DePaul Law Review

Volume 11
Issue 1 *Fall-Winter 1961*

Article 11

Courts - Federal Procedure - Federal Court Jurisdiction Obtained on Grounds That Defendant Has Claimed and Will Claim More than the Jurisdictional Amount - Horton v. Liberty Mut. Ins. Co., 367 U.S. 348 (1961)

DePaul College of Law

COURTS–FEDERAL PROCEDURE–FEDERAL COURT JURISDICTION OBTAINED ON GROUNDS THAT DEFENDANT HAS CLAIMED AND WILL CLAIM MORE THAN THE JURISDICTIONAL AMOUNT

Horton, petitioner in this cause, alleging that he was injured while employed, filed a claim before the Texas Industrial Accident Board against the respondent insurance company for $14,035 and was awarded $1,050. The day of the award, the insurance company filed a suit[1] in the United States District Court to set aside the board's $1,050 award. Jurisdiction was claimed on the grounds of diversity of citizenship and that the amount in controversy exceeded $10,000 because, the insurance company alleged, Horton "claims and will claim"[2] $14,035.[3] One week later Horton brought an action in a Texas State Court to set aside the $1,050 award and to recover $14,035. Horton then moved to dismiss respondent's federal court suit on the grounds that the court was without jurisdiction because the amount in controversy was $1,050 (the amount of the actual award by the Accident Board) and not the $14,035 which he had sought. Subject to the ruling on this motion, Horton filed a counterclaim in this federal court action for $14,035. The District Court held that only $1,050 was the amount in controversy and dismissed the insurance company's suit for want of jurisdiction.[4] The United States Court of Appeals reversed the decision[5] and after granting certiorari,[6] the Supreme Court of the United States affirmed the Court of Appeals' decision in holding that the District Court had jurisdiction, for the amount in controversy was $14,035. *Horton v. Liberty Mut. Ins. Co.*, 367 U.S. 348 (1961).

After deciding that federal and not state standards determine the amount in controversy,[7] and then recognizing that the purpose of recent congressional enactments was to reduce congestion in the federal courts,[8]

[1] The suit is permitted by TEXAS ANN. CIV. STAT. Arts. 8307 § 5 (Vernon 1959).

[2] Liberty Mutual's original complaint filed April 30, 1959 before the United States District Court for the Eastern District of Texas.

[3] 28 U.S.C. § 1332, 28 U.S.C.A. § 1332 (1958). For the district courts to have original jurisdiction the controversy must exceed the sum or value of $10,000.

[4] Brief for Petitioner, Horton v. Liberty Mut. Ins. Co., 367 U.S. 348 (1961).

[5] Liberty Mut. Ins. Co. v. Horton, 275 F.2d 148 (5th Cir. 1960).

[6] Horton v. Liberty Mut. Ins. Co., 364 U.S. 814 (1960).

[7] Shamrock Oil & Gas Corp. v. Sheets, 313 U.S. 100 (1941).

[8] The Congress enacted:

a) 28 U.S.C. § 1332, 28 U.S.C.A. § 1332 (1958); which reduces congestion by
1. Deeming corporations, citizens of the State where it has its principal place of business.
2. When plaintiff receives judgment for less than $10,000 the District Court may impose costs on the plaintiff.

b) 28 U.S.C. § 1445 (c), 28 U.S.C.A. 1445 (c) (1958) which prohibits the removal of Workmen's Compensation cases from state courts to District Courts.

the Court pointed out that 28 U.S.C. Sec. 1445 (c)(1958) provides that "a civil action in any state court arising under Workman's Compensation Laws of such state *may not be removed* to any District Court of the United States."[9] Since the Supreme Court of Texas interprets a suit to set aside an award of the Texas Industrial Accident Board as a trial de novo, the insurance company's suit in the federal district court is not a *removal* action, but an *original* action not mentioned by 28 U.S.C. Sec. 1445 (c), and thus not barred by that section. The dissent states that "the Court goes out of its way to defeat the Congressional intent"[10] in that the Court did not deny federal jurisdiction under 28 U.S.C. Sec. 1445 (c)[11] even though Congress in enacting the section was deliberately trying to relieve the federal courts of their heavy burden.[12] However, the statutory bar is to prohibit *removal actions only*, and clearly this was an *original action*. Certainly the majority of the Court is correct in not manipulating perfectly lucid language into what the Court thought Congress must have intended.

In determining whether or not the insurance company's federal suit was a removal action in violation of 28 U.S.C. Sec. 1445 (c), the Court said that the trial in the Federal District Court was a *trial de novo*. *Burstein v. Millikin Trust Co.*[13] defines *de novo* as "meaning 'fresh' or 'anew' . . . A *de novo* trial . . . is a trial had as if no action whatever had been instituted in the court below."[14] The Supreme Court, after stating that the suit in the Federal District Court was "wholly without reference to what may have been decided by the Board,"[15] and hence an original action not barred by 28 U.S.C. Sec. 1445 (c), concludes that $14,035 is the amount in controversy because it was the amount previously claimed before the Board. It appears inconsistent to treat the Board action as "no action whatever"[16] and not to recognize it when determining that the insurance company's action is an original suit and then to recognize the action before the Board when determining the amount in controversy.

The other factors that the Court considered instrumental in placing the amount in controversy at $14,035 are (1) Horton counterclaimed for

[9] 28 U.S.C. § 1445 (c), 28 U.S.C.A. § 1445 (c) (1958) (Emphasis added).

[10] Horton v. Liberty Mut. Ins. Co., 367 U.S. 348, 362 (1961) (dissenting opinion).

[11] Although the dissent carefully avoids specifically referring to 28 U.S.C. § 1445 (c), it was cognizant of the statute when making the statement, for the majority had made reference to it.

[12] *Supra*, note 8.

[13] 350 Ill. App. 462, 13 N.E.2d 339 (1953).

[14] *Id.* at 466, 113 N.E.2d at 341.

[15] Horton v. Liberty Mut. Ins. Co., 367 U.S. 348, 355 (1961).

[16] Burstein v. Milikan Trust Co., 350 Ill. App. 462, 466, 13 N.E.2d 339, 341 (1953).

$14,035; (2) there was no denial by Horton of the company's allegations that he would claim the jurisdictional amount; (3) Horton did not disclaim or surrender any part of his original claim as he counterclaimed for the full $14,035; and (4) Horton's claim in the State Court, filed one week after the insurance company's federal suit, was for $14,035. Since these factors all happened *after* the filing of the company's suit, the Supreme Court is relying on events occurring after the suit was filed in the District Court in order to establish that the averred $14,035 is in controversy. But events subsequent to the filing of an action should have no effect in determining federal jurisdiction,[17] for "[f]ederal jurisdiction depends on the facts at the time the suit is *commenced, and subsequent changes neither confer or divest it.* This is well settled as to diversity of citizenship."[18] "[J]urisdiction depends on the situation as it exists at the time the suit is brought and not on what happens thereafter."[19] The court states in *Barnes v. Parker*:[20]

> We had thought that it was now established beyond all debate that, in determining the amount in controversy in actions sought to be removed, the Court to which removal is sought determines the question solely by looking to the amount in good faith prayed for as *damnum* in the complaint . . . *regardless of subsequent events in the action* . . . amounts claimed by way of counterclaim could not be considered as increasing the amount of the required sum.[21]

In recognizing Horton's actions after the filing of the insurance company's suit, the Court has departed from the existing federal rule forbidding reliance on such acts for establishing jurisdiction.

The insurance company is not able to show on the face of its own pleadings that $14,035 is in controversy, except by conjecture and anticipating that the *petitioner* will *counterclaim* for $14,035. Similar cases have shown that the plaintiff cannot anticipate the defendant's answer to place the claim within federal jurisdiction.[22] An analysis of these deci-

[17] St. Paul Mercury Indem. Co. v. Red Cab Co., 303 U.S. 283 (1938); Division 525 Order of Ry. Conductors of America v. Gorman, 133 F. 2d 273 (8th Cir. 1943); National Sur. Corp. v. City of Excelsior Springs, 123 F. 2d 573 (8th Cir. 1941). "[A]nd though, as here, the plaintiff after removal, by stipulation, by affidavit, or by amendment of his pleadings, reduces the claim below the requisite amount, this does not deprive the district court of jurisdiction." *Id.* at 577; LeVinski v. Middlesex Baking Co., 92 F. 449 (5th Cir. 1899); Dobie, FEDERAL JURISDICTION AND PROCEDURE § 56 (1928) states that a counterclaim should play no part in determining the amount in controversy.

[18] Ford, Bacon & Davis, Inc. v. Volentine, 64 F. 2d 800, 801 (5th Cir. 1933) (Emphasis added); New Century Cas. Co. v. Chase, 39 F. Supp. 768 (S.D. W.Va. 1941).

[19] Mutual Life Ins. Co. v. Rose, 294 F. 122, 123 (6th Cir. 1923).

[20] 126 F. Supp. 649 (W.D. Mo. 1954).

[21] *Id.* at 651. (Emphasis added.)

[22] Taylor v. Anderson, 234 U.S. 74 (1914). The Court held that, "it rested with the defendants to select their ground of defense. . . ." *Id.* at 75; Taylor v. Smith, 167 F. 2d 797 (7th Cir. 1948).

sions suggests that the *defendant* and not the *plaintiff* could have acquired federal jurisdiction. In *Louisville & N. R.R. v. Mottley*,[23] Mottley was injured by the defendant railroad and in consideration for the promise to issue him free railroad passes for the rest of his life, he released the defendant of its liability for personal injuries. The railroad then refused to give the promised passes, and Mottley filed suit for specific performance pleading federal jurisdiction on the grounds that the railroad would raise the defense that a Congressional enactment prohibits the giving of free passes. Mottley claimed that the purpose of his suit was to determine if the enactments were in violation of the fifth amendment. The Court dismissed the action for want of jurisdiction holding that "[it] is not enough that the plaintiff alleges . . . that the defense is invalidated by some provision in the Constitution of the United States."[24] The Court continued:[25]

> It would be wholly unnecessary and improper in order to prove complainant's cause of action to go into any matter of defense which the defendants might possibly set up and then attempt to reply to such defense and thus, if possible, to show that a Federal question might or probably would arise in the course of the trial of the case. [This] is inconsistent with any known rule of pleading so far as we are aware, and is improper.[26]

In the case of *Joy v. City of St. Louis*[27] the plaintiff alleged in an ejectment action that the federal courts have jurisdiction over the controversy because certain acts of Congress and certain United States land patents regarding the land in controversy are disputed and contested by the parties. The Court held that it was without jurisdiction and inferred that only the defendant could put the Congressional Acts and Patents in controversy.

Although in *Horton* the Court states, "No matter which party brings it [the suit] into court, the controversy remains the same,"[28] the courts have established that there is a distinction between an ordinary controversy between two parties and the legal controversy required to obtain federal jurisdiction. The federal courts may or may not have jurisdiction *depending on who institutes the claim.* If the defendants, in the mentioned

[23] 211 U.S. 149 (1908). See also International Refugee Organization v. Republic Steamship Corp., 92 F. Supp. 674 (D. C. Md. 1950).

[24] *Id.* at 152.

[25] *Id.* at 153; quoting from Boston & M. Consol. Copper & Silver Mining Co. v. Montana Ore Purchasing Co., 188 U.S. 632, 638–39 (1903). The facts in the Boston case were that in the plaintiff's bill to quiet title of mining lands, he alleged he is owner of the property taken by the defendant and that the federal court jurisdiction is acquired over the complaint because the defendant will assert an invalid United States land patent as a defense. Held: that the court was without jurisdiction.

[26] Louisville & N. R.R. v. Mottley, 211 U.S. 149, 153 (1908).

[27] 201 U.S. 332 (1906).

[28] Horton v. Liberty Mut. Ins. Co., 307 U.S. 348, 354 (1961).

cases, rather than the plaintiffs, had commenced the federal action to litigate the disputes, the district court would have had jurisdiction; and although the converse has never been allowed, the Supreme Court has anomalously permitted the company to plead Horton's defense.

The only rule applied by the Court in determining the amount in controversy in the *Horton* case is that it is the amount in the complaint unless not claimed in "good faith." Good faith is determined, according to the Court, by the inability to establish as a legal certainty that the claim is really for less than the jurisdictional requirement. In support of the doctrine the Court cited *St. Paul Mercury Idem. Co. v. Red Cab Co.*[29] where the plaintiff alleged more than the jurisdictional amount in his pleadings and later attached an exhibit enumerating his injuries fixing an amount less than the jurisdictional requirements. The Court applied the legal certainty phrase and found that it was with jurisdiction for there is no "*evidence* that the petitioner [defendant] . . . had *reason to believe*, that the respondent's claim, whether well or ill founded in law of fact involves less than [the jurisdictional amount]."[30] The *St. Paul* case employs the legal certainty phrase to decide the factual question involving evidence of the plaintiff's good faith; yet in the *Horton* case there is no question of Liberty Mutual's veracity. In *National Sec. Corp. v. City of Excelsior Springs*[31] where the plaintiff claimed $3,200 and after commencing the action and then realizing that he was entitled to less than $3,000,[32] he signed a statement that he had erred; the court found that $3,200 was the amount in controversy as long as the initial claim *was not colored* and was in good faith.

These cases apply the "legal certainty" rule to a situation where the claim is for an *unliquidated amount*[33] and the court must determine if

[29] 303 U.S. 283 (1938).

[30] *Id.* at 296. (Emphasis added.)

[31] 123 F. 2d 573 (8th Cir. 1941).

[32] At the time the jurisdictional amount in diversity cases was $3,000.

[33] Colonial Oil Co. v. Vining, 237 F. 2d 913 (5th Cir. 1956); Olan Mills v. Enterprise Pub. Co., 210 F. 2d 895 (5th Cir. 1954) involves ascertaining of damages in a libel and slander action; Burks v. Texas Co., 211 F. 2d 443 (5th Cir. 1954). "This is also an action for *unliquidated damages*, where the amount in controversy is ordinarily the sum claimed by the plaintiff in good faith." *Id.* at 445. (Emphasis added.) Aetna Cas. & Sur. Co. v. Flowers, 330 U.S. 464 (1947). In a state where subsequent payments due after the suit is filed are considered a part of a single action, the court held that since it is not absolutely certain that the installment subsequently due will not equal the jurisdictional amount (death terminates defendant's liability), the court has jurisdiction over the controversy for there is not a legal certainty that the plaintiff cannot recover the jurisdictional minimum; Bell v. Preferred Life Assur. Socy., 320 U.S. 238 (1943). "Therefore even though petitioner is limited to actual damages of $1,000, as both courts held [District Court and Circuit Court of Appeals], the question remains whether it is apparent to a legal certainty from the compaint that he [plaintiff] could not recover, in addition, sufficient punitive damages [$2,000] to make up the requisite $3,000." *Id.* at 240.

the "claim [is] evidently *fictitious* in character and alleged merely to create the jurisdictional amount. . . ."[34] Only those claims involving an *unliquidated amount* that may be exaggerated so as to obtain federal jurisdiction require the application of the "legal certainty" doctrine to establish the legitimate value of the *unliquidated damages;* yet the doctrine is employed in the *Horton* case to determine whether to a legal certainty the insurance company's claim of $14,035 is in violation to the *rules of pleading.* Clearly, the doctrine is only employed to resolve issues involving *factual* controversies of determining damages and not controversies involving *legal issues* such as whether or not the Court, in determining the amount in controversy, can look to Horton's claim before the Board, his subsequent state action, and his federal counterclaim.

Although the Court correctly interpreted 28 U.S.C. Sec. 1445 (c) prohibiting original Workmen's Compensation claims in the Federal District Court, it broke with precedent when it placed $14,035 in controversy by: (1) recognizing the Board's action; (2) permitting the company to place facts in controversy that happened after the filing of the suit, and (3) allowing the plaintiff to allege and reply to a conjectural defense before the defendant answered the complaint. Finally, the Court apparently applied the "legal certainty" doctrine to an issue of law rather than to a factual controversy. Subsequent to this writing rehearing has been denied,[35] and the departure from the well-established rule is now law.

[34] Burks v. Texas Co., 211 F. 2d 443, 446 (5th Cir. 1959). (Emphasis added.)

[35] 30 U.S. L. WEEK 3115 (U.S. Oct. 9, 1961).

FEDERAL TAXATION—THE DETERMINATION OF WILFULNESS IN FAILURE TO PAY TAX CASES

Defendant Goodman filed a timely federal income tax return for 1953. He failed to pay his income tax liability for that year which he was required to pay on or before March 15, 1954. The tax due on his 1953 return was $4,457.48. Beginning in 1955, the defendant made several payments on his 1953 tax liability. Goodman's personal debts exceeded his assets before and during the period of his tax liability. After extensive attempts at collection by the Internal Revenue Service, that agency informed the defendant that criminal prosecution was being recommended to the Department of Justice. Full payment of the unpaid balance of his income taxes for 1953, together with interest, was made by the defendant on January 8, 1957. The defendant was indicted on January 14, 1957 for wilful failure to pay income taxes at the time required by law.

This was the first prosecution ever brought under the "wilful failure to