

watchman and as a messenger, earning \$589.43 in 1951, \$1,128.30 in 1952, \$305.94 in 1953, and \$347.26 in 1954.

The plaintiff contends that he became totally and permanently disabled within the meaning of the Social Security Act in 1945, when he suffered his initial heart attack; that he is entitled to have his wage record frozen from that time until March 29, 1952, the date of his fiftieth birthday, and to collect disability payments from July, 1957.

I disagree. The record discloses that, although the plaintiff suffered his first heart attack in 1945, he was able to return to work as a messenger and as a watchman during the years of 1951, 1952, 1953 and 1954. His record of earnings, which is attached to the record of the proceedings before the Social Security Administration at page 53, shows that he was employed in the last three quarters of 1951, the first three quarters of 1952, the first and last quarters of 1953, and the first two quarters of 1954. He has not been employed since then. It would appear, therefore, that his disability, if any, commenced in the third quarter of 1954. However, in a letter dated February 6, 1958, written to the plaintiff by Arthur E. Hess, Assistant Director of the Social Security Administration, a copy of which is attached to the record at pages 63 and 64, the date of the plaintiff's disability was fixed at September 30, 1952.

The first question to be determined is whether the plaintiff, either on September 30, 1952 or on June 30, 1954, had met the earnings requirements of twenty quarters of coverage in the forty calendar quarters ending with the quarter in which the disability began, and whether he acquired not less than six quarters of this coverage in the last thirteen quarters of the same period, as required by the Social Security Act, Title 42 U.S.C.A. § 416(i) (2), (3) and (4). On neither of these dates did he meet the earnings requirements. As of September 30, 1952 he had sixteen quarters of coverage in the preceding forty calendar quarters, and six quarters of coverage in the preceding thirteen calendar quarters. As of June

30, 1954 he had sixteen quarters of coverage in the preceding forty calendar quarters and ten quarters of coverage in the preceding thirteen calendar quarters.

[1,2] The Social Security Administration has found that the plaintiff has not met the earnings requirements, and there is substantial evidence to support that finding. The decision of the Secretary denying the disability benefits is, therefore, conclusive on this Court, pursuant to the provisions of Section 405(g) of Title 42.

The plaintiff's motion for summary judgment is denied and the defendant's motion is granted.

Settle order on notice.



Max EISENBERG, Plaintiff,
v.
COMMERCIAL UNION ASSURANCE
COMPANY Limited, North British
Group, Defendant.

United States District Court
S. D. New York.
Dec. 19, 1960.

Diversity action by citizen of New York against British corporation. Corporation moved to dismiss for lack of diversity. The District Court, Dimock, J., held that where principal place of business of British corporation was in London, England, there was sufficient diversity of citizenship between corporation and citizen of New York to give the District Court jurisdiction, although corporation's principal place of business within the United States was in New York.

Motion denied.

Cite as 189 F.Supp. 500 (1960)

1. Courts ⇐321

Under statute giving District Court jurisdiction based on diversity of citizenship, unless a corporation is incorporated by a state of the United States, it will not be deemed a citizen of the state where it has its principal place of business. 28 U.S.C.A. § 1332(c).

2. Courts ⇐321

Where principal place of business of British corporation was in London, England, there was sufficient diversity of citizenship between corporation and citizen of New York to give the District Court jurisdiction, although corporation's principal place of business within the United States was in New York. 28 U.S.C.A. § 1332(c).

3. Courts ⇐314

Although purpose of amendment which made a corporation a citizen of state where it had its principal place of business as well as state where it was incorporated, for purpose of diversity jurisdiction, was to reduce number of cases which would come to federal courts under diversity jurisdiction, it was not the purpose of the amendment to abandon the protection from local prejudice against outsiders as the reason for diversity jurisdiction. 28 U.S.C.A. § 1332 (c).

Kaye, Scholer, Fierman, Hays & Handler, New York City, for plaintiff; Joseph J. Moscou, New York City, of counsel.

Edward F. Sweeney, New York City, for defendant.

DIMOCK, District Judge.

Defendant moves for dismissal of this action on the ground that there is no diversity of citizenship between plaintiff and defendant. Plaintiff is a citizen of New York. Defendant is a British corporation with its principal place of business in London. Defendant has many places of business in the United States but its principal one in the United States is in New York.

The question presented involves the interpretation of section 1332 of title 28 U.S.Code, as amended in 1958, which reads as follows:

"§ 1332. Diversity of citizenship; amount in controversy; costs

"(a) The district courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of \$10,000, exclusive of interest and costs, and is between—

"(1) citizens of different States;

"(2) citizens of a State, and foreign states or citizens or subjects thereof; and

"(3) citizens of different States and in which foreign states or citizens or subjects thereof are additional parties.

"(b) Except when express provision therefor is otherwise made in a statute of the United States, where the plaintiff who files the case originally in the Federal courts is finally adjudged to be entitled to recover less than the sum or value of \$10,000, computed without regard to any setoff or counterclaim to which the defendant may be adjudged to be entitled, and exclusive of interest and costs, the district court may deny costs to the plaintiff and, in addition, may impose costs on the plaintiff.

"(c) For the purposes of this section and section 1441 of this title, a corporation shall be deemed a citizen of any State by which it has been incorporated and of the State where it has its principal place of business.

"(d) The word 'States', as used in this section includes the Territories, the District of Columbia, and the Commonwealth of Puerto Rico."

Defendant's position is that it has its principal place of business in the State of New York and that therefore, under the express terms of subdivision (c), it is to be deemed a citizen of New York and

there is no diversity of citizenship between it and plaintiff New York citizen.

[1] It is to be noted that the statute differentiates between States of the United States and foreign states by the use of a capital S for the word when applied to a State of the United States. Subdivision (c), therefore, in dealing with the *place of incorporation* refers only to a corporation incorporated in a State of the United States. When subdivision (c) goes on to deal with *principal place of business* it refers to the same corporation and thus only to a corporation incorporated in a State of the United States. The subdivision is not susceptible of the construction as if it read "all corporations shall be deemed citizens of the States by which they have been incorporated and of the States where they have their principal places of business." Unless a corporation is incorporated by a State of the United States it will not be deemed a citizen of the State where it has its principal place of business.

[2] If I am wrong about this and a corporation incorporated by a foreign state can be deemed a citizen of the State where it has its principal place of business, defendant is in no better case on this motion. Defendant's principal place of business is not in New York; it is in London. Defendant would have me read subdivision (c) as if words were added to it so as to make it provide that a corporation shall be deemed a citizen "of the State where it has its principal place of business" *within the United States*.

[3] I do not believe that the statute ought to be read otherwise than literally. It is true that the purpose of the amendment which made a corporation a citizen of the State where it had its principal place of business as well as of the State where it was incorporated was to reduce the number of cases which would come to

the Federal courts under the diversity jurisdiction. *Hughes v. United Engineers & Constructors, Inc., D.C.S.D.N.Y., 178 F.Supp. 895.* Even if, however, the amendment carried out this purpose by taking away from all foreign state corporations whose principal place of business was within the State, as well as all State corporations whose principal place of business was within the State, the right of removal of a case brought by a resident of that State, it was not the purpose of the amendment to abandon the protection from local prejudice against outsiders as the reason for diversity jurisdiction. It is a fair inference that a corporation which has located its principal place of business in a State has adopted that State as its actual residence and will not be subject to prejudice against outsiders. If a British corporation has located its principal place of business outside of the United States, however, and has set up two branches in the United States, one in Chicago and one in New York, and the one in New York is merely its principal place of business in the United States, no inference can be legitimately drawn from those facts that it has adopted New York as its actual residence. Its contact with New York may be so slight that it is still an outsider there. On the other hand, if a Bahaman corporation, for example, has located its principal place of business in New York, the inference is legitimate that it has adopted New York as its actual residence and that it is no longer entitled to be considered an outsider and to deserve the protection accorded outsiders.

Diversity of citizenship exists in this case and defendant cannot refuse the protection of federal jurisdiction that plaintiff thrusts upon it.

Motion denied.

So ordered.

John L. LEWIS, Henry G. Schmidt and Josephine Roche, as Trustees of the United Mine Workers of America Welfare and Retirement Fund, Plaintiffs,

v.

Edward MEARS, individually and trading as Mears Coal Company, Defendant.

Civ. A. No. 15288.

United States District Court

W. D. Pennsylvania.

Nov. 23, 1960.

As Amended Dec. 6, 1960.

Action by trustees of mine workers' welfare and retirement fund to recover payments allegedly due from mine operator pursuant to contract allegedly entered into by operator and mine workers' union. The case was submitted to the jury on two interrogatories. Verdict was rendered and an order was filed denying plaintiffs' motion for directed verdict and entering judgment in favor of defendant in accordance with the answers to the interrogatories. Plaintiffs filed motion to reopen judgment and for directed verdict in favor of the plaintiffs and a motion for a new trial. The District Court, Rabe F. Marsh, Jr., J., held that admission of operator's testimony that no contract existed in that union officer who procured operator's signature to contract had agreed that contract would not become effective until operator received a copy signed by mine workers' union and that operator had never received such copy was not in violation of parol evidence rule.

Motions denied.

1. Evidence ⇄429

In action by trustees of mine workers' welfare and retirement fund to recover payments allegedly due from mine operator pursuant to contract allegedly entered into by operator and miners' union, admission of operator's testimony that no contract existed in that union officer who procured operator's signature to contract had agreed that contract would not become effective until operator

received a copy signed by miners' union and that operator had never received such copy was not in violation of the parol evidence rule; but testimony was admissible to show that no contract existed inasmuch as the condition precedent to the formation of the contract had never occurred.

2. Evidence ⇄397(2)

The "parol evidence rule" provides generally that whenever any contract is contained in writing which appears to be complete and regular on its face, it is the sole evidence of the agreement, and cannot be varied, altered, or contradicted by parol except in certain circumstances.

See publication Words and Phrases, for other judicial constructions and definitions of "Parol Evidence Rule".

3. Evidence ⇄397(1)

It is fundamental that with respect to the application of the parol evidence rule to contracts there must first be a contract.

4. Estoppel ⇄119

Labor Relations ⇄777

In action by trustees of mine workers' welfare and retirement fund to recover payments allegedly due from mine operators pursuant to contract allegedly entered into by operator and mine workers' union, the evidence, including evidence relating to operator's acceptance of fund hospitalization benefits, to operator's payment of royalties in accordance with contract, to operator's having checked off union dues consistent with contract, and to operator's failure to disavow contract and to notify trustees of intention to terminate contract and discontinue payments, created such doubt on questions of operator's ratification of contract and operator's estoppel to maintain that contract never legally existed as would preclude binding instructions or any ruling in favor of trustees as a matter of law. Fed. Rules Civ. Proc. rule 49(a), 28 U.S.C.A.

5. Estoppel ⇄116

Labor Relations ⇄777

In action by trustees of mine workers' welfare and retirement fund to re-