Court and to immunize federal employees by express legislation. With the way opened by the decisions in the *Gerhardt* case and the instant case, Congress has passed legislation to permit reciprocal income taxation by the federal and state governments.[24]

Taxation—Domicil—Interpleader of Rival Claimants to Inheritance Taxes—[Federal].—The state of Texas filed in the United States Supreme Court an original bill in the nature of interpleader[1] against three other states, asking a determination of the domicil of the decedent for the purpose of deciding which of the four states could impose death taxes upon the decedent's intangibles. The decedent's next-of-kin was joined as defendant. The total taxes claimed by the several states were in excess of the total net value of the estate. *Held* (Justices Frankfurter and Black dissenting), the Court has jurisdiction of the cause and the special master's finding that the decedent was domiciled in Massachusetts at the time of his death should be confirmed. *State of Texas v. State of Florida.*[2]

In the notable case of *First National Bank v. Maine*,[3] the Supreme Court established the rule that a state statute imposing death taxes upon intangibles of decedents not domiciled in the state infringes the Fourteenth Amendment.[4] Shortly thereafter, there arose in the *Dorrance* cases[5] the problem of the constitutionality of multiple taxation of the same intangible estate based upon conflicting determinations by state courts as to the place of the decedent's domicile. These cases, however, failed to settle the problem since the appeal to the United States Supreme Court from one of the state courts was dismissed on the ground that the federal question "was not properly presented to . . . . the Supreme Court of Pennsylvania,"[6] and a later action to enjoin the collection of the New Jersey tax was dismissed as contrary to the federal statute forbidding a stay of any proceedings in a state court.[7]

In *Worcester County Trust Co. v. Riley*[8] an executor filed a bill under the Federal Interpleader Act[9] joining tax officials of two states and seeking a determination of

[24] 33 Time No. 17, at 14 (1939).

[1] The Court said: "The essential of the bill in the nature of interpleader is that it calls upon the Court to exercise its jurisdiction to guard against the risks of loss from the prosecution in independent suits of rival claims where the plaintiff himself claims an interest in the property or fund which is subjected to the risk." State of Texas v. State of Florida, 59 S. Ct. 563, 568 (1939).

[2] 59 S. Ct. 563 (1939). [3] 284 U.S. 312 (1932).

[4] The rule grew out of the cases of Farmer's Loan and Trust Co. v. Minnesota, 280 U.S. 204 (1930) overruling Blackstone v. Miller, 188 U.S. 189 (1903); Baldwin v. Missouri, 281 U.S. 586 (1930); Beidler v. South Carolina Tax Comm'n, 282 U.S. 1 (1930); and has been followed in City Bank Farmers Trust Co. v. Schnader, 293 U.S. 112 (1934).

[5] See Dorrance's Estate, 309 Pa. 151, 163 Atl. 303 (1932) *cert. denied* Dorrance v. Pennsylvania, 287 U.S. 660 (1932); New Jersey v. Pennsylvania, 287 U.S. 580 (1933); *In re* Dorrance, 115 N.J. Eq. 268, 170 Atl. 601 (1934); *In re* Dorrance, 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. 393 (1935).

[6] Dorrance v. Pennsylvania, 287 U.S. 660 (1932).

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

[8] 302 U.S. 292 (1937). [9] 49 Stat. 1096 (1936), 28 U.S.C.A. § 41 (26) (Supp. 1938).

domicil which would be binding upon them. The United States Supreme Court held that to apply the interpleader act in this situation would constitute a suit against the states in violation of the Eleventh Amendment. The Court distinguished cases in which suits are permitted against state officials threatening to enforce statutes alleged to be invalid,[10] by stating that "Neither the Fourteenth Amendment nor the full faith and credit clause requires uniformity .... as to the place of domicil, where the exertion of state power is dependent upon domicil within its boundaries."[11] This recognition of the constitutionality of double inheritance taxation through conflicting determinations of domicil led both the majority and minority in the principal case to agree that direct review of such determinations is not available.[12] However, if a state court acted arbitrarily in finding that a decedent was domiciled within the jurisdiction, or if the state legislature by statute greatly relaxed the requirements for domicil,[13] it is doubtful whether the Court would refuse *certiorari* to the state court.[14]

The Court in the instant case evidently upheld its jurisdiction over an original bill filed by one of the states only because the estate was not large enough to satisfy the tax demands of all states claiming domicil, the necessary "case or controversy" otherwise

[10] Citing *Ex parte* Young, 209 U.S. 123 (1908) and cases which have followed it.

[11] 302 U.S. 292, 299 (1937).

[12] At 59 S. Ct. 569 the Court said: "That two or more states may each constitutionally assess death taxes on a decedent's intangibles upon a judicial determination that the decedent was domiciled within it in proceedings binding upon the representatives of the estate, but to which the other states are not parties, is an established principle of our federal jurisprudence." Mr. Justice Frankfurter, in his dissent, makes these remarks at page 579, footnote 4: "The decision of the Court therefore binds the states upon an issue of state law which this Court could not consider upon appeal from the state courts, and on which this Court would be bound to follow state law in all other proceedings instituted in the federal courts."

[13] Because of the present state of the law legislatures may tend to reduce their domiciliary requirements for purposes of inheritance taxation for the same reasons that they have reduced the residence requirements for divorce. Compare the residence requirements for divorce in the various states in 2 Vernier, American Familiy Laws 108 ff. (1932) with the changes noted in Vernier, American Family Laws 50 ff. (Supp. 1938). The tendency is to reduce the minimum period of residence. See 17 Minn. L. Rev. 638 (1933).

[14] Because the Supreme Court has jurisdiction under the due process clause "where any right, title, privilege or immunity is claimed under the Constitution" (Abbott v. Tacoma Bank of Commerce, 175 U.S. 409 (1899)), the writ of *certiorari* should be granted because a federal question (violation of the Fourteenth Amendment) is presented. 43 Stat. 937 (1925), 28 U.S.C.A. 344 (b) (1928). See Chafee, The Federal Interpleader Act of 1936, 45 Yale L. J. 1161, 1170 (1936); 34 Col. L. Rev. 1151 (1934). Moreover, in the Riley case the Court said: "Under California statutes inheritance taxes are assessed by judicial proceedings resulting .... in a judgment which is reviewable on appeal by the state courts, and by this Court if it involves any denial of a federal right." 302 U.S. 292, 298 (1937). It appears, further, that taxing statutes must not be arbitrary in their application, the Court in Dane v. Jackson, 256 U.S. 589, 599 (1921), saying: "A state tax law will be held to conflict with the Fourteenth Amendment only where it proposes, or clearly results in, such flagrant and palpable inequality between the burden imposed and the benefit received, as to amount to the arbitrary taking of property without compensation—'to spoliation under the guise of exerting the power of taxing.'" The Court cited Bell's Gap R. Co. v. Pennsylvania, 134 U.S. 232, 237 (1890); Henderson Bridge Co. v. Henderson City, 173 U.S. 592, 615 (1899); Wagner v. Baltimore, 239 U.S. 207, 220 (1915). See further Stebbins v. Riley, 268 U.S. 137 (1925).

being absent.[15] One might have thought that if this were the sole basis of the jurisdiction, the only result of the adjudication of domicil would be to assure the successful state priority in collecting its tax. The opinion indicates, however, that only Massachusetts may tax the intangibles concerned.[16] By reason of the happy circumstance that the taxes claimed exceeded the amount of the net estate, the beneficiaries gained the protection from multiple taxation which was vainly sought in the *Dorrance* and *Riley* cases. It is hard to believe that the instant case represents a permanent solution of the general problem.

[15] The Court said at 59 S. Ct. 568: "When by appropriate procedure, a court possessing equity powers is in such circumstances asked to prevent the loss which might otherwise result from the independent prosecution of rival but mutually exclusive claims, a justiciable issue is presented for adjudication which . . . . is a 'case' or 'controversy' within the meaning of the constitutional provision."

[16] ". . . . the gist of the relief sought is the avoidance of the burden of unnecessary litigation or the risk of loss by the establishment of multiple liability when only a single obligation is owing. These risks are avoided by adjudication in a single litigation binding on the parties." 59 S. Ct. 570. The Court did not enjoin the losing states from the collection of the tax, saying "their adjudication of the conflicting claims is not any the less effective as *res judicata* because not supplemented by injunction." *Ibid.*