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Federal Courts - Jurisdiction under 28 U.S.C., Section 1343(3)

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circumstances would yield a result which is consonant with the purpose of the clause.⁸³

Until this judicial status can be reached, the combination of a case-by-case determination⁸⁴ and the power of the House to take action against its members⁸⁵ would act as a deterrent against abuse of the privilege. In this way independence of the legislature is insured, and the Members can effectively perform their constitutional duty.

Louis Leo Brunetti

FEDERAL COURTS—JURISDICTION UNDER 28 U.S.C., SECTION 1343(3)—The Supreme Court of the United States has held that for purposes of federal jurisdiction arising under 42 U.S.C., section 1983, and its jurisdictional correlate 28 U.S.C., section 1343(3), there is no difference in achieving the right to redress deprivation pursuant to section 1343(3), whether the right asserted is personal, or proprietary.

Lynch v. Household Finance Corp., 405 U.S. 538 (1972).

Mrs. Lynch directed her employer to deposit ten dollars of her weekly pay in a credit union savings account in 1968. Shortly thereafter, Household Finance brought an action in a Connecticut state court, alleging non-payment of a promissory note in the amount of five hundred twenty-five dollars. Prior to Mrs. Lynch's being served with process, Household Finance garnished the savings account set up by her employer.¹ Mrs. Lynch then proceeded to file a class action in federal district court against both the sheriffs who levied on the savings account, and Household Finance which invoked the prejudgment garnishment procedure.² In that action, the plaintiff alleged violation of due process and equal

83. See Cella, *supra* note 18.

84. Mr. Justice Stewart stated that this type of determination would balance the need for an informed public with the proper administration of justice. 408 U.S. at 632.

85. U.S. CONST. art. I, § 5.

1. Household Finance Corp. garnished the savings account pursuant to CONN. GEN. STAT. REV. § 52-329 (1961), which authorizes summary prejudgment attachment, and garnishment. Under the statute, this action could be taken at the request of attorneys for the creditor.

2. *Lynch v. Household Finance Corp.*, 318 F. Supp. 1111 (D. Conn. 1970). In this action, a class action was used to represent those owners of savings and checking accounts who sought declaratory and injunctive relief after having had their accounts garnished under the Connecticut procedure.

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protection, and sought declaratory and injunctive relief pursuant to section 1983,³ and its jurisdictional counterpart section 1343(3).⁴ A district court of three judges convened to hear the claim,⁵ but the court never had an opportunity to reach a decision on the merits of the case, as the complaint was dismissed on grounds, *inter alia*, that the district court lacked jurisdiction under section 1343(3).⁶ The district court stated that section 1343(3) applied only to personal liberties as opposed to the proprietary rights Mrs. Lynch seemed to be asserting. The Supreme Court of the United States proceeded to note probable jurisdiction to determine the jurisdictional question of 1343(3).⁷ In rejecting the district court's determination of the inapplicability of section 1343(3) to proprietary rights, the Supreme Court clarified 1343(3) by saying that for the purpose of achieving a federal forum through 1343(3), there is no difference whether the claim is essentially personal or proprietary.⁸

Prior to Lynch, section 1343(3) was the subject of much judicial scrutiny. This jurisdictional section was originally enacted in conjunction with the Civil Rights Act of 1871,⁹ and provided a cause of action to redress deprivations arising under color of state law, of any rights, privileges, or immunities secured by the Constitution. The first problem with the section was to determine exactly what rights, privileges, and immunities were secured for redress. Early cases, such as the companion cases *Carter v. Greenhow*¹⁰ and *Pleasants v. Greenhow*¹¹ attempted unsuccessfully to define the scope of the right secured. Cases followed

3. 42 U.S.C. § 1983 (1970) provides:

Every person who, under color of any statute, regulation, custom, or usage, of any state or territory, subjects, or causes to be subjected, any citizen of the United States or any person within the jurisdiction thereof, to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proceeding for redress.

4. 28 U.S.C. § 1343(3) (1970) provides:

The District Courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person . . .

(3) to redress the deprivation, arising under any state law, statute, ordinance, regulation, custom, or usage, of any right, privilege, or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States . . .

5. A three judge federal court may be convened under 28 U.S.C. §§ 2281, 2284 (1970) from which a direct appeal may be taken to the Supreme Court.

6. 318 F. Supp. 1111 (D. Conn. 1970).

7. *Lynch v. Household Finance Corp.*, 401 U.S. 935 (1971).

8. *Lynch v. Household Finance Corp.*, 405 U.S. 538 (1972).

9. Act of April 20, 1871, ch. 22, 17 Stat. 13. The full title of the act was an "Act to enforce the Provisions of the Fourteenth Amendment to the Constitution of the United States and for other Purposes."

10. 114 U.S. 317 (1884).

11. 114 U.S. 323 (1884).

for nearly a thirty year period without cogently defining the rights secured in section 1343(3).¹² Not until Justice Stone's concurrence in *Hague v. CIO*¹³ were true constraints laid on 1343(3) jurisdiction. In *Hague*, there was no majority opinion, but Mr. Justice Stone's concurrence seemed to have the greatest impact, stating;

Whenever the right or immunity is one of personal liberty, not dependent for its existence upon the infringement of a property right, there is jurisdiction in the district courts under section [1343(3)] . . . [without any proof] as to the amount in controversy.¹⁴

It was this portion of *Hague* which, in the years following its decision, caused so much confusion in federal courts in determining 1343(3) jurisdiction. Cases arose in which there were clearly personal rights at issue, and most federal courts followed Mr. Justice Stone.¹⁵ Yet, some courts, believing the distinction to have little weight because no majority decision was rendered in *Hague*, denied jurisdiction even to claims which were strictly personal in nature.¹⁶

Still greater problems arose when the claim asserted was partly personal and partly proprietary. A weighing of the personal versus proprietary nature of the claim became necessary, and results in the various circuits and districts varied widely.¹⁷ Still other courts felt Mr. Justice

12. See *Truax v. Raich*, 239 U.S. 33 (1915) (sustained jurisdiction in an equal protection challenge to alleged employment discrimination); *Holt v. Indiana Mfg. Co.*, 176 U.S. 68 (1900) (denied jurisdiction in an action to enjoin state taxation of patent rights allegedly in violation of federal law).

13. 307 U.S. 496 (1949).

14. *Id.* at 531-32. It should be noted at this point that an action brought under section 1343(3) is not subject to the amount-in-controversy provision of federal jurisdiction, 28 U.S.C. § 1331 (1970). This was stated in the Act of March 3, 1911, ch. 231, 36 Stat. 1087, 1091. In *Hague*, Mr. Justice Stone reasoned to the same conclusion stating that the predecessor to 42 U.S.C. § 1983 (1970), the substantive provision accompanying section 1343(3), was passed prior to the predecessor of section 1331; and, therefore, the Congress was presumed to have known about section 1343(3) when it passed section 1331.

15. *McNamara v. Malloy*, 337 F. Supp. 732 (D. Vt. 1971). This case sustained 1343(3) jurisdiction in a claim of denial of due process in taking a drivers license without a hearing.

16. *Joe Louis Milk Co. v. Hershey*, 243 F. Supp. 351 (N.D. Ill. 1965).

17. See *Murdock v. Pennsylvania*, 319 U.S. 105 (1943). *Murdock* sustained 1343(3) jurisdiction in a plaintiff's claim of denial of freedom of religion caused by a state statute prohibiting door-to-door solicitation. The Court did recognize the proprietary element encompassed in door-to-door solicitation of the Jehovah Witness sect, but felt it to be ancillary to the consideration of the personal right of freedom of religion. See also *Walton v. City of Atlanta*, 181 F.2d 693 (5th Cir.), *cert. denied*, 340 U.S. 823 (1950) (sustained 1343(3) jurisdiction in a right to work claim—felt that there was some personal element in the claim in that denial of equal protection was alleged); *Battone v. Lindsley*, 170 F.2d 705 (10th Cir. 1948), *cert. denied*, 366 U.S. 944 (1949) (jurisdiction was sustained in a claim for damages for a denial of right to trial by jury—personal right of trial by jury prevailed over pecuniary considerations of damages).

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Stone's interpretation to be incorrect, but were hesitant to carve out new exceptions, and therefore followed begrudgingly.¹⁸

Even prior to *Lynch*, federal courts had to make determinations about garnishment cases. Some courts adopted the strict *Hague* personal-proprietary distinction, and denied jurisdiction,¹⁹ while other federal courts felt a *Lynch*-type claim to be exactly what section 1343(3) should cover.²⁰

This, then, was the state of confusion that surrounded 1343(3) jurisdiction prior to the determination in *Lynch*.

In *Lynch*, the Court was faced with a parallel jurisdictional problem encountered previously. *Lynch* presented within the claim aspects of both personal and proprietary rights. In situations like this the Court had previously denied certiorari.²¹ The *Lynch* claim was personal in dealing with the plaintiff's right to due process of law and equal protection, yet there was the persistent fact that the claim was proprietary in the sense of garnishing personalty of the plaintiff.

At the outset in the majority opinion, the Court stated that it had never adopted the distinction between personal and proprietary rights as a guide to the contours of 1343(3) jurisdiction. *Hague* was merely a concurring opinion in a case which commanded no majority.²² The Court continued by saying that it never ruled on 1343(3) jurisdiction in post-*Hague* decisions when in seeming contradiction with the principle enunciated in *Hague*.²³

Household Finance Corporation, in support of its position that 1343(3) applied only to personal liberties, cited three pre-*Hague* decisions²⁴ and two post-*Hague* affirmances²⁵ of federal district court dismissals of complaints under section 1343(3). Household Finance claimed these cases all held that section 1343(3) had no application if the asserted right

18. See *Eisen v. Eastman*, 421 F.2d 560 (2d Cir. 1969), cert. denied, 400 U.S. 841 (1970).

19. See *McCormick v. First Nat'l Bank*, 322 F. Supp. 604 (S.D. Fla. 1971).

20. See *Santiago v. McElroy*, 319 F. Supp. 284 (E.D. Pa. 1970).

21. See *Walton v. City of Atlanta*, 181 F.2d 693 (5th Cir.), cert. denied, 340 U.S. 823 (1950); *Battone v. Lindsley*, 170 F.2d 705 (10th Cir. 1948), cert. denied, 366 U.S. 944 (1949).

22. *Hague v. CIO*, 307 U.S. 496 (1939).

23. The Court in cases such as *Eisen v. Eastman*, 421 F.2d 560 (2d Cir. 1969), cert. denied, 400 U.S. 841 (1970), *Walton v. City of Atlanta*, 181 F.2d 693 (5th Cir.), cert. denied, 340 U.S. 823 (1950), and *Battone v. Lindsley*, 170 F.2d 705 (10th Cir. 1948), cert. denied, 366 U.S. 944 (1949), consistently denied certiorari.

24. *Holt v. Indiana Mfg. Co.*, 176 U.S. 68 (1900); *Pleasants v. Greenhow*, 114 U.S. 323 (1884); *Carter v. Greenhow*, 114 U.S. 317 (1884).

25. *Hornbeak v. Hamm*, 283 F. Supp. 549 (M.D. Ala.), aff'd, 393 U.S. 9 (1968); *Abernathy v. Carpenter*, 208 F. Supp. 793 (W.D. Mo. 1962), aff'd, 373 U.S. 241 (1963).

was proprietary.²⁶ The Court distinguished these cases by saying that all of them dealt with the constitutionality of given state taxes, and that in this specialized area of taxation, the Supreme Court realizes that Congress looks upon judicial intervention in such situations in a unique manner, governed by unique considerations.²⁷ Denial of federal jurisdiction was not the result of section 1343(3) inapplicability because it was limited to personal rights; rather, the cases were controlled by section 1341 which prevents anticipatory adjudication in the federal courts of such constitutional attacks on state taxes.²⁸

The proposition that the Supreme Court never followed such a personal-property distinction and therefore is not bound by it is further substantiated by reference to the areas of civil rights,²⁹ freedom of speech,³⁰ landlord-tenant,³¹ and religious discrimination,³² where there is no showing of the application of such a distinction.

The Court, having distinguished the state taxation cases, having shown that the personal-property distinction was never applied by the Supreme Court and having stated that there was no majority opinion in *Hague*, thus stated that as to section 1343(3) there is no difference whether the right asserted is personal or proprietary.

In assessing the effectiveness and correctness of the *Lynch* decision, it is necessary to see the reason the personal-property distinction was first proposed by Mr. Justice Stone in *Hague*, and contrast it with the *Lynch* Court's view of the *Hague* distinction.

In *Hague*, Mr. Justice Stone felt the need to reconcile the general amount in controversy provision, section 1331, with the color of state law provision for federal jurisdiction, section 1343(3).³³ The *Hague*

26. *Lynch v. Household Finance Corp.*, 405 U.S. 538, 542 (1972).

27. 28 U.S.C. § 1341 (1970) states:

The District Court shall not enjoin, suspend or restrain the assessment, levy or collection of any tax under State law where a plain, speedy and efficient remedy may be had in the courts of such state.

28. See *Great Lakes Dredge & Dock Co. v. Huffman*, 319 U.S. 293 (1943); *Matthews v. Rodgers*, 284 U.S. 531 (1932); *Dows v. City of Chicago*, 78 U.S. (11 Wall.) 65 (1871).

29. See *Wilson v. Board of Supervisors of La. St. Univ. & Agricultural & Mechanical College*, 92 F. Supp. 986 (E.D. La. 1950), *aff'd*, 340 U.S. 909 (1951) (action seeking to enjoin an order which by its terms excluded Negroes from L.S.U., the court did not apply the personal-property distinction).

30. *City of Manchester v. Leiby*, 117 F.2d 661 (1st Cir.), *cert. denied*, 313 U.S. 562 (1941) (federal court claimed jurisdiction to enjoin the enforcement of municipal ordinances requiring persons selling periodicals in public to wear identification badges).

31. See *Eisen v. Eastman*, 421 F.2d 560 (2d Cir. 1969), *cert. denied*, 400 U.S. 841 (1970).

32. See *MacDonald v. Shawnee Country Club, Inc.*, 438 F.2d 632 (6th Cir.), *cert. denied*, 403 U.S. 932 (1971) (country club attempted to exclude plaintiff because of his religion).

33. See *Hague v. CIO*, 307 U.S. 496 (1939).

concurrence can be read as an attempt to keep vitality in 1343(3) jurisdiction, which Mr. Justice Stone felt threatened by a possible broad construction of the general amount in controversy provision. The Court reasoned that the two federal jurisdictional sections should be read together, with neither totally excluding the other.³⁴ The concurrence stated that there are many rights³⁵ arising under the Constitution and statutes, which are inherently incapable of the pecuniary evaluation of ten thousand dollars which section 1331 seems to require, and that surely the drafters of section 1343(3) had this in mind when section 1343(3) was drafted. For this reason 1343(3) was meant to apply to personal rights, which by their nature were inherently incapable of pecuniary evaluation, while section 1331 was reserved for proprietary claims capable of monetary evaluation. Therefore, the Court concluded that section 1343(3) was not subject to the amount in controversy provision.³⁶

The *Lynch* Court seems to read the personal-property distinction enunciated in *Hague* as restricting, rather than salvaging 1343(3) jurisdiction. The Court stated that section 1343(3) applied both to personal and proprietary rights, thus bringing proprietary rights within the shelter of 1343(3) jurisdiction, and thus eliminating the need to meet the general amount in controversy requirement in section 1983 claims as to property rights. This conclusion seems directly inapposite to the attempted result of *Hague*, and follows the premise that *Hague* unduly narrowed section 1343(3).³⁷

The *Lynch* and *Hague* Courts therefore faced the dilemma of the reconciliation of sections 1331, and 1343(3) from quite different perspectives. The *Lynch* view of an expanded 1343(3) jurisdiction severely restricts the previous bounds of the general amount in controversy provision. The *Hague* rationale for the distinction was not the expansion of section 1343(3) and erosion of section 1331. Rather, it was the concurrence's aim to prevent the erosion of 1343(3) jurisdiction. *Hague* viewed section 1331 as threatening the bounds of 1343(3) jurisdiction, while *Lynch* viewed section 1331 in a more passive role as to 1343(3) jurisdiction. Thus, *Lynch* reconciled the two provisions in a manner

34. *Id.*

35. Such rights as freedom of religion and freedom of speech are inherently incapable of pecuniary evaluation.

36. See *Hague v. CIO*, 307 U.S. 496, 529-32 (1939).

37. See also *Lynch v. Household Finance Corp.*, 405 U.S. 538, 548 (1972).

which permits expansion of section 1343(3) unforeseen when the *Hague* principle was first enunciated.

Lynch cannot be viewed in this context alone. Policy questions emerge as to the tenor and direction of the Court in the field of civil rights jurisdiction generally, which make a section 1343(3) extension more understandable. At the present time there are an ever increasing number of civil rights claims, which by their nature are partially proprietary, yet cannot meet the ten thousand dollar minimum of section 1331.³⁸ But for the *Lynch* decision these claims would have no federal forum from which to seek redress. The underlying policy which the Supreme Court seems to be following is that which was first enunciated in *Monroe v. Pape*,³⁹ i.e., an expansion of civil rights jurisdiction in general. A restrictive reading of 1343(3) jurisdiction would narrow the number of claims able to reach a federal forum. By including property claims within the scope of section 1343(3), and thus eliminating the amount in controversy requirement as to them, the Court remains consistent with its general policy of *Monroe*.

There is another interesting line of reasoning in *Lynch* which merits reflection. *Lynch* stated that the Supreme Court never followed a personal-property distinction as a guide to 1343(3) jurisdiction, except in cases involving the constitutionality of certain state taxing practices.⁴⁰ The Court distinguished these cases from its general rule of the non-applicability of a personal-property distinction to 1343(3) jurisdiction by saying that these cases were really governed by the Tax Injunction Act,⁴¹ which prevents anticipatory adjudication of such claims in the federal courts. This Act was originally passed in 1937. Household Finance cited *Carter v. Greenhow*⁴² and *Pleasants v. Greenhow*⁴³ which were 1884 cases, and *Holt v. Indiana Manufacturing Co.*,⁴⁴ which was a 1900 case. The Tax Injunction Act of 1937 could not possibly have applied to these three cases. Household Finance cited these cases for the proposition that the Court had used such a guideline as to the scope

38. See *Murdock v. Pennsylvania*, 319 U.S. 105 (1943); *Johnson v. Harder*, 438 F.2d 7 (2d Cir. 1971).

39. See also *Monroe v. Pape*, 365 U.S. 167 (1961). In a section 1983 claim, employing the jurisdictional correlate section 1343(3), the Court said that the federal forum should be supplemental to the state forum, and should be available even if no state remedy is available. This was a broad reading of the scope of section 1343(3).

40. See *Lynch v. Household Finance Corp.*, 405 U.S. 538, 542 (1972).

41. 28 U.S.C. § 1341 (1970).

42. 114 U.S. 317 (1884).

43. 114 U.S. 323 (1884).

44. 176 U.S. 68 (1900).

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of 1343(3) jurisdiction. Therefore, it seems the Court did in fact fail to properly support its blanket statement that it had "never" invoked a personal-property distinction.

The *Lynch* decision is perhaps erroneous in the underlying considerations of the formulation of the *Hague* distinction. The Court was perhaps presumptuous in distinguishing Household Finance's precedent as to a personal-property distinction. But, given the general policy, seemingly pursued by the Court, on an expanded federal forum for an expanded segment of the populus in the area of civil rights, *Lynch* is indeed understandable.

Larry D. Yogel

CONSTITUTIONAL LAW—DUE PROCESS—PAROLEE'S RIGHT UNDER THE DUE PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT TO AN OPPORTUNITY TO BE HEARD PRIOR TO REVOKING HIS PAROLE—The United States Supreme Court has held that a parolee's liberty involves significant values within the protection of the due process clause of the fourteenth amendment, and termination of that liberty requires an informal hearing to give assurance that the finding of a parole violation is based on verified facts to support the revocation.

Morrissey v. Brewer, 408 U.S. 471 (1972).

Petitioners Morrissey and Booher were each convicted of forgery and sentenced to a term in an Iowa penitentiary. Over a year later each was released on parole. Approximately six months after their release, at their parole officers' discretion, each was arrested for parole violations and confined in a local jail. At the end of the following week, solely on the basis of a written report by their parole officers, the Iowa Board of Parole revoked their parole and the petitioners were returned to the penitentiary. At no time during any of the proceedings which led to the parole revocations were the petitioners granted any type of hearing.

After exhausting state remedies, both petitioners filed habeas corpus petitions in the United States District Court for the Southern District of Iowa alleging that they had been denied due process because their paroles had been revoked without a hearing. The district court held