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Constitutional Law--Conflict of Laws--Use of Interpleader to Avoid Double Inheritance Taxation

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the defendant bank as would have accrued to it had the parties themselves treated the transaction as a loan. Loans are usually made for a fixed period; compensation in the way of a discount or interest charge is provided for, and generally the transaction is evidenced by a note and carried on the books as a loan and so published in reports for the benefit of the public. None of these elements is present here. Deposits are often induced by financial statements of a bank, and to allow secret pledging is to allow the bank to procure patrons by misrepresentation — a palpable fraud.¹⁴ The trend of modern banking legislation is clearly to protect the depositor, and to construe away that legislative policy by application of hypertechnical distinctions would not seem to be sound judgment.

H. G. W.

CONSTITUTIONAL LAW — CONFLICT OF LAWS — USE OF INTERPLEADER TO AVOID DOUBLE INHERITANCE TAXATION. — Tax commissioners of both Massachusetts and California claimed that one Hunt, deceased, was domiciled in their respective jurisdictions, and sought to levy inheritance taxes upon the estate. Hunt's executor filed a bill of interpleader under the Federal Interpleader Act of 1936.¹ Defendants appealed from a district court decree enjoining any other proceedings to collect the taxes,² and to review a judgment of the circuit court of appeals vacating the decree below,³ plaintiff brought *certiorari*.⁴ *Held*, that this suit was, in effect, a suit against the states of Massachusetts and California, and was therefore forbidden by the Eleventh Amendment.⁵ Judgment affirmed. *Worcester County Trust Co. v. Riley*.⁶

“A question of domicile as between the state of the forum and another state is determined by the law of the forum.”⁷ This seemingly innocuous rule of law has of late proved somewhat of a bug-

¹⁴ Cataldo, *The Right of a Bank to Pledge Its Assets as Security for a Public or Private Deposit* (1931) 79 U. OF PA. L. REV. 608, at 615.

¹ 49 STAT. 1096, 28 U. S. C. A. § 41 (26) (1936).

² *Worcester County Trust Co. v. Long*, 14 F. Supp. 754 (D. C. Mass. 1936).

³ *Riley v. Worcester County Trust Co.*, 89 F. (2d) 59 (C. C. A. 1st, 1937).

⁴ 299 U. S. 567, 57 S. Ct. 29, 81 L. Ed. 99 (1937).

⁵ “The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State.”

⁶ 58 S. Ct. 185, 82 L. Ed. 192 (1937).

⁷ RESTATEMENT, CONFLICT OF LAWS (1934) § 10 (1).

bear to owners of large fortunes who maintain residences in different states. After the death of Dr. Dorrance, the Campbell's soup magnate, the courts of Pennsylvania found that Dr. Dorrance had been domiciled in Pennsylvania,⁸ and the courts of New Jersey found that he had been domiciled in New Jersey,⁹ whereupon both states levied inheritance taxes totalling approximately twenty-nine and one-fourth million dollars, leaving eighty-five and three-fourths million dollars to the estate, subject, of course, to the Federal Inheritance tax.

In view of the recent tendency of the Supreme Court to hold unconstitutional acts which permit double taxation,¹⁰ it is not unlikely that if the question were brought before the Court in the proper manner, double inheritance taxation would be held to be violative of the Due Process Clause of the Fourteenth Amendment. But how may the matter be brought to the attention of the Court? In *Dorrance v. Pennsylvania*,¹¹ the Supreme Court denied *certiorari* on the ground that no federal question was presented. In *Hill v. Martin*,¹² the Court refused to enjoin the collection by New Jersey of the tax on Dorrance's estate because of the provision of the judicial code to the effect that the writ of injunction shall not be granted by any court of the United States to stay proceedings in any state court except in bankruptcy cases.¹³ Leave to file a bill of complaint was refused in *New Jersey v. Pennsylvania*.¹⁴

Professor Chafee has suggested three possible remedies:¹⁵ (1) fighting each state separately in the Supreme Court, and attempting to so time the cases that both may be heard together; (2) intervention by other interested states in proceedings in one state court; (3) interpleader. Chafee objects to the first procedure on the grounds: (a) expense; (b) the records might so differ that the

⁸ *In re Dorrance's Estate*, 309 Pa. 151, 163 Atl. 303 (1932).

⁹ *In re Dorrance's Estate*, 115 N. J. Eq. 268, 170 Atl. 601 (1934); *id.*, 116 N. J. Eq. 204, 172 Atl. 503.

¹⁰ See *Farmers' Loan & Trust Co. v. Minnesota*, 280 U. S. 204, 50 S. Ct. 98, 74 L. Ed. 371, 65 A. L. R. 1000 (1930); *Baldwin v. Missouri*, 281 U. S. 586, 50 S. Ct. 436, 74 L. Ed. 1056 (1930); *First Nat. Bank v. Maine*, 284 U. S. 312, 52 S. Ct. 174, 67 L. Ed. 313, 77 A. L. R. 1401 (1932); *Union Transit Co. v. Kentucky*, 199 U. S. 194, 26 S. Ct. 36, 50 L. Ed. 150 (1905); *Frick v. Pennsylvania*, 268 U. S. 473, 45 S. Ct. 603, 69 L. Ed. 1058 (1924).

¹¹ 287 U. S. 660, 53 S. Ct. 222, 77 L. Ed. 570 (1932).

¹² 296 U. S. 393, 56 S. Ct. 278, 80 L. Ed. 293 (1935).

¹³ 36 STAT. 1162 (1911), 28 U. S. C. A. § 379 (1911).

¹⁴ 287 U. S. 580, 53 S. Ct. 313, 77 L. Ed. 508 (1933).

¹⁵ Chafee, *The Federal Interpleader Act of 1936* (1936) 45 YALE L. J. 963, 1161.

cases could not be decided as a single controversy; and (c) pressure of other business might cause *certiorari* to be denied. Another objection is indicated in the principal case, *i. e.*, that the Supreme Court might uphold both states. To quote from the opinion by Mr. Justice Stone:

“But conflicting decisions upon the same issue of fact do not necessarily connote erroneous judicial action. Differences in proof and the latitude necessarily allowed to the trier of fact in each case to weigh and draw inferences from evidence and to pass upon the credibility of witnesses, might lead an appellate court to conclude that in none is the judgment erroneous.”¹⁶

Matter of Trowbridge,¹⁷ in which case Connecticut willingly intervened in an inheritance tax case in New York, illustrates Chafee's second suggestion. The rather obvious difficulty is that the millenium is not sufficiently near at hand to expect many states to follow the sterling example set by Connecticut.

The remedy which Chafee deemed to be most feasible was that of interpleader. He recognized the fact that this might run counter to the Eleventh Amendment, but contended that the double inheritance tax would fall within the principle of *Ex Parte Young*,¹⁸ in which it was held that officers acting under an allegedly unconstitutional statute would be acting without the authority of the state, *ergo*, a suit against such officers would not be a suit against the state, either in form or substance. The Court answered this contention in the *Worcester* case,¹⁹ saying that it was not asserted that the statute of either state was unconstitutional, but that the decisions of the courts of the states might conflict—something which the Constitution does not forestall.

Under the Eleventh Amendment and the cases construing it,²⁰ it would seem that the result of the principal case is the only one that could logically be reached, however much an innate sense of justice may be offended. Perhaps the only way in which the ultra-

¹⁶ 58 S. Ct. 185, 188, 82 L. Ed. 192 (1937).

¹⁷ 266 N. Y. 283, 194 N. E. 756 (1935).

¹⁸ 209 U. S. 123, 28 S. Ct. 441, 52 L. Ed. 714, 13 L. R. A. (N. S.) 932, 14 Ann. Cas. 764 (1908).

¹⁹ *Worcester County Trust Co. v. Riley*, 58 S. Ct. 185, 82 L. Ed. 192 (1937).

²⁰ Marshall, in *Osborn v. Bank*, 9 Wheat. 738, 857, 6 L. Ed. 204 (1824), originally interpreted the Eleventh Amendment to apply only to suits which were in name against a state. This was overruled in *In re Ayers*, 123 U. S. 492, 8 S. Ct. 164, 31 L. Ed. 216 (1887), where the inhibition was held to apply to suits against state officers in which the state was the real party in interest.

wealthy may avoid having their deaths bring about the enrichment of several coffers will be to confine their activities to one state.

H. A. W., JR.

CONSTITUTIONAL LAW — FINANCIAL RESPONSIBILITY STATUTE — RIGHT OF STATE TO REVOKE AUTOMOBILE OPERATOR'S LICENSE FOR NONPAYMENT OF JUDGMENT RENDERED IN ANOTHER STATE. — A judgment for damages was taken against the plaintiff in New York resulting from his operation of an automobile in that state. Under the West Virginia financial responsibility statute¹ the plaintiff's license to operate a motor vehicle in West Virginia was suspended by the State Road Commissioner for his failure for thirty days to satisfy this judgment. The plaintiff sued to have the order of suspension set aside, claiming that the statute was fathered by insurance companies, is discriminatory, denies the plaintiff due process of law, and is accordingly unconstitutional. *Held*, that the statute is a valid exercise of the state police power and is therefore constitutional. *Nulter v. State Road Commission of West Virginia*.²

One judge dissented on the theory that the statute constituted an unreasonable extension of a state's police power beyond its territorial limits.³ However, in basing the suspension of the license on a liability incurred in New York, West Virginia did not extend the police power of the former into this state,⁴ but merely determined by a reasonable exercise of its own police power that, because of the plaintiff's conduct and financial irresponsibility as illustrated by the unsatisfied New York judgment, he was unqualified to operate a motor vehicle in West Virginia.⁵

¹ W. Va. Acts 1935, c. 61, § 3: "In the event of the failure of any person, within thirty days thereafter, to satisfy any judgment, which shall have become final . . . in this state or in any other state or the District of Columbia, or in any district court of the United States, or by a court of competent jurisdiction in . . . the Dominion of Canada, for damages . . . in excess of fifty dollars, resulting from the ownership, maintenance, use or operation hereafter of a motor vehicle, the learner's permit, operator's and/or chauffeur's license, every certificate of registration and the registration plates of such person shall be forthwith suspended by the commissioner . . ."

² 193 S. E. 549 (W. Va. 1937).

³ *Nulter v. State Road Comm.*, dissenting opinion, 194 S. E. 270 (W. Va. 1937).

⁴ The theory of the dissent seems to be that this was an extension of New York police power into West Virginia. On the same principle it may be argued that West Virginia police power was extended into New York.

⁵ *Re Probasco*, 269 Mich. 453, 257 N. W. 861 (1934). Revocation of an operator's license for a conviction for drunken driving was not a penalty or punishment, but the conviction showed the unfitness of the offender to operate an automobile on the public highways.