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Federal Practice--Doctrine of Indispensable Parties Held To Be a Matter of Substantive Law Unaffected by Amended Rule 19 (Provident Tradesmens Bank & Trust Co. v. Lumbermens Mut. Cas. Co, 365 F.2d 802 (3d Cir. 1966))

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RECENT DECISIONS

FEDERAL PRACTICE — DOCTRINE OF INDISPENSABLE PARTIES HELD TO BE A MATTER OF SUBSTANTIVE LAW UNAFFECTED BY AMENDED RULE 19. — As a result of an automobile accident, two separate actions against the owner and driver jointly were pending before a state court. A third action, arising from the same accident, was instituted in a federal district court against the driver alone and resulted in a default judgment. Thereafter, another action for a declaratory judgment was commenced in the federal district court in which all the parties except the owner were joined and in which it was held that the driver was operating the vehicle within the scope of his authority and was thus an "insured" within the meaning of the owner's policy. The Court of Appeals for the Third Circuit, reversing, *held* sua sponte that since the owner was an indispensable party and no decree could be rendered to protect his interest in either the federal or state actions, his non-joinder was error. The Court explained that the indispensable party doctrine is a matter of substantive law, and therefore could not be altered by Rule 19 of the Federal Rules of Civil Procedure. Thus, dismissal of the action was required. *Provident Tradesmens Bank & Trust Co. v. Lumbermens Mut. Cas. Co.*, 365 F.2d 802 (3d Cir. 1966).

Under common-law procedure, those who had joint rights or liabilities were required to be joined as parties.[1] Thus, joint obligees had to bring an action for damages on a contract right together,[2] and joint obligors had to be made joint defendants in an action at law.[3] Exceptions were made when one of the joint obligors was an infant,[4] a silent partner,[5] dead,[6] or discharged by operation of law.[7] In tort actions, plaintiffs who had joint interests

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[1] Fell v. Brown, 2 Bro. C.C. 276, 29 Eng. Rep. 151 (Ch. 1787). Although offering only dictum on the point, *Fell* has been referred to as the embodiment of a rule of long standing. See Farmer v. Curtis, 2 Sim. 466, 57 Eng. Rep. 862 (Ch. 1829); Palk v. Clinton, 12 Ves. Jun. 48, 33 Eng. Rep. 19 (Rolls 1805). Prior to *Fell* the English Chancery Courts had employed a pragmatic approach to joinder issues. See Hazard, *Indispensable Party: The Historical Origin of a Procedural Phantom*, 61 COLUM. L. REV. 1254 (1961).

[2] See Slingsby's Case, 5 Co. Rep. 18b, 77 Eng. Rep. 77 (1588).

[3] Keller v. Blasdel, 1 Nev. 491 (1865).

[4] Burgess v. Merill, 4 Taunt. 468, 128 Eng. Rep. 410 (1812).

[5] Tomlinson v. Spencer, 5 Cal. 291 (1855).

[6] Murphy's Adm'rs v. Branch Bank, 5 Ala. 421 (1843).

[7] Ivey v. Gamble, 8 Ala. Rep. (7 Port.) 545 (1838).

were required to join in order to bring an action for damages,[8] while, generally, joint tort-feasors could be sued either jointly [9] or severally,[10] at the plaintiff's option.

This indispensable party doctrine, requiring a court to dismiss in the absence of certain interested parties, was recognized by the federal courts in *Joy v. Wirtz*.[11] In that case, several creditors had executed a release of their claims against the defendant and two of them brought an action to rescind. The defendant's demurrer for non-joinder of all the creditors was sustained since the court reasoned that it could not set aside the release as to some of the creditors and leave it operative as to the others. The plaintiffs were permitted to amend the complaint to join all the creditors except one whose citizenship would have defeated federal jurisdiction based upon diversity of citizenship.[12] The defendant again demurred, and the court, although recognizing the common-law doctrine, allowed the action to proceed believing it could frame the decree so as not to affect the rights of the absent party.

Courts of equitable jurisdiction developed more flexible and pragmatic compulsory joinder requirements. The object of the requirements in the equity courts was to settle an entire controversy in one action when this could be done conveniently and without prejudice to any of the parties.[13] In *Russell v. Clarke's Ex'rs*,[14] an action for the construction of, and a determination of liability under, a letter of credit, the United States Supreme Court decided that a final decree could not be entered on the merits unless all parties who had an essential and substantially affected interest were joined.[15]

The United States Supreme Court, in *Shields v. Barrow*,[16] defined indispensable and necessary parties in terms that are still accepted today. Indispensable parties are:

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[8] Gallatin & N. Turnpike Co. v. Fry, 88 Tenn. 296, 12 S.W. 720 (1889).

[9] Colegrove v. New York & N.H.R.R., 20 N.Y. 492, 7 N.Y. Supp. 878 (1859).

[10] Sutton v. Clarke, 6 Taunt. 29, 128 Eng. Rep. 943 (1815).

[11] 13 Fed. Cas. 1172 (No. 7553), *rehearing*, 13 Fed. Cas. 1172 (No. 7554) (C.C.D. Pa. 1806).

[12] Non-joinder of an interested party whose joinder would defeat diversity jurisdiction is the traditional problem that faces the federal courts. The more typical problem facing all courts, both federal and state, is non-joinder of a party who is not amenable to the jurisdiction of the court.

[13] City Bank v. Bartlett, 71 Ga. 797 (1883).

[14] 11 U.S. (7 Cranch) 69 (1812).

[15] *Id.* at 98.

[16] 58 U.S. (17 How.) 129 (1854). The Supreme Court in *Shields* was construing a statute, Act of Feb. 28, 1839, ch. 36, § 1, 5 Stat. 321, which provided:

persons who not only have an interest in the controversy, but an interest of such a nature that a final decree cannot be made without either affecting that interest, or leaving the controversy in such a condition that its final termination may be wholly inconsistent with equity and good conscience.[17]

Necessary parties are:

persons having an interest in the controversy, and who ought to be made parties, in order that the court may act on that rule which requires it to decide on, and finally determine the entire controversy, and do complete justice, by adjusting all the rights involved in it . . . [but whose] interests are separable from those of the parties before the court, so that the court can proceed to a decree, and do complete and final justice, without affecting other persons not before the court. . . .[18]

The essence of the Court's formulation is that if a court may enter a meaningful decree without affecting the absent party's interest, that party is at most a necessary party; if a court is unable to do so, then the absent party is indispensable.[19]

Citing *Shields* for the classification of parties, the Ninth Circuit Court of Appeals, in *Washington v. United States,*[20] established the criteria for determining whether a party is necessary or indispensable. After determining that a party is interested in the controversy, the court must answer four questions:

(1) Is the interest of the absent party distinct and severable?

That where, in any suit at law or in equity, commenced in any court of the United States, there shall be several defendants, any one or more of whom shall not be inhabitants of or found within the district where the suit is brought or shall not voluntarily appear thereto, it shall be lawful for the court to entertain jurisdiction, and proceed to the trial and adjudication of such suit, between the parties who may be properly before it; but the judgment or decree rendered therein shall not conclude or prejudice other parties, not regularly served with process, or not voluntarily appearing to answer; and the nonjoinder of parties who are not so inhabitants, or found within the district, shall constitute no matter of abatement, or other objection to said suit.

[17] Shields v. Barrow, 58 U.S. (17 How.) 129, 139 (1854).

[18] *Ibid.* There is also a third class of parties—those whose relation "to the matter in controversy, merely formal or otherwise, [is such] that while they may be called proper parties, the court will take no account of the omission to make them parties." Barney v. Baltimore, 73 U.S. (6 Wall.) 280, 284 (1867).

[19] Reed, *Compulsory Joinder of Parties in Civil Actions,* 55 MICH. L. REV. 327, 342-43 (1957).

[20] 87 F.2d 421 (9th Cir. 1936).

(2) In the absence of such party, can the court render justice between the parties before it?
(3) Will the decree made, in the absence of such party, have no injurious effect on the interest of such absent party?
(4) Will the final determination, in the absence of such party, be consistent with equity and good conscience? [21]

If all the questions cannot be answered affirmatively, then the absent party is indispensable and his non-joinder will warrant a dismissal.

The approach of the equity courts to the indispensable party doctrine is characterized by extreme flexibility. For example, in *Elmendorf v. Taylor*,[22] the plaintiff, one of several cotenants, was allowed to sue in equity without the joinder of his cotenants who were not amenable to the jurisdiction of the court. The Court noted the desirability of bringing all interested parties before it so as to finally settle the controversy, but stated that the application of the indispensable party doctrine was *discretionary* in the interests of justice.[23] *Mallow v. Hinde* [24] cited *Elmendorf* with approval, but held that there was no dispensing with a party whose rights lie at the very foundation of plaintiff's claim of right and whose interests will be directly affected and prejudiced.[25] In dictum, however, the Court stated that it might be possible, in the interest of justice, to grant some relief through the use of a decree contingent upon a favorable adjudication for the plaintiff over the absent parties, or, in the alternative, a retention of jurisdiction pending other developments.[26]

This concept of shaping the decree to avoid the hardship of dismissal for non-joinder has been applied where the plaintiff sought specific equitable relief. For example, in an action for rescission of a contract in which several of the parties to the agreement were not joined, it was held that the trial court before dismissing should first consider whether alternative relief could be granted which would not affect the interests of an absent party.[27] In *Miller & Lux, Inc. v. Nickel*,[28] the court stated that where specific relief is sought and, if granted, would adversely affect the interests of the absent party, "the court can award damages in lieu [of specific relief] . . . and frame its decree so as to protect the

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[21] *Id.* at 428.
[22] 23 U.S. (10 Wheat.) 152 (1825).
[23] *Id.* at 166-67.
[24] 25 U.S. (12 Wheat.) 193 (1827).
[25] *Id.* at 198.
[26] See *id.* at 198-99.
[27] Ward v. Deavers, 203 F.2d 72 (D.C. Cir. 1953).
[28] 141 F. Supp. 41 (N.D. Cal. 1956).

interests of those absent parties." [29] The possibility of shaping the decree so as to protect absent parties also has application in cases where the plaintiff sought relief at law.[30]

Among the factors which are weighed to determine whether a party is indispensable is the inconvenience of a dismissal to the plaintiff, including whether or not the plaintiff will be left without a forum in which to vindicate his rights.[31] In *Kroese v. General Steel Castings Corp.*,[32] the plaintiff sued the defendant corporation for a declaration of dividends. The plaintiff could not obtain jurisdiction over a majority of the board of directors in any state or federal court. The lower court, reasoning that it could not grant relief without the joinder of a majority, dismissed the action. The court of appeals reversed, concluding that the decision of the court as to whether dividends should be declared was substituted for the independent business judgment of the board; the only function to be performed by the board, then, was the recording of the decree in the minutes book—a ministerial function. The court was aware of the fact that enforcement of its decree without in personam jurisdiction over a majority of the board would be difficult. However, this difficulty was counterbalanced by the complete absence of any forum where such jurisdiction could be obtained. Thus, the court concluded that by virtue of its power over the defendant's property within the state, relief could be effectively granted.

Other interests of the plaintiff, besides the lack of a forum, have been considered important by the courts. In *A.L. Smith Iron Co. v. Dickson*,[33] the plaintiff sought to declare a patent invalid and sued the licensee without joinder of the licensor-patentee. The court felt that the potential detriment of a judgment of invalidity against the patentee could be obviated by according him an opportunity to intervene and, with this opportunity, his sole remaining interest in a dismissal for his non-joinder was choice of forum. The court, however, held that the interest of the present plaintiff to obtain a speedy adjudication outweighed this interest of the patentee and allowed the case to proceed.

The Supreme Court, in 1934, promulgated the Federal Rules of Civil Procedure under the authority of enabling legislation [34]

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[29] *Id.* at 46. *Accord,* Hudson v. Newell, 172 F.2d 848, 850 (5th Cir. 1949).

[30] Roos v. Texas Co., 23 F.2d 171 (2d Cir. 1927), *cert. denied,* 277 U.S. 587 (1928). *Accord,* Kendig v. Dean, 97 U.S. 423 (1878). See also Atwood v. Rhode Island Hosp. Trust Co., 275 Fed. 513 (1st Cir. 1921), *cert. denied,* 257 U.S. 661 (1922).

[31] See, *e.g.,* Fitzgerald v. Haynes, 241 F.2d 417 (3d Cir. 1957); Fouke v. Schenewerk, 197 F.2d 234 (5th Cir. 1952).

[32] 179 F.2d 760 (3d Cir.), *cert. denied,* 339 U.S. 983 (1950).

[33] 141 F.2d 3 (2d Cir. 1944).

[34] 28 U.S.C. § 2072 (1964).

which specifically withheld from the Court the power to modify, abridge or enlarge substantive law or rights.[35] In adopting the rules, equity and law in the federal courts were merged under a single set of procedural rules.[36] As first promulgated in 1934, rule 19, dealing with joinder, provided that persons who have joint interests shall be made parties. In addition, persons who are not indispensable, but who are needed to provide complete relief between the joined parties and who are within the jurisdiction of the court, can be summoned to appear.[37] However, in its discretion, the court may proceed without them if jurisdiction can only be obtained voluntarily or if joinder would deprive the court of jurisdiction. This rule provided that if such parties were not joined, the judgment rendered would not affect their rights or liabilities. Rule 19 incorporated language which had been construed as not affecting the substantive principles for the determination of indispensable parties.[38] Subsequent decisions of the United States Supreme Court [39] and of the lower federal courts [40] have followed a practical application of the principles referred to in *Shields*. Thus, the law of indispensability remained virtually unchanged by the enactment of the Federal Rules.

By an amendment, effective July 1, 1966, rule 19 was significantly changed.[41] Subdivision (a) now provides that a person should be joined (1) if complete relief cannot be given the joined parties, or (2) if the absent "party's" ability to protect an interest will be impeded or if his future action might expose parties already joined to double, multiple, or otherwise inconsistent obligations. In addition, subdivision (b) of rule 19 now specifies four factors to be considered by the court in determining whether or not to proceed in the absence of a person described in subdivision (a). They are:

first, to what extent a judgment rendered in the person's absence might be prejudicial to him or those already parties; second, the extent to which, by protective provisions in the judgment, by the shaping of relief, or other measures, the prejudice can be lessened or avoided; third, whether a judgment rendered in the person's

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[35] *Ibid.* See United States v. Sherwood, 312 U.S. 584, 589-90 (1941).
[36] FED. R. CIV. P. 1, 2 (1958).
[37] FED. R. CIV. P. 19 (1958).
[38] Fink, *Indispensable Parties and the Proposed Amendment to Federal Rule 19*, 74 YALE L.J. 403, 409-11 (1965).
[39] See, *e.g.*, Lumbermen's Mut. Cas. Co. v. Elbert, 348 U.S. 48 (1954).
[40] *E.g.*, Stevens v. Loomis, 334 F.2d 775 (1st Cir. 1964); L.O. Koven & Brother, Inc. v. Local 5767, United Steelworkers of America, 250 F. Supp. 810 (D.N.J. 1966).
[41] *Compare* FED. R. CIV. P. 19 (1958), *with* FED. R. CIV. P. 19 (Supp. 1966).

absence will be adequate; fourth, whether the plaintiff will have an adequate remedy if the action is dismissed for nonjoinder.[42]

The change in the rule, as indicated by the Advisory Committee's Note,[43] is an attempt to state affirmatively in subdivision (b) the factors relevant in determining whether an action should proceed or be dismissed when the joinder of interested persons is not feasible. However, the fact that an adjudication will, as a practical matter, adversely affect an absent person or leave a party exposed to possible inconsistent recovery by the absent person is only one factor to be considered on the issue of indispensability. Similarly, the "shaping of relief" provision was intended to be used as a method of lessening prejudice and was considered by the committee to be a "familiar expedient" for obtaining such a result.[44]

In the instant case,[45] the decedent's estate brought a declaratory judgment action to determine whether the person driving the vehicle in which deceased was killed was covered under the owner's insurance policy. The policy's coverage extended only to those driving the car with the owner's permission. The critical issue was whether or not the driver was using the vehicle within the scope of this permission. Defendant insurance company had not defended in another suit brought against the driver's estate by the plaintiff herein, and a default judgment had been obtained. Dutcher, the owner of the automobile, was being sued in a state court by the plaintiff here, and was not joined in the instant action. The district court directed a verdict in favor of the plaintiff since, in Pennsylvania, the presumption is that a dead man was operating a borrowed vehicle within the scope of his permission; this presumption had not been rebutted. Although Dutcher was ruled incompetent to testify as to the scope of the permission since his interest was adverse to the plaintiff's estate, he was permitted to testify in a phase of the trial concerning a passenger not fatally injured. As to this facet of the trial, a jury had found that the driver had not used the automobile beyond the scope of his permission.

The Court of Appeals, Third Circuit, advanced two reasons for reversing the lower court's finding: first, the failure to join the owner was a fatal error in that he was an indispensable party, and, second, in view of the pending state court actions in which the question of coverage would be decided, the district court should

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[42] FED. R. CIV. P. 19(b) (Supp. 1966).

[43] U.S. CODE CONG. & AD. NEWS 779-84 (1966).

[44] *Id.* at 782.

[45] Provident Tradesmen Bank & Trust Co. v. Lumbermen's Mut. Cas. Co., 365 F.2d 802 (3d Cir. 1966).

have denied relief without consideration of the merits. The Court stated that a declaratory judgment proceeding is procedural and not equitable in nature and that, while equitable principles are an element in a determination of indispensability, they "are not operative" where the element of potentially drastic "injurious effect" to the interest of the absent party is present.[46] The Court reasoned that a party is indispensable when his rights may be affected and the court cannot proceed without him. Supported by the district court's finding that the owner's interest in the policy was adverse to the plaintiff's, the Court held that it was practically impossible to protect the owner in a decree since his interests were so entangled with those of the joined parties. Moreover, there was no precedent for fashioning a decree which would protect the absent party while settling the issue between the parties before the Court. The Court concluded that one whose interests or rights will be adversely affected has a substantive right to be joined which cannot be abridged by procedural rules and held that the district court should not have proceeded in view of the fact that its finding as to the action's potentially drastic effect upon the owner made him an indispensable party.

The dissent stated that declaring one an indispensable party is a conclusion premised upon the failure of the court to proceed with the action after various factors are considered. Arguing that indispensability is not determined by academic or mechanical classification but rather depends on all the elements which bear on the case, the dissent maintained that the action should not be dismissed if an effective judgment could be molded without adversely affecting the absent party. It was the dissent's position that preserving the verdict would only adversely affect the owner if the total judgments obtained in both the federal and state proceedings should exceed the policy's limits. In that event, the owner would have a right to make his claim of superiority to the proceeds of the policy for indemnity. Also, a race to the proceeds could be prevented by a provision in the decree forbidding the insurer to make any payments until the owner had presented his claims for indemnity. The dissent was highly critical of the majority's failure to apply rule 19 pragmatically and to consider the crucial factors of the case: (1) the time factor—eight years had elapsed since the date of the accident; (2) the factual determination which will have to be retried with no new evidence or circumstances; (3) the possibility of no actual conflict between the owner and driver since the policy limits may not be exceeded; (4) the failure of the owner to intervene under rule 24—presumably so that he would not be bound by an adverse determination but would reap the benefits

[46] *Id.* at 809.

of a favorable one; and (5) that the issue of non-joinder was not raised by the parties but by the Court itself.[47]

Under the concept of indispensability adopted by the Court in the instant case, the application of recently amended Rule 19 of the Federal Rules of Civil Procedure is restricted. In classifying the indispensable party doctrine as substantive law, the Court adds unnecessary doctrinal confusion to the pragmatic essence of the test of who is an indispensable party and who is merely a necessary party. Under prior law, if the court could render a decree between the present parties that would not injure the absent party, there would be no need to dismiss the action for failure to join. In the instant case, the Court stated that "equitable considerations are an element of the criteria to be applied in determining whether a party is indispensable but they *are not operative* where the element of 'injurious effect on the interest of the absent party' is present." [48] This approach begs the question of what causes and what can prevent the injurious effect on this absent party. This conclusion, superimposed on the Court's concept of indispensability as a question of substantive law, will tend to restrict the pragmatic approach intended by the revisors of rule 19. It seems that the Court did not give sufficient consideration to whether some kind of an unprejudicial decree could be fashioned.

Furthermore, the restrictive approach of the majority seems contrary to the intent of the revisors of rule 19. The revisors sought to have "the case . . . examined pragmatically and a choice made between the alternatives of proceeding with the action in the absence of particular interested persons, and dismissing the action." [49] It has been urged that the classification of *Shields* be abandoned in favor of a balancing of competing interests on a case by case basis.[50]

The majority contended that rule 19 was inapplicable since it could not affect substantive rights. However, it seems that rule 19 could properly be considered a mere codification of federal decisional law on indispensability rather than a vehicle to change substantive rights. That the rule was merely a codification can be seen by examining its provisions in light of the case law of indispensable parties. The first factor to be considered by a court under rule 19(b) is the extent of possible prejudice to the absent party. It has been held that if the court can proceed to a meaningful decree without affecting the interest of the absent person,

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[47] *Id.* at 816 (dissenting opinion).
[48] *Id.* at 809. (Emphasis added.)
[49] U.S. CODE CONG. & AD. NEWS 779 (1966).
[50] Reed, *Compulsory Joinder of Parties in Civil Actions,* 55 MICH. L. REV. 327, 356 (1957).

that absent person is, at most, a necessary party.[51] The second factor, which is closely related to the first, is the possibility of reducing the prejudice to absent parties by protective provisions or the shaping of relief. This factor indicates that there may be devices short of an outright judgment for either party which will not affect the absent party and yet will provide a meaningful determination. This factor is an important consideration where specific relief, such as rescission, is sought and not all parties to the agreement are joined. By awarding money damages in lieu of the specific remedy sought and by shaping the decree to protect the absent parties, courts have avoided the indispensable party doctrine.[52] The other factors enumerated in amended rule 19 are whether adequate relief can be granted in the absence of third parties, and whether there is any forum in which the plaintiff can join all "indispensable" persons. It is submitted that all these factors are inherent in the traditional test for determining who are indispensable parties. In fact, one of the purposes of the new rule was to permit the courts to retain a case to determine whether or not, considering all the above mentioned factors, they should proceed or dismiss.

However, upon application of rule 19(b) to the facts of the case, it appears that a result identical to that of the instant case would have been warranted. Under this subdivision, a court's first inquiry is whether there is prejudice to the absent party. Here, a judgment for the plaintiff would definitely be prejudicial to the owner since if the proceeds are applied to satisfy the plaintiff's judgment against the driver, and judgments are later entered in the state court against the owner and driver jointly, less of the proceeds are available to satisfy these state claims. Secondly, the court must determine if the interests of the absent party can be protected by the decree. In this case such protection is possible by holding payments in abeyance until a determination is had in the state courts. However, a third factor, *i.e.*, whether the plaintiff will have another forum in which to pursue a remedy, seems to militate against shaping a decree in such manner. Since the state courts are open to him and he could easily consolidate his action with the others pending there, there would be a great conservation of judicial effort coupled with a certitude of consistent results.

One problem that frequently arises in joining indispensable parties in federal practice which may have had a bearing on the Court's attitude in the instant case is that such joinder threatens

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[51] Roos v. Texas Co., *supra* note 30; Atwood v. Rhode Island Hosp. Trust Co., *supra* note 30.

[52] See, *e.g.*, Miller & Lux, Inc. v. Nickel, 141 F. Supp. 41 (N.D. Cal. 1956).

to defeat the jurisdictional diversity and venue requirements of the federal courts. This problem could be alleviated if Congress would modify these requirements as it has for interpleader [53] and third-party actions,[54] so that joinder of a non-diverse indispensable party would not divest the federal court of jurisdiction. The same would be true of venue. In this way, one of the more serious problems inherent in the indispensable party doctrine would be eliminated and the doctrine made more practical and workable in the federal courts.

Considering the above application of rule 19(b) to the instant case, the end result should not be criticized. However, the broad holding of the Court could militate against a flexible application of rule 19(b), while a discretionary dismissal would have been in accord with the intent of the revisors and applicable case law.

IMMIGRATION — RELIEF FROM DEPORTATION — ALIENS WITH FAMILIAL TIES AND WHO WILFULLY EVADED QUOTA RESTRICTIONS ARE "OTHERWISE ADMISSIBLE" AT TIME OF ENTRY. — Two aliens separately entered the United States by misrepresenting their immigrant quota status; thereafter, each became a parent of an American citizen. The Immigration and Naturalization Service ordered the aliens deported on the ground that they were "excludable at entry" as not having been of the proper status under the quota specified by the immigrant visa. The aliens had contended that they were nevertheless saved from deportation by Section 241(f) of the Immigration and Nationality Act which exempts aliens who enter fraudulently, who have close familial relationships with American citizens, and who were "otherwise admissible" at time of entry. On review of the respective cases, the courts of appeals came to an opposite conclusion. In resolving the conflict, the United States Supreme Court concluded that neither alien was deportable, *holding* that although they had misrepresented their quota status for the purpose of evading the quota restrictions, the aliens were nevertheless "otherwise admissible" at the time of entry. *Immigration & Naturalization Serv. v. Errico,* 385 U.S. 214 (1966).

With the exception of the Alien Act of 1798, which allowed the President to order the deportation of any alien he deemed

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[53] 28 U.S.C. § 1335 (1964).

[54] Williams v. Keyes, 125 F.2d 208 (5th Cir.), *cert. denied,* 316 U.S. 699 (1942).