Chapter 1: Subject Matter Jurisdiction

Introduction

The bulk of litigation in the United States takes place in the state courts. While some state courts are organized to hear only a particular type of case, such as probate, juvenile or small claims, most state courts are courts of general jurisdiction. State courts can hear cases based upon either state or federal law, unless the federal claim is one which has been preempted, that is the role of the judiciary to resolve matters under certain laws is accorded only to the federal courts. Federal preemption is the exception and not the rule. Thus as a starting point, we presume that state courts have jurisdiction over a case, and look only for exceptions.

In contrast, federal courts are courts of limited jurisdiction. This is because the U.S. Constitution, in Article III, Section 2 identifies nine types of cases over which federal courts have judicial power. If a case is not concerned with one of these nine topics, it cannot be heard by a federal court.

This concept gives rise to the federal pleading requirement under Rule 8 in the Federal Rules of Civil Procedure that the plaintiff must allege the basis for federal court jurisdiction in the Complaint. Failure to do so presents grounds for a Motion to Dismiss under Rule 12(b)(1). Unlike most procedural Motions, a challenge to subject matter jurisdiction can be made at any time, and cannot be waived. This is because the parties cannot give the Court the power to hear a case it does not have.

In this Chapter, we focus upon the major issues concerning federal court subject matter jurisdiction, and the federal jurisdictional statutes most commonly invoked. **Read Article III, Sections 1 & 2 of the U.S. Constitution.**[1]

A. Federal Question Jurisdiction.

Read 28 U.S.C. §1331. Compare it to the first clause of Article III, Section 2. The phrase "arising under the Constitution, laws, or treaties of the United States" sounds straight forward. Do not be fooled...

[1] Unless otherwise noted, an instruction to read something noted in boldface type means the item is contained in the appendix to the text.

LOUISVILLE AND NASHVILLE R.R. COMPANY v. MOTTLEY

SUPREME COURT OF THE UNITED STATES

211 U.S. 149; *29 S. Ct. 42*; *53 L. Ed. 126 (1908)*

The appellees (husband and wife), being residents and citizens of Kentucky, brought this suit in equity in the Circuit Court of the United States for the Western District of Kentucky against the appellant, a railroad company and a citizen of the same State. The object of the suit was to compel the specific performance of the following contract:

"Louisville, Ky., Oct. 2nd, 1871.

"The Louisville & Nashville Railroad Company in consideration that E. L. Mottley and wife, Annie E. Mottley, have this day released Company from all damages or claims for damages for injuries received by them on the 7th of September, 1871, in consequence of a collision of trains on the railroad of said Company at Randolph's Station, Jefferson County, Ky., hereby agrees to issue free passes on said Railroad and branches now existing or to exist, to said E.L. & Annie E. Mottley for the remainder of the present year, and thereafter, to renew said passes annually during the lives of said Mottley and wife or either of them."

The bill alleged that in September, 1871, plaintiffs, while passengers upon the defendant railroad, were injured by the defendant's negligence, and released their respective claims for damages in consideration of the agreement for transportation during their lives, expressed in the contract. It is alleged that the contract was performed by the defendant up to January 1, 1907, when the defendant declined to renew the passes. The bill then alleges that the refusal to comply with the contract was based solely upon that part of the act of Congress of June 29, 1906, 34 Stat. 584, which forbids the giving of free passes or free transportation. The bill further alleges: First, that the act of Congress referred to does not prohibit the giving of passes under the circumstances of this case; and, second, that if the law is to be construed as prohibiting such passes, it is in conflict with the *Fifth*

Amendment of the Constitution, because it deprives the plaintiffs of their property without due process of law. The defendant demurred to the bill. The judge of the Circuit Court overruled the demurrer, entered a decree for the relief prayed for, and the defendant appealed directly to this court.

OPINION

MR. JUSTICE MOODY, after making the foregoing statement, delivered the opinion of the court.

Two questions of law were raised by the demurrer to the bill, were brought here by appeal, and have been argued before us. They are, first, whether that part of the act of Congress of June 29, 1906 (34 Stat. 584), which forbids the giving of free passes or the collection of any different compensation for transportation of passengers than that specified in the tariff filed, makes it unlawful to perform a contract for transportation of persons, who in good faith, before the passage of the act, had accepted such contract in satisfaction of a valid cause of action against the railroad; and, second, whether the statute, if it should be construed to render such a contract unlawful, is in violation of the *Fifth Amendment of the Constitution of the United States*. We do not deem it necessary, however, to consider either of these questions, because, in our opinion, the court below was without jurisdiction of the cause. Neither party has questioned that jurisdiction, but it is the duty of this court to see to it that the jurisdiction of the Circuit Court, which is defined and limited by statute, is not exceeded. This duty we have frequently performed of our own motion.

There was no diversity of citizenship and it is not and cannot be suggested that there was any ground of jurisdiction, except that the case was a "suit . . . arising under the Constitution and laws of the United States." Act of August 13, 1888. It is the settled interpretation of these words, as used in this statute, conferring jurisdiction, that a suit arises under the Constitution and laws of the United States only when the plaintiff's statement of his own cause of action shows that it is based upon those laws or that Constitution. It is not enough that the plaintiff alleges some anticipated defense to his cause of action and asserts that the defense is invalidated by some provision of the Constitution of the United States. Although such allegations show that very likely, in the course of the litigation, a question under the Constitution would arise, they do not show that the suit, that is, the plaintiff's original cause of action, arises under the Constitution. In *Tennessee v. Union & Planters' Bank, 152 U.S. 454*, the plaintiff, the State of Tennessee, brought suit in the Circuit Court of the United States to recover from the defendant certain taxes alleged to be due under the laws of the State. The plaintiff alleged that the defendant claimed an immunity from the taxation by virtue of its charter, and that therefore the tax was void, because in violation of the provision of the Constitution of the United States, which forbids any State from passing a law impairing the obligation of contracts. The cause was held to be beyond the jurisdiction of the Circuit Court, the court saying, by Mr. Justice Gray, "a suggestion of one party, that the other will or may set up a claim under the Constitution or laws of the United States, does not make the suit one arising under that Constitution or those laws." Again, in *Boston & Montana Consolidated Copper & Silver Mining Company v. Montana Ore Purchasing Company, 188 U.S. 632*, the plaintiff brought suit in the Circuit Court of the United States for the conversion of copper ore and for an injunction against its continuance. The plaintiff then alleged, for the purpose of showing jurisdiction, in substance, that the defendant would set up in defense certain laws of the United States. The cause was held to be beyond the jurisdiction of the Circuit Court, the court saying, by Mr. Justice Peckham.

"It would be wholly unnecessary and improper in order to prove complainant's cause of action to go into any matters of defence which the defendants might possibly set up and then attempt to reply to such defence, and thus, if possible, to show that a Federal question might or probably would arise in the course of the trial of the case. To allege such defence and then make an answer to it before the defendant has the opportunity to itself plead or prove its own defence is inconsistent with any known rule of pleading so far as we are aware, and is improper.

"The rule is a reasonable and just one that the complainant in the first instance shall be confined to a statement of its cause of action, leaving to the defenddant to set up in his answer what his defence is and, if anything more than a denial of complainant's cause of action, imposing upon the defendant the burden of proving such defence.

"Conforming itself to that rule the complainant would not, in the assertion or proof of its cause of action, bring up a single Federal question. The presentation of its cause of action would not show that it was one arising under the Constitution or laws of the United States.

"The only way in which it might be claimed that a Federal question was presented would be in the complainant's statement of what the defence of defendants would be and complainant's answer to such defence. Under these circumstances the case is brought within the rule laid down in *Tennessee v. Union &*

Planters' Bank. That case has been cited and approved many times since, . . ."

The application of this rule to the case at bar is decisive against the jurisdiction of the Circuit Court.

It is ordered that the judgment be reversed and the case remitted to the Circuit Court with instructions to dismiss the suit for want of jurisdiction.

Notes:

American Well Works Company v. Layne and Bowler Company, 241 U.S. 257 (1916), was a case removed to federal court premised on the exclusive federal jurisdiction over cases arising under federal patent law. The plaintiff, manufacturer of "a certain pump," asserted "that the defendants have falsely and maliciously libeled and slandered the plaintiff's title to the pump" by informing the plaintiff's clients that the pump infringed the defendant's patent. Justice Holmes, writing for the Court, found jurisdiction lacking" :

> As suit for damages to business caused by a threat to sue under the patent law is not itself a suit under the patent law. And the same is true when the damage is caused by a statement of fact - that the defendant has a patent which is infringed. What makes the defendant's act a wrong is its manifest tendency to injure the plaintiff's business and the wrong is the same whatever the means by which it is accomplished. But whether it is a wrong or not depends upon the law of the state where the act is done, not upon the patent law, and therefore the suit
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> arises under the law of the State. A suit arises under the law that creates the cause of action. The fact that the justification may involve the validity and infringement of a patent is no more material to the question under what law the suit is brought than it would be in an action of contract. If the State adopted for civil proceedings the saying of the old criminal law: the greater the truth the greater the libel, the validity of the patent would not come into question at all. In Massachusetts the truth would not be a defence if the statement was made from disinterested malevolence. The State is master of the whole matter, and if it saw fit to do away with actions of this type altogether, no one, we imagine, would suppose that they could be maintained under the patent laws of the United States.

In **Smith v. Kansas City Title & Trust Company**, 255 U.S. 180 (1920), a shareholder of the Kansas City Title & Trust Company brought suit in federal district court to enjoin the company, which was only authorized to invest in legal securities, from buying tax exempt farm loan bonds issued by Federal Land Banks or Joint Stock Land Banks under the Federal Farm Loan Act of July 17, 1916. The sole basis for opposing the purchase was the assertion that Congress lacked the power to issue the bonds. According to Justice Day, writing for the majority:

> It is ... apparent that the controversy concerns the validity of an act of Congress which is directly drawn in question. The decision depends upon the determination of this issue.

The majority went on to uphold the federal Farm Loan Program.

Justice Holmes dissented:

> No doubt it is desirable that the question raised in this case should be set at rest, but that can be done by the Courts of the United States only within the limits of the jurisdiction conferred upon them by the Constitution and the laws of the United States. As this suit was brought by a citizen of Missouri against a Missouri corporation the single ground upon which the jurisdiction of the District Court can be maintained is that the suit "arises under the Constitution or laws of the United States" within the meaning of **§**[1331]. I am of the opinion that this case does not arise in that way and therefore that the bill should have been dismissed.
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> It is evident that the cause of action arises not under any law of the United States but wholly under Missouri law. The defendant is a Missouri corporation and the right claimed is that of a stockholder to prevent the directors from doing an act, that is, making an investment, alleged to be contrary to their duty. But the scope of their duty depends upon the charter of their corporation and other laws of Missouri. If those laws had authorized the investment in terms the plaintiff would have had no case, and this seems to me to make manifest what I am unable to deem even debatable ,that, as I have said, the cause of

action arises wholly under Missouri law. If the Missouri law authorizes or forbids the investment according to the determination of this Court upon a point is material only because the Missouri law saw fit to make it so. The whole foundation of the duty is Missouri law, which at its sole will incorporated the other law as it might incorporate a document. The other law or document depends for its relevance and effect not on its own force but upon the law that took it up, so I repeat once more the cause of action arises wholly from the law of the State.

> But it seems to me that a suit cannot be said to arise under any other law than that which creates the cause of action. It may be enough that the law relied upon creates a part of the cause of action although not the whole, as held in *Osborn v. Bank of the United States. ...* I am content to assume this to be so, although the *Osborn* case has been criticized and regretted. But the law must create at least a part of the cause of action by its own force, for it is the suit, not a question in the suit, that must arise under the law of the United States. The mere adoption by a state law of a United States law as a criterion or test, when the law of the United States has no force proprio vigore, does not cause a case under the state law to be also a case under the law of the United States. ...

In **Moore v. Chesapeake & Ohio Railway Co.**, 291 U.S. 205 (1934), a switchman, allegedly injured by a defective coupling lever, sued his employer. Because the injury occurred while working on an intrastate railroad he could not use the cause of action provided by the Federal Employer's Liability Act. Instead, he used Kentucky's analogous cause of action. But the plaintiff also relied on an alleged violation of the Federal Safety Appliance Acts, "to constitute negligence per se and .. to furnish the ground for precluding the defense of contributory negligence as well as that of assumption of risk." Justice Hughes wrote for the majority:

> The Federal Safety Appliance Acts prescribed duties, and injured employees are entitled to recover for injuries sustained through the breach of these duties.
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> Questions arising in actions in state courts to recover for injuries sustained by employees in intrastate commerce and relating to the scope or construction of the Federal Safety Appliance Acts are, of course, federal questions which may appropriately be reviewed in this Court. But is does not follow that a suit brought under the state statute which defines liability to employees who are injured while engaged in intrastate commerce, and brings within the purview of the statute a breach of the duty imposed by the federal statute, should be regarded as a suit arising under the laws of the United States and cognizable in the federal court in the absence of diversity of citizenship. The Federal Safety Appliance Acts, while prescribing absolute duties, and thus creating correlative rights in favor of injured employees, did not attempt to lay down rules governing actions for enforcing these rights. ...
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> With respect to injuries sustained in intrastate commerce, nothing in the Safety Appliance Acts precluded the State from incorporating in its legislation applicable to local transportation the paramount duty which the Safety Appliance Acts imposed as to the equipment of cars used on interstate railroads ... [but this] suit is not to be regarded as one arising under the laws of the United States.

Smith and **Moore** raise the problem of suits that do not rely on federal causes of action, but have some important federal element. Although we can predict what Justice Holmes would do in all cases of this sort, the Court as a whole has behaved in a far less clear and predictable manner. But can we at least say that we know there is jurisdiction as a matter of federal statutory law whenever there is a federal cause of action? There is at least one case that casts doubt on an affirmative answer (though it predated Justice Holmes' attempt to resolve the issue of statutory general federal question jurisdiction with a cause of action standard). In **Shoshone Mining Company v. Rutter**, 177 U.S. 505 (1900), Congress had passed a statute authorizing "that which is familiarly known in mining regions as an 'adverse suit'" to take place "in a court of competent jurisdiction." The Court emphasized the lack of any express mention of federal courts: "If [Congress} had intended that any new rule of demarcation between the jurisdiction of the Federal and state courts should apply, it would likewise undoubtedly have said so." Why should a special statute bestowing jurisdiction in this category of cases be needed, given the general federal question statute? According to Justice Brewer, writing for the majority:

> [A] suit to enforce a right which takes its origin

> in the laws of the United States is not necessarily one arising under the Constitution or laws of the United States, within the meaning of the jurisdiction clauses, for if it did every action to establish title to real estate (at least in the newer States) would be such a one, as all titles in those States come from the United States or by virtue of its laws. ... The adverse suit is "to determine the question of the right of possession." That right may or may not involve the construction or effect of the Constitution or a law or treaty of the United States. By sections 2319, 2324, and 2332, Revised Statutes, it is expressly provided that this right of possession may be determined by 'local customs or rules of miners in the several mining districts, so far as the same are applicable and not inconsistent with the laws of the United States,' or 'by the statute of limitations for mining claims of the State or Territory where the same may be situated.' So that in a given case the right of possession may not involve any question under the Constitution or laws of the United States, but simply a determination of local rules and customs, or state statutes, or even only a mere matter of fact.
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> The recognition by Congress of local customs and statutory provisions as at time controlling the right of possession does not incorporate them into the body of Federal law. ...
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> A statute authorizing an action to establish a right is very different from one which creates a right to be established. An action brought under the one may involve no controversy as to the scope and effect of the statute, while in the other case it necessarily involves such a controversy, for the thing to be decided is the extent of the right given by the statute.

Is Justice Brewer discussing constitutional limitation on Congress's power to grant jurisdiction to the federal courts? That is if the statute has expressly stated that the federal district courts had jurisdiction, would it violate the Constitution? If so, could Congress make the statute constitutional by expressly stating that the state law had been "incorporated" into federal law? If so, what value do the limitations of Article III have? We might say that Justice Holmes' test not only fails to include appropriate cases that lack a federal cause of action but have an important federal element, but also fails to exclude inappropriate cases that have a federal cause of action but lack an important federal element. What exactly is the test? (Or is "exactly" something of a pipe dream here?) As you read *Merrell Dow*, consider whether Justice Stevens, who wrote for the majority, has reached a satisfying harmonization of all of the cases, or whether Justice Brennan, who dissents, has correctly divided the good cases from the bad. Or did Holmes have the best approach after all?