

1955

Federal Jurisdiction and Procedure: Mid-Term Examination (November 1955)

William & Mary Law School

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FEDERAL JURISDICTION AND PROCEDURE

Mid-Term Examination

November, 1955

I

Plaintiff, a Virginia Corporation, collected a \$5,000 freight overcharge from Defendant, a Virginia Corporation, by mistake, but claimed that it could not make a rebate without the consent of the Federal Interstate Commerce Commission, pursuant to a provision of the Federal Act to Regulate Commerce. Defendant refused to prepare the papers which Plaintiff maintained were required by the Commission, contending that the Act was inapplicable to the circumstances, and threatened to bring action if immediate rebate was not made. Plaintiff sought a declaratory judgment in the Federal District Court in Virginia that the Federal Act was applicable to the transaction between Plaintiff and Defendant and that Plaintiff is not liable to make rebate to Defendant unless and until the Interstate Commerce Commission assents thereto. Defendant moved to dismiss the action on jurisdictional grounds. What decision should be rendered on the motion? *Stally - Adleman*

III

Action seeking recovery of \$5,000 damages was brought in a New Jersey court by Plaintiff, a New Jersey corporation, against Defendant, an Illinois corporation, and Co-Defendant, a New Jersey corporation. The complaint was based on an alleged breach of a distributorship contract under which Plaintiff was to be the exclusive distributor of Defendant's products in New Jersey. It alleged Defendant had cancelled this contract without justification. It was further alleged that Co-Defendant, with knowledge of the improper cancellation, entered into an agreement with Defendant to act as Defendant's New Jersey distributor, constituting an unlawful and malicious conspiracy by both defendants to injure Plaintiff in its business. Defendant believes that the Federal court procedures afford it a better opportunity to establish its defense than the New Jersey court procedures. Can it get there? *No separate course of action - main point.*

co-D formal party + dropped - Not collusively joined.

III

In 1954 judgment was recovered against D in the U.S. District Court in North Carolina for damages for D's alleged negligence arising out of an automobile accident which had occurred in that State. In that action P had alleged that P was a citizen of Virginia and that D was a citizen of North Carolina. The fact was that D owned a cottage at Nags Head, N.C., at which he stayed only 2 weeks in the year, maintaining his home and place of business at Williamsburg, Va. A North Carolina statute provided for service of process by mail, and D had been served in that suit by mail addressed to his Nags Head cottage. D had appeared specially, moving to quash the service, contending that the statute was applicable only to in rem proceedings. The court had denied D's motion, holding that the statute was applicable regardless of the nature of the suit, and no further steps had been taken by D to defend the action. In 1955 the Supreme Court of the United States, in another action involving the N.C. statute, decided that the statute was unconstitutional in so far as it was construed to apply to in personam proceedings against non-residents. D seeks your advice as to whether there are any grounds for vacating the 1954 judgment. What would you advise? *No Dismissal + no jurisdiction.*

Discuss - Effect of later SC decision - jurisdiction of person.

IV

Result. Lost out.

Plaintiff was the owner of overdue coupons in the amount of \$10,000 cut from bonds of the State, which coupons were receivable, by the terms of the issuing Act, in payment for all taxes, debts and demands due the State. Defendant is the State Tax Commissioner charged with the collection of taxes due the State. Plaintiff charges that pursuant to statute passed since the issuing Act, Defendant is forbidden to receive such coupons in payment of taxes or otherwise redeem them. The statute, P alleges, impairs the obligation of the contract between the State and the holder of the coupon and accordingly is in violation of the Constitution of the United States. Plaintiff states that although he owes no taxes to the State, his coupons are rendered worthless by the Defendant's refusal to accept like coupons from others, as those who do owe taxes will not pay value for Plaintiff's coupons while the impediment exists. Plaintiff further alleges that others who do owe taxes have agreed to purchase his coupons at par, conditioned however upon the Defendant's being compelled to accept the coupons in satisfaction of their tax liabilities. Plaintiff asks that the Federal District Court declare unconstitutional the State statute preventing the Defendant from receiving the coupons in satisfaction of tax liabilities and that the Defendant be restrained from refusing to accept the coupons in payment thereof. A challenge is made to the Court's jurisdiction. Should it be sustained?

Case or Controversy in present between two persons.