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Courts - Federal Juridiction - Pendent Jurisdiction Rule

Daniel J. Chapman

NOTES

COURTS – FEDERAL JURISDICTION – PENDENT JURISDICTION RULE. – A noteworthy summary of the existing divergence of opinion upon the question of pendent or derivative federal jurisdiction is contained in the Second Circuit Court of Appeals decision in *Kleinman v. Betty Dain Creations.*[1] The pendent jurisdiction rule extends to the federal courts jurisdiction of non-federal claims when such claims are closely interwoven with a federal claim upon which the federal court can properly act. Otherwise significant merely as a continuation of a dispute of long standing in the Second Circuit,[2] the *Kleinman* case develops at length two distinct interpretations of the pendent jurisdiction rule, either of which may be amply supported in logic. On the one hand, Judge Augustus Hand, representing the majority view of the Second Circuit court, states with candor and persuasiveness the position which the court has maintained since 1933, when the Supreme Court laid out the rule of pendent jurisdiction in the decision in *Hurn v. Oursler*[3]; on the other hand, vigorously asserting the argument for a more liberal construction of the rule in the *Hurn* case, which position, though clearly the minority view, is supported by the legal writers,[4] is Judge Charles E. Clark, himself a writer of great distinction in several fields of the law.[5]

Principally an economy measure aimed at reducing the need for production of overlapping testimony in both federal and state courts, the pendent jurisdiction rule extends jurisdiction to the federal courts in proper cases in preference to referring the matter to state courts for what usually is useless litigation. Jurisdiction so acquired is not lost by the fact that the federal question, assuming it to be a substantial claim, is for one reason or another dismissed.[6]. As early as 1824, in the decision in *Osborn v. United States Bank,*[7] the United States Supreme Court, speaking through Chief Justice Marshall, evidenced approval of such a jurisdic-

1. 189 F.2d 546 (2d Cir. 1951).
2. See, *e.g.*, Zalkind v. Scheinman, 130 F.2d 895 (2d Cir. 1943);Musher Foundation v. Alba Trading Co., 127 F.2d 9 (2d Cir. 1942); Lewis v. Vendome Bags, 108 F.2d 16 (2d Cir. 1939); and dissents contained therein.
3. 289 U.S. 238 (1932).
4. See, *e.g.*, 60 Harv. L. Rev. 424, 430 (1947); 52 Yale L.J. 922 (1943); 2 Callmann, The Law of Unfair Competition and Trademarks, §91.2 (a), (b), (c), (d) (1945).
5. See, *e.g.*, Clark, Code Pleading (2d ed. 1947); Covenants and Interests Running with the Land (2d Ed. 1947).
6. Warner Publications v. Popular Publications, 87 F.2d 913 (2d Cir. 1937).
7. 9 Wheat. 738 (U. S. 1824).

tional extension when it said, "We think, then, that when a question to which the judicial power of the Union is extended by the constitution forms an ingredient of the original cause, it is in the power of Congress to give the Circuit Court jurisdiction of that cause, although other questions of fact or law may be involved in it."[8] And in the 1909 case of *Silver v. Louisville and Nashville R.R. Co.*,[9] the germination of the pendent jurisdiction rule, which was to burst into bloom in the *Hurn* case, continued when it was decided that federal jurisdiction existed in a case where the federal action had been decided against the plaintiff, or not decided at all.

Manifestly the broadening sphere of federal jurisdictional influence and consequent shrinkage of the state jurisdictional domain must be halted at a point consistent with economic principles and with federal constitutional restrictions.[10] Basically, it would seem, this is the parting of the ways in the opinions of Judge Clark and his colleagues. Clark, a proponent of liberal joinder and judicial economy, would extend the federal sphere farther, it would seem, even than the Supreme Court contemplated in the *Hurn* case and would include within the pendent jurisdiction rule all claims dependent upon a single set of operative facts.[11] Clark's colleagues on the Second Circuit bench, traditionally reluctant to encroach upon state jurisdiction solely for the sake of judicial economy,[12] have narrowly and properly, it would seem, required substantially identical proof in proving the federal and the non-federal claim to justify the application of the pendent jurisdiction rule. As one district judge put the issue, Clark is contending for "substantial identity of right" and the majority "substantial identity of proof" as the test for the rule's application.[13] Some doubt has been suggested as to the constitutionality of Clark's proposed extension.[14]

Having thus considered, if only briefly, some of the factors contributing to the breach between Judge Clark and the other judges of the Second Circuit court, considerably more difficulty is met in an attempt to define the exact point of conflict of the divergent viewpoints. Clearly, however, the source of the con-

8. *Id.* at 823.
9. 213 U.S. 175 (1909).
10. U.S. Const. Art. III, §2.
11. *See* Lewis v. Vendome Bags, 108 F.2d 16, 18 (2d Cir. 1939) (dissenting opinion).
12. Kleinman v. Betty Dain Creations, 189 F.2d 546 (2d Cir. 1951).
13. See Schreyer v. Casco products Corp., 89 F. Supp. 177 (D. Conn. 1950).
14. Strachman v. Palmer, 82 F. Supp. 161 (D. Mass. 1949), *rev'd*, 177 F.2d 427 (1st Cir. 1949).

troversy is the *Hurn* case, upon which both Judge Clark and his colleagues purportedly rely. In the *Hurn* case, taken on certiorari from the Second Circuit, the United States Supreme Court decided that jurisdiction of a non-federal count of unfair competition joined with a claim of copyright infringement had been improperly refused, although the federal claim had been dismissed for lack of infringement, in a case where (1) the facts needed to support the non-federal count were substantially identical to those needed to prove the federal count ; (2) the two claims were but separate counts of a single cause of action; and (3) the federal claim was a substantial claim. Significant also was the court's disposition of a further claim for unfair competition as to an uncopyrighted revision of the play, which was the subject of the alleged infringement in the principal claim. Upon this point, the court sustained the trial court's ruling refusing jurisdiction because the non-federal claim was wholly independent of the federal claim. In subsequent decisions, inferior courts have treated each of the bases for the decision in *Hurn v. Oursler* as a valid limitation upon the general rule of pendent jurisdiction.[15]

While most of the so-called limitations of the *Hurn* rule have been variously interpreted and widely argued, there exists relative tranquility as to the application of the "substantial federal claim" phase of the rule and, in fact, at least one critic of the Second Circuit majority has upon this point commended the court's position.[16] Substantiality, in this instance, is determined without regard to the disposition of the claim and thus, a claim, substantial as alleged in the complaint, continues to be so considered, although it is subsequently dismissed.[17] A United States Supreme Court decision to the contrary,[18] was impliedly, at least, overruled by the decision in *Hurn v. Oursler.* In that case, the court had held a federal claim of trademark infringement to be "unsubstantial" and refused to decide the common law count of unfair competition, where the trademark was found to be invalid. And a later Supreme Court decision [19] took the position that a federal

15. Dubil v. Rayford Camp & Co., 184 F.2d 899 (9th Cir. 1950) (no jurisdiction of non-federal claim because it is separate cause of action from federal cause of action); French Renovating Co. v. Ray Renovating Co., 170 F.2d 945 (6th Cir. 1948) (no jurisdiction of non-federal claim because facts needed to support non-federal count are not substantially identical to those needed to support federal claim); Also see Pure Oil Co. v. Puritan Oil Co., 127 F.2d 6 (2d Cir. 1942) (federal claim, with which non-federal claim is joined, must be substantial).

16. See 52 Yale L.J. 922 (1943).

17. Hurn v. Oursler, 289 U.S. 238 (1932). *But cf.* Foreign & D.M. Corp. v. Twentieth Century-Fox F. Corp., 19 F. Supp. 769 (S.D. N.Y. 1937).

18. Leschen Rope Co. v. Broderick, 201 U.S. 166 (1906).

19. Levering & G. Co. v. Morrin, 289 U.S. 103 (1933).

claim was not substantial where the question had been foreclosed by a prior Supreme Court decision. This decision stands unrepudiated but not unreproved.[20]

Close scrutiny of the rule of the *Hurn* case as to the unfair competition of the uncopyrighted revision of the play will show that this is little more than a negative restatement of the "substantially identical facts" rule, upon which the principal decision was based. Thus, if the non-federal claim is based upon facts *not* substantially identical with the facts upon which the federal claim is predicated, the federal court clearly has no jurisdiction of the non-federal count. In its application, however, this limitation of the *Hurn* rule has become integrated with a chronological consideration. In *Foster D. Snell, Inc. v. Potter,*[21] for example, the Second Circuit court cited this phase of the *Hurn* rule as controlling where, in a case of patent infringement, plaintiff had also alleged violation of a licensing agreement prior to the issuance of the patent. The court there said, "It relates to a different period of time, and depends upon facts which are irrelevant to the proof of the federal cause of action";[22] and therefore jurisdiction was refused. It has been suggested, however, that no less justification exists for retaining jurisdiction in cases of this kind than in a case where the non-federal claim arose at the same time as the federal claim since in both instances the federal court has no original jurisdiction.[23]

Largely determinative of the circumstances upon which the rule of pendent jurisdiction will be applied and the source of most abundant disagreement is the limitation of the *Hurn* rule to separate counts of a single cause of action. Closely allied is the "substantially identical facts" rule, which is now generally regarded as the test for a cause of action. Although courts often discuss one of these factors to the exclusion of the other. It must be conceded as settled that impliedly, at least, the other is involved to the extent that proving one is proof of the other. There would seem to be some doubt as to whether this is an entirely accurate characterization of the *Hurn rule*[24] and in view of the broad definition accorded a cause of action in cases of this kind

20. *See* Strachman v. Palmer, 177 F.2d 427, 432 (1st Cir. 1949) (concurring opinion).
21. 88 F.2d 611 (2d Cir. 1937).
22. *Id.* at 612.
23. See Yale L.J. 922, 926 (1943).
24. Strachman v. Palmer, 82 F. Supp. 161 (D. Mass. 1949).

by the court in *Hurn v. Oursler*,[25] it would seem possible that a single cause of action might exist, the single counts of which cannot be proven by substantially identical facts. This view is not shared by the courts.

Contained in the *Kleiman* case [26] is an excellent illustration of the contrasting attitudes of Judge Clark and his colleagues toward the meaning of the "substantially identical facts" rule. In that case, plaintiff sought recovery for an alleged patent infringement and for defendant's breach of contract to pay plaintiff for the use of the patented article. In the lower court, the claim of infringement was dismissed upon its merits and jurisdiction of the claim of breach of contract was refused, the court not having found diversity of citizenship of the parties. In sustaining this holding, the Second Circuit court said recovery upon the breach of contract count must be predicated upon proof of (1) the existence of the contract; (2) that the goods were of use to the defendant; (3) that the defendant sold the goods; (4) that the defendant failed to pay for them; and (5) the fair compensation due. In order to prove the patent infringement claim, the majority contended, only point 3 would have to be proved and point 2 by implication. Points 1, 4 and 5 would not need to be shown. Judge Clark's position is that the first claim undertakes to show that (1) plaintiff had a novel idea for commercial device; (2) which was wrongfully appropriated; (3) wrongfully because in violation of a patent grant. The second or non-federal count repeats points 1 and 2 and only point 3 varies. Assuming, however, the accuracy of Judge Clark's analysis, it would seem evident that considerable proof is necessary to sustain the additional non-federal charge once the federal claim has been proved, or, as in this case, disproved. He has, for example, consolidated into point 3 of his own analysis, all that which was contained in points 1, 4 and 5 in the majority opinion and there is thus little conflict as to the amount of proof necessary to prove the additional charge. The issue then narrows into a disagreement as to what constitutes enough "additional" evidence to take the case out of the

25. Adopting wording of Baltimore S.S. Co. v. Phillips, 274 U.S. 316, 321 (1927) "A cause of action does not consist of facts but of the unlawful violation of a right which the facts show. The number and variety of the facts alleged do not establish more than one cause of action so long as their result, whether they be considered severally or in combination, is the violation of but one right by a single legal wrong. The facts are merely the means and not the end. They do not constitute the cause of action, but they show its existence by making the wrong appear."

26. 189 F.2d 546 (2d Cir. 1951).

"substantially identical facts" rule. As to this, the position of the Second Circuit majority has been stated to be that "that test (the substantially identical facts rule) . . . is not hard and fast; the question is one of degree but the allowable lattitude, as the Supreme Court decisions go, is indeed narrow."[27] Judge Clark, clearly evidencing the view that the need for judicial economy outweighs any insignificant loss of state power, however, has said, "If the roast must be reserved for the federal bench, it is anomalous to send the gravy across the street to the state court house."[28]

It should not be assumed, in view of the express statements that the *Hurn* rule has been given a narrow interpretation by the Second Circuit majority,[29] that it is a dead rule in that circuit. It is, to the contrary, applied or refused upon the circumstances of each case. That the rule is one which must be applied according to the circumstances of the particular case is substantiated by wording in Judge Clark's concurring opinion in *Collins v. Metro-Goldwyn Pictures Corp.*[30] The pendent jurisdiction rule has been applied, for example, in a case where the Waterman Pen Co.[31] was complaining of trademark infringement and unfair competition for the use of the name "Waterman" on razor blades. Jurisdiction of the non-federal claim was retained, although the federal claim had been dismissed, upon a finding that the facts necessary to support each of the counts were substantially identical. Likewise, in *Warner Publications v. Popular Publications,*[32] jurisdiction to try an unfair competition count upon its merits was sustained where the alleged trademark infringement and the unfair competition count were pleaded as two separate causes of action, clearly in violation of the *Hurn* rule if correctly pleaded. The court decided, however, that the claims were in fact but separate counts of a single cause of action. And in a case where jurisdiction of a consent decree made prior to the decision in *Hurn v. Oursler* was challenged, the court, finding that both the federal and the non-federal claims were sustainable upon substantially identical facts, refused to upset the decree,[33] although at the time of the issuance of the decree, the Second Circuit rule was not in accord with that which was subsequently set out in

27. Zalkind v. Scheinman, 139 F.2d 895, 900 (2d Cir. 1943).
28. Musher Foundation v. Alba Trading Co., 127 F.2d 9, 11 (2d Cir. 1942).
29. See Zalkind v. Scheinman, 139 F.2d 895, 900 (2d Cir. 1943).
30. 106 F.2d 83, 87 (2d Cir. 1939).
31. L. E. Waterman Co. v. Gordon, 72 F.2d 272 (2d Cir. 1934).
32. 87 F.2d 913 (2d Cir. 1937).
33. Winthrop Chemical Co. v. American Pharmaceutical Co., 94 F.2d 587 (2d Cir. 1938).

the *Hurn case.*[34] Where, however, any appreciable proof is necessary to prove the non-federal claim in addition to that which is necessary to prove the federal claim, jurisdiction has generally been refused upon the authority of *Hurn v. Oursler.*[35] Although it is apparent that no distinct division, applicable to all cases, separates the two types of cases, it would seem clear that the quantum of additional proof necessary to deprive the federal court of jurisdiction over the non-federal claim is microscopic. Rejection of jurisdiction, rather than its retention, is more common in the Second Circuit.

At the other extreme is Judge Clark, who, while not wishing to extend the rule of pendent jurisdiction to every case in which a federal claim is joined with a non-federal claim,[36] would retain jurisdiction for the federal courts where there is substantial identity of right.[37]. Thus, for example, where a right arises by reason of plaintiff's invention, Clark would, it appears, extend federal jurisdiction to every violation of this right, however extensive this might be. These violations, then, could take the form of patent infringement, unfair competition, breach of contract or common law tort. Consistent with this position and frequently alluding to the need for judicial economy,[38] Clark has argued for an extension of the pendent jurisdiction rule to include a case where the non-federal acts alleged took place prior to the existence of the federal claim[39] or were only incidentally related,[40] and to include a case where the bill as finally amended was clearly outside the *Hurn* case, although as originally pleaded it would have been subject to the pendent jurisdiction rule.[41] Similarly he would treat as only provisional and not appealable a judgment in the lower court, in which the non-federal count had not been tried on its merits when that count was, so Clark says, inextricably interwoven with a substantial federal claim.[42] Plaintiff had there sought to join a federal claim of patent violation with a claim

34. Levering & Garrigues Co. v. Morrin, 61 F.2d 115 (2d Cir. 1932), *rev'd on other grounds,* 289 U.S. 103 (1933).

35. See, *e.g.,* Kaplan v. Helenhart Novelty Corp., 182 F.2d 311 (2d Cir. 1950); Lewis v. Vendome Bags, 108 F.2d 16 (2d Cir. 1939).

36. Collins v. Metro-Goldwyn Pictures Corp., 106 F.2d 83 (2d Cir. 1939).

37. See note 13, *supra.*

38. See, *e.g.,* Kleinman v. Betty Dain Creations, 189 F.2d 546, 551 (2d Cir. 1951); Zalkind v. Scheinman, 139 F.2d 895, 906 (2d Cir. 1943) (dissenting opinions); See also Treasure Imports v. Henry Amdur & Sons, 127 F.2d 3 (2d Cir. 1942) (concurring opinion).

39. See Treasure Imports v. Henry Amdur & Sons, 127 F.2d 3 (2d Cir. 1942) (concurring opinion).

40. *See* Zalkind v. Scheinman, 139 F.2d 895 (2d Cir. 1943) (dissenting opinion).

41. See Lewis v. Vendome Bags, 108 F.2d 16 (2d Cir. 1939).

42. *See* Zalkind v. Scheinman, 139 F.2d 895, 906 (2d Cir. 1943) (dissenting opinion).

founded upon alleged fraudulent misrepresentations of the defendant in the United States patent office, which acts had caused plaintiff some delay in obtaining his patent. Little imagination is necessary to comprehend the additional proof necessary to sustain the non-federal charge of this complaint. Such an extension of the pendent jurisdiction rule, while possibly entirely commendable, would seem to be unwarranted under the holding of the *Hurn* case.

In view of the fact that a large percentage of the cases involving the principle herein discussed have arisen in the Second Circuit, it can be correctly assumed that other jurisdictions are not nearly as concerned with the problem. The cases generally, however, seem to favor the strict application of the *Hurn* rule, supporting the position of the Second Circuit majority.[43] But the rules of the other Circuit Courts are not as clearly defined even as that of the Second Circuit.[44] Both Judge Clark and the Second Circuit majority quarrel with the holding in the First Circuit, which adopts the reasoning of a previous concurring opinion of that court,[45] that even where the trial judge may properly exert his jurisdiction over a non-federal claim by the rule of pendent jurisdiction, it is a matter of discretion with him, which discretion may not be reversed on appeal.[46] Similarly typical of the looseness with which the pendent jurisdiction rule is applied in jurisdictions other than the Second Circuit is the Seventh Circuit decision in *Atkins v. Gordon*,[47] where the *Hurn* case was not followed but the court said, "It is unnecessary to discuss the unfair trade method charges, for in view of the residence of the parties in the same state, the Federal Court's jurisdiction is dependent upon

43. Dubil v. Rayford Camp & Co., 184 F.2d 899 (9th Cir. 1950) (two causes of action, no jurisdiction); Loew's Drive-In Theatres v. Park-In Theatres, 174 F.2d 547 (1st Cir. 1949) (two causes of action, no jurisdiction where claim of infringement joined claim of unpaid royalties under licensing agreement); New Orleans Public Belt R. Co. v. Wallace, 173 F.2d 145 (5th Cir. 1949) (two causes of action, no joinder in suit against railroad under federal Employer's Liability Act and non-federal claim of common law tort); Crabb v. Welden Bros., 164 F.2d 797 (8th Cir. 1947) (two causes of action, no jurisdiction); Pearce v. Pennsylvania R. Co., 162 F.2d 524 (3d Cir. 1947) (two causes of action, no joinder in suit against railroad under federal Employer's Liability Act and non-federal claim of common law tort); United Lens Corp. v. Doray Lamp Co., 93 F.2d 969 (7th Cir. 1937) (jurisdiction accepted, saying cause of action is unlawful violation of a right which facts show and counts arising therefrom are same cause of action); General Motors Corp. v. Rubsam Corp., 67 F.2d 217 (6th Cir. 1933), *cert. denied*, 290 U.S. 688 (1933) (two causes of action, no jurisdiction).

44. *E.g.*, *compare* United Lens Corp. v. Doray Lamp Co., *supra* note 43, *with* Atkins v. Gordon, 86 F.2d 597 (7th Cir. 1936); and Loew's Drive-In Theatres v. Park-In Theatres, *supra* note 43; *with* Massachusetts Univ. Conv. v. Hildreth & Rogers Co., 183 F.2d 497 (1st Cir. 1950).

45. See Strachman v. Palmer, 177 F.2d 427, 432 (1st Cir. 1949) (concurring opinion).

46. Massachusetts Univ. Conv. v. Hildreth & Rogers Co., 183 F.2d 497 (1st Cir. 1950).

47. 86 F.2d 595 (7th Cir. 1936).

appellee's sustaining the patent infringement charges of the complaint."[48] This expeditious method of disposing of the question of federal jurisdiction, apparently ignoring the pendent jurisdiction rule, is, it would seem, clearly in error.

Some question might also be raised as to the propriety of the extension of the *Hurn* doctrine into fields other than copyright, patent and trademark infringement. Although the *Hurn* case involved copyright infringement and most cases citing the *Hurn* case as binding have involved patent, trademark or copyright infringement, the rule is apparently now settled to be not so restrictive. It has been held, for example, that the pendent jurisdiction rule applied in a case where commerce, alleged to be interstate, was in fact intrastate and no other basis for federal jurisdiction existed.[49] Other decisions of similar import are abundant.[50]

Because the extension of jurisdiction to the federal courts through the pendent jurisdiction rule is clearly also a deprivation of the jurisdiction of the state courts, the state becomes an interested party in each case subject to the rule. There are, however, few state court actions involving in any way this principle of diminishing jurisdiction. The existing decisions show little concern with the encroachment of the federal courts upon state court jurisdiction. It has been held, for example, that plaintiff's action in a federal court upon a federal claim, with which he could have joined a non-federal claim, was res judicata as to an action brought in the state court on the non-federal claim.[51] In another case, the state court held, although two judges dissented, that plaintiff, whose federal claim had been rejected for lack of jurisdiction, could bring a state court action, because although the existence of a federal patent was incidentally involved, it did not lie at the basis of plaintiff's claim.[52] Where, however, the state court has jurisdiction of the parties and of the subject matter, it cannot be

48. *Ibid.*

49. Southern Pac. Co. v. Van Hoosear, 72 F.2d 903 (9th Cir. 1934).

50. Lindquist v. Dilkes, 127 F.2d 21 (3d Cir. 1942) (rule applied in case of seaman's action for cure and maintenance, although the seaman's claim under the Jones Act was withdrawn); Hogue v. National Automotive Parts Ass'n., 87 F. Supp. 816 (E.D. Mich. 1949) (rule applied in action for unpaid wages for hours covered by Fair Labor Standards Act, where a claim was made for unpaid wages for hours covered by the Act); Water Service Co. v. Redding, 304 U.S. 252 (1938) (rule applied, although the local question was dismissed because of a lack of a substantial federal question, in a suit to enjoin a city from receiving large grant from the federal government under the NIRA, which it was alleged, was unconstitutional, the local question being the appropriation of proceeds from the sale of bonds for the same purpose).

51. McCann v. Whitney, 25 N.Y.S.2d 354 (Spec. Term 1941).

52. Zenie v. Miskend, 245 App. Div. 634, 284 N.Y.Supp. 63 (First Dept. 1935) *aff'd.* 270 N.Y. 636, I N.E.2d 367 (1936).

ousted of this jurisdiction by defendant's incidental claim that a certain patent is invalid.[53]

Whatever the state court's attitude is toward its diminishing jurisdiction, the federal tendency, it seems clear, is toward the position occupied by Judge Clark. Consistent with this is a recent remedial statute,[54] purporting to extend the doctrine of the *Hurn* case. What effect, if any, this statute will have upon the courts must remain problematical because in the *Kleinman* case, where the statute was sought to be applied, the court distinguished the case and decided on other grounds.[55] It is to be here noted that the suggested changes embodied in the remedial statute and cogently asserted by Judge Clark are pointed in the right direction, toward much-needed judicial economy for both the litigant and the court, toward accelerated appellate process and toward greater liberality in pleading. They cannot, however, of themselves outweigh the necessity for retaining wherein possible the constitutional division of jurisdiction between federal and state courts. The Second Circuit's tenacious resistance to the extension of the pendent jurisdiction rule, which can only be made at the expense of state court jurisdiction, is in this respect a healthy safeguard.

DANIEL J. CHAPMAN

NEGOTIABLE INSTRUMENTS — LIMITATIONS ON ACTIONS — THE STATUTE OF LIMITATIONS APPLIED TO ACTIONS AGAINST DRAWERS OF BANK DRAFTS. — Bank drafts are demand instruments drawn by one bank upon another. They are drawn on funds deposited in the drawee bank in the same manner as ordinary bank checks, drawn by individuals. These drafts are used for the immediate transfer of funds by the issuing bank or by individuals or corporations who purchase the drafts.

When a bank issues a draft drawn on a correspondent bank, it immediately credits the account of the drawee for the amount of the draft. The drawee bank, on the other hand, does not charge the account of the drawer until the draft is presented and paid.

53. Pratt v. Paris Gas Light & Coke Co., 168 U.S. 255 (1897).

54. 62 Stat. 931 (1948), 28 U.S.C. §1338 (b) (Supp. 1948): "The district courts shall have original jurisdiction of any civil action asserting a claim of unfair competition when joined with a substantial and related claim under the copyright, patent or trademark laws."

55. The court held that there was in fact no unfair competition, the niceties of which are discussed elsewhere in this note, and therefore the statute, especially restricted to case of unfair competition joined with patent, copyright or trademark infringement, did not apply.