

June 1939

Constitutional Law--Double Inheritance Taxation--Interpleader by Interested State

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Recommended Citation

J. P. R., *Constitutional Law--Double Inheritance Taxation--Interpleader by Interested State*, 45 W. Va. L. Rev. (1939).

Available at: <https://researchrepository.wvu.edu/wvlr/vol45/iss4/10>

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RECENT CASE COMMENTS

CONSTITUTIONAL LAW — DOUBLE INHERITANCE TAXATION — INTERPLEADER BY INTERESTED STATE.¹ — Decedent died in New York leaving an immense estate consisting of realty and tangible personalty in that and three other states, but more largely of intangible securities, the paper evidences of which were located in that state.² In the United States Supreme Court, Texas brought an original suit in the nature of a bill of interpleader against the other states and the estate, to determine decedent's true domicile so that the proper state might assess death taxes on his intangible estate. *Held*, that this suit was a "case" or "controversy" of which the Supreme Court had original jurisdiction under the Judiciary Article of the Federal Constitution, and hence that the Court could determine which claimant state was the decedent's true domicile; and that the true state of domicile so determined, and it alone, could collect death taxes on decedent's intangibles. *Texas v. Florida*.³

This decision attempts to solve the problem of multiple death taxation of intangibles where each of several states claims decedent's domicile, through the procedural device of a bill in the nature of a bill of interpleader. The employment of such a bill in a case like this, although not exactly unprecedented,⁴ is exceptional, in that the sole ground for equitable relief by way of interpleader is the danger of injury to the complainant because of risk of multiple suits where liability is single,⁵ whereas in this

¹ For a discussion of the problem of double inheritance taxation, see Note (1938) 44 W. Va. L. Q. 398.

² The special master found, *inter alia*, that decedent Edward Green's net estate, after payment of debts and expenses other than death taxes, amounted to \$36,137,335; that realty and tangible personalty constituted only about one-sixth of the estate; that the death taxes due to the United States and to the four claimant states, if their contentions should be sustained, totaled \$37,727,213, and that this sum exceeded the total net estate by \$1,589,877.

³ 59 S. Ct. 563, 83 L. Ed. 549 (U. S. 1939), Brandeis and Black, JJ., dissenting, Brandeis, J., writing the dissenting opinion.

⁴ In *Webster v. Hall*, 60 N. H. 7 (1830), it is said: "When a bill of interpleader is necessary to determine conflicting claims of creditors, it may be maintained by one of the creditors as well as by the debtor." *Pacific Nat'l Bank v. Mixer*, 124 U. S. 721, 8 S. Ct. 718, 31 L. Ed. 567 (1888), may be a precedent. In that case a bill in the nature of interpleader was filed against the stakeholders, rather than by them. The Court said: "Such a suit is clearly cognizable in equity. . . . the suit, although not brought by them, is in the nature of an interpleader to save them 'from the vexation of two proceedings on a matter which may be settled in a single suit'."

⁵ "Interpleader is the relief given to protect a debtor or holder of property from conflicting claims of different claimants." *McCLINTOCK, EQUITY*

case such injury is threatening not the complainant, Texas, but rather the defendant, the decedent's estate. To allow one of the rival claimants to bring interpleader against the other claimants and the person vexed or about to be vexed by such multiple suits is to ignore the above reason why equity takes jurisdiction. Texas can hardly say it is the vexed stakeholder, either of the decedent's property within its bounds, because that belongs to decedent's estate, or of its uncollected taxes, because the other states do not claim them. But it may be that a case like the present one warrants an extension of the use of the bill, since the Eleventh Amendment of the Federal Constitution does not permit an estate so vexed by several states' taxation to file interpleader against the states in the federal courts;⁶ and thus one of the states should be allowed to file the bill for the estate's benefit. The dissenting opinion objects to the use of interpleader here, as a matter of procedural law, because there had not yet been "substantial translation into effective legal action of the assertion by the four states of their domiciliary claims" and because it is not to be assumed that "state courts will make findings dictated solely by fiscal advantage to their states". The majority opinion asserts that initiation of litigation is not a prerequisite to the bill.⁷ As to the other objection, it is true that there are many cases of unselfish action by state courts decidedly to the fiscal disadvantage of their states,⁸ but in this case the facts show that all the respondent states made counterclaims and filed cross-bills, each asserting that the deceased was domiciled in it and that it was entitled to death taxes on all decedent's intangibles, and this is to be expected where the stakes are high and the claims seemingly have some ground. Yet, New York denied without contradiction that its procedure for levy and collection of taxes had been set in operation.

(1936) § 175; also see HOGG, EQUITY PROCEDURE (Carlin's ed. 1921) §§ 157-158; (1917) 15 R. C. L. 234 and cases there cited; *Stephenson v. Burdett*, 56 W. Va. 109, 48 S. E. 846, 10 L. R. A. (n. s.) 748 (1904).

⁶ So held, even under the Federal Interpleader Act of 1936, in *Worcester County Trust Co. v. Riley*, 302 U. S. 292, 58 S. Ct. 185, 82 L. Ed. 192 (1937); commented on in Note (1938) 44 W. VA. L. Q. 398. This case explains the action of the Court in *City Bank Farmers Trust Co. v. Schnader*, 291 U. S. 24, 54 S. Ct. 259, 78 L. Ed. 628 (1934), where a state official was enjoined from collecting inheritance taxes, by saying that the objection that the suit was one against the state within the meaning of the Eleventh Amendment was not urged or considered on the appeal.

⁷ *Michigan Trust Co. v. McNamara*, 165 Mich. 200, 130 N. W. 653 (1911); *Dorn v. Fox*, 61 N. Y. 264 (1874).

⁸ *Matter of Trowbridge*, 266 N. Y. 283, 194 N. E. 756 (1935); *Mayor v. Gibbs*, 166 Md. 364, 171 Atl. 37 (1934); *In re Frank's Estate*, 192 Minn. 151, 257 N. W. 330, 96 A. L. R. 667 (1934).

Of course, considerations of policy affect the Court's decision in a case such as this. First, is this the type of interstate controversy that the adjudicatory process is best adapted to settling.⁹ The Supreme Court or certain of its members have at times thought that the limitations of litigation often render that process unsuited to solving interstate problems.¹⁰ But if the decedent's domicile continues to be the basis of inheritance taxation of intangibles, the determination of what state will be the winner that takes all is certainly for a judicial tribunal. The dissent, however, suggests that in our modern economic order the doctrine of domicile, in so far as it is a basis for taxation, is in danger of becoming "a social anachronism", but this result seems to threaten only in the unusual case. Yet, if a man does not choose to confine his business activities to one state, then, under the benefit theory of taxation,¹¹ why should only one state tax his intangible estate at his death? Perhaps the solution is to resort to interstate agreement whereby the various states claiming decedent's domicile would apportion a reasonable tax among themselves.

Then there is the question of whether or not the Court is consistent in accomplishing the result it does by means of interpleader, when it has held that two or more states can each constitutionally assess death taxes on a decedent's intangibles upon judicial determination that decedent is domiciled within it, in judicial proceedings to which the other states are not parties.¹² The

⁹ "The limitations of litigation—its episodic character, its necessarily restricted scope of inquiry, its confined regard for considerations of policy, its dependence on the contingencies of a particular record, and other circumscribing factors—often denature and even mutilate the actualities of a problem and thereby render the litigious process unsuited for its solution." Frankfurter, J., dissenting in the principal case.

¹⁰ Dissent of Taney, C. J., in *Pennsylvania v. Wheeling Bridge Co.*, 13 How. 518, 579, 592, 14 L. Ed. 249 (1851); *New York v. New Jersey*, 256 U. S. 296, 313, 41 S. Ct. 492, 65 L. Ed. 937 (1920); dissent of Brandeis, J., in *Pennsylvania v. West Virginia*, 262 U. S. 553, 605, 619, 43 S. Ct. 658, 67 L. Ed. 1117 (1922).

¹¹ See Merrill, *Jurisdiction to Tax—Another Word* (1935) 44 YALE L. J. 582.

¹² See the Dorrance litigation: *In re Dorrance's Estate*, 309 Pa. 151, 163 Atl. 303 (1932); *In re Dorrance's Estate*, 115 N. J. Eq. 268, 170 Atl. 601 (1934); *id.* 116 N. J. Eq. 204, 172 Atl. 503; *Dorrance v. Pennsylvania*, 287 U. S. 660, 53 S. Ct. 222, 77 L. Ed. 570 (1932); *New Jersey v. Pennsylvania*, 287 U. S. 580, 53 S. Ct. 313, 77 L. Ed. 508 (1933); *Hill v. Martin*, 296 U. S. 393, 56 S. Ct. 278, 80 L. Ed. 293 (1935).

Neither the Fourteenth Amendment nor the full faith and credit clause requires uniformity in the decisions of the courts of different states as to the place of domicile, where the exertion of state power is dependent upon domicile within its boundaries. *Thormann v. Frame*, 176 U. S. 350, 20 S. Ct. 446, 44 L. Ed. 500 (1900); *Iowa v. Slimmer*, 248 U. S. 115, 39 S. Ct. 33, 63 L. Ed. 158

Court here seems to bind the states on an issue of state law which it has held it could not consider on appeal from the states' courts. The issue being one of state law,¹³ the further question arises of which state's law is to be applied; certainly the Supreme Court here had to apply a "general" or "federal" common law.¹⁴

Will this decision be confined to its particular facts, that is, to cases where the taxes claimed exceed the total value of the decedent's entire estate and where the estate is very large? There are indications in the language of both the majority and dissenting opinions that the holding will be so restricted.¹⁵

J. P. R.

DAMAGES—DUTY TO MITIGATE.—*P* reported in September at the Hamlin grade school where he was to serve under a one-year contract as principal and learned that, as a part of a wholesale transfer of teachers in the county, his place of work had been changed to the Red River school in another district of the same county at the same salary. *P*, refusing to comply with the transfer, remained unemployed as a teacher at day school until March, at which time he was reemployed at the Hamlin school. In an action by *P* against the school board for his contract salary from September until March verdict and judgment were entered for *P*. On appeal, judgment affirmed. *Held*, that one need not mitigate damages arising under a broken contract by accepting similar employment in a different locality. *Martin v. Board of Education of Lincoln County*.¹

The general proposition sought to be applied in the principal case is the well-established one "that it is 'the duty' of a party,

(1918). And judgment on each state's taxes is entitled to full faith and credit. *Milwaukee County v. White Co.*, 296 U. S. 268, 56 S. Ct. 229, 80 L. Ed. 220 (1935).

¹³*In re Bain's Estate*, 104 Misc. 508, 172 N. Y. Supp. 604 (1918); RESTATEMENT, CONFLICT OF LAWS (1934) § 10 (1); 1 BEALE, CONFLICT OF LAWS (1935) 105, § 10.1.

¹⁴After *Swift v. Tyson*, 16 Pet. 1, 10 L. Ed. 865 (U. S. 1842), the federal courts applied in matters of general jurisprudence what was called a general common law, but they denied that there was any federal common law as a body of law distinct from the common law of the states. The recent case of *Erie R. R. v. Tompkins*, 304 U. S. 64, 58 S. Ct. 817, 82 L. Ed. 1188, 114 A. L. R. 1487 (1937), though overruling *Swift v. Tyson*, maintained still that "There is no federal general common law."

¹⁵From the majority opinion: "Taken as a whole the case is exceptional in its circumstances and in the principles of law applicable to them . . ." From the dissenting opinion: "To be sure, the Court's opinion endeavors to circumscribe carefully the bounds of jurisdiction now exercised."

¹199 S. E. 887 (W. Va. 1938).