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FEDERAL JURISDICTION AND PROCEDURE

Mid-Term Examination

November 1954

I

Defendant had granted plaintiff a license to use defendant's Federal patent subject to conditions imposed. Defendant subsequently informed plaintiff that by reason of plaintiff's alleged breach of a condition, the license was terminated and any further use of defendant's patent by the plaintiff would be considered an infringement and action taken accordingly. Thereupon plaintiff denying any breach and desiring to continue his undisturbed use of defendant's patent brought action in the Federal District Court seeking a declaratory judgment that the license was in full force and effect. Defendant moves to dismiss for lack of jurisdiction in the Federal Court to entertain the suit. The parties are citizens of the same state. Should the motion to dismiss be granted?

II

Briefly discuss the accuracy of the following statement:

The judgment of a Federal Court which has neither proper jurisdiction of the person of the defendant nor proper jurisdiction of the subject matter of the action may be collaterally attacked, but if the court had either, its erroneous final determination that it had both is res judicata on that issue in any independent proceeding.

III

State whether or not the Federal Court would take jurisdiction in each of the following cases, justifying your answer as briefly as you can and in no event more than two sentences.

- (1) A non-resident administrator is appointed solely for the purpose of bringing suit in the Federal Court against a resident debtor of the estate, all beneficiaries and the decedent creditor being and having been residents.
- (2) A North Carolina administrator is appointed solely for the purpose of preventing suit in the Federal Court by a North Carolina creditor of the estate, all beneficiaries and the decedent being and having been citizens of Virginia
- (3) Assignments of interests are made to a committee of non-residents with absolute restrictions upon disposition or other modification of such interests and solely for the purpose of enabling suit to be brought in the Federal Court against a resident defendant, all assignors being residents.
- (4) A resident pauper is joined as a party defendant together with a prosperous non-resident defendant alleging a bona fide joint liability in an action brought by a resident plaintiff solely for the purpose of preventing removal to a Federal Court and with no intention of enforcing a judgment against the pauper.
- (5) A resident plaintiff in an action on an insurance policy joins a resident agent as a party defendant together with a non-resident insurance company, alleging alternatively the negligence of the agent if he failed to place the policy with the insurance company, the defendant insurance company having denied its liability asserting a breach of conditions in prior correspondence with the insured, and defendant insurer seeks to remove from State to Federal Court.
- (6) A Virginia plaintiff brings suit in the Federal Court against a Nevada Corporation whose only place of business is in Virginia and whose sole stockholder, except for nominal shares, is a citizen of Virginia.

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- (7) A North Carolina plaintiff brings action in the Virginia State Court against a citizen of Kentucky and a citizen of Virginia alleging joint liability and removal to the Federal Court is sought.
- (8) A resident corporation reorganizes to form a non-resident corporation, dissolving the old corporation solely for the purpose of bringing action in the Federal Court against a resident defendant.
- (9) An injunction is sought in the Virginia State Court by a Virginia plaintiff to restrain an alleged nuisance maintained by a Maryland defendant which is impairing the plaintiff's rights to the extent of \$2000 in value. Defendant seeks removal to the Federal Court asserting that if the plaintiff is successful removal of the nuisance will cost the defendant \$5000.
- (10) Virginia plaintiff brings action in the Virginia State Court for \$5000 damages, alleging that defendant is a resident of Virginia. Unknown to plaintiff and for the purpose of enabling removal of such an action to the Federal Court, defendant, prior to commencement of the action, sold his Virginia home and had purchased a residence on the other side of the State border in West Virginia. Defendant seeks removal.