

INTERPLEADER IN THE UNITED STATES COURTS

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"I'll tell you all my ideas about Looking-glass House. . . . You can see just a little peep of the passage: and it's very like our passage as far as you can see, only you know it may be quite different on beyond. Oh, Kitty! how nice it would be if we could only get through into Looking-glass House! I'm sure it's got, oh! such beautiful things in it! Let's pretend there's a way of getting through into it, somehow, Kitty. Let's pretend the glass has got all soft like gauze, so that we can get through. Why, it's turning into a sort of mist now, I declare! It'll be easy enough to get through—"

—ALICE THROUGH THE LOOKING GLASS.

A COUNTERPART exists in the United States courts for most of the remedies of the state courts including interpleader.¹ Federal interpleader resembles state interpleader, but is bound not to be quite the same, for it is necessarily shaped by the peculiar stresses caused by the requirement of diversity of citizenship. The decisions are not numerous, but they present some very interesting problems. One group arose under the general equity powers of the United States courts; and a larger group under the three successive Interpleader Acts which Congress has enacted, beginning in 1917, to assist life insurance companies and similar organizations, which badly needed relief from conflicting claims growing out of a single policy or other contract. Pending bills contemplate the possibility of the extension of this protection from injustice to other types of stakeholders. Interpleader in the United States courts under such statutes bids fair to be increasingly frequent and important, giving all persons concerned in a controversy a more adequate chance to settle their differences than is otherwise possible.

A stakeholder faced with two or more conflicting claims involving the same property or obligation may have several reasons for wishing to interplead the various claimants in a United States court. First, if there are two claimants living in different states, neither of whom can be personally served in the state where the

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¹ This article is the third of a series. *Modernizing Interpleader* (1921) 30 YALE L. J. 814 discussed the judge-made requisites which have hampered the natural effectiveness of this remedy. *Interstate Interpleader* (1924) 33 YALE L. J. 685 considered the difficulties of obtaining relief against claims by citizens of different states, and touched briefly on the possibility of federal interpleader and the Act of 1917. Federal legislation and decisions since 1924 call for a much more detailed treatment of this topic, hence the present article. The series will be continued by another article on federal interpleader and by a discussion of the numerous state interpleader statutes.

other resides, it is unlikely that the state courts in either state will be able to give adequate relief to the stakeholder.² If the nonresident claimant refuses to come in voluntarily for the sake of a rapid settlement of the controversy, there is no way in which a state court can acquire personal jurisdiction over him. Even if jurisdiction *in rem*, sufficient to bind the absent claimant, can be acquired over land or tangible personalty within the state,³ the most frequent need for interpleader arises in controversies as to the ownership of a debt or other obligation admittedly owed by the stakeholder. In such a situation, the United States Supreme Court in *New York Life Insurance Co. v. Dunlevy*⁴ decided that a state court does not possess jurisdiction *in rem* over the debt in an interpleader proceeding, and cannot adjudicate its ownership in the absence of a nonresident claimant, so as to prevent the latter from forcing the debtor to pay over again by suing him in another state.⁵ The effect of the *Dunlevy* case is strengthened by several recent decisions of the United States Supreme Court⁶ denying a state power to tax a chose in action at the domicile of the obligor when the obligee resides in another state. It is true that the long series of foreign garnishment cases has not yet been questioned, so that personal jurisdiction over the debtor still gives power to discharge the debt; but it seems probable that for all other purposes a state court will be held unable to control the debt unless it has personal jurisdiction over both the debtor and the creditor (including the nonresident claimant, a potential creditor). If this interpretation of the *Dunlevy* case be sound, then when the claimants to an obligation reside in different states, neither state court can afford a satisfactory remedy by interpleader. Obviously state legislation can-

² For detailed discussion, see Chafee, *Interstate Interpleader*, *supra* note 1.

³ As to tangible property, see *id.* at 698-700. Since equity is usually considered to act only in *personam*, a state statute applicable to interpleader would probably be required to enable it to act *in rem* as to such property in this type of proceeding.

⁴ 241 U. S. 519, 36 Sup. Ct. 613 (1916). See Chafee, *Interstate Interpleader*, *supra* note 1, at 711, where more limited interpretations of this case by Judge Learned Hand and others are discussed.

⁵ As to the possibility of preventing him from recovering from the debtor or the successful claimant in a suit in the same state as the interpleader, see Chafee, *Interstate Interpleader*, *supra* note 1, at 715. The likelihood that the due process clause will be held to invalidate the interpleader even within the state is strengthened by the tax cases cited *infra* note 6.

⁶ *Farmers Loan and Trust Co. v. Minnesota*, 280 U. S. 204, 50 Sup. Ct. 98 (1930); *Baldwin v. Missouri*, 281 U. S. 586, 50 Sup. Ct. 436 (1930); *Beidler v. South Carolina Tax Commission*, 282 U. S. 1, 51 Sup. Ct. 54 (1930); *First National Bank v. Maine*, 52 Sup. Ct. 174 (1932). These decisions overruled *Blackstone v. Miller*, 188 U. S. 189, 23 Sup. Ct. 277 (1903), the relation of which to interpleader against a non-resident is discussed in Chafee, *Interstate Interpleader*, *supra* note 1, at 705.

not remedy the difficulty, for a state legislature cannot extend the personal jurisdiction of its own courts over a potential creditor beyond the limits of the state. On the other hand, Congress may, if it wishes, give a United States district court nationwide personal jurisdiction so as to reach all the conflicting claimants to an obligation. The *Dunlevy* decision led the life insurance companies to obtain the first federal interpleader statute in the following year, 1917, in order to bring claimants who were citizens of different states into the United States courts.

Second, an interpleader suit will not give complete relief to the stakeholder unless the entire controversy can be settled in the interpleader proceeding. Consequently, when interpleader is granted, the decrees discharging the stakeholder and ordering the claimants to interplead with respect to the deposit in court also enjoins the claimants from bringing or pressing any suits against the stakeholder. Without these injunctions the relief would lose a large part of its value. Now, a claimant who is a citizen of a different state from the stakeholder often starts a suit against him in the federal court before he has time to interplead. If the stakeholder then seeks interpleader in a state court, he immediately faces the difficulty of the unwillingness of a state court to enjoin federal suits. Of course, it will be objected that in a federal court he will encounter a corresponding unwillingness to enjoin state suits, because of section 265 of the Judicial Code. However, this prohibition imposed by Congress can be taken away by Congress at one fell swoop so far as it applies to interpleader, while it is improbable that many state legislatures will become sufficiently interested to remove the limitations on state injunctions against pending federal suits. Furthermore, the greater importance of the national sovereignty naturally makes federal courts more ready to enjoin suits in another jurisdiction.

Third, whatever advantages of freedom from local prejudice can be obtained in the United States courts in suits based on diversity of citizenship will also attach to federal interpleader. It is true that recent writers⁷ have expressed serious doubts whether these advantages are sufficiently great to outweigh the inconvenience of two parallel systems of courts for private litigation, but so long as the diversity of citizenship jurisdiction remains it is only fair that stakeholders should be able to make use of it as well as other litigants who are in a less embarrassing situation. A nonresident who is subjected to two suits on the same obligation in two different state courts needs protection from local prejudice twice as badly as the ordinary defendant who removes one state suit into the United States courts.

⁷ Friendly, *The Historic Basis of Diversity Jurisdiction* (1928) 41 HARV. L. REV. 483; Frankfurter, *Distribution of Judicial Power between United States and State Courts* (1928) 13 CORN. L. Q. 499.

Fourth, in the courts of many states, interpleader is hedged about by unfortunate technical requisites.⁸ It seems likely that federal interpleader will be less burdened by these technicalities and hence more calculated to attain justice. Since normally it is on the equity side of a federal court,⁹ it is not subject to the procedural rules of the particular state, but governed by nationwide principles of equitable relief. Although federal interpleader decisions show some natural tendency to cite local state cases, they also rely extensively upon federal interpleader cases, whether or not they are in the same circuit. Consequently one or two liberal interpleader decisions in the United States courts may have a marked influence in removing technicalities from interpleader throughout the entire federal system. Still further improvements of the remedy may be attained through the Federal Equity Rules established by the Supreme Court, and if necessary by act of Congress. Thus there may be situations where a stakeholder would be able to attain in a United States court the much-needed relief from double vexation which would be denied him in any available state court because of its adherence to local precedents hampering the adequate development of interpleader.

I

THE BASES OF FEDERAL JURISDICTION OVER INTERPLEADER

A. *Jurisdiction Apart from the Federal Interpleader Legislation*

Interpleader, like any other form of litigation, may not be brought into the United States courts unless the applicant for relief can establish the existence of some constitutional ground for the jurisdiction of these courts. So far as diversity of citizenship is concerned, it is clear that some of the difficulties which prevent state interpleader will often make federal interpleader also impossible.¹⁰ Unlike ordinary litigation, an interpleader suit has three parties. This means that the stakeholder must obtain personal service upon both claimants. If they can only be served in separate states, the United States courts in either state will be as helpless as the state courts, unless Congress has aided the stakeholder by extending the power of the United States court beyond the limits of the state where it sits. Until the Interpleader Act of 1917 a United States court could not acquire personal jurisdiction in an interpleader suit by service outside the state wherein its district

⁸ Chafee, *Modernizing Interpleader*, *supra* note 1.

⁹ The possibility of interpleader on the law side will be discussed in a subsequent issue of the *Journal*.

¹⁰ Detailed consideration of these difficulties, with citations, will be found in Chafee, *Interstate Interpleader*, *supra* note 1, at 720.

lay, and this legislation applies only to certain types of stakeholders. A related difficulty concerns the production of evidence. A United States court cannot compel the appearance of a witness living more than one hundred miles from the court. Such a restriction might very well operate to the injury of the distant claimant who, though obliged to appear himself, could not force his witnesses to come with him. It may be doubted whether depositions taken where the distant witness resides would be an adequate substitute for his testimony in open court. Because of these geographical limitations, federal interpleader suits are very much fewer than state interpleader suits. In the ordinary state interpleader, all the parties live within the state. Such a case could not, of course, get into the United States courts unless some federal right was involved. On the other hand, the very diversity of citizenship which confers federal jurisdiction may at the same time make it impossible to obtain the proper personal service upon the claimants. In spite of these obstacles, enough interpleader litigation has arisen in the United States courts to repay examination.

In this connection it is desirable to remind the reader that bills of interpleader fall into two types: (1) Strict bills of interpleader offer no ground for equitable relief except multiple vexation. All the issues involved in the controversy are purely legal issues, which would be tried by a jury if interpleader were not granted. Consequently the applicant cannot get equitable relief and dispense with jury trials without compliance with the requisites of interpleader whatever these may happen to be in the particular jurisdiction. (2) Bills in the nature of interpleader lie when the applicant shows that in addition to multiple vexation he has some other reason for coming into equity, for instance, the administration of a trust, the enforcement of a lien, or cancellation of an instrument. Courts are much more liberal toward bills in the nature of interpleader and dispense with some of the requisites of strict bills. Although the distinction between these two types of bills will become important when we examine the equitable principles applied in the United States courts, the problems of federal jurisdiction are the same for both types. The presence of a federal right or of diversity of citizenship must be shown as clearly for a bill in the nature of interpleader as for a strict bill. Consequently, decisions establishing federal jurisdiction over bills in the nature of interpleader are precedents for federal jurisdiction over strict bills, and *vice versa*.

The federal interpleader cases before the interpleader statutes or subsequent to them but outside the scope of that legislation, may be placed in three groups: (1) original bills in cases arising under the Constitution and the laws of the United States; (2) original bills based on diversity of citizenship; (3) ancillary bills,

connected with suits at law or in equity already in a United States court because of either a federal question or diversity.¹¹

Original Bills of Interpleader Involving a Federal Question

Since the United States courts¹² have jurisdiction of such cases, regardless of the citizenship of the parties, the co-citizenship of two or more of the persons involved in the interpleader causes no difficulties.

*Foss v. First National Bank of Denver*¹³ adjudicated the ownership of a joint deposit in a national bank. Some claimants had sued both the bank and the other claimants in equity in the United States Circuit Court. The bank answered, disclaiming interest and alleging doubt as to the ownership of the deposit, and also filed a cross-bill asking interpleader. All the parties were citizens of the same state. Since Congress had given the United States courts jurisdiction over suits by and against national banks,¹⁴ it was held that the court had jurisdiction over the cross-bill as in effect an original bill of interpleader by the bank. Doubt was expressed as to the jurisdiction over the bill against the bank and over its answer, because that suit was not really against the national bank as an active party. In *Pacific Bank v. Myster*¹⁵ there is a dictum by Waite, C. J., that the sureties on an attachment bond given by a national bank might have interpleader.

In *Liberty Oil Co. v. Condon National Bank*,¹⁶ a national bank in Kansas held a joint deposit to be paid either to a Virginia corporation or to an Oklahoma corporation and several citizens of Kansas, accordingly as a contract for the sale of oil land was or was not performed. The Virginia corporation brought an action of money had and received at law in the United States District Court in Kansas, to recover the deposit. The bank inter-

¹¹ The attitude of the federal courts toward interpleader may be affected by two other groups of cases which do not involve the jurisdiction of United States courts. (1) Interpleader cases originating in the District of Columbia and the territories: *Killian v. Ebbinghaus*, 110 U. S. 568, 4 Sup. Ct. 232 (1884); *Standley v. Roberts*, 59 Fed. 836 (C. C. A. 8th, 1894); *Royal Trust Co. v. Gardiner*, 44 App. D. C. 570 (1916); *Morgan v. Kraft*, 52 App. D. C. 172, 285 Fed. 906 (1922). (2) Comments by a United States judge about the effect of a state interpleader proceeding: *Smith v. Mosier*, 169 Fed. 430 (D. N. Y., 1909).

¹² 28 U. S. C. § 41 (1926) deals with most types of statutory jurisdiction of the district courts. See especially § 41(1)(a).

¹³ 3 Fed. 185 (C. C. D. Colo. 1880), *aff'd* without discussion of the interpleader point in *Bissell v. Foss*, 114 U. S. 252, 5 Sup. Ct. 851 (1885).

¹⁴ 28 U. S. C. § 41 (16) (1926).

¹⁵ 124 U. S. 721, 8 Sup. Ct. 718 (1888).

¹⁶ 260 U. S. 235, 43 Sup. Ct. 118 (1922), *rev'g* 271 Fed. 928 (C. C. A. 8th, 1921). This case like some of the others involving federal questions might perhaps be classified under the ancillary jurisdiction.

pleaded the other participants in the deposit under section 274b of the Judicial Code, allowing equitable defenses in law suits—to be discussed in detail later in this article.¹⁷ The opinions in the Circuit Court of Appeals and the Supreme Court dealt mainly with the question whether the controversy between the claimants in the second stage of the interpleader should be considered as a legal or an equitable proceeding. Neither the briefs nor the opinions questioned the propriety of interpleader or the jurisdiction of the United States courts over such relief.

The United States may sue in a federal court.¹⁸ The government's position with respect to conflicting claims to war risk insurance closely resembles that of life insurance companies, which have found interpleader a necessary method of obtaining relief from double vexation. In two such cases the government was allowed interpleader.¹⁹ When a statute required the Secretary of the Navy to sell a government vessel to the highest bidder, the United States ascertained by interpleader which of two bidders should be considered the higher.²⁰

Two cases involved interpleader against the Alien Property Custodian. Judge Mayer allowed a bank to interplead a depositor, an American citizen, and the Alien Property Custodian who claimed the deposit on the ground that the actual owner was an enemy alien.²¹ However, Judge Learned Hand refused interpleader to a citizen who sought to determine whether the property of which he was trustee was held for the benefit of another citizen or for that of enemy aliens, as the Alien Property Custodian claimed.²²

When a surety bond is given to the United States which sues upon it for the benefit of private persons whose aggregate claims exceed the amount of liability on the bond, it seems that in an appropriate situation the surety company might have interpleader in the United States court against the conflicting claimants. However, a surety company which had bonded a Post Office clerk who stole from the mails, was denied interpleader against various claimants to the money paid in reimbursement because the statute provided an administrative method of adjusting their claims before a postal official.²³

¹⁷ Under section III B which will be published in a subsequent issue.

¹⁸ 28 U. S. C. § 41 (1) (1926).

¹⁹ *State Bank & Trust Co. v. U. S.*, 16 F. (2d) 439 (C. C. A. 6th, 1926); *Heinemann v. Heinemann*, 50 F. (2d) 696 (C. C. A. 6th, 1931).

²⁰ *Levinson v. U. S.*, 258 U. S. 198, 42 Sup. Ct. 275 (1922), *rev'g* 267 Fed. 692 (C. C. A. 2d, 1920).

²¹ *Am. Exchange Nat. Bank v. Palmer*, 256 Fed. 680 (D. N. Y. 1919). For the Trading with the Enemy Act, see 50 U. S. C. Appendix.

²² *Kahn v. Garvan*, 263 Fed. 909 (D. N. Y. 1920).

²³ *U. S. v. U. S. Fidelity and Guaranty Co.*, 247 Fed. 16 (C. C. A. 6th, 1918). See also *U. S. ex rel. Morris v. Richardson*, 223 Fed. 1010 (C. C. A. 4th, 1915).

Original Bills of Interpleader Based on Diversity of Citizenship

If the stakeholder and all of the claimants are citizens respectively of different states, complete diversity of citizenship exists and jurisdiction over an interpleader action can be obtained in any United States court so long as the requirements of venue are satisfied and the process of that court can be personally served on all the claimants. Obviously such personal service is impossible if each claimant can be served only in the state of which he is a citizen. It sometimes happens, however, that a claimant who is not a citizen of the state in which the United States court sits, is nevertheless personally present in that state so that he can be served. If the claimant is a corporation, incorporated in another state, it may be doing business in the state of suit and have agents there. The opinions do not give us much information about the means by which the United States court sitting in one state obtained personal service upon those claimants who were citizens of other states, but such jurisdiction has been acquired in several instances. Perhaps in some of the cases the non-citizen claimant appeared voluntarily.

In *German Savings Institution v. Aday*²⁴ a Missouri bank interpleaded a citizen of Illinois and a citizen of Ohio in the Missouri Circuit Court. In *Hayward v. McDonald*²⁵ a Louisianan interpleaded a citizen of Georgia and a citizen of Texas in the Louisiana District Court. Interpleader was denied as unnecessary in *Pusey & Jones Co. v. Miller*,²⁶ where it was sought by a Delaware corporation against a Pennsylvanian and an Alabaman in the Delaware Circuit Court; but no doubt was expressed as to the existence of federal jurisdiction.

Is complete diversity of citizenship essential to federal jurisdiction over interpleader in situations not covered by any federal interpleader legislation? First, suppose one of the claimants is a citizen of the same state as the stakeholder. Under the statutes regulating the jurisdiction of United States courts, it has been repeatedly held that the requisite diversity of citizenship does not exist when citizens of the same state are on different sides of the controversy.²⁷ Does the suggested interpleader suit violate this rule? If we regard the second stage of the interpleader as the real controversy and the first stage as merely incidental, it is sufficient if the claimants are citizens of different states, and the citizenship of the stakeholder is immaterial. On the other hand, it is hard to regard the first stage as negligible when we remember that most of the knock down and drag out fights in inter-

²⁴ 8 Fed. 106 (C. C. D. Mo. 1880).

²⁵ 192 Fed. 890 (C. C. A. 5th, 1912). See also *City Bank v. Skelton*, *infra* note 56, possibly though not probably a case of ancillary jurisdiction.

²⁶ 61 Fed. 401 (C. C. D. Del. 1894).

²⁷ The leading case is *Strawbridge v. Curtiss*, 3 Cranch 267 (U. S. 1806).

pleader suits occur in the first stage. If the objecting claimant is a citizen of the same state as the applicant, the first stage is then clearly not a controversy between citizens of different states. In several cases where it was sought to remove an interpleader suit from a state court to a United States court which would have had personal jurisdiction over all the parties, the removal was refused because the stakeholder was a co-citizen of one claimant, the requisite diversity of citizenship being said not to exist.²⁸ On the other hand, interpleader has been granted in at least three federal cases where the stakeholder was a co-citizen of one or more of the claimants.²⁹ Unfortunately, in none of these cases does the opinion discuss the question whether the co-citizenship ousts the jurisdiction of the United States court, and it is possible that no objection was made on this point.

A different kind of difficulty arises when two or more claimants are citizens of the same state. The Massachusetts state court refused to permit removal of an interpleader suit to the United States court where the claimants were both citizens of Massachusetts and the stakeholder was a New York corporation.³⁰ This objection, however, does not appear to have been raised in any of the reported cases in the United States courts. In four of these cases³¹ the question was not discussed. In *Knickerbocker Trust Company v. Kalamazoo*,³² a New York trust company which was trustee under the mortgage bonds of a Michigan street railway corporation filed a bill in equity in a United States Circuit Court in Michigan against the street railway corporation, some of its officials, and a Michigan city which was taking steps to forfeit summarily the franchise of the street railway company without any judicial proceedings. Here all the defendants were citizens of Michigan, yet relief in the nature of interpleader was granted. The city in opposing relief apparently placed no insistence upon its co-citizenship with the other defendants, and its

²⁸ *Leonard v. Jamison*, 2 Edw. Ch. 136, 137 (N. Y. 1833): "There is something to be settled between him and the defendants before the latter can litigate together." *Republic Fire Insurance Co. v. Keogh*, 23 Hun 664 (N. Y. 1881); see *George v. Pilcher*, 28 Gratt. 299 (Va. 1877).

²⁹ *Spring v. South Carolina Insurance Co.*, 8 Wheat. 268 (U. S. 1823); *McWhirter v. Halsted*, 24 Fed. 828 (C. C. D. N. J. 1885); *Thomas Kay Woolen Mill Co. v. Sprague*, 259 Fed. 338 (D. Ore. 1919). A federal suit was pending against the stakeholder in the first two cases, so that the interpleader was perhaps ancillary, but this is improbable. The first case is too early, the second treats the bill as original. In the third case, a suit was pending but it is not stated that it was in the federal court.

³⁰ *Mutual Life Insurance Co. v. Allen*, 134 Mass. 389 (1883).

³¹ *Spring v. South Carolina Insurance Co.*; *McWhirter v. Halsted*, both *supra* note 29, probably not ancillary to pending federal suits; *Mutual Life Insurance Co. v. F. & M. Nat. Bank*, 173 Fed. 390 (C. C. D. Ohio 1909); *National Sash and Door Co. v. Continental Casualty Co.*, 37 F. (2d) 342 (C. C. A. 5th, 1930).

³² 182 Fed. 865 (C. C. D. Mich. 1910).

only jurisdictional objection was that the trust company and the street railway corporation were not really antagonistic to each other, so that on a realignment of parties the street railway corporation ought to be joined as a co-plaintiff. The court, however, held that the interests of these two parties were sufficiently adverse. Interpleader was denied by the United States Supreme Court in a case³³ where the stakeholder was a citizen of Mississippi and all four claimants were of Alabama, but the only reason given for refusing relief was that the Mississippi District Court had not obtained personal jurisdiction over some of the claimants by service of process.

In the remaining cases where interpleader was brought into the United States courts on the ground of diversity of citizenship, the reports do not give sufficient information about the citizenship of the various parties to enable us to determine whether any of them were co-citizens.³⁴ Thus the question whether complete diversity of citizenship is necessary for original bills of interpleader has not yet been satisfactorily adjudicated.

Another unsettled question relates to the jurisdictional amount in interpleader suits. The statutory requirement for diversity of citizenship suits in general is, that the sum in controversy shall exceed \$3000.³⁵ Is this requirement satisfied when the aggregate

³³ *Herndon v. Ridgway*, 17 How. 424 (U. S. 1854). The bill was possibly but not probably ancillary to a pending federal suit. Nothing is said to that effect and the case is early. If all the claimants except one are personally served, it might be worth while to let those served interplead, so as to determine their rights at least and protect the stakeholder from their claims; but the absent claimant was held an indispensable party in *Mutual Life Insurance Co. v. Lott*, *infra* notes 106, 107.

³⁴ *Penn Mutual Life Insurance Co. v. Union Trust Co.*, 83 Fed. 891 (C. C. D. Cal. 1897); *McNamara v. Provident Savings Life Assurance Society*, 114 Fed. 910 (C. C. A. 5th, 1902), *aff'd* *Provident Sav. Life Assur. Soc. v. Loeb*, 115 Fed. 357 (C. C. D. La. 1901); *Mutual Life Insurance Co. v. Lane*, 151 Fed. 276 (C. C. D. Ga. 1907), *aff'd* by memo *sub. nom.* *Alexander v. Lane*, 157 Fed. 1002 (C. C. A. 5th, 1907), *cert. den.* 208 U. S. 617, 28 Sup. Ct. 568 (1908); *Union Pacific R. Co. v. Belek*, 211 Fed. 699 (C. C. D. Neb. 1913); *Holt v. Russell*, 30 F. (2d) 597 (C. C. A. 5th, 1929), *cert. den.* 279 U. S. 856, 49 Sup. Ct. 351; *Continental Life Insurance Co. v. Sailor*, 47 F. (2d) 911 (D. Cal. 1930), possibly under the federal Interpleader Act although this is not mentioned. See also the following possibly ancillary cases where citizenship is uncertain: *Union Insurance Co. v. Glover*, *infra* note 60; *Louisiana State Lottery Co. v. Clark*, *infra* note 61; *Wells, Fargo and Co. v. Miner*, *infra* note 62; *Federal Cement Co. v. Shaffer*, *infra* note 56.

The following unreported interpleader cases are known to exist in United States District Courts: *N. Y. Life Insurance Co. v. Coldren* (Dec. 1924, N. D. Ill.); *N. Y. Life Insurance Co. v. Donnelley* (Jan. 1925, W. D. Mo.); *National Life Insurance Co. v. Planters Bank* (Nov. 1927, N. D. Tenn.); *National Life Insurance Co. v. Theological Seminary* (Apr. 1928, N. D. Ill). These have not been examined; some may be ancillary, some may be under federal interpleader legislation.

³⁵ 28 U. S. C. § 41(1) (1926). The amount was \$2000 between 1887 and 1911.

of the conflicting claims exceeds that amount, but each separate claim is less? Suppose each of two claimants asserts ownership of a \$2000 bank deposit. If interpleader be denied the bank may be subjected to a double recovery and so lose \$4000. If it be granted to prevent that loss, the bank will deposit only \$2000 in court to be fought over in the second stage by the claimants. Is "the sum in controversy" \$4000 or \$2000? Probably \$2000. A reasonable test of jurisdictional amount, at least in strict bills of interpleader, is the maximum sum which the stakeholder will have to deposit in court to get a discharge from liability.³⁶ The "controversy," for purposes of the jurisdictional amount, is the second stage of the interpleader and not the first stage.

Some help on this question can be obtained from Mr. Justice Pitney's observations on a different situation:³⁷

"The settled rule is that when two or more plaintiffs having separate and distinct demands unite in a single suit, it is essential that the demand of each be of the requisite jurisdictional amount; but when several plaintiffs unite to enforce a single title or right in which they have a common and undivided interest, it is enough if their interests collectively equal the jurisdictional amount."

The claimants may be regarded as "plaintiffs" within this statement. The stakeholder is only a nominal plaintiff, for interpleader is by nature a defensive proceeding. Although the claimants are defendants in form in this suit, they are plaintiffs in the pending or threatened suits at law against the stakeholder which it is his main purpose to avoid by the interpleader. And in a way the claimants are plaintiffs against the sum deposited in court, hav-

³⁶ The only interpleader case in point may be *contra*, because it rejected the amount of the deposit as a test, but the circumstances were peculiar. *Hayward v. McDonald*, *supra* note 25. At a time when the jurisdictional amount was \$2000, the stakeholder, an agent, was sued (in what courts it is not stated) by two claimants for \$5700 and \$2500, respectively. He filed a bill (apparently not ancillary) offering to pay into court \$1175, which he admitted as the extent of his liability. In reversing a decree dismissing the bill, the Circuit Court of Appeals regarded the bill as in the nature of interpleader because of the necessity for an accounting and the fiduciary position of the stakeholder. The jurisdictional amount was said to exist since each claimant was suing for more than the requisite sum though less was deposited. This decision is not necessarily inconsistent with the deposit test suggested in the text, for here the deposit did not, as usual in strict bills, correspond to the highest claim. Since this was not a strict bill, the stakeholder was not discharged after making the deposit of \$1175, but remained subject to the control of the court which might oblige him to pay in more when the extent of his disputed liability should be determined. This liability might well prove to equal the smaller claim, at least. For a bill in the nature of interpleader the test should be, not the actual deposit made with the bill, but the maximum sum capable of being ordered paid in during the whole course of the suit.

³⁷ *Pinel v. Pinel*, 240 U. S. 594, 596, 36 Sup. Ct. 416, 417 (1916).

ing "separate and distinct demands." It would usually be necessary, therefore, for each claimant to demand more than \$3000,³⁸ and the deposit must consequently exceed that sum to confer federal jurisdiction. This interpretation of the general diversity of citizenship statute receives some support from the express language of Congress in the federal interpleader statutes, which, as we shall see, test the jurisdictional amount by the size of the obligation or property claimed and deposited.³⁹

Ancillary Bills of Interpleader

When a suit at law or in equity has already been brought against the stakeholder in the United States court, which has jurisdiction thereof either because of diversity of citizenship or because of a federal question, there is considerable authority allowing the stakeholder to file a bill of interpleader, or in the nature of interpleader, against the plaintiff (in the previous federal suit) and one or more additional claimants. If such an interpleader proceeding can be considered as ancillary to the suit against the stakeholder, it is immaterial that he is a co-citizen of any of the added claimants or that co-citizenship exists among the claimants.

The doctrine that ancillary suits are possible in the United States courts without regard to diversity of citizenship has long been established in situations other than interpleader. Professor Dobie thus explains: ⁴⁰

"We now come to a different class of jurisdiction, variously called ancillary, auxiliary, dependent, incidental, or supplementary. This jurisdiction is not absolute, but relative; it exists not for itself, but by virtue of its relation to a case of which the court has already acquired jurisdiction. The whole reason for its exist-

³⁸ If one claimant sought \$3500 and the other only \$2999 as the amount of the debt, the stakeholder ought to be able to satisfy the jurisdictional requirement by depositing the larger sum, as he must usually do to get a strict bill. Chafee, *Modernizing Interpleader*, *supra* note 1, at §24.

³⁹ An alternative test of jurisdictional amount might be the sum by which the aggregate of all the claims exceeds the stakeholder's admitted liability, for it is this excess which he seeks to avoid by interpleading. So far as he is concerned, nothing else is in controversy. Suppose four sub-contractors or partial assignees, each claiming \$1000, and two more each claiming \$500; the aggregate is \$5000, but everybody agrees that the stakeholder's liability is limited to \$3500. He wishes to deposit this sum and determine priorities. The claimants object that his only controversy with them is as to the excess of \$1500, since he raises no dispute as to \$3500. However, the claimants dispute about \$3500, and that is enough. Observe that Pitney's reasoning should not apply here, because the claimants do not make "distinct and separate demands" but overlap. Each claims only part of the conceded liability of the stakeholder, not all of it as usual. It would be absurd to test the jurisdiction by the amount of the lowest single claim, \$500, or the highest, \$1000.

⁴⁰ DOBIE, HANDBOOK OF FEDERAL JURISDICTION AND PROCEDURE (1928) 323.

ence is that without it the court could neither effectively dispose of the principal case nor do complete justice in the premises. Principal jurisdiction involves and carries along with itself power over matters that can properly be regarded as accessorial.

"Since ancillary jurisdiction exists by virtue of the relation of the incidental proceeding to the principal case over which jurisdiction already exists, this relation alone creates and establishes jurisdiction over such incidental proceeding. As to such ancillary proceeding, accordingly, the amount of money concerned, the citizenship of the parties therein, and the federal or non-federal nature of the questions involved are quite immaterial."

The ancillary jurisdiction exists whether the principal suit is at law or in equity. Probably it is more frequently invoked in suits in equity, where the introduction of new parties by the supplemental bill resembles intervention.⁴¹ It is important to observe, however, that the question whether a bill is original or ancillary is not determined by the tests ordinarily applied in equity pleading. A bill which might be considered original under such tests may be regarded as ancillary for purposes of federal jurisdiction. This has been carefully pointed out by Mr. Justice Miller: ⁴²

"The question is not whether the proceeding is supplemental and ancillary or is independent and original, in the sense of the rules of equity pleading; but whether it is supplemental and ancillary or is to be considered entirely new and original, in the sense which this court has sanctioned with reference to the line which divides the jurisdiction of the Federal courts from that of the State courts. No one, for instance, would hesitate to say that, according to the English chancery practice, a bill to enjoin a judgment at law, is an original bill in the chancery sense of the word. Yet this court has decided many times, that when a bill is filed in the Circuit Court, to enjoin a judgment of that court, it is not to be considered as an original bill, but as a continuation of the proceeding at law; so much so, that the court will proceed in the injunction suit without actual service of subpoena on the defendant, and though he be a citizen of another State, if he were a party to the judgment at law."

The ancillary jurisdiction is roughly divided by Professor Dobie into two classes: ⁴³

"(1) Proceedings which are concerned with the pleadings, processes, records, or judgments of the court in the principal case; (2) proceedings which affect property already in the custody or control of the court."

⁴¹ See Hersman, *Intervention in Federal Courts* (1927) 61 AM. L. REV. 1, 161.

⁴² *Minnesota v. St. Paul Rr.*, 2 Wall. 609, 633 (U. S. 1864).

⁴³ *Supra* note 40, at 323-4.

Ancillary bills of interpleader are found in both these classes.

It is probably easier to get ancillary interpleader under the second heading, where relief is sought against double vexation with respect to a *res* already in court. Equity courts are well accustomed to adjudicate the distribution of such a *res* among several claimants, and to prevent them from asserting their claims by parallel conflicting suits elsewhere.⁴⁴ A leading case permitting a bill in the nature of interpleader in such a situation is *Groves v. Sentell*.⁴⁵ Two sisters mortgaged their undivided land to secure their joint note for \$8000. Later they partitioned the land and one sister gave a second mortgage on her share alone. After a foreclosure sale of her land under this second mortgage, the purchaser, A, held back from the purchase price sufficient cash to pay the balance of \$5750 still due on the first mortgage. The first mortgagees brought an action at law for this whole sum against A in the United States Circuit Court of Louisiana, based on diversity of citizenship. The second mortgagor was contending that since she had made all the payments in reduction of the first mortgage, they should be applied against her half of the original first mortgage debt. Consequently she claimed a considerable portion of the fund in A's hands, and sought to marshal most of the unpaid balance of the first mortgage against her sister's land, which was not covered by the second mortgage. Under these circumstances A (of Louisiana) filed a bill in the nature of interpleader, joining the first mortgagees (of Indiana and Ohio), the second mortgagor sister (of Virginia), and the liquidator of the second mortgagee (of Louisiana). The other sister (of Louisiana) was made a party defendant by order of the court. Although the opinion of Mr. Justice White does not discuss the basis of federal jurisdiction or the fact that the stakeholder and two claimants were citizens of Louisiana, the bill was maintained without any question, and the whole fund was awarded to the first mortgagee with no marshalling. This was a bill in the nature of interpleader and not a strict bill,⁴⁶ because A had an interest in the fund as a partner in the firm which took the second mortgage; consequently A did not get counsel fees out of the fund.⁴⁷

Interpleader suits also seem proper under the first heading of

⁴⁴ *Cole v. Cunningham*, 133 U. S. 107, 10 Sup. Ct. 269 (1890); *Sercomb v. Catlin*, 128 Ill. 556 (1889); *Chafee v. Quidnick Co.*, 13 R. I. 442 (1881); *DOBIE*, *op. cit. supra* note 40, at 328.

⁴⁵ 153 U. S. 465, 14 Sup. Ct. 898 (1894). The facts as to citizenship are taken from the record.

⁴⁶ *Groves v. Sentell*, 66 Fed. 179 (C. C. A. 5th, 1895); *Sherman National Bank v. Shubert Theatrical Co.*, 247 Fed. 256 (C. C. A. 2d, 1917).

⁴⁷ Other federal interpleader cases which apparently involved a fund are the following: *Spring v. South Carolina Insurance Co.*; *Aetna National Bank v. U. S. Life Insurance Co.*; *Lockett v. Rumbough*; *Mundy v. Louisville & N. Rr.*; *Buck v. Mason*, all *infra* note 56.

the federal ancillary jurisdiction, although some doubts on this point will have to be considered. Professor Dobie states the reasons for this kind of ancillary relief in general, as follows: ⁴⁸

"Every real court has, and must have, a broad jurisdiction over its pleadings, processes, record, and judgment. Without this inherent power, it could not function effectively as a court. And under this head falls a large part of the ancillary jurisdiction of the federal District Court, extending to many and varied proceedings in connection with the annulment, interpretation, modification, and enforcement of its pleadings, processes, records, and judgments. This power, though quite broad, is subject to bounds set by principles of necessity and efficiency, as it is hedged about by limitations imposed by historical policies and precedents. The jurisdiction begins with the institution of the suit; it continues until its final disposition, until the rights of the litigants not only have been adjudged or decreed, but also until the judgment has been finally satisfied or the decree completely carried out."

For example, ancillary bills, bringing in co-citizens who were not parties to the principal suit, were maintained to construe a decree already given,⁴⁹ and to enforce a federal judgment against property conveyed by the debtor in fraud of creditors to grantees who were co-citizens of the plaintiff.⁵⁰ The Supreme Court has sanctioned an ancillary suit by members of a fraternal benefit association, citizens of the state in which it was incorporated, for the purpose of intervening in a representative suit brought against the association by members residing in other states.⁵¹ The total absence in this last case of any *res*, either in court or in the federal district or indeed anywhere, is to be noticed. An interpleader suit is a much milder exercise of the ancillary jurisdiction. To permit one claimant who may really not own the debt to get a federal judgment against a stakeholder, without giving the latter an adequate opportunity to interplead and protect himself against later suits by the other claimant, would be doing injustice, not justice. As Mr. Justice Miller says in an analogous situation: ⁵²

"An unjust advantage has been obtained by one party over another by a perversion and abuse of the orders of the court, and the party injured comes now to the same court to have this abuse corrected."

There are many situations appropriate for interpleader where

⁴⁸ *Supra* note 40, at 324.

⁴⁹ *Minnesota v. Milwaukee & St. Paul Rr.*, *supra* note 42, at 632.

⁵⁰ *Hobbs Mfg. Co. v. Gooding*, 164 Fed. 91 (C. C. D. Mass. 1908), noted in (1909) 22 HARV. L. REV. 304.

⁵¹ *Supreme Tribe of Ben-Hur v. Cauble*, 255 U. S. 356, 41 Sup. Ct. 338 (1921), noted in (1921) 19 MICH. L. REV. 759; (1921) 21 COL. L. REV. 487.

⁵² *Supra* note 42, at 633.

the stakeholder, who has been sued in a federal court, is subjected to claims by persons other than the plaintiff, which relate to the same obligation and yet which are not directed against any property that the stakeholder can put into the custody of the court. Assume, for example, that the principal action at law has been brought in the United States District Court in Massachusetts against a Massachusetts savings bank by a Rhode Islander, the administrator of a depositor, who sues for the amount of the deposit with interest. A Massachusetts woman, the depositor's landlady, asserts that the depositor gave her the bank book before his death. The bank files an ancillary bill of interpleader. Here the federal court cannot acquire custody of any *res*, in the sense required for that branch of the ancillary jurisdiction. It is true that the usual deposit of the money in court, which the stakeholder proposes to make, is often described as a *res* in interpleader cases, but the word is then used with a different meaning. The landlady's claim is not directed against that money or any particular money; it runs against the bank upon the original debt which, she says, was assigned to her. The bank cannot by its own act transform that debt into the cash placed in the hands of the court. The deposit of this "*res*" in court does not give the court any jurisdiction *in rem* to determine the ownership of the debt.⁵³

And yet ancillary interpleader is badly needed. If the federal court proceeds with the suit against the bank without allowing it to compel the landlady and the administrator to fight out the validity of the alleged gift between themselves, the court will be using its process to do the bank a grave injustice. In the absence of interpleader, the federal jury may find the bank liable to the administrator on the ground that there was no gift. Then the bank will have to defend an additional action brought by the landlady in the state court, where a different jury may find that there was a gift and oblige the bank to pay a second time. If the administrator's action had been pending in a Massachusetts state court, interpleader would clearly have been granted in a state equity suit, but the federal nature of his action makes it difficult for a state court to enjoin it⁵⁴ and thus protect the bank effectively by interpleader. Therefore, since interpleader cannot be brought in a state court where no regard is paid to diversity of citizenship, it is but common justice to furnish the bank with an equally adequate remedy (without regard to diversity of citizenship) in the United States court where the administrator has

⁵³ N. Y. Life Insurance Co. v. Dunlevy, *supra* note 4; Chafee, *Interstate Interpleader*, *supra* note 1, at 714, 715, and cases cited.

⁵⁴ Schuyler v. Pelissier, 3 Edw. Ch. 191 (N. Y. 1838); Smith v. Reed, 74 N. J. Eq. 776, 70 Atl. 961 (1908). See Kline v. Burke Construction Co., 260 U. S. 226, 43 Sup. Ct. 79 (1922).

sued. Otherwise the federal system of duplicate courts fails to justify its existence. Since this needed federal interpleader probably cannot be given upon an original bill, because of the nature of the court's diversity of citizenship jurisdiction, the harassed bank can obtain its equal and adequate remedy only by the exercise of the equitable powers of the United States court under its ancillary jurisdiction, "arising out of the inherent power of every court of justice to control its own process, so as to prevent and redress wrong."⁵⁵

Unfortunately, the judicial opinions in most federal interpleader cases assume the federal jurisdiction without discussing its basis. Sometimes the report of the case does not make it clear whether or not partial co-citizenship existed; one would have to go to the record. In many cases where it clearly did exist, no explanation is offered to show why it did not oust the court of jurisdiction. It is convenient to group together all the cases in which interpleader was maintained by a defendant who had already been sued in the United States courts⁵⁶ either at law or in equity, but it is not absolutely certain that the court in granting interpleader considered that it was acting under its ancillary jurisdiction. In some of these cases it is possible that the court regarded the interpleader bill as an original bill in the federal sense, but refrained from throwing it out on account of partial co-citizenship, either because this point was overlooked or because the court, in accordance with the line of reasoning already suggested, did not consider complete diversity of citizenship essential for even original bills of interpleader. Some additional significance attaches to the fact, that there are no cases where a defendant in a federal court sought interpleader and was refused it because of co-citizenship. The few decisions denying interpleader to a defendant rest on other grounds.⁵⁷

⁵⁵ Matthews, J., in *Krippendorf v. Hyde*, 110 U. S. 276, 282, 4 Sup. Ct. 27, 29 (1884). Although this case involved the custody of a *res*, the same argument applies in its absence to interpleader. See the discussion of interpleader in this case at 287.

⁵⁶ An asterisk marks cases which were probably regarded as original bills, either because they were decided before the ancillary jurisdiction was well established or because of indications in the court's reasoning; these are discussed previously in connection with original bills. All the cases are in chronological order.

1. Defendant in federal action at law based on diversity of citizenship obtained interpleader or similar relief: **Spring v. South Carolina Insurance Co.*, 8 Wheat. 268 (C. C. S. C. 1823); **City Bank v. Skelton*, 2 Blatch. 14, 26 (D. N. Y. 1846); *Stone v. Bishop*, 4 Cliff. 593 (D. Mass. 1878); *Union Insurance Co. v. Glover*, 9 Fed. 529 (C. C. Me. 1881); *Louisiana State Lottery Co. v. Clark*, 16 Fed. 20 (C. C. La. 1883); **McWhirter v. Halsted*, 24 Fed. 828 (C. C. N. J. 1885); *Wells, Fargo and Co. v. Miner*, 25 Fed. 533 (C. C. Cal. 1885); *Krippendorf v. Hyde*, 110 U. S. 276, 4 Sup. Ct. 27 (1884) *semble*; *Lockett v. Rumbough*, 40 Fed. 523 (D. N. C. 1889); *Groves v. Sontell*, 153 U. S. 465, 14 Sup. Ct. 898 (1894); *Buck v. Mason*, 135 Fed. 304

Among the interpleader cases which probably fall under the ancillary jurisdiction and which cannot easily be explained as involving the custody of a *res*, the following merit some attention: ⁵⁸

Stone v. Bishop ⁵⁹ was the earliest case of interpleader clearly ancillary. A New Hampshire citizen sued a Massachusetts savings bank in the federal court, claiming a deposit as held in trust for him. The bank obtained interpleader against this plaintiff and the depositor's administrator, a Massachusetts citizen. Judge Clifford said:

"Jurisdiction of the suit will be assumed, though one of the respondents is a citizen of the same State with the complainant, it appearing that the suit is auxiliary to the original suit previously commenced and still pending between citizens of different States."

The next three cases did not say that the jurisdiction was ancillary, and the citizenship of the parties was incompletely stated in the reports.

C. C. A. 5th, 1905); *Caten v. Eagle Bldg. & Loan Ass'n*, 177 Fed. 996 (D. Pa. 1909); *Huxley v. Pennsylvania Warehousing Co.*, 184 Fed. 705 (C. C. A. 3d, 1911); *Federal Cement Co. v. Shaffer*, 235 Fed. 912 (D. Pa. 1916); *Sherman National Bank v. Shubert Theatrical Co.*, 247 Fed. 256 (C. C. A. 2d, 1917) *aff'g* 238 Fed. 225; *Montgomery v. Philadelphia*, 253 Fed. 473 (D. Pa. 1918); *Brown v. Home Life Insurance Co.*, 3 F. (2d) 661 (D. Okla. 1925); *Duell v. Greiner*, 15 F. (2d) 726 (D. Fla. 1926); *Kentucky Distilleries & W. Co. v. Louisville Public Warehouse Co.*, 19 F. (2d) 866 (C. C. A. 6th, 1927); *Frankfort Distillery Co. v. Dougherty Warehouse Co.*, 31 F. (2d) 217 (D. Pa. 1928), *semble*; *Fleming v. Phoenix Assurance Co.*, 40 F. (2d) 38 (C. C. A. 5th, 1930), *cert. den.* 282 U. S. 69, 51 Sup. Ct. 76. See *Marine Midland Trust Co. v. Irving Trust Co.*, *infra* note 81.

2. Defendant in federal equity suit based on diversity of citizenship obtained interpleader or similar relief: *Aetna National Bank v. U. S. Life Insurance Co.*, 25 Fed. 531 (C. C. D. N. Y. 1885); *Mundy v. Louisville & Nashville Rr.*, 67 Fed. 633 (C. C. A. 6th, 1895); *Federal Mining Co. v. Bunker Hill Mining Co.*, 187 Fed. 474 (C. C. Idaho 1909); *Hirschmann v. Bank of Dassel*, 21 F. (2d) 263 (C. C. A. 8th, 1927).

⁵⁷ Interpleader was denied to defendant at law or in equity for other reasons than co-citizenship: *Herndon v. Ridgway*, 17 How. 424 (D. Miss. 1854) (probably defendant in equity); *Bartlett v. The Sultan*, 23 Fed. 257 (C. C. N. Y. 1885); *Kingdom of Roumania v. Guaranty Trust Co.*, 250 Fed. 341 (C. C. A. 2d, 1918), *rev'g* 244 Fed. 195; *Breitung v. Packard*, 260 Fed. 895 (D. Mass. 1919); *Bank of Taiwan v. Gorgas-Pierie Mfg. Co.*, 273 Fed. 660 (C. C. A. 3d, 1921) (defendant in equity); *Mallory S. S. Co. v. Thalheim*, 277 Fed. 196 (C. C. A. 2d, 1921).

⁵⁸ Of the other unstarred cases in note 56, those which probably involved a *res* are mentioned in note 47; three decisions applying the Pennsylvania statute to allow federal interpleader at law will be discussed later under section III; and ancillary proceedings of a triangular nature resembling interpleader, although not precisely taking the form of that remedy, were allowed in four cases: *Brown v. Home Life Insurance Co.*; *Duell v. Greiner*; *Kentucky Distilleries & Warehouse Co. v. Louisville Public Warehouse Co.*; *Federal Mining Co. v. Bunker Hill*.

In *Union Insurance Co. v. Glover*,⁵⁰ a Massachusetts policyholder sued an insurance company, of unstated citizenship, in the federal court. A Maine citizen brought a state suit as partial assignee of the policy. The company interpleaded and the partial assignee recovered on the ground of an equitable lien. In *Louisiana State Lottery Co. v. Clark*,⁵¹ two suits were brought against the lottery company in the state court. One plaintiff claimed the ownership of half of a prize lottery ticket. The other plaintiff claimed the whole ticket and joined the other claimant in his suit. The company removed both suits to the federal court, and then filed a bill of interpleader, which was allowed. In *Wells, Fargo and Co. v. Miner*,⁵² C-1 sold a mining claim to C-2, a Nevada corporation, and received a check for \$10,000, which he deposited in a banking house in return for \$2500 in cash and a \$7500 certificate of deposit, which he indorsed to C-3. The Nevada corporation, alleging fraud in the sale and C-3's bad faith, claimed the certificate, warned the banking house not to pay it, and brought two state actions against the banking house, one of which went to judgment. Then C-3 sued the banking house in the United States court for its refusal to pay the certificate on presentation. The banking house thereupon filed a federal bill in equity to interplead the three claimants, and obtained a preliminary injunction of the actions against it. The citizenship of C-1, C-3, and the banking house was not stated. If the bank's debt was the subject matter of controversy, there was no *res* within the custody of the court under the doctrine of the *Dunlevy* case;⁵³ and nothing was said to show that the certificate of deposit was regarded as such a *res*.

*Sherman National Bank v. Shubert Theatrical Co.*⁵⁴ is the most important of all the federal interpleader cases because of its extended discussion of the ancillary jurisdiction over interpleader. L, the owner of the American dramatic rights of Maeterlinck's play, "The Bluebird," made a contract with the Shubert Theatrical Company, a New York corporation, for the production of the play and the sharing of profits. These profits were to be deposited in a special account in a New York bank, on which checks could be drawn by either of the two Shubert brothers (apparently the sole stockholders of the New York Shubert corporation). As security for loans, L assigned to this New York bank and a Vermont bank half of his share of the profits under the Shubert contract. Subsequently L became bankrupt. Shortly

⁵⁰ 4 Cliff. 597 (D. Mass. 1878).

⁵¹ 9 Fed. 529 (C. C. Me. 1881).

⁵² 16 Fed. 20 (C. C. La. 1883).

⁵³ 25 Fed. 533 (C. C. Cal. 1885).

⁵⁴ *Supra* note 4.

⁶⁴ 247 Fed. 256 (C. C. A. 2d, 1917), *aff'g* 238 Fed. 225.

afterwards *D* of New York, *L*'s trustee in bankruptcy, served on the New York bank an order of the United States district court in New York, restraining all persons from paying over any funds in which *L* claimed an interest, and *D* demanded that the bank hold such sums in its possession. Consequently the bank dishonored a check drawn by one of the Shuberts for the balance of the account. The bank was then sued at law in the same federal court by the Shubert Theatrical Corporation of New Jersey (probably owned by the Shubert brothers, although the opinions do not show just how it was interested in the deposit). As ancillary to this action at law, the defendant New York bank filed a bill in the nature of interpleader against both the Shubert corporations, the two Shuberts individually, *L*, his trustee in bankruptcy, *D*, and the Vermont bank.⁶⁵ Although the citizenship of the two Shuberts and *L* is not stated, there was obviously co-citizenship between the New York bank, the New York Shubert corporation, and the trustee in bankruptcy. A strict bill of interpleader would probably have been prevented by the stakeholder's claim of a lien upon the deposit to secure *L*'s indebtedness, but the necessary independent equitable ground for a bill in the nature of interpleader was found in the multiplicity of transactions and in the prayer for an accounting of the profits of "The Bluebird," which *L* had unsuccessfully sought to obtain from the New York Shubert corporation before the bankruptcy.

Judge Learned Hand, in taking jurisdiction, expressly recognizes that the co-citizenship of the New York bank and the trustee in bankruptcy raises the question of the constitutional jurisdiction of the United States court. Although the bill from the standpoint of equity pleading is an original bill, that does not determine its jurisdictional status, which may none the less be ancillary.⁶⁶ It is true, he says, that most cases of ancillary jurisdiction arise when some property has come into the custody of the court, or at least when some suit is pending in which the court may assume possession at any time. But such a possessory element⁶⁶ is not essential. The power of the court to determine

⁶⁵ Only the New Jersey Shubert corporation and the Vermont bank appear to have answered the bill. The record is defective, according to the court, in failing to show the citizenship of the defendants not answering, whether they were served with process, and whether or not they were beyond the jurisdiction of the court.

⁶⁶ Judge Hand tentatively suggests a possessory element here on the theory that the personal jurisdiction of the federal court in the bankruptcy proceeding over the bankrupt, *L*, puts all of *L*'s "property" into court, including the bank deposit, and hence under Judicial Code, Section 57, the court may remove a cloud on *L*'s title to this deposit asserted by a non-resident claimant. But since the whole dispute is whether the deposit is *L*'s property, or how far, the bankrupt's mere claim to the deposit hardly makes it a *res* in court, especially if personal jurisdiction cannot be obtained over other claimants. See Chafee, *Interstate Interpleader*, *supra* note 1, at

the ownership of the deposit is necessary in order to avoid the injustice which would arise from a partial consideration of the "controversy" in the pending action at law between citizens of different states.

"The 'controversy' at least involves, not only the liability of the obligor, but whether the plaintiff is the obligee. The plaintiff, by asserting that he is the obligee, has necessarily invited a decision which must determine the identity of the obligee, at least negatively, and the complete determination of that question is all that the bill of interpleader seeks to secure, because the court will in the action decide something positive about the identity of the obligee, even were it to decide that among all possible obligees the plaintiff is not one, though it may fail to decide which is the actual, among all putative obligees. In a question of constitutional jurisdiction it should accept the complete determination of that question, as the whole of the 'controversy' at stake in the action; it should not cut too fine. . . . The power to compel the obligor to pay must include the power to protect him in his payment and the successful obligee in his proceeds. It is exactly analogous to the incidental powers of a court which has custody of a res. Having awarded possession, the court must have power to protect both him who has delivered and him who has received. In each case the effective exercise of the power itself involves as an incident its validity against others. In the case of constitutional jurisdiction over choses in action, the same principle applies as to the territorial jurisdiction over the person in cases of choses in action, and to the constitutional jurisdiction in possessory suits. The court cannot completely protect the results of its judgment at law in a case such as this, without recourse to that procedural entirety that courts have devised to that end."⁶⁷

Judge Hand relied upon *Stone v. Bishop*,⁶⁸ which recognized the ancillary jurisdiction divorced from any possessory element. Although this decision involved a strict bill of interpleader, the same principle of constitutional jurisdiction would extend to the bill in the nature of interpleader in the *Shubert* case. Consequently, he upheld federal jurisdiction, struck out the defenses of the New Jersey Shubert corporation, and enjoined state and federal suits against the stakeholder.

On appeal by the New Jersey Shubert corporation, Judge Hand's order was affirmed. Judge Ward's opinion expressly says that it is unnecessary to hold the account a *res* within the juris-

707, 724. On his interpretation of the Dunlevy case and the foreign garnishment cases, see *id.* at 711. Judge Hand's interpretation of Blackstone v. Miller, is affected by the later tax cases cited *supra* note 6.

⁶⁷ 238 Fed. 228, 229 (1916).

⁶⁸ *Supra* note 59. He says this is the only case to that effect. The three cases in notes 60, 61 and 62 seem in point though there is no discussion of ancillary jurisdiction in the opinions.

diction in order to support the ancillary jurisdiction of interpleader. He appears to go squarely on the alternative ground that interpleader is necessary to accomplish justice in the main action at law. When the account was opened, he points out, the bank was told that the deposit was under an agreement between named parties who had an interest in it. The ownership of the account, both wholly and in part, is claimed by several different persons. If the action at law stopped here, it is plain that the New York bank would be exposed to the danger of paying all or part of the balance to four different persons: the two Shubert companies, the trustee in bankruptcy, and the Vermont bank. Nothing but a bill of interpleader in equity could protect the New York bank from this danger.

"We are clearly of opinion that the bill is ancillary to the action at law and that the court has complete jurisdiction of the cause because of the diversity of citizenship in the action at law. As a pleading its allegations would constitute an original bill, and this court would have no jurisdiction of it as such for want of proof of diversity of citizenship. But it is filed, among other things, to stay the action at law, and so is connected with and ancillary to it. The jurisdiction of this court over the action at law by virtue of the citizenship of the parties extends to the ancillary bill."⁶⁹

This decision has not gone wholly unquestioned. A law review asks:⁷⁰

"Can it be said that the determination of whether two strangers to the original suit are the owners of the claim, even though it involves the determination of whether the original claimant is the owner or not, is truly ancillary to the original proceeding? . . . While the result may be desirable, the logic is not conclusive."

On the other hand, the case has been approved by other legal writers and by the court in another circuit.⁷¹ With *Stone v. Bishop* and the other cases previously described,⁷² it seems excellent authority for the position that the ancillary jurisdiction over interpleader is not limited to cases connected with the possession of a *res*.

In *Hirschmann v. Bank of Dassel*,⁷³ a Minnesota citizen, the

⁶⁹ 247 Fed. 256, 258 (C. C. A. 2d, 1917).

⁷⁰ Note (1917) 30 HARV. L. REV. 521.

⁷¹ Note (1917) 17 COL. L. REV. 560, 561: "The principal case is sound in holding that where the equity suit depends on a previous action the court has jurisdiction of the bill since it is part of the controversy already before the court." DOBIE, *op. cit. supra* note 40, at 326. *Ross v. International Life Insurance Co.*, 24 F. (2d) 345, 346 (C. C. A. 6th, 1928).

⁷² *Supra* notes 59-62.

⁷³ 21 F. (2d) 263 (C. C. A. 8th, 1927). The facts as to citizenship are taken from the record. Federal jurisdiction was not discussed by the court.

agent of an Indiana insurance company, assigned his renewal commissions to a Minnesota bank which brought a federal equity suit against the insurance company for an accounting. The defendant was allowed to interplead its general agent in Minnesota who also claimed the commissions, although he was a co-citizen of the bank.

In *Fleming v. Phoenix Assurance Co.*,⁷⁴ eight insurance companies, including the Phoenix, an English corporation, issued fire policies to Fleming, an Alabaman, each with a clause for prorating any loss. After a fire, all the companies denied liability for breach of an iron safe clause. Separate suits against the eight companies were brought by Fleming in the state courts, of which five, including the suit against the Phoenix, were removed to the United States court. Fifteen of Fleming's creditors sued him in the state courts and garnished each of the companies. The Phoenix company filed a federal bill in equity, joining Fleming, his creditors, and the other companies, and prayed for a judgment of non-liability or, in the alternative, that the court determine the amount due Fleming, the prorata liability of each company, and the rights of Fleming and his creditors. (Three companies were incorporated in Pennsylvania, the others in different states outside Alabama. The citizenship of the creditors was not stated, but they resided outside Alabama. The bill was said to show the necessary diversity of citizenship.) The other insurance companies were dismissed on appeal, for lack of sufficient community of interest to support a bill of peace;⁷⁵ but injunctions were held properly granted against federal and state suits brought by Fleming and the garnishing creditors against the Phoenix. The decree here is really the converse of that in *Virginia-Carolina Chemical Co. v. Home Insurance Co.*,⁷⁶ where a federal bill in equity was allowed for the purpose of ascertaining the liability of many insurance companies to a common policyholder under the prorata clause. There were fourteen original suits pending on the law side of the United States court which the bill sought to restrain and regulate, so that it was sustained

⁷⁴ 40 F. (2d) 38 (C. C. A. 5th, 1930), *cert. den.* 282 U. S. 869. The facts as to citizenship are taken from the record. The court did not discuss federal jurisdiction or say that the bill was ancillary, but the briefs took that position. This was not a strict bill of interpleader because the Phoenix disputed its liability.

⁷⁵ The court was probably bound by *Scruggs and Echols v. Am. Cent. Insurance Co.*, 176 Fed. 224 (C. C. A. 5th, 1910), to dismiss the bill of peace, but it might perhaps be sustained in another circuit for the sake of winding up the whole controversy in one proceeding. See *Va.-Carolina Chem. Co. v. Home Insurance Co.*, *infra* note 76; *Dixie v. American Confectionery Co.*, 124 Tenn. 247, 136 S. W. 915 (1911); 1 POMEROY, EQUITY JURISPRUDENCE (4th ed. 1918) 459 n.

⁷⁶ 113 Fed. 1 (C. C. A. 4th, 1902), *aff'g* 109 Fed. 681.

as an ancillary proceeding without regard to citizenship. In that case the ancillary proceeding apportioned several liabilities to one plaintiff at law among several defendants; in the *Fleming* case it apportioned one liability of one defendant among several plaintiffs.

The ancillary jurisdiction is not limited to situations where the principal suit is based on diversity of citizenship. It also applies when that suit is brought into a United States court because of a federal question. Sometimes the ancillary interpleader proceeding may involve the same federal question,⁷⁷ but this is not essential, as is demonstrated by the recent case of *Irving Trust Co. v. Marine Midland Trust Co.*⁷⁸

The Marine Midland Trust Co. of New York lent money to a broker for the purchase of stock on a "day loan," which by a New York statute gave the trust company a lien on the securities bought. Some of these were delivered by the broker to the trust company and were still in its possession when the broker became bankrupt less than four months later. Three suits were then begun against the Marine Midland Trust Co.: (a) a suit in equity in the federal court under the Bankruptcy Act⁷⁹ by the trustee in bankruptcy, the Irving Trust Co., to set aside the alleged preference and recover all the securities, some of which nobody else claimed; (b) a suit at law in the federal court by *E*, a customer of the broker, for conversion of part of the securities; (c) a suit at law in the state court by *W*, another customer, for conversion of a different group of securities. In addition, both customers began reclamation in the bankruptcy proceedings (in the same federal court) to get their respective securities from the trustee's portfolio. The Marine Midland Trust Co. moved in the equity suit, where it was defendant, to make the two customers parties to that suit on the analogy of a bill in the nature of a bill of interpleader. The citizenship of the various parties was not stated, but obviously there was co-citizenship between the two trust companies, and perhaps with *W*.

Judge Woolsey granted the motion provisionally, but in a modified form under the defendant's prayer for general relief. The defendant's purpose, he said, was the prevention of two situations which equity holds in abhorrence: a possible double recovery against a party; and multiplicity of suits involving issues which could be conveniently tried together. Though he approved the defendant's purpose, the proper procedure had not been

⁷⁷ See *Liberty Oil Co. v. Condon Nat. Bank*, *supra* note 16; *Heinemann v. Heinemann*, *supra* note 19, and other cases cited *supra* notes 13, 15 and 23.

⁷⁸ 47 F. (2d) 907 (D. N. Y. 1931). For subsequent proceedings see *infra* note 81.

⁷⁹ Sections 60b, 70e, 11 U. S. C. §§ 96(b), 110(e) (1926).

adopted for its attainment. New parties should not be joined on motion. The provisions of the New York Practice Act on that subject could not affect a federal equity suit.⁸⁰ Furthermore, Judge Woolsey said that neither a cross-bill nor a counterclaim could be filed in equity to bring in new parties—a point shortly to be discussed. Consequently, he found a different procedure necessary, and considered it proper for the defendant to file two bills in the nature of bills of interpleader, ancillary to the main equity suit to set aside the preference. One bill should be against the plaintiff trustee in bankruptcy and *E*; the other against the trustee and *W*. After proper service of subpoena on the claimants, *E* and *W* would be temporarily enjoined from proceeding with their respective legal actions until the final determination of the bills in the nature of interpleader. If aught should then remain to be tried in the actions at law, the several plaintiffs could then have their jury trial in respect of such residual issues. Meanwhile, the trial of the principal equity suit would be stayed for thirty days to allow the defendant to institute the ancillary suits. (Obviously these ancillary bills involved much more the federal question of a preference; they also concerned the rights of *E* and *W* to the securities, a matter of state law.)

The Marine Midland Trust Co. filed its ancillary bills in the nature of interpleader as suggested and obtained the injunctions. A motion by *W* to dismiss the bill against him was denied by Judge Mack. Then *E* moved to dismiss the bill against him for lack of jurisdiction and equitable insufficiency; or in the alternative to vacate Judge Woolsey's order, to compel a fuller statement of particulars, to restrain the Marine Midland Trust Co. from proceeding further in this or any similar suit, and to grant a trial preference in *E*'s federal lawsuit. Except as to the fuller statement of particulars, this motion was denied by Judge Mack.⁸¹ On the jurisdictional question he said:⁸²

"Federal jurisdiction arises from the character of the suit, ancillary to two proceedings pending in this court, as to each of which jurisdiction is undisputed; the action at law brought by Eybro against Marine in which the ground of jurisdiction is diversity of citizenship and the suit by Trustee against Marine to recover an alleged preference."

The result reached in the *Marine Midland Trust Company* case is admirable, but one is struck with the rather roundabout nature of the procedure which Judge Woolsey felt obliged to adopt. *Two*

⁸⁰ See discussion under III A to appear in a subsequent issue of the *Journal*.

⁸¹ *Marine Midland Trust Co. v. Irving Trust Co.*, 56 F. (2d) 385 (D. N. Y. 1932).

⁸² *Id.* at 387.

ancillary bills in the nature of interpleader seem a complicated addition. The principal proceeding was already in the federal court on the equity side. The normal way for a defendant in equity to obtain affirmative relief is by a cross-bill, which under Federal Equity Rule 30 now takes the form of a counterclaim incorporated in the answer. Interpleader by cross-bill (or answer) seems the natural procedure for a stakeholder who is already in an equity court, and it is much simpler than the filing of one or more ancillary bills. This convenient method of bringing in new parties has long been used under state codes. Why should it not be equally available in the United States courts? The objection raised by Judge Woolsey and others is that several cases in United States courts do not allow a cross-bill to bring in new parties. But this objection appears to have been removed, after the decisions on which Judge Woolsey relies,⁸³ by the provision added to Equity Rule 30 in 1925:⁸⁴

“When in the determination of a counterclaim complete relief cannot be granted without the presence of parties other than those to the bill, the court shall order them to be brought in as defendants if they are subject to its jurisdiction.”

This language seems sufficiently broad to include the introduction of new parties through interpleader. In view of the great convenience of such practice it is to be hoped that the amended rule will be construed so as to permit it.⁸⁵ Then the stakeholder who has been sued by one claimant in a federal equity suit,⁸⁶ will not have to go to the trouble of filing an ancillary bill but will merely interplead any other claimants by a counterclaim in his answer.

Whether the precise procedural method allowed be an ancillary bill or an answer, the cases make it clear that once a stakeholder has been sued by one claimant in the United States court he will have little difficulty in interpleading other claimants to the same obligation, in spite of any co-citizenship between himself and one or more claimants or among the claimants themselves. This ancillary relief has the additional advantage of probably dispensing with personal service of process upon nonresident claimants

⁸³ Judge Woolsey cites *United States v. Woods*, 223 Fed. 316 (C. C. A. 8th, 1915); *Looney v. Thorpe*, 277 Fed. 367, 370 (C. C. A. 8th, 1921). To the same effect are *Federal Mining Co. v. Bunker Hill*, 187 Fed. 474 (C. C. Idaho 1909); *Williams v. Mason*, 7 F. (2d) 143 (D. Fla. 1925). On the divergent views in state decisions see Note (1920) 33 HARV L. REV. 730.

⁸⁴ HOPKINS, *THE NEW FEDERAL EQUITY RULES* (6th ed. 1929) 200.

⁸⁵ The only case interpreting the new clause is *Hunn v. Lewis*, 25 F. (2d) 271 (C. C. A. 8th, 1928). This recognizes that the law has been changed, but holds that the counterclaim in the particular case did not state a cause of action which would justify the joinder of new parties.

⁸⁶ The possibility of interpleader by answer in federal actions at law will be discussed later under section III.

who have become plaintiffs in the pending federal suits. Service upon their attorneys in such suits will probably be accepted as sufficient.⁸⁷ However, this praiseworthy liberality as to ancillary relief does not suffice to protect the stakeholder in a large number of situations where he is threatened with suits by claimants residing in other states. In the first place, he cannot obtain ancillary relief at all unless a nonresident claimant has already started suit in a federal court. So long as he merely threatens suit, he probably cannot be served with process in an original bill of interpleader. It may very well be that some other claimant will start in the state court and press his suit to judgment before the nonresident claimant begins his action in the United States court; then it will probably be too late for interpleader. Secondly, if two or more claimants are nonresidents, it will not be sufficient for effective ancillary relief if only one of them starts suit in the federal court. So long as the other nonresident claimants keep out of the state, the stakeholder will find it impossible to bind them by interpleader, and indeed his bill may be dismissed for want of personal jurisdiction over such absent claimants.⁸⁸ There may also be situations where the stakeholder is a corporation doing business in several states, so that claimants who reside in different states will be able to start suits against the stakeholder in two or more different federal courts. Under such circumstances the stakeholder probably could not get ancillary relief in either federal court, for want of personal service over the claimant who is suing in the other federal court. Therefore the only really satisfactory form of protection against claims by residents of different states is federal jurisdiction over an original bill of interpleader filed in the district where any claimant resides, with power in the federal court of that district to serve process on the other claimants wherever they reside. This wider relief has already been made possible to a limited class of stakeholders by the federal interpleader statutes now to be discussed.

⁸⁷ *Minnesota v. St. Paul Co.*, quoted *supra* note 42; *Young v. McNeal-Edwards Co.*, 283 U. S. 398, 51 Sup. Ct. 538 (1931); *Sherman v. Shubert Theatrical Co.*, *supra* note 64. See also *Kingdom of Roumania v. Guaranty Trust Co.*, 244 Fed. 195 (S. D. N. Y. 1917).

⁸⁸ *Herndon v. Ridgway*, *supra* note 33. See also the statements as to absent claimants in *Sherman Nat. Bank v. Shubert Theatrical Co.*, *supra* note 64.

*B. Jurisdiction under the Federal Interpleader Act of 1917
and Subsequent Legislation*⁸⁹

The provisions of the federal interpleader act of 1917⁸⁹ may be summarized as follows: 1. United States district courts have original jurisdiction over suits in equity begun by bills of interpleader. 2. The stakeholder must be an insurance company or a fraternal beneficiary society. 3. One or more persons, being *bona fide*⁹¹ claimants against the complainant, must reside within the jurisdiction of the court. 4. The jurisdictional amount involved in the policy is fixed at \$500. 5. "Two or more adverse claimants, citizens of different States, are claiming or may claim to be entitled to such insurance." 6. The amount of such insurance must be deposited in court.⁹² 7. The court shall have power to issue its process for said claimants, "which shall be addressed to and served by the United States marshals for the respective districts wherein said claimants reside or may be found." 7. "The court shall have power to hear the bill of interpleader and decide thereon according to the practice in equity." 8. The court shall have power to discharge the complainant from further liability upon payment of the insurance as directed by the court, less complainant's "actual court costs."⁹³ 9. The court shall have the power to make suitable and proper orders and decrees and to issue "the necessary writs usual and customary in such cases for the purpose of carrying out such orders and decrees." 10. When the insurance is payable to a beneficiary, the bill shall be filed in the district where he resides,—a provision as to venue which caused a great deal of difficulty of interpretation.⁹⁴

⁸⁹ See JOSEPH S. CONWELL, THE FEDERAL INTERPLEADER ACT (1920) and THE FEDERAL INTERPLEADER ACT DOWN TO DATE (1926), two valuable papers read before the Association of Life Insurance Counsel and published in pamphlets, from which is taken the information in the following notes on the history of the bills in Congress. The 1926 pamphlet contains forms for bill and decrees.

⁹⁰ Act of Feb. 22, 1917, c. 113, 39 STAT. 929. The bill was introduced in the House by Representative J. Hampton Moore of Pennsylvania.

⁹¹ These two words were inserted by Senator Shields in committee, presumably to prevent an insurance company from obtaining interpleader through a pretended claim. On the construction of these words, see *Aetna Life Insurance Co. v. Mason*, 30 F. (2d) 715 (D. N. J. 1929).

⁹² The bill provided that an offer to deposit the money should be sufficient to give jurisdiction, but this was changed in committee to require actual deposit.

⁹³ The bill read "reasonable costs," but this was changed by the House committee, eliminating the usual allowance of counsel fees to the stakeholder. See the 1926 Act.

⁹⁴ The original bill allowed the company a free choice to interplead in the district wherein any claimant resided. The House committee limited the choice to the district of either a beneficiary or an assignee. Senator Shields in committee limited the choice to the beneficiary's district if there was a

In 1925 a second statute was substituted,⁹⁵ making some important changes which were carried over into the existing 1926 law. Through inadvertency several lines were omitted from the bill during its passage through Congress, and consequently the statement of the powers of the courts was so drastically cut down that their ability to give relief might have been impaired. However, this statute remained in force only a year before the error was corrected. It was then replaced by the statute of 1926, which is still in force as section 24 (26) of the Judicial Code. The text of the present act is as follows: ⁹⁶

“That the district courts of the United States shall have original jurisdiction to entertain and determine suits in equity begun by bills of interpleader duly verified, filed by any casualty company, surety company, insurance company or association or fraternal or beneficial society, and averring that one or more persons who are bona fide claimants against such company, association, or society resides or reside within the territorial jurisdiction of said court; that such company, association, or society has in its custody or possession money or property of the value of \$500 or more, or has issued a bond or a policy of insurance or certificate of membership providing for the payment of \$500 or more to the obligee or obligees in such bond or as insurance, indemnity, or benefits to a beneficiary, beneficiaries, or the heirs, next of kin, legal representatives, or assignee of the person insured or member; that two or more adverse claimants, citizens of different States, are claiming to be entitled to such money or property or the penalty of such bond, or to such insurance, indemnity, or benefits; that such company, association, or society has deposited such money or property or has paid the amount of such bond or policy into the registry of the court, there to abide the judgment of the court.

Sec. 2. In all such cases if the policy or certificate is drawn payable to the estate of the insured and has not been assigned in

beneficiary. The following cases interpret the venue provisions of the various acts: *Penn. Mutual Life Insurance Co. v. Henderson*, 244 Fed. 877 (D. Fla. 1917); *N. Y. Life Insurance Co. v. Kennedy*, 253 Fed. 287 (D. Fla. 1918); *Kansas City Life Insurance Co. v. Adamson*, 24 F. (2d) 107 (D. Tex. 1928); *Bankers' Life Insurance Co. v. Ebbert*, 48 F. (2d) 907 (D. Pa. 1928). The courts have tended to put an assignee on the same footing with a beneficiary, so that in a controversy between them interpleader may be brought in the district where either resides. Conwell's two pamphlets fully discuss the operation of the various venue clauses.

⁹⁵ Act of Feb. 25, 1925, c. 317, 43 STAT. 976, 28 U. S. C. § 41(26) (1926). This was introduced in the Senate by Senator George W. Pepper of Pennsylvania.

⁹⁶ Act of May 8, 1926, c. 273, 44 STAT. 416 (1929), 28 U. S. C. supp. § 41(26). This was also introduced in the Senate by Senator Pepper, reported without amendment and sent to the House, where it was amended to include casualty and surety companies and their contracts. The Senate concurred in these amendments at the request of the committee of the Association of Life Insurance Counsel, which had the matter in charge.

accordance with the terms of the policy or certificate the district court of the district of the residence of the personal representative of the insured shall have jurisdiction of such suit. In case the policy or certificate has been assigned during the life of the insured in accordance with the terms of the policy or certificate, the district court of the district of the residence of the assignee or of his personal representative shall have jurisdiction. In case the policy or certificate is drawn payable to a beneficiary or beneficiaries and there has been no such assignment as aforesaid the jurisdiction shall be in the district court of the district in which the beneficiary or beneficiaries or their personal representatives reside. In case there are claimants of such money or property, or in case there are beneficiaries under any such bond or policy resident in more districts than one, then jurisdiction shall be in the district court in any district in which a beneficiary or the personal representative of a claimant or a deceased claimant or beneficiary resides. Notwithstanding any provision of the Judicial Code to the contrary, said court shall have power to issue its process for all such claimants and to issue an order of injunction against each of them, enjoining them from instituting or prosecuting any suit or proceeding in any State court or in any other Federal court on account of such money or property or on such bond or on such policy or certificate of membership until the further order of the court; which process and order of injunction shall be returnable at such time as the said court or a judge thereof shall determine and shall be addressed to and served by the United States marshals for the respective districts wherein said claimants reside or may be found.

Sec. 3. Said court shall hear and determine the cause and shall discharge the complainant from further liability; and shall make the injunction permanent and enter all such other orders and decrees as may be suitable and proper, and issue all such customary writs as may be necessary or convenient to carry out and enforce the same.

The principal differences from the 1917 act, some of them introduced in 1925 as indicated, are these: 1. The list of persons entitled to interplead is expanded to include insurance associations (1925), and casualty and surety companies;⁹⁷ and appropriate references to bonds are consequently inserted at various places in the statute. 2. To insurance policies and certificates as subject-matters of controversy are added indemnity (1925) and money or property in the custody of the stakeholder; this last item takes care of insurance companies who have retained the amount of the policy after its maturity under an arrangement for periodical payments to beneficiaries. 3. The "may claim" clause was omitted; defendants must now actually claim.⁹⁸ 4.

⁹⁷ For the history of this addition, see *supra* note 96.

⁹⁸ This change was made in order to secure the passage of the Act of 1926. Some of the members of the Senate subcommittee were not willing

The venue clause is expanded (1925) to allow suit to be brought in an assignee's district or in the district where any beneficiary resides when there are several beneficiaries. These attempts to give a preferential venue to particular types of claimants have caused considerable difficulties of judicial interpretation.⁹⁹ 5. Other provisions of the Judicial Code are not to prevent the district court from temporarily enjoining any state or federal suit against the stakeholder relating to the same controversy.¹⁰⁰ 6. Nor are such other provisions to prevent the court from issuing its process for all the claimants in any federal districts wherein they reside or may be found.¹⁰¹ 7. The court shall have power to make the injunction against the claimants permanent (1925). 8. The provision for the discharge of the stakeholder omits the clause about deduction of "actual court costs" (1925).¹⁰²

The foregoing federal interpleader legislation has been remarkably successful. Out of 25 reported cases under the three statutes, interpleader was granted in 19 cases,¹⁰³ and equivalent

to permit the companies to obtain the jurisdiction of the District Court when there was only a possibility of claims by two or more persons.

⁹⁹ *Supra* note 94.

¹⁰⁰ This clause was due to the denial of injunctions in *Lowther v. N. Y. Life Insurance Co.*, 278 Fed. 405 (C. C. A. 3d, 1922). The clause was inserted in the 1925 draft, in the portion which was inadvertently omitted during passage.

¹⁰¹ This provision for service of process in other districts appeared in a less explicit form in the 1917 act, and was inadvertently omitted altogether in the 1925 act. This omission caused trouble in two unreported cases mentioned by Conwell. The provision was held constitutional in *National Fire Insurance Co. v. Sanders*, *infra* note 121; see also *U. S. v. Congress Construction Co.*, 22 U. S. 199, 203 (1911).

¹⁰² See *supra* note 93.

¹⁰³ *N. Y. Life Insurance Co. v. Kennedy*, 253 Fed. 287 (D. Fla. 1918); *New England Mutual Life Insurance Co. v. Reid*, 263 Fed. 451 (D. Md. 1920) *rev'd* on another point, *Reid v. Durboraw*, 272 Fed. 99 (C. C. A. 4th, 1921); *Lowther v. N. Y. Life Insurance Co.*, 278 Fed. 405 (C. C. A. 3d, 1922); *Guardian Life Insurance Co. v. Rosenbaum*, 280 Fed. 861 (C. C. A. 3d, 1922); *Equitable Life Insurance Co. v. Cummings*, 4 F. (2d) 794 (C. C. A. 3d, 1925); *N. Y. Life Insurance Co. v. Bidoggia*, 15 F. (2d) 126 (D. Idaho 1926), 17 F. (2d) 112; *Fidelity & Deposit Co. v. Reid*, 16 F. (2d) 502 (D. Pa. 1926); *Terry v. Supreme Forest*, 21 F. (2d) 158 (D. Tenn. 1926); *Ackerman v. Tobin*, 22 F. (2d) 541 (C. C. A. 8th, 1927); *Kansas City Life Insurance Co. v. Adamson*, 24 F. (2d) 107, 712 (D. Tex. 1928); *Ross v. International Life Insurance Co.*, 24 F. (2d) 345 (C. C. A. 6th, 1928); *Mutual Life Insurance Co. v. Bondurant*, 27 F. (2d) 464 (C. C. A. 6th, 1928), *cert. den.* 278 U. S. 630, 49 Sup. Ct. 30; *Aetna Life Insurance Co. v. Mason*, 30 F. (2d) 715 (D. N. J. 1929); *National Fire Insurance Co. v. Sanders*, 38 F. (2d) 212 (C. C. A. 5th, 1930), *rev'g* 33 F. (2d) 157; *Allen v. Hudson*, 35 F. (2d) 330 (C. C. A. 8th, 1929); *Peyraud v. Gray*, 47 F. (2d) 1063 (C. C. A. 8th, 1931); *Bankers' Life Co. v. Ebbert*, 48 F. (2d) 907 (D. Pa. 1928); *Globe and Rutgers Fire Insurance Co. v. Brown*, 52 F. (2d) 164 (D. La. 1931); *Vogel v. N. Y. Life Insurance Co.*, 55 F. (2d) 205 (C. C. A. 5th, 1932).

relief was given in one more case.¹⁰⁴ In one case the final outcome remained doubtful.¹⁰⁵ Interpleader was denied in only four reported cases,¹⁰⁶ and in only one of these was the cause of failure absence of federal jurisdiction. This case held that a claimant who was a citizen of the District of Columbia could not be interpleaded under the statute.¹⁰⁷

Two interesting jurisdictional questions are presented by this federal legislation: (1) What is the effect of co-citizenship between the applicant and one or more claimants? (2) What is the effect of co-citizenship among two or more claimants?¹⁰⁸

Co-citizenship Between the Applicant and One or More Claimants

Earlier in this article the view was expressed¹⁰⁹ that such co-citizenship is perhaps a bar to federal interpleader in the absence

¹⁰⁴ *Royal Neighbors v. Lowary*, 46 F. (2d) 565 (D. Mont. 1931). Although Judge Bourquin said that he was denying interpleader, this apparently meant nothing more than the refusal of counsel fees to the stakeholder, because the court went ahead and decided the controversy between the two claimants.

¹⁰⁵ *Connecticut General Life Insurance Co. v. Yaw*, 53 F. (2d) 684 (D. N. Y. 1931). An injunction was denied because there was a dispute as to the amount of the stakeholder's liability; but the bill was not dismissed. Two unreported inconclusive cases under the 1925 act are discussed in Conwell's 1926 pamphlet, cited *supra* note 89, at 470, 471, 480, 487.

¹⁰⁶ *Penn. Mutual v. Henderson*, 244 Fed. 877 (D. Fla. 1917); *Mutual Life Insurance Co. v. Lott*, 275 Fed. 365 (D. Cal. 1921); *Calloway v. Miles*, 30 F. (2d) 14 (C. C. A. 6th, 1929), questioned in *National Fire Insurance Co. v. Sanders*, *supra* note 103; *Pacific Mutual Life Insurance Co. v. Lusk*, 46 F. (2d) 505 (D. La. 1930).

¹⁰⁷ *Mutual Life Insurance Co. v. Lott*, *supra* note 106. The claimants were a wife, the original beneficiary, who lived in California, and four children, the substituted beneficiaries, three of whom lived in New York and one in the District of Columbia. Interpleader was begun in the United States district court in California. The bill was dismissed on motion by the children. Judge Bledsoe said that the District of Columbia was not a state within the Constitution or the statute. He refused to entertain the suit as a contest between the wife and the New York children with respect to three-quarters of the fund, because he regarded the District of Columbia claimant as an indispensable party.

¹⁰⁸ Complete diversity of citizenship apparently existed in the following cases under the statute cited *supra* note 103: *New York Life Insurance Co. v. Kennedy*; *Reid v. Durboraw*; *Equitable Life Insurance Co. v. Cummings*; *Kansas City Life Insurance Co. v. Adamson*; *Aetna Life Insurance Co. v. Mason*; *National Life Insurance Co. v. Sanders*; *Peyraud v. Gray* (shown by record); *Vogel v. Life Insurance Co.*; *Connecticut General Life Insurance Co. v. Yaw*, *supra* note 105; in the following cases in note 106: *Penn Mutual v. Henderson*; *Calloway v. Miles*.

Partial co-citizenship possibly existed in some of the following cases where the reports do not give sufficiently specific information: *Guardian Life Insurance Co. v. Rosenbaum*; *Bankers' Life Co. v. Ebbert*, both *supra* note 103; *Royal Neighbors v. Lowary*, *supra* note 104.

¹⁰⁹ *Supra* under IA, in subsection headed *Original Bills of Interpleader Based on Diversity of Citizenship*.

of a statute. However, the problem may be different under the particular legislation before us, especially when the stakeholder is not a citizen of the state where he interpleads. None of the three federal interpleader actions makes any requirement about the citizenship of the stakeholder. The only requisite as to federal jurisdiction which is expressed is that "two or more adverse claimants, citizens of different States," are claiming the subject-matter of controversy. If the requirement of complete diversity of citizenship among adverse parties is imposed by the Constitution, then the gap in the statutory requisites is immaterial. If the Constitution makes the co-citizenship of the stakeholder and a claimant a bar to interpleader, this bar cannot be removed by Congress. However, it is arguable that the language of the Constitution, "Controversies, . . . between Citizens of different States" is satisfied if one person on each side of the controversy comes from a different state from one person on the opposite side. According to this view, the decisions of the Supreme Court requiring complete diversity of citizenship are merely construction of the Congressional legislation with respect to the jurisdiction of the lower federal courts. This view is supported by the fact that the opinion of Chief Justice Marshall in *Strawbridge v. Curtiss*¹¹⁰ does not mention the Constitution but rests entirely on the words of the act of Congress: "Where . . . the suit is between a citizen of a state where the suit is brought, and a citizen of another state." The objection may be raised that this statutory language is virtually the same as that of the Constitution, so that if complete diversity of citizenship is held to be the meaning of the words of the statute, it must also be the meaning of the similar words of the Constitution. But this does not necessarily follow. The Constitution need not be construed as strictly as a statute.¹¹¹ If a court finds that Congress has not authorized a particular governmental action, Congress can easily amend the statute so as to confer the power; but if such action is held to be outside the scope of the Constitution, the defect is very difficult to cure. The Constitution is the outline of a scheme of national government, and Congress and the courts must not be cramped in filling in the details of this outline as needs alter. For example, Mr. Justice Holmes in the two *Stock Dividend* cases¹¹² considered that "income" in a tax law did not include stock dividends unless Congress expressly said so; but that "income" in the Sixteenth Amendment could be interpreted to let Congress tax such dividends by amending the law.

"It is not necessarily true that income means the same thing in the Constitution and the Act. A word is not a crystal, transparent and unchanged; it is the skin of a living thought and may

¹¹⁰ 3 Cranch 267 (U. S. 1806).

¹¹¹ CARDOZO, *THE NATURE OF THE JUDICIAL PROCESS* (1922) 83 ff.

vary greatly in color and content according to the circumstances and the time in which it is used.”¹¹³

The practical reasons are plain for a limited construction of the general statute on the diversity of citizenship jurisdiction of the federal courts. If complete diversity were not required, many more cases would be taken away from state tribunals, arousing more jealousy in the states and increasing the burdens of the federal judges. Therefore, it is reasonable for those courts to reject cases of partial citizenship when Congress has not definitely indicated an intention to deal with them. If this narrow construction of the statute were unsatisfactory to Congress, it could amend the law so as to indicate its intention definitely. But by enacting the interpleader statutes Congress did exhibit a clear intention to throw a new type of litigation into the federal courts and remedy an evil which was made obvious by the *Dunlevy* case.¹¹⁴ This evil is just as great when the stakeholder is a co-citizen of one claimant as when he is not. There is little question of taking these cases away from the state courts,—most of them cannot be decided there at all because of the impossibility of service of process on claimants residing in different states. The interpleader statutes do not expressly make this partial co-citizenship a bar, and neither does the Constitution. Consequently, the purpose of the statutes will best be served if this partial co-citizenship be ignored. And if the statutes are not yet sufficiently explicit on the jurisdictional requisites to permit this construction, it would seem both desirable and constitutional for Congress to amend the law so as to widen the federal interpleader jurisdiction sufficiently to take care of this situation.¹¹⁵

No authoritative conclusion on this question can be reached in the absence of any Supreme Court decisions construing the interpleader statutes. One Circuit Court of Appeals has twice granted interpleader where the stakeholder was a co-citizen of some claimants, but not of the particular claimant in whose dis-

¹¹² *Towne v. Eisner*, 245 U. S. 418, 38 Sup. Ct. 158 (1918); *Eisner v. Macomber*, 252 U. S. 189, 219, 40 Sup. Ct. 189, 197 (1920), dissenting opinion.

¹¹³ *Towne v. Eisner*, *supra* note 112, at 425.

¹¹⁴ *Supra* note 4.

¹¹⁵ Support for this reasoning is found in the construction of the Removal Act of 1875 in *Barney v. Latham*, 103 U. S. 205 (1880). The previous Removal Act of 1866 allowed the removal of that part of a state suit which constituted a separable controversy between citizens wholly of different states. The Act of 1875 was held to allow removal by any defendant affected with prejudice so as to carry the entire litigation to the United States court, irrespective of the residence of the plaintiffs and other defendants. Thus co-citizens might be brought into the federal court. *Cf. Cochran v. Montgomery County*, 199 U. S. 260, 26 Sup. Ct. 58 (1905).

trict interpleader was brought.¹¹⁶ There is a dictum on the point by Judge Bledsoe in an opinion which gives careful consideration to the jurisdictional problems raised by this legislation:¹¹⁷

"The controversy here is not between the insurance company and the claimants. If so, the court obviously would be without jurisdiction because some of the claimants are citizens of New York, of the same state of which the plaintiff itself is a citizen. Disregarding the formal and looking to the substantial alignment of the parties . . . the real and seemingly only controversy in the case is between the claimants."

Must There Be Complete Diversity of Citizenship Among the Claimants?

Here the statutes are more explicit, because they say "two or more adverse claimants, citizens of different States." If there are only two claimants, it is certain that their co-citizenship would be a bar to relief. Suppose, however, that there are three claimants. Is it sufficient that two of them belong in one state and the third in another? This seems enough in cases where the co-citizens have exactly the same interest, for instance, when insurance money is claimed by the widow living in one state and two children of a former wife, living in another state; here each child claims only half of the insurance money and recognizes the claim of the other child. Under such circumstances the non-antagonistic co-citizen claimants may be considered aligned together on one side of the controversy in the second stage in opposition to the claimant who lives in another state. This position is supported by the cases.¹¹⁸ The real problem arises when the co-citizen claimants are antagonistic to each other. For ex-

¹¹⁶ *Ackerman v. Tobin*, 22 F. (2d) 541 (C. C. A. 8th, 1927). A New York casualty company issued a robbery policy to a citizen of Missouri, who sued in the state court. The action was removed to the federal court. Several New York creditors of the policyholder garnished the company in New York state suits. The company interpleaded the policyholder and the creditors in the Missouri federal court, which determined the priorities of the creditors. The effect of the co-citizenship was not discussed.

Allen v. Hudson, 35 F. (2d) 330 (C. C. A. 8th, 1929). A New York life insurance company issued policies on the life of C-1 of New York payable to his firm. C-1 sold out to his partner, C-2 of Arkansas, who at once demanded the surrender value of the policy from the company. C-1 demanded a fraction of the surrender value proportional to his interest in the firm. The company interpleaded both partners in the Arkansas federal court. The effect of the co-citizenship was not discussed. (The facts as to citizenship are in the record but not in the report.)

¹¹⁷ *Mutual Life Insurance Co. v. Lott*, 275 Fed. 365, 372 (D. Col. 1921).

¹¹⁸ *Mutual Life Insurance Co. v. Lott*, *supra* note 117, *semble*; *New York Life Insurance Co. v. Bidoggia*, 15 F. (2d) 126, 17 F. (2d) 112 (D. Idaho 1926); *Mutual Life Insurance Co. v. Bondurant*, 27 F. (2d) 464 (C. C. A. 6th, 1928), *cert. den.* 278 U. S. 630.

ample, life insurance money is claimed by each of three successive assignees, two of whom live in the same state. Here it seems a strained construction of the statute to make the phrase "citizens of several States" limit only the word "two" and not the whole of the preceding phrase so as to mean that the claimants, however many they be, must each reside in a different state. The second stage of the interpleader is surely a real controversy. Yet, it is significant of the ease with which interpleader has been granted under the federal legislation that partial co-citizenship among the claimants has never been held a bar to relief. Judge Bledsoe left the question open in the case just quoted,¹¹⁹ and five decisions granted interpleader where some antagonistic claimants were apparently co-citizens.¹²⁰ However, the point was not discussed, and may have been overlooked by court and parties. Thus the effect of partial co-citizenship among the claimants is still unsettled, but when it is squarely raised it will probably bar relief unless ancillary jurisdiction can be established.

An entirely different jurisdictional problem was raised by *National Fire Insurance Co. v. Sanders*,¹²¹ which involved the power of a federal court to allow interpleader for a debt already garnished in a state court. After a fire loss had been adjusted, an Illinois creditor sued the Texan policyholder in the Illinois state court, serving him by publication, and garnished the Connecticut insurance company. Judgment was rendered against the Texan and the garnishment (or attachment, as the court called it¹²²) was sustained. The Texan notified the company that the insurance money from his homestead was exempt from seizure under Texas law, so that he would endeavor to hold the company even though the creditor won the Illinois suit. The company interpleaded the policyholder and the creditor in the Texas federal court. The policyholder's wife intervened, claiming exemption for the homestead as community property. The creditor moved

¹¹⁹ *Mutual Life Insurance Co. v. Lott*, *supra* note 117.

¹²⁰ *Lowther v. New York Life Insurance Co.*, 278 Fed. 405 (C. C. A. 3d, 1922) (two successive assignees, apparently of Illinois); *Fid. & D. Co. v. Reid*, 16 F. (2d) 502 (D. Pa. 1926) (conflicting claims by subcontractors, several of them in Pennsylvania); *Ackerman v. Tobin*, *supra* note 116; *Ross v. Inter. Life Insurance Co.*, 24 F. (2d) 345 (C. C. A. 6th, 1928) (possibly ancillary to a federal cancellation suit); *Globe & Rutgers Fire Insurance Co. v. Brown*, 52 F. (2d) 164 (D. La. 1931) (trustee in bankruptcy and mortgagee bank both in Louisiana). Relief was denied for other reasons in *Pacific Mutual Life Insurance Co. v. Lusk*, 46 F. (2d) 505 (D. La. 1930) (several Alabama garnishing creditors).

¹²¹ 38 F. (2d) 212 (C. C. A. 5th, 1930), *rev'd* 33 F. (2d) 157. See Note (1931) 9 TEX. L. REV. 281. See also *Ackerman v. Tobin*, *supra* note 116.

¹²² The question whether this was a garnishment or an attachment is discussed in a Note in (1931) 26 ILL. L. REV. 77, which concludes that it was a garnishment.

to dismiss the bill on the grounds that judgment in the Illinois court where the fund was impounded gave that court sole control of the *res*; and that the company was in no danger of paying the loss twice, because satisfaction of the Illinois judgment would be a good defence to any claim made by the policyholder in another suit.

In granting the motion, the district court said: ¹²³

"The statute invoked here clearly does not enlarge the functions or application of the equitable principles of interpleader. It enlarges the jurisdiction of this court as to parties when a certain state of facts is shown to exist, but it does not make appropriate the use or remedy afforded by a bill of interpleader to cases where such remedy, before the statute, would not apply."

In reversing the decision, Judge Foster replied to this argument by saying: ¹²⁴

"It may be conceded that the statute does not enlarge the equitable right of interpleader, but neither does it restrict it. It is not necessary to seek any enlargement of equitable right from the statute in this case. It is a fundamental principle of interpleader that its office is not so much to protect a party against double liability as against double vexation in respect of one liability. It is immaterial whether the danger apprehended comes from suits pending or merely threatened. In either case, a court of equity having jurisdiction over the parties may enjoin the institution or further prosecution of the suits and grant adequate relief to the stakeholder and the adverse claimants of the fund."

Whether money had been impounded by the Illinois court was immaterial, since, the Texas federal court had a fund in its own hands to award to either claimant. The garnishment proceedings, he said, did not vest jurisdiction of the *res* in the Illinois court. What was attached was a credit. The Illinois suit was *in personam*, though *quasi in rem* to the extent that the judgment could be satisfied only out of the property attached. The court below wrongly said that the claims are not adverse. Each claimant seeks the proceeds of the policy to the exclusion of the other. The creditor claims by virtue of the Illinois judgment and attachment; the policyholder, although not disputing his obligation to the creditor, claims the proceeds as exempt: ¹²⁵

"The statute is remedial and to be liberally construed. It is broad enough to cover any adverse claims against the proceeds of the policies, no matter on what grounds urged. Its terms are not to be interpreted as meaning only adverse claims of those pretending to be beneficiaries of the insured."

¹²³ 33 F. (2d) at 158.

¹²⁴ 38 F. (2d) at 214.

¹²⁵ *Ibid.*

The foreign garnishment cases in the United States Supreme Court do not render the company's remedy at law adequate.¹²⁶ Although the Illinois courts do not recognize the Texas exemption, quite possibly the Texas state courts would give effect to it and decide for the policyholder against the company, disregarding the Illinois judgment. Even if the company could in a prolonged contest of the Texas litigation finally establish the binding effect of the Illinois judgment, the expense would probably exceed the insurance money involved. Equitable jurisdiction will be sustained when time, expense, and multiplicity of suits will be saved. The burdens of such double litigation are amply illustrated by the foreign garnishment cases, which had to be carried all the way to the United States Supreme Court in order to secure the protection of the full faith and credit clause:

"No doubt it was to prevent this very species of injustice that Congress adopted the act of 1917, recognizing that insurance companies doing an interstate business are more apt to be subjected to this kind of vexation than any other litigant."¹²⁷

In this case, neither claimant can lose anything by the filing of the bill. If the creditor has a garnishment lien, he can follow it into the registry of the Texas federal court; and the policyholder will get the deposit if his exemption is superior.

This is the most important decision thus far upon the scope of the federal interpleader legislation. It sustains the provision allowing process to run in any district, and it expressly advocates a liberal construction of the present statute.

To be continued

¹²⁶ Examples are: *Chicago, R. I. & P. Ry. v. Sturm*, 174 U. S. 710, 19 Sup. Ct. 797 (1899); *Harris v. Balk*, 198 U. S. 215, 25 Sup. Ct. 625 (1905). On the relation of these cases to interpleader see Chafee, *Interstate Interpleader*, *supra* note 1, at 708. It was held in *Ward v. Boyce*, 152 N. Y. 191, 46 N. E. 180 (1897), that when the ownership of a garnishment debt was disputed, the adjudication of its ownership by the court of garnishment did not bind the absent claimant to the debt.

¹²⁷ *Supra* note 124, at 215.