action or proceeding arising under any Act of Congress regulating commerce or protecting trade and commerce against restraints and monopolies.

Ps = Shippers
Ds = common carriers.

Ps' c/a based on sec. 20 of the I. Commerce Act.
Re "fed. specialty juris." based on §1337 which covers commerce and anti-trust matters. No juris. amount is required for suits arising under 1337.

If a c/a is directly created

by a fed. law, is the case one
 "arising under" even tho'
 only questions of fact
 are to be raised and
 not questions of inter-
 pretation, construction or
 validity of the fed. stat. ~~?~~

HELD, YES.

This case would
 have really involved
 only the question of exist-
 ence of req. of Ry. Co.

Held, "when the complaint
 asserts a right created
 by fed. law, it presents
 a suit wh. may properly
 turn upon a construc-
 tion of that law; and
 such a suit "arises
 out of" the law for
 purposes of fed. juris.,
 notwithstanding the D may
 raise only issues of
 fact by his answer."

This case, therefore, in-
 volved special fed. juris.

See B31-1359

Interstate
Commerce
Cases:
Jurisdictional
Amount

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While no juris. amt. is required to institute an action under the I.C.A. via §1331, if the action is removed from a state to a fed. ct., a juris. amt. of \$3,000 is required under §1445 (b).

The tendency is to narrow the concept of "fed. question" juris, and three cases esp. have done this:

Metcalf v. Watertown, 128 U.S. 586 -

The holding here was adopted and extended by the Mottley case (p. 189) and Texas v. Union & Planters Bank (p. 249).

FED. QUESTION
JURISDICTION:
REQUIREMENTS

It must be (1) a substantial fed. question, (2) which is pivotal and (3) seasonably raised.

Bell v. Hood (p. 97)

Whether an inference, arising from Erie v. Tompkins, was applicable here.

If the P asserts a claim he bases on the const. laws of U.S. or Treaties, and pleads same in the complaint, a fed. question exists, even though

under the merits. P may not prevail. The c/a arose under the Fourth and Fifth Amendments, and that satisfied juris. The court did not, nor was it called upon to, decide whether the P was entitled to relief under the particular facts. Thus, the U.S. Supreme Ct. held yes was fed. juris. (fed. question) & remanded the case for decision on the merits.

Some special fed. stats. create private rights & fed. question juris:

- (1) Anti-trust
- (2) Trade mark & patent infringements.
- (3) Recoveries from collector of taxes for taxes illegally or erroneously collected.
- (4) 42 U.S.C. 1983, 1985 -
- (5) Civil Rights Act (civil).
- (6) Tort actions v. U.S.
- (6) Veterans' insurance cases.

But, no stat. has been enacted which creates a right in tort against the fed. govt. under the 5th or 14th Amendments.

If a P today, as in Bell v. Hood, brought the same sort of tort

action, the case would probably be dismissed as frivolous since it has now been decided that there is no such c/a under the Fifth and Fourth and Fourteenth Amendments which raises fed. question juris., due to Bell v. Hood.

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Holding

Bell v. Hood — If the P, in good faith, asserts a claim well-pleaded based on the Const., laws or treaties of the U.S., it will be fed. question juris.; but the P will not necessarily win on the merits.

Gully v. First National Bank in Meridian (p. 102)
 "To bring a case within the statute (28 USCA 1331), a right or immunity created by the Constitution or laws of the U.S. must be an element, and an essential one, of the P's c/a. ... The right or immunity must be
 Held, no elements of fed. juris. here.
 (1) P relied on K between two banks.
 (2) P relied on state stat. empowering the state to tax a national bank.

such that it will be support-
ed if the Constitution or
laws of the U.S. are given
one construction or effect,
and defeated if they receive
another. ... A genuine
and present controversy,
not merely a possible or
conjectural one, must
exist w/ reference thereto,
... and the controversy
must be disclosed on the
face of the complaint,
unaided by the answer
or by the petition for re-
moval. ... Indeed,
the complaint itself
will not avail as a
basis of juris. in so
far as it goes beyond
a stmt. of the P's cla
and anticipates or replies
to a probable defense."

Fed. incorporation is
now abolished as a ground
of fed. juris. except on
the U.S. holds more
than one-half the
capital stock.

Rule

(3) I relied impliedly on a
fed. stat. wh authorized
the state statute taxing
the natl. banks.

Cardozo held, that the
fed. stat. was too re-
moval and that the
federal question was
only collateral, not
basic as it should be.
The fed. stat. was too
far in the background
as a fed. question.

"That is a fed. law
permitting such taxation
does not change the
basis of the suit, wh is
still the statute of the
state, though the fed. law
is evidence to prove the
statute valid."

See p. 103 cbk. for the tests of fed.
juris.

The ~~source~~ nature, not the
source, of the fed. right
deter. the existence of
fed. question juris. "The
fed. nature of the right to be
established is decisive —
not the source of the authority
to establish it."

The first papers filed should always make clear the basis of fed. juris.

Hurn v. Dursler (p. 107)

FED. and NON-FED.
CLAIMS

Placed for injunction, damages, and an accounting. Alleged infringement of a copyright, unfair competition and unfair comp. w/ respect to an uncopyrighted version of the same play.

The trial court dismissed the claim ^{on its merits} as it was grounded on copyright, and found no juris. as the claim was based on unfair competition.

Involved special fed. question juris. under §1338
(see cbk. p. 112).

On appeal, reversed as to the finding of no juris. because that was an inseparable part of the P's c/a.

Hurn Rule

Held, where γ is a c/a w/ two or more grounds to

support it, the fed. ct. has the power to decide the fed and non-fed grounds.

But, if there are two causes of action, one fed and one non-fed, the non-fed c/a cannot be deter.

Horn Rule
Policy

Rationale: to avoid piecemeal litigation & to support rule v. splitting of c/a. This is a policy of JUDICIAL ECONOMY.

§1338(b) has now incorporated into law the Horn Rule (after 1947 Amendment of the Jud. Code) as far as patents, copyrights, & trademarks.

TEST

⊗ The Stat. test is substantial and related claims." §1338(b). Horn Rule

(See §183 F.2d 497)

Although §1338 applies only to patents, copyrights and trade marks, the Horn Rule applies throughout in all areas of fed. juris.

Dismissal
of federal
claim:
Rule

A fed. ct. may, in its discretion, refuse to try a non-fed. claim of a c/a involving, also, a fed claim where the ct. would have juris. over the non-fed. claim only be-

cause of the fed. claim, and
on the fed. claim is
dismissed on its merits.

Mass. Universalist Con-
vention case, 183 F.2d 497.

Hurn rule, in practice,
 applied to equity cases,
 but not exclusively. 72
 F.2d 903.

26 Tex. L.R. 547 - fed. + non-
 fed. claims.

72 F.2d 903

Amer. Well Works Co. v. Layne & Bowler Co. (p. 113)

"Obviously, the language
 (of the D.J. Act) does not
 create new substantive
 rights or legal relation-
 ships but adds, to reme-
 dies previously existing,
 an additional one for relief
 in the form of a judg.
 declaring, in cases of
 actual controversy, the rights
 of the parties. Equally as
 clearly, prior to the passage of
 the act, no one had a right
 under the patent laws to
 initiate suits for affirmative
 relief in the form of an
 adjudication that another's
 patent was invalid or was
 not infringed. ... The D.J.
 Act merely introduced add-

Claim for damns. for slander.
 Slander is a right created
 by state law, and
 the action involved
 that state right ne-
 cessarily. Thus, this
 case arose under
 state law even tho'
 the Δ s' justification or truth
 of their stunts would
 involve the fed.
 patent laws.

Held, a case "arising
under" is a case stating
a fed. c/a.

Held, if a suit is required
to be brought in a fed.
State Ct. that case
cannot be removed. A

itional remedies. It modified the law only as to procedure⁹⁹ and, though the right to such relief has been in some cases inherent, the stat. extended greatly the situations under which such relief may be claimed.

... But the controversy between the parties as to whether a patent is valid, and whether infringement exists is in

either instance essentially one arising under the patent laws of the United States. It is of no moment, in the determination of the character of the relief sought, that the suit is brought by the alleged infringer instead of by the owner."

would have to be dismissed and re-initiated. (and see p. 256 ckt.)

(Discussed Edelman case, p. 114.)

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Skelly Oil Co. v. Phillips Petrol. Co. (p. 117) Fed. Declaratory Jud. does not expand fed. juris.

But, as a practical matter, fed. juris. standards are expanded because of the ability of complainants to present questions wh could not have been presented before.

Rule

The fed. Question must be directly immediate, not tangential and remote.

ADMIRALTY

There is a "law side" of U.S. Dist. Cts. as distinguished from admiralty.

28 U.S.C.A. 1333 - Provides for Admiralty.

28 U.S.C.A. 1331 - fed. question as re the "Law" side of fed. dist. cts.

28 U.S.C.A. 1332 - Div. of Cts.

"Savings to Suitsors" Clause of
28 U.S.C. 1333 - means
 that State Cts. will
 have juris. over all
 maritime cases ⁱⁿ for
 the common law cts.
 were able to give
 relief. ~~—~~ All other cases
are under fed. juris.

28 U.S.C. 1441 - Cases of
maritime nature,
begun in State cts.,
may be removed
to fed. cts. - Gen. removal stat.

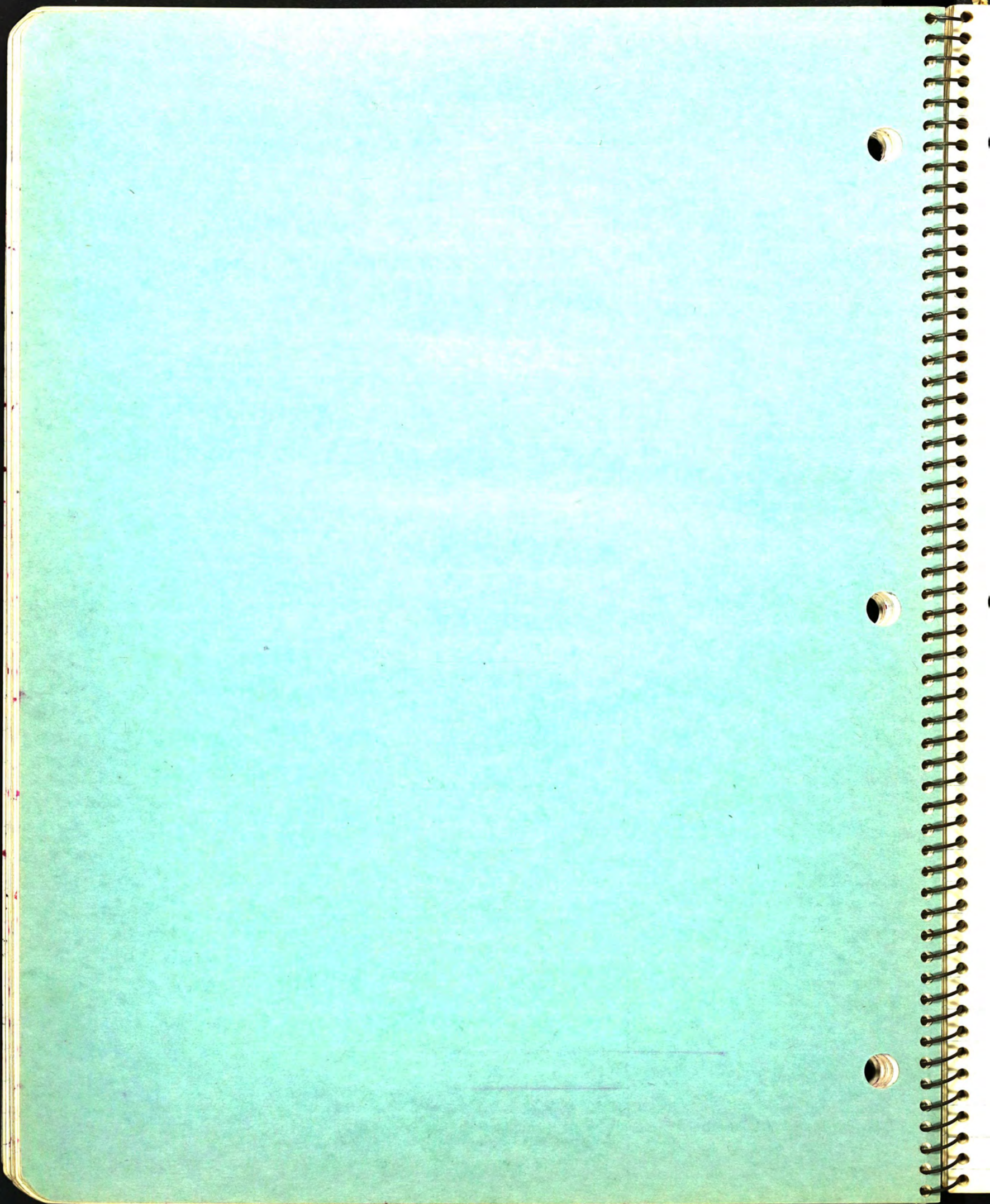
(1957) 243 F.2d 270 -
(2d Circuit)

Dist Cts. may transfer
a case from civil
docket to Admiralty
docket, and vice versa.

Maritime law not based
on C.L. Based on com-
mercial law and
somewhat, the civil law.

Romero v. Internat'l Terminal Operating Co. (p. 122)
Admiralty w/in jud. power
of fed. courts due to
Art. III, § 2, cl. 1.

New 1/2 Statute (1) 46 U.S.C. 761-767 - (Death
on the High Seas Act) creates a



Libel = c/a in admiralty

101

c/a for wrongful death on the high seas.

(2.) Ship Mortgage Act - 46 U.S.C. 951 et. seq.

(3.) Fed. Maritime Lien Act - 46 U.S.C. 971.

(4.) Admir. Extension Act of 1948 - damage to land prop. or rocks, etc. ^{made actionable} 46 U.S.C. 70; 199 F.2d 761.

(5.) Traditionally, no jury in Admiralty. [328 U.S. 1 allows seaman to sue his ~~ser~~ employer] But, now by majority juries upon express demand. 28 U.S.C. 1873 allows this in K or tort cases only if either party demands it. *199 F.2d 457 held that action for maintenance and cure is not a matter of K or tort w/in §1873, thus no jury if brought on "admiralty side."

No right to jury in action for maintenance and cure.

199 457

Romero ~~Act~~ Case

(p. 122)

Romero v. International Terminal Operating Co. (1959)

Jones Act gave seamen right of action under F.E.L.A. Thus, this Act authorized an action at law for qualified

seamen.

P's second claim was under gen. maritime law for unseaworthiness of ship.

P's third claim was for maintenance and cure under traditional maritime law.

P's fourth claim was for tort.

The claim against the Spanish ship owner was dismissed for lack of div. of cit.

The claims against the three American corps.

(Issue) - whether the P's claim based upon the gen. maritime law is a claim based upon §1331 (fed. question juris - "arising under"). If so, P could have jury trial on law side. If not, no jury trial under Admiralty (exception of §1873 not applicable here).

Held, no. But, the P's Jones Act claims did raise fed. juris. as a case or cause arising under a fed. law. The mere

assertion of those claims
gave fed. dist. ct. juris.

The dist. ct. had juris. to
deter. ~~whether~~ the P's claims
under gen. maritime law
~~to the~~ other claims PENDANT
to the former wh. did satis-
fy fed. question juris.

Thus, the claims
under Gen. Maritime
law did not arise
under §1331.

IN REM ACTIONS (ADMIRALTY)

State cts. are denied
juris. over any actions
in admiralty in rem
(e.g., against the
ship 'per se'). Dist. Cts. have
exclusive juris. over these in rem actions.

Thus, the allegation that
admiralty law was
a "law of the U.S." w/in the
meaning of §1331, entitling
the P to a trial by jury
on the "Law side", was
rejected by Romero case.

If P begins action under
State Ct. juris. under
"saving to Suitsors" clause
of §1333, D may not remove.
The whole policy would
otherwise be defeated.

No
REMOVAL
under
"Saving to Suitsors"

In Personam Actions (Maritime)
317 U.S. 239 - Actions in
personam v. owners
of ships = concurrent
juris. between fed.
and state cts.

A div. of cit. and
 juris. abt. exist in
 in personam admiralty
 cases, the case will
be deter. on maritime
law, whether brought
 in state ct. or in "law"
 or Admiralty side of
 fed. ct.

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Rule

Romero case extended
 the doctrine of the
Hurn case: fed. juris.
may attach pendant to
a state claim (PENDANT
JURISDICTION THEORY). But,
 this applies only on there
 are alternative grounds
 of remedy, and one there-
 of may be a state claim.

Maintenance and cure are
substantially quasi-Kual.

Textile Workers Union of America v. Lincoln Mills of Ala. (p. 140)

JUDICIAL INVENTIVENESS

DOCTRINE arose herefrom.

Union seeking sp. perf. of collective bargaining agreements. Based on Taft-Hartley Act.

Dist. Ct. said it had fed. question juris.

Ct. of Appeals said the Dist. Ct. had juris. to entertain the suit, but no juris. to grant the relief sought.

U.S. Sup. Ct. reversed Ct. of Appeals, Douglas, J. speaking. Sec. 301 of the T-H Act gave feds.

power over these labor Rs and said Douglas, power to enforce them through a body of law which the feds. could develop to effectuate the policies behind the labor legislation.

This case expanded the PROTECTIVE JURISDICTION THEORY. Fed. C.L. is to govern actions under §301 of T-H Act.

Congress may enact a statute giving fed. juris. to feds. over labor Rs.

But, to try to do this over

ALL Ks, that would be an abuse of art. IV. But, on Congress has the power to, and does, regulate a particular phase of Ks, the enactment of juris. of fed. cts. over those Ks will be upheld.

*Actions
by
International
Agencies*

Any action brought by any specialized agency of any international organization (to which U.S.A. is a party or member) is an action arising under.

Protective Juris Theory designed to protect the power of Congress in its regulation of matters over which Congress has regulatory powers. — This Theory has not been adopted by the majority of the U.S. Sup. Ct.

** SUMMARY OF CHAP. II **

There are two main tests of arising under:
1. Was the c/a created by fed. law (See Holmes, J.)

in Amer. Well Works Case,
p. 113). Here, the rigid plead-
ing rule is that the
fed. nature of the P's
claim must appear
in P's complaint well
pleaded.

- (2) Does the case turn
upon a question of
the interpretation of fed.
const., laws or treaties?
— Most often applied
on appeal; thus,
the above pleading
rule is not ~~applicable~~
applicable on appeal
(Ct. of Appeals, U.S.
Sup. Ct.).

53 Col. L.R. 157 at
165 + 168.

If a case meets either
one of the tests, it
qualifies as one arising
under.

BASIC TEST

"A substantial claim
arising under fed. law"
is the basic test in the
last analysis. See 53 Colam.
L.R. 157 at 165 and 168.

Assign. Div. of Cit.

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* (Chap. III) DIVERSITY OF CITIZENSHIP *

Must first look at the judiciary clause of the Const. (Art. III, Sec. 2) and the controlling statutes: 28 U.S.C.A. §1332; 28 U.S.C.A. §1359.

Rule of Law

If div. exists at beginning of suit, subsequent destruction of div. will not oust the Ct. of juris.

Effect of Joinder of Parties

If there be a joinder of a party, necessary but not indispensable, who would tend to destroy div., div. will be unaffected. But, if an indispensable party is joined and that party destroys div., the Ct. is ousted of juris based on div. of citizenship.

Hammerstein v. Lye (p. 156)

State citizenship in div. of cit. cases depends on:

- (1) Citizenship in U.S.
- (2) Domicile in a state.

Domicile requires:

- (1) Physical presence in state
- (2) Intent to remain in -
definitely.

One can be a U.S. citizen w/o being a citizen of a state; but, the converse is not true.

Thus, it is impossible for a non-U.S. citizen to be a citizen for div. of cit. purposes.

ALIENS

Whether an alien can sue in state courts depends on the laws of the various states.

(N.C. Law)

65 N.C. 555 - Alien enemy cannot sue but can be sued.

G.S. 64-1; 197 N.C. 234 - friendly aliens, resident or non-resident, are deemed citizens of another state for div. of cit. purposes. Thus, an alien living in N.C. is not a citizen of N.C. because he is not a U.S. citizen. But, friendly aliens can sue and be sued.

110 (SKIPPED)

Rule

An alien cannot sue another alien in a fed. ct. if they are, i.e., aliens on both sides, no fed. juris., including multiple party suits, unless they are nominal party aliens on both sides or only one i.e., if the aliens ^{on both sides} are indispensable parties, no fed. juris.

Rule

Foreign Countries

Foreign country can sue citizen of U.S. But, a U.S. citizen cannot sue a foreign country w/o its consent. (See Texas case re Monaco, early in this course.)

Sun Printing & Publishing Co. v. Edwards (p. 159)
 P made mistake of alleging in his complaint that he was a "resident of ... Delaware." P should have alleged that he was a citizen of Delaware.

In div. of cit. cases, the trial court and all fed. cts. can look to all papers & pleadings to find whether div. exists. But, in

fed. question cases, the fed. dist. ct. is confined to the allegations of the complaint.

Rule: stat. of juris. in complaint

An allegation of residence is not synonymous w/ citizenship.

Rule: same

An allegation of domicile is not synonymous w/ an allegation of citizenship.

ALIENS

An alien and a citizen of a state may be on the same side of a case. Sec. 1332. 209.
A (N.Y.) v. B (Calif.) + C (Japan);
A (N.Y.) + B (Japan) v. C (Calif.).

On parties on both sides are aliens, no fed. juris. under sec. 1332. (But, it may be fed. question juris.)

Assign. ① 25 pages.
 ② What does "realignment of parties" mean?

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DOCTRINE OF REALIGNMENT-

The ct. will scrutinize the case to determine whether there really is diversity of citizenship and in order to do so

See City of Indianapolis
v. Chase Nat'l. Bank,
p. 193 of cbk. for
doctrine of realignment.

will disregard the position in which the P has placed the parties; and if it determines that a party who should have been a P was placed as a D, or vice versa, the court will rearrange the parties, and if after such rearrangements there is no div. of cit. (D/C), the cause will be dismissed for want of jurisdiction.

Rule:
Citizenship

Thus, for D/C purposes, citizenship depends on domicile in a state and U.S. citizenship.

Amendment
of
Defective
Allegation
of
Jurisdiction

Defective allegations of ~~citizenship~~ jurisdiction may be corrected in terms in trial or appellate ct. by amendment. 28 U.S.C.A. 1653.

213 F.2d 446
Burden of
Proof of
Jurisdiction

If D challenges juris. of ct., burden of proving juris. is on the P, the one invoking the juris. of the ct. 213 F.2d 446, Stein v. Moore. True even if D files a counterclaim or cross claim.

Question of juris. may be raised:

- (1) by answer
- (2) by motion

(3) by the ct. ex mero motu.

Morris v. Gilmer (p. 162)

Initial litigation in state ct. of Ala. P (Ala.) and D (Ala.) now in fed. ct., but P has changed his residence to Tenn.

Here, P moved to Tenn solely to create diversity of cit. but did not have the intent to remain in Tenn. Thus, no fed. juris.

Held, the motive is not the crucial point, intent is the sine qua non.

Rule:
Motive
v.
Intent

Thus, "if the new citizenship is really and truly acquired, his right to sue is a legitimate, constitutional and legal consequence, not to be impeached by the motive of his removal." See 116 F.2d 871; Grady v. Irvine, 254 F.2d 224 (4th circuit).

Re joinder of indispensable parties, see 134 A.L.R. 335.

Strawbridge v. Curtiss

p. 165

Rule of Law

It must be complete diversity of citizenship. Thus, if 4 Ps from Mass., and 3 Ds from Mass. and 1 D from Vt., no D/C. (But see p. 123, *infra*.)

(p. 166)

Marshall v. Baltimore & Ohio Railroad Co.

CORPORATIONS

Conclusive
Presumption
of Citizenship
in State of
Incorporation

This case ^{did not} hold that a corp. is a citizen, within the meaning of D/C, of the state of incorporation, ~~but~~ that "the presumption arising from the habitat of a corp. in the place of its creation being conclusive as to the residence ~~of~~ or citizenship of those who use the corp. name and exercise the faculties conferred by it."

Thus, a fiction was used to reach a result that paid homage to stare decisis while making it possible for Ps to sue corps. on basis of D/C. The real effect of the conclusive presumption of citizenship of the corp. members of the corporate state, is that a corp. is a citizen of the state of incorp.

See Fed. Form 2 (p. 101 F.R.C.P. pamphlet).

Shareholders

196 U.S. 579 - shareholders may sue corp. if they ~~are~~ are citizens of a state other than the state of incorp.

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Letson case (1844) had held that a corp. would be deemed a citizen of the state of incorp., and could be sued and sue as a citizen of that state.

Ten years later came the Marshall case wh re-examined Letson case and latched onto the fiction afore-mentioned.

* CORPS. *

Citizenship of Corporations

After 1958 amendment to §1332, a corp. is a citizen of the state of incorp. and of the state of its principal place of business.

PRINCIPAL PLACE OF BUSINESS

Scott Typewriter Co. v. Underwood Corp., 170 F. Supp. 862 (1959); Kelly v. U.S. Steel Corp., 284 F. 2d 850 at 853 (1960, 3d Cir.) = definition of "principal place of biz."

173 F. Supp. 953 (1959) - "principal place of biz" will be defined as the same phrase is defined in the Bankruptcy Act.

Factors considered by cts (to decide p.p.b.)

- ① Character of corp.
- ② Purposes " " "
- ③ Biz engaged in.
- ④ Citus of corp.

Two tests have developed:

① "Home Office" Test - the p.p. of b. = The "nerve center" of the corp. Scott Typewriter case.

② "Bulk of activities" test - p.p. of b. = place on the corp. carriers on the bulk of its activities regardless of the location of the home office.

hypo:

P(N.C.) v. D (incorp. in Va., p.p. of b. in N.C.) = No Div. of cit. See Duck case, 275 F.2d 292 (60).

Buck
275 F.2d 292 (1960)

Corp. incorp. in Dist. of Colum. is deemed a "citizen of a state" in meaning of §1332, and that "state" would be D.C.
- Same for territories and Common-

wealth of Puerto Rico.

Corp. chartered in foreign ~~corp~~ country (106 U.S. 118 [1882]; 170 U.S. 100) is a citizen of that foreign country.

Multistate Corps. —

On a corp. is actually incorp. in two or more states. (e.g., Railroads.) Not to be confused w/ "licensing" of corp. to do biz in a state (called Domestication of a foreign corp.) 176 F. Supp. 445 (1959)

⊗ Before 1958 Amend —

① hypo: P (State A) v. D corp. (incorp. in States A & B) in State C: Y is NO D/C.

② hypo: Same, but suit in State B. D-corp. would be deemed a citizen of the forum state only if suit were brought in such a state as D-corp. was incorp. in. Thus, D/C here.

③ hypo: Same, but suit in State A. Split of author. in fed. cts. on this.

Citizenship of Multistate Corporations

* After 1958 Amendment —
Under hypo no. 2, or any
of the hypotheses, would be
no liberality. The D-
Corp. would be a citizen
of each and every state of
incorp. and of the state in
it has its principal
place of biz. Tacowski v.
McCloskey & Co. (1958), p. 171 cot.

Municipal Corps. are
deemed citizens of state
of organization. See 74 U.S.
118; 296 U.S. 268; 120 F.2d 850.

State commissions are not:
see 272 F.2d 337.

States are not "citizens"
for D/C purposes. 155
U.S. 482; 194 U.S. 48; 278 F.2d 194.

Pleading Capacity governed mostly by
F.R.C.P. Rule 9: no allegation required.

See Form 2 (F.R.C.P.) carefully.

Appellation — (complaints)

1. Fed. Cts
" A.B. Co., plaintiff
vs.
C.D. Co., defendant "

74 U.S. 118
296 U.S. 268
120 F.2d 850

272 F.2d 337 - commission

155 U.S. 482 - state
194 U.S. 48
278 U.S. 194

② N.C.

"A.B. Co., a corp.
Plaintiff

vs.

C.D. Co., a corp.
Defendant"* UNINCORPORATED ASSOCIATIONS *

Unincorp. associations are not "citizens" within meaning of §1332. Thus, the corp. doctrine of Marshall case stops at corps.

Capacity

In a fed. question case, the unincorp. assoc. ~~#~~ may be sued in fed. Ct. as an entity and may sue the same. Rule 17(b) governs.

Capacity to sue governed by fed. rules. But, Rule 17(b) says that in the case of D/C juris., the law of the forum state re capacity will govern. Thus, first question would be sueability. If, under the state law, the ~~assn.~~ assn. can be sued or sue, then there must be complete D/C under Strawbridge case (i.e., all associates must be considered).

One way to circumvent this would be to bring a class action and only the

citizenship of the class representatives would be considered.

General Rule

Russell v. Central Labor Union, p. 177 ckt., held "...a volun. association is suable in the U.S. Cts., but no legal entity, though suable, may invoke the juris. of the ct upon the ground of diverse cit., unless it appears that the individual members comprising this entity are citizens of states other than those of the opposing parties;*

*except that corps.

created by statute of the various states, and of such character that the individual stockholders of have only participating interests in capital stock, and have no legal title to the property of the corp., are to be treated as citizens."

N.C. —

Unincorp. assocns. are suable and may sue in assn. name. But, ptnrshps. are suable only in names of ptnrs, while ptnrs. may bring suit, however, in ptnrshp. name. — However, the rule of Russell case would still apply in any case.

On P cannot get D/c v. an unincorp. assn in fed. ct., may sue in state ct. v.

the assn. as a legal entity and all members would be bound thereby.

CLASS ACTIONS

Under fed. law, 3 types of Class actions:

① True class action - on the rights of all members of the class are joint, similar or secondary. e.g., stockholders class action, heirs, etc. All are bound by judg.

② Hybrid class actions - rights of members are several but specific prop. commonly affected. e.g., creditors suit against assets of debtor. Failure to join means loss of right.

③ Spurious Class Action - all claims may be several and not affecting specific property, but they are common questions of fact or law. If damages are sought in various sums, a party not joined, w/ a similar claim, will not be foreclosed from later bringing his own suit. - A mode of permissive joinder.

Salmon Trust Co. v. Mfgs. Finance Co. (p. 181)

Provides exception to Strawbridge case.

Rule:
Exception to
Strawbridge
Doctrine

Held, on the question of jurisdiction, an unnecessary and dispensable party will not be considered.

The Mass. party here was a mere stakeholder w/ no real interest in the controversy. Thus, not an indispensable party.

Here, P (Mass. corp.) v. D-1 (Delaware) and D-2 (Mass.). P and D-1 claim to be separate assignees of a fund held by D-2. "Here, no cfa exists against the International Trust Co. (D-2) because it has not been determined which of the other parties is entitled to pymt."

Rice v. Houston (p. 182)

Rule:
Real Party in
Interest
(Citizenship of)
REPRESENTATIVE
PARTIES

For D/C purposes, the ct. will look to the dominus litis, the citizenship of the real party in interest. Thus, the cit. of an executor will control, not the cit. of the testator. Same for admrs. "They

are the real parties in interest, and succeed to all the rights of the testator or intestate by operation of law."

Thus, a representative party, w/ at least a modicum of control over the litigation, will be deemed the real party in interest.

The cit. of the following reps. controls, not the party represented:

- ① Executors 185 F. Supp. 134
- ② Adms. 184 " 806
- ③ Conservators.
- ④ Guardians - 220 F.2d 325.
- ⑤ Trustees
- ⑥ Receivers

General
Guardians

The gen. guardian of an infant controls when, under the state law under wh. the guardian was appointed, he is considered as a fiduciary.

The cit. of the infant represented by a NEXT FRIEND will control for D/c. The real party in interest.

= the infant. The next friend would be merely a nominal or formal party. Same for guardian ad litem.

Thus, gen rule is that the cit. of the real party in interest ~~will~~ will be controlling.

General
Issue

Thus, re reps., the issue will be who the real party in interest is.

Parties (fed.):

- ① Indispensable
- ② Necessary (conditionally)
- ③ Proper
- ④ Nominal or formal.

The only reason you may fail to join a necessary party will be on D/C would be destroyed. e.g., a joint of-figor would = necessary party. Binder here not discretionary.

Binder of proper parties purely discretionary.

An indispensable party = one who would be necessarily affected by the judg., i.e., no judg. could be rendered w/o affecting

that party. Must be joined.
Failure to join = ~~must~~
~~joined of parties~~ "failure
to join an indispensable
party", a ground for
dismissal.

Interpleader

GEN. RULE

See 308 U.S. 66
(1939)

Governed by:

28 USCA 1335, 1397 + 2361;
Rule 22 of F.R.C.P.

Interpleader - (Fed. Interpl. Act)

There must be diversity
between the adverse
claimants under
Fed. Interpleader Act
(I must deposit fund in court
give bond, and I must be
at least \$500 juris. amt.,
and process may run
anywhere in U.S.), and
the cit. of a stake-
holder is immaterial.
The Act allows claim-
ant to enjoin any
other similar actions,
and suit may be
brought on any
of the parties lives.

Equitable Interpleader (§1332; F.R. C.P. 22 (1)) -

If claimants are both
(P and D) of same state, but
the stakeholder is of
a different state, I will
still be D/P under eq. inter-
pleader. - juris. amt = \$10,000.

1332
F.R.
22 (1)

EXCEPTION

POLICY AGAINST
REALIGNMENT TO
CREATE D/C:

Assign. - Read + write
on juris. amt. and
removal juris.

See Burns, on
Fed. Cts.

* Realignment of Parties (see p. 112
supra) may be done on
the effect of same will
be to preserve or destroy D/C.
— On the effect of realignment
will be to preserve D/C, the
cts. will be hesitant to re-
align ~~due~~ due to overriding
policy of disfavoring D/C
juris.

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(CHAP. IV)

JURISDICTIONAL AMOUNT (J/A)

28 U.S.C. § 1332. J/A required
also under § 1331 under
fed. question actions. Thus,
J/A important only under 1331 + 1332.

No J/A:

- ① Special fed. question cases
(e.g., § 1336).
- ② Personal rights cases
involving no pecuniary
measurable amount.
- ③ (Tucker Act) K claims v.
U.S. govt. under \$10,000.
- ④ Tax Refund suits v. U.S. govt.

Methods of raising objection to J/A:

- ① Motion

- ② Responsive pleading
- ③ On appeal by either party
- ④ On appeal by court ex mero motu.

"P's Viewpoint" Test

When an action depends on D/C and J/A for fed. juris., the amt. that the P asserts in good faith to be in controversy is the J/A. You look at it from the P's viewpoint.

"Good faith" = P must have a reas. expectation of recovery of an amount at least as large as the J/A, rather than a merely specious, spurious claim designed to create the J/A.

Schenk v. Moline, Milburn & Hoddart Co. (p. 209)

General Rule

It is the value P places on his claim ^{that} is controlling and not the amt. ultimately awarded. The merits of the c/a have no effect.

Vance v. W.A. Vandercook Co. (p. 212)

Ordinarily, the P's good faith claim will control.

EXCEPTION

But, on a rule of law limits the amt. recoverable, the type of action

will be considered to deter. if it comes w/in the scope of that rule of law.

"Legal
Certainty"
Test

If, before a decision on the merits, the evid. discloses as a legal certainty that I could never have reas. expect-
ed to recover damages. = to the J/A, the Ct. will dismiss.

Caveat!

Wade

Sometimes difficult ~~to~~ to distinguish between J/A question and a question on the merits.

Wade v. Rogers

(p. 214)

Indicates reluctance of courts to delve into J/A on the merits are involved.

"Indeed, since the issue of J/A in this case is so closely tied to the merits of the cause, insistence upon evid. w/ respect to must be tld. lest, under the guise of determining juris., the merits of the controversy between the parties be summarily decided w/o the ord. incidents of a trial, including the right to a jury."

(Read!)

Definition

④ Actions for Money Damages -

"Amt. in controversy" - the amt. that (See 303 U.S. 283) P in good faith claims unless it appears to a legal certainty that the P could not have recovered the amt. claimed.

Liquidated Damages -

On rule of law limits the amt. of liquidated damages, that controls regardless of P's demands. See 245 F.2d 171.

Unliquidated Damages -

Amt. P claims in good faith will control. See 1 Wallace 337, Lee v. Watson.

Punitive (or, Exemplary) Damages -

On recoverable, these may be considered in deter. the T/A. See Bell v. Preferred Life Assur. Society, 320 U.S. 238, 64 S.Ct. 5 (1943)

Tests of "Amt. in controversy"

① P's Viewpoint Rule

- majority rule.

② D's Viewpoint Rule

- minority rule. See Ronzio case, (p. 222.)

Ronzio v. Denver & R.G.W. R.R. (p. 222)
Proposes "D's Viewpoint Test"
as an alternative.

Many cts. look at the
pecuniary affects to
either party, but the
prevailing view is P's View-
point test

Rule of
Law:
I/A

Collateral effect of judgment
in other cases will
NOT be considered in deter-
mining I/A. See Healy v. Ratta,
p. 239 ckt. You look only at
the amt. in controversy
in the instant suit.

Quere:

When will I/A be determined?

— If I/A amt. exists
when juris. is invoked,
any subsequent events
will not affect it. See
St. Paul Mercury Indemnity Co. v. Red Cab Co., 303 U.S. 283.

St. Paul Mercury Indem. Co. v. Red Cab Co.
303 U.S. 283

Rule:
I/A in limine

Inference:

But, you can always
allege that it never
existed. I/A. Complaint can be
amended.

Requirements
for
Dismissal

Dismissal will be granted
only on it appears to a
legal certainty that P
could not ^{have reasonably expected} to recover the
amt. necessary for I/A.

see 255 Fed. 958
Rule of Pleading

The J/A must be well pleaded. See form 2.

The fact that the amt. ultimately recovered is not as much as the J/A will have no retroactive effect to oust the Ct. of juris.

Effect of
Defense
to P's Action:
J/A

Where fact that D has defense and pleads same will have no bearing on J/A. But, if a defense appears on the face of P's complaint, this will have evidentiary value in deciding good faith of P.

Removal

If P begins action in state Ct. claiming amt. exceeding J/A, and D removes to fed. Ct., the fact that P subsequently amends his complaint to an amt. less than J/A will not oust the fed. Ct. of juris.

§1332 (as amended, 1958) applies only to verdicts and judgments, not any settlement (re imposition of costs).

28 U.S.C. A §1332(b) If P actually recovers less than J/A, Ct. may impose on P

the costs, and may look to see whether P claimed T/A in good faith in the first place.

B/P on
Jurisdiction

The party invoking a court's jurisdiction has the B/P on the jurisdiction.

Deter. of Juris. -
No right to jury

On the jurisdictional issue, one not entitled to jury trial either on constitutional or statutory grounds. 307 U.S. 66.

Mode of determining whether T/A exists left to discretion of trial judge.

See 330 U.S. 731.

307 U.S. 66

330 U.S. 731

Actions to recover sums due in installments — only value of amt. presently being litigated may be counted to determine existence of T/A.

Workmen's Compensation — See Horton v. Liberty Mutual Ins. Co., p. 223 (decision's holding not clear), which is the leading case in this area. (Real!)

Real Property —

Value of real property controls T/A. 8 Cranch 229 (1814). This old rule is strictly followed in all

actions re title of the land.
 But, if title is not
in question, the J/A =
the value of the right to
poss. + any special (16 F.
Supp. 117) dams. pleaded.

51 F.2d 337 -
injunction here, but
total value of the land
in issue because title
was at stake.

Gen. Rule

* Injunctions *
 Difficult area. Basic
rule = P's Viewpoint Rule.

Action to Remove Cloud on Title

Ant. in controversy = difference
in value between land w/
clear title and land
w/ cloud on title.

Policy
Rule

On state regulations are
in question, the policy
favours amicable relations
and the fed. cts. take a
narrow view of what
ant. is in controversy.

Miss. + Mo. R.R. Co. v. Ward

Test:
Injunction
Cases

Ch. will look at the (p. 218) value of the
P is seeking to achieve by
the injunction to deter ant
in controversy. But, what is
"the value of the object"?

Was the object the right to be free from the obstruction of the bridge? Hand, J., said "yes" in a later case.

Glenwood etc.

v. Mutual etc.

(p. 219)

Value of P's right to operate his bus w/o D's interference = amt. in controversy.

See 210 F.2d #37 - P sought to enjoin D from dumping debris on P's land + \$1000 damages. Held, amt. in controversy = value of the right to have land free from debris + \$1000.

Thus, the scope of the controversy will give some clue as to the value of the right sought to be protected or enforced by injunction.

Trademark -

Test = value of the T.M.

Past Dams.

95 Fed. 199 - Ct. will count past dams.

16 F.2d 92 -

Prospective Dams.

159 Fed.

Prospective dams. if injunction not granted will be counted.
159 Fed. 662 (4th Cir. 1908), 212 U.S. 571 [certiorari den.] - Ct. will count past and prospective damages.

Preferred
Test:
Injunctions

The preferred approach =
the pecuniary damage the P is likely to sustain if the acts of D sought to be enjoined are allowed to go on unabated.

Interest

On the controversy or dispute is about interest on money, such interest is counted in deter. the ~~J/A~~ amt. in controversy.

Thus, "interest" w/in 1332 means interest qua interest.

* Aggregate Claims *

A P may aggregate all claims against D wh can be joined under F.R.C.P., rule 18, and J/A will be satis. if all together exceed \$10,000.

Not necessary that each one satisfy J/A.

Assignment
of
Claims

On one of the claims was assigned (298 U.S. 179, Bullard v. Cisco), okay so long as it was not a collusive assignment to create juris.

Consolidation of Claims -

① One P. v. several Ds -

If Ds' liab. = joint, the value in controversy is the full

206 514

amt. of all the claims. See
206 F.2d 514. Same if Ds
 are associated only by con-
 spiracy wh caused dam.
 to P, the amt. in contro-
 versy = aggregate amt.

If the claims are several,
 each claim must meet
 the test.

(2) Several Ps v. one D -

If the claims of Ps are
several and distinct,
 no aggregation. Each claim
 must stand on its own feet.

If the Ps join to seek
 the same, indivisible
 claim, e.g., injunctive, the
 claims may be aggregated.

joint owners of real
prop. seeking to quiet
title = one claim. i.e.,
may be aggregated.

On one wrongful act by
 D - tortfeasor causes injury
 to several Ps, the claims
 of Ps are several & distinct.
266 F.2d 63 (5th Cir., 1959).

(3) Class action -

(a) True class action by
or v. the class - claims
 may be aggregated.

(b) Hybrid class action -
 aggregation of claims not allowed.

1954 -
 266 F.2d 63

However, if P v. two or
 more joint tortfeasors,
 P may prosecute
 his claims jointly or
 severally.

Compulsory Counterclaims -

If there be juris. over main claim of P, γ need be no independent juris. over the C.C. because it is merely ancillary to the main claim.

Permissive Counterclaims -

Must sustain juris.
w/o consideration of the main claim. If γ be (20 F.R.D. 563, Holiberton case) several per. C.C., they may be aggregated.

Per. C.C. is not auxiliary to the main claim. It is independent.

Cross-Claims - (e.g., D v D)

Deemed to be ancillary to main claim and need not have independent juris. grounds.

See 1441 (c) - (re pendant juris.) "separate and independent claims."

Read footnotes on J/A carefully!!
May see these again!!

Assign. - 1. Removal.

- a. 1441 (c) sep.
- b. Finn case, p. 263.

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* (Chap. V) REMOVAL JURIS. AND PROCEDURE *

28 U.S.C. 1441

316 U.S. 448 - orig.

hypo:
This applies to
diversity cases only.

POLICY
BEHIND
REMOVAL

See Gen. Investment Co.
case, p. 255. **RULE**

Removal covers only re-
moval from state trial
court to fed. dist. ct.
Concerns only orig.
juris. of fed ct, not
appellate juris. 316 U.S.
448.

P (N.Y.) v. D (N.C.) in N.C. -
y is diversity, but
D could not remove
because one of the
main reasons for
removal is that a
D should be free from
local prejudice, and
that danger would not
exist here. §1441(b)

Removal juris. is deriva-
tive. i.e., the state ct.
must have had juris.
over the matter. So,
fed. removal juris. is
derivative from state
juris. Thus, an action
under the Fed. Torts
Claims Act could not
be removed to fed. ct.
because state ct would
not have juris. over
the action. That case

RULE

Source of Determination of Removal Jurisdiction

would have to be begun in the fed. ~~dist.~~ ct.

Also, to remove to a fed. ct. presupposes that the fed. ct. would have had jurisd. over the matter had it been begun in the first place.

So, removal jurisd. will be deter. by looking at the pleadings face at the time the removal petition is filed. And, once found, removal will not be defeated by subsequent amendment of the pleadings.

Met. Casualty Ins. v. Stevens - Right to remove may be lost by: (waiver)

312 U.S. 653

- ① failing to petition in apt time
- ② asserting a non-compulsory counterclaim in the state ct. before petitioning for removal.

Venue here does not depend upon gen. venue statute.

Venue upon removal is governed by 1441. Venue exists in a fed. ct. in the district where the state ct. action is pending. And, within that fed. dist.,

removal must be made to the same division's fed. ct. (fed. districts have divisions.)

No Waiver

On a state ct disregards the removal petition, D would not waive his removal right by contesting the action in the state court.

Once the removal petition is filed, the state court no longer has jurisdiction.

Gen. Rule:
Discretion

It is always discretionary w/ the fed. ct. whether it will hear a non-fed. case involving state law.

Ant. in controversy cannot be supplied by a D's permissive counter-claim. 313 U.S. 100, Sheets v. Shamrock Oil and Gas Co.
Ant. in controversy must satisfy I/A otherwise.

On the D's counter-claim is compulsory under state law, the fed. cts are split. Out of 7 cases dealing w/ this, 4 cases

denied removal. The other 3 (N.C. cases) allowed removal here. See 95 F. Supp. 437 (1951); 144 F. Supp. 658 (1956) (both out of middle list of N. Carolina). — The 3 cases about above are deemed the better view.

If D asserts cross-claim in excess of \$10,000 in an action which does not involve \$10,000 in as between P and D, no removal.

204 F.S. 38

Caveat!

204 F. Supp. 38 (E.D. Ky.) — Questionable result because the cross-claim is dependent upon the main claim.

Fed. Question cases —

existence of fed. question on removal depends upon the P's complaint well pleaded. 160 F. Supp. 345 (M.D. N.C., 1958).

(160 F.S.
345
1958)

Diversity Cases —

Citizenship of indisp. parties will be deter. by alignment per their true interests.

"Separate + Independent causes of action"

General Issue

APP

Under 1441(c), the question is raised whether you can remove to a fed. ct. on one of your claims could have been brought in fed. ct. initially, but another claim was not removable. — This statute says yes.

Specific Issue

The question is really what = "separate and independent claims"?

Statute -
28 USC § 1441(c)

1441(c) — "Whenever a separate and independent claim or c/a, which would be removable if sued upon alone, is joined with one or more otherwise non-removable claims or c/a, the entire case may be removed and the dist. ct. may deter. ~~the~~ all issues therein, or, in its discretion, may remand all matters not otherwise within its orig. juris."

1441(c) applies in fed. question as well as diversity cases.

Ct. of justice of peace
 = "state ct." for purposes
 of removal.

Admin. Tribunal
 not state ct.; but this
 decision is up to fed. ct.

Limitation

There can be removal only from state
of orig. juris., not
appellate juris.

See 184 F.2d 714.

184 F.2d 714

Civil rights cases
are removable. §1443.

Some non-removable
actions:

- ① Civil actions on dist.
cts. (fed.) have exclusive
orig. juris.
- ② 45 U.S.C. 51-60; 28 U.S.C.
1445(a) - actions under
F.E.L.A.
- ③ Actions under Merchant
Marine Act (Jones Act)
- ④ Civil action under
W.C. laws of the
state. May be begun in fed. ct. however.
- ⑤ Actions involving loss
of goods shipped by
Common Carrier under
over \$3000 amt. in contro-
versy exists. 49 U.S.C. 20.

49 U.S.C. 20

116 U.S. 408
179 U.S. 335

On 4 or multiple Ds, all Ds entitled to remove must be joined in the petition for removal. Exception: on some have not been served w/ process yet.

Pullman Co. v. Jenkins,
305 U.S. 534

On P joins resident defend-
ant w/ non-resident D,
non-resident D may
remove if he can
show that P joined the
resident D in bad faith.

P can never remove.
Whether a party is a for
a D will be deter. by
fed. law. 313 U.S. 100 (name
case).

* Read American Fire & Cas. Co.
v. Finn, p. 263 - NAME CASE.

1447(d)
311 U.S. 199 (1940)

Order ~~den~~ granting motion
to remand not re-
viewable.

Read on VENUE (but not on
forum). — Venue may be
waived. Exists on all
Ds or all to reside.

If Ds reside in dif-
ferent states, may bring in

one of D_s' states. But, on
if are several P_s ,
~~then~~ cannot get
venue in any one
of the P_s' states.

United States v. Borden Co. et al.

308 U.S. 188 (1934)

Re review under Criminal Appeals Act (18 U.S.C. 3731)
(at p. 193)

The established principles governing our review are these: (1) Appeal does not lie from a judgment which rests on the mere deficiencies of the indictment as a pleading, as distinguished from a construction of the statute which underlies the indictment. (2) Nor will an appeal lie in a case where the Dist. Ct. has considered the construction of the statute but has also rested its decision upon the independent ground of a defect in pleading which is not subject to our examination. In that case we cannot disturb the judgment and the question of construction becomes abstract. (3) This Court must accept the construction given to the indictment by the Dist. Ct. as that is a matter we are not authorized to review. (4) When the Dist. Ct. holds that the indictment, not merely because of some deficiency in pleading but w^{rt} respect to the substance of the charge, does not allege a violation of the statute upon which the indictment is founded, that is necessarily a construction of that statute. (5) When the Dist. Ct. has rested its decision upon the construction of the underlying statute this Court is not

at liberty to go beyond the question of the correctness of that construction and consider other objections to the indictment. The Government's appeal does not open the whole case."

{ Rembert A. Gaddy (+ ELIZABETH)
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