RECENT CASES

Constitutional Law—Jurisdiction of Federal Courts—Amended Federal Interpleader Act—[Federal].—The complainant's testate died in 1934 leaving a large estate of intangibles. The tax officials of both Massachusetts and California claimed the right to tax the whole of the decedent's intangible estate, each asserting that the decedent died domiciled in his state. The complainant, executor of the estate, brought this bill under the Amended Federal Interpleader Act,[1] interpleading the officials of the two states. The bill requested a temporary injunction against both, a determination of the domicil, and a permanent injunction against the official whose claim was unsound. From an order granting the temporary injunction, the California official appealed. *Held*, (one dissent), reversed. The suit being in effect against a state, the Amended Federal Interpleader Act as construed and applied to confer jurisdiction of this case contravenes the Eleventh Amendment. *Riley v. Worcester County Trust Co.*[2]

By overlooking the realities of the problem involved and placing reliance upon procedural form, the court in the instant case has blocked one of the few conceivable escapes from the gross injustice of double inheritance taxation based upon conflicting domiciliary determinations.[3] The executor may oppose the collection of the taxes in courts of the respective jurisdictions but is faced with the likelihood that each court will declare the decedent's domicil to have been in its state, as was done in the famous *Dorrance* cases,[4] despite the fact that it is impossible for one to be domiciled in two places at the same time.[5] Conceivably an original bill in equity might be brought in the United States Supreme Court interpleading the two states on the theory that the controversy is between the states and the executor is merely a formal disinterested party.[6] Under this theory, however, the executor would be unable to oppose the higher

[1] 49 Stat. 1096 (1936), 28 U.S.C.A. § 41 (1937).

[2] 89 F. (2d) 59 (C.C.A. 1st 1937) reversing Worcester County Trust Co. v. Long, 14 F. Supp. 754 (1936) noted in 15 Chi-Kent L. Rev. 41 (1936), 25 Georgetown L. J. 760 (1937), 49 Harv. L. Rev. 1378 (1936), 31 Ill. L. Rev. 546 (1936), and 11 Temple L. Q. 103 (1936).

[3] For the most famous example see: Dorrance's Estate, 309 Pa. 151, 163 Atl. 303 (1932), *cert.* denied, 287 U.S. 660 (1932); New Jersey v. Pennsylvania, 287 U.S. 580 (1932); *In re* Dorrance, 115 N.J. Eq. 268, 170 Atl. 601 (1934); *id.* 116 N.J. Eq. 204, 172 Atl. 503 (1934) aff'd, Dorrance v. Thayer-Martin, 13 N.J. Misc. 168, 176 Atl. 902 (1935); Hill v. Martin, 296 U.S. 293 (1935).

[4] See Dorrance's Estate, 309 Pa. 151, 163 Atl. 303 (1932), *cert.* denied, 287 U.S. 660 (1932); *In re* Dorrance, 116 N.J. Eq. 204, 172 Atl. 503 (1934).

[5] United States *ex rel.* Thomas v. Day, 29 F. (2d) 485 (1928); Rest., Conflict of Laws § 11 (1934); Dicey, Conflict of Laws 88 (4th ed. 1927).

[6] Certainly after interpleader is granted this is true. Anonymous, 1 Vernon 351 (1865) (on death of complainant thereafter, the suit may continue without substitution of his successor, for he is without interest); see Chafee, The Federal Interpleader Act of 1936: I, 45 Yale L. J. 963 (1936), that if the executor deposits the amount of the larger tax with the court, he is a mere stakeholder and withdraws from the proceeding.

tax;[7] and further, the Supreme Court might reject the theory suggested and sustain the objection that the bill violated the eleventh amendment in that it was a suit "commenced against one of the United States"[8] by a citizen of another state. The matter might voluntarily be submitted to an impartial tribunal by the states themselves, by intervention by one state or its officer in a suit against the other, as in a recent New York case,[9] or by an original bill in the United States Supreme Court by one state against the other, as presently is being done by the State of Texas in a like situation.[10] These two latter methods, however, may not be used unless at least one state consents. The Interpleader Act was intended by Congress to supply a remedy for the situation of the instant case,[11] yet the court failed to recognize the principle that an act should be upheld whenever any reasonable interpretation will permit.[12] Unless interpleader with its nation-wide service of process is permitted, no certainty of redress may be had.

The court in the instant case relied upon the Eleventh Amendment, which prohibits extension of the judicial power of the United States to "any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State. . . . ."[13] The amendment was adopted in 1798 to reestablish the traditional doctrine that freedom from suit is an essential attribute of sovereignty, previously derogated by the Supreme Court in *Chisholm v. Georgia*.[14] To avoid the harshness of this provision, the Supreme Court evolved the so-called doctrine of *Ex parte Young*,[15] that a suit for an injunction against a state official based on allegations of threatened unlawful action is not prohibited therein, for it is a suit against the official as an individual.[16] In refusing to apply this doctrine to the instant case, the court utilized a most obvious, but formalistic, argument based solely upon the unique nature of interpleader. It is apparent from the nature of the bill that one official, yet unascertained which one, is acting lawfully. Hence, the court argued, the requirements of *Ex parte Young* were not met. The bill, however, alleges that one or the other official is acting unlawfully; so neither official can point out that the suit against him fails to come within *Ex parte Young*. The purpose of the eleventh amendment is not violated, for sovereignty of the states is not involved. Realistically, *Ex parte Young* requires only a bona fide claim of unlawful action. The bona fide claim of the executor in the instant case that either official is acting unlawfully is fortified by the fact that one of them certainly is. Had separate suits been brought against both of the tax officials in the federal courts, jurisdiction would be assumed without question,[17] though the same possibility

[7] See Killian v. Ebbinghaus, 110 U.S. 568 (1884). [8] U.S. Const., 11th amend.

[9] *In re* Trowbridge's Estate, 266 N.Y. 283, 194 N.E. 756 (1935).

[10] See Texas v. New York, 57 S. Ct. 610, 926, 935 (1937).

[11] 79 Cong. Rec. 6711 (1935).

[12] 1 Willoughby, Const. Law of the United States § 26 (2d ed. 1929); Sinking-Fund Cases 99 U.S. 700 (1878); El Paso & N.E. Ry. Co. v. Gutierrez, 215 U.S. 87 (1909).

[13] U.S. Const. 11th amend.

[14] 2 Dall. (U.S.) 419 (1793). See Hans v. Louisiana, 134 U.S. 17 (1889).

[15] 209 U.S. 123 (1907).

[16] See also Allen v. Baltimore & Ohio Ry. Co., 114 U.S. 311 (1884); *In re* Tyler, 149 U.S. 164 (1893); Prout v. Starr, 188 U.S. 537 (1903); Sterling v. Constantin, 287 U.S. 378 (1932)

[17] See Hill v. Martin, 296 U.S. 393 (1935).

that either was acting lawfully would exist. And if the suits could be brought in the same jurisdiction and consolidated, it is inconceivable that jurisdiction would be defeated. Thus, a decision upholding this action would require no invasion of state sovereignty by a more liberal interpretation of the amendment, but merely a slight adaptation of a firmly established principle to a situation only formally different from those of its traditional application.

Corporate Reorganization—Extraterritorial Jurisdiction of Reorganization Court over Debtor's Claim against Non-resident—[Federal].—Trustees of the debtor corporation claimed that the defendants, residents of Illinois and Delaware, received property from the debtor corporation without consideration therefor, and instituted suit for an accounting and judgment in a Federal district court of Mississippi. The defendants were served in their respective states and appeared specially to object to the jurisdiction of the court. On appeal from the action of the district court in dismissing the suit, *held*, affirmed. The dismissal for lack of jurisdiction was proper notwithstanding § 77B(a) of the Bankruptcy Act[1] which provides that the court shall "have exclusive jurisdiction of the debtor and its property wherever located. . . ." *Bovay v. Byllesby & Co.*[2]

Courts and writers alike have suggested that a reorganization court should have extraterritorial jurisdiction to facilitate the reorganization and the management of the corporate business.[3] It has been held that the jurisdiction of the reorganization court is nationwide over tangible property to which the debtor claims title.[4] There is no unanimity, however, among the several courts which have considered the problem of extraterritorial jurisdiction over choses in action. In *Thomas v. Winslow*,[5] it was decided that a reorganization court could extend its process beyond its territorial limits in a suit upon a chose in action, for a chose in action, even though unliquidated, is property in the possession of the debtor. Both the instant case and *United States v. Tacoma Oriental S. S. Co.*[6] seem to be holdings directly *contra*.

Section 77B(a) contains no express provision for extraterritorial service of process upon one claiming title adversely to the debtor corporation. The exercise of nationwide control in such cases is a matter of discretion.[7] It has been urged that the court should weigh all conflicting interests in deciding whether or not the necessity of centralized administration requires extension of territorial jurisdiction.[8] The hardship upon one who is put to the disadvantage and expense of making his defense in a foreign jurisdiction may conceivably be affected by the validity of the claim. The hardship

[1] 11 U.S.C.A. § 207 (1936). [2] 88 F. (2d) 990 (C.C.A. 5th 1937).

[3] Continental Illinois National Bank & Trust Co. v. Chicago R. I. & Pac Ry., 294 U.S. 648 (1935); Gerdes, Jurisdiction of the Court in Proceedings Under Section 77B, 4 Brooklyn L. Rev. 237 (1935).

[4] *In re* Greyling Realty Co., 74 F. (2d) 734 (C.C.A. 3d 1935); see also, Continental Illinois National Bank & Trust Co., note 3 *supra*, which is widely cited as a leading authority by cases coming under § 77B of the Bankruptcy Act, but which construes the identical provision under § 77.

[5] 11 F. Supp. 839 (N.Y. 1935). [6] 86 F. (2d) 363 (C.C.A. 9th 1936).

[7] *In re* Midland United Co., 12 F. Supp. 502 (Del. 1935).

[8] See 49 Harv. L. Rev. 797 (1936).