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## THE FEDERAL INTERPLEADER ACT OF 1936: I

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*"The ship is in the harbor; the sails are swelling; the east wind blows; let us weigh the anchor, and put forth to sea."*—SWEDENBORG.

### I

#### INTRODUCTION<sup>1</sup>

Life insurance companies, surety companies, banks, railroads, warehouses, and other kinds of corporations doing business in several states, are frequently subjected to conflicting claims by two or more persons growing out of a single obligation previously incurred by the corporation. The equitable remedy of interpleader has long been useful for dealing with just such conflicting claims in situations where the claimants all live in the same state. The stakeholder admits liability and is anxious to pay the person rightfully entitled to payment if it can be ascertained which of the claimants is that person. Interpleader enables the stakeholder to put the money or other property in dispute into court, withdraw from the proceeding, and leave the claimants to litigate between themselves the ownership of the fund in court. Since the claimants are now enabled to assert their rights in the interpleader proceeding, an

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1. This article is the fourth of a series. *Modernizing Interpleader* (1921) 30 YALE L. J. 814 discussed the judge-made requisites, such as privity, 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 opportunities for federal interpleader, which have now been realized. *Interpleader in the United States Courts* (1932) 41 YALE L. J. 1134, 42 *id.* 41, dealt with federal interpleader both apart from statutes and under the 1926 act, which has been greatly extended by the act of 1936, to which the present article is devoted. The series will be concluded by a discussion of the numerous state interpleader statutes.

See also 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, which contain information on the history of the various bills in Congress and discuss the operation of the 1917 and 1925 acts; the 1926 pamphlet contains forms for bills and decrees. CHAFEE, *CASES ON INTERPLEADER*, c. I (1936) is a recent collection of cases and references on interpleader. Several important decisions under the three earlier Federal Interpleader Acts are discussed in (1933) 17 MINN. L. REV. 449; (1924) 2 TENN. L. REV. 102; and in the references cited in second article.

injunction is issued forbidding the claimants to bring any further proceedings directly against the stakeholder. The claimants are greatly benefited by the opportunity to settle their controversy in the interpleader, because the winning claimant can at once obtain the property in dispute from the court, which has such property in its possession or control. He is thus much better off than if he had merely obtained a judgment at law against the stakeholder, for then he would have been faced with the difficulties of finding assets and levying execution. Thus interpleader is a remedy which benefits all parties concerned.

In many controversies where interpleader would be desirable, difficulties arise because the claimants reside in different states. This may prevent the life insurance company or other stakeholder from obtaining interpleader in a state court. For example, if a Pennsylvanian and a Californian each claimed to be the proper beneficiary of a life insurance policy, the company could not force the Californian into the Pennsylvania court in order to interplead there with the Pennsylvanian, because the process of the Pennsylvania courts does not run beyond the limits of the state. This was definitely established by the Supreme Court in *New York Life Insurance Co. v. Dunlevy*<sup>2</sup> in 1916. At that time, interpleader in a United States court was also hard to obtain when the claimants resided in different states, because the process of a federal court normally does not run outside the state containing the federal district in which suit is brought.<sup>3</sup> Without special legislation relating to interpleader, a United States district court in Pennsylvania could not acquire personal jurisdiction over the California claimant, so long as he avoided personal service in Pennsylvania. Consequently, the *Dunlevy* case left insurance companies and other similarly situated stakeholders without an adequate remedy in either state or federal courts.

Insurance companies obtained some relief from this unsatisfactory situation soon after the *Dunlevy* case. In 1917, Congress enacted the first Federal Interpleader Act,<sup>4</sup> authorizing these companies to interplead in a United States district court when the claimants lived in different states, and providing that the process of the court could run into all parts of the United States, wherever the various claimants lived. A second statute in 1925<sup>5</sup> attempted some improvements, and the third statute, enacted in 1926,<sup>6</sup> made further improvements and extended the benefits

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2. 241 U. S. 519 (1916). See Chafee, *Interstate Interpleader*, *supra* note 1, at 711.

3. 36 STAT. 1101 (1911), 28 U. S. C. A. §§ 111-114 (1926); cases cited in Chafee, *supra* note 2, at 720-721.

4. 39 STAT. 929 (1917). See Chafee, *supra* note 1, 41 YALE L. J. at 1161.

5. 43 STAT. 976 (1925), 28 U. S. C. A. § 41 (26) (1926). See Chafee, *supra* note 4, at 1162.

6. 44 STAT. 416 (1926), 28 U. S. C. A. § 41 (26) (1926). See Chafee, *supra* note 4, at 1162-1165.

of the act to certain other types of stakeholders who badly needed relief, namely, casualty companies and surety companies. This legislation has worked admirably. Many suits have been brought under it,<sup>7</sup> and the disputes between the claimants have been settled quickly with apparent satisfaction to themselves as well as to the insurance companies and other organizations benefited by the statutes.

Many important businesses vexed by similar claims from residents of different states still remained outside the scope of this legislation, for instance, railroads, warehouses, banks (especially savings banks), and oil companies operating under leases and confronted with disputes as to the ownership of royalties.<sup>8</sup> The successful operation of the 1926 Act

7. A list of 25 reported cases under the first three Federal Interpleader Acts until June, 1932, will be found in Chafee, *supra* note 4 at 1164-1165, nn. 103-106. The citations in this footnote add 20 subsequent cases until the enactment of the new statute on January 20, 1936, making 45 cases in all. In addition, there are doubtless many unreported district court cases.

*Interpleader granted.* 20 cases are listed in Chafee, *supra* note 4 at 1164, nn. 103 104, and 18 more are listed below, making 37 in all. Later developments of 3 cases on the previous list were as follows: In *Ackerman v. Tobin*, 22 F. (2d) 541 C. C. A. 8th, (1927), certiorari was denied, 276 U. S. 628 (1928). In *National Fire Insurance Co. v. Sanders*, 38 F. (2d) 212 C. C. A. 5th, 1930, discussed in Chafee, *supra* note 4 at 1169-1171 and at the close of this article, the Illinois claimant was awarded, the *res.* *Sanders v. Armour Fertilizer Works*, 292 U. S. 190 (1934), four judges dissenting, aff'g 63 F. (2d) 902 (C. C. A. 5th, 1933), one judge dissenting. In *Vogel v. N. Y. Life Insurance Co.*, 55 F. (2d) 205, (C. C. A. 5th, 1932), certiorari was denied, 287 U. S. 604 (1932).

The new cases granting interpleader are: *Shields v. Barton*, 60 F. (2d) 351 (C. C. A. 7th, 1932); *Mass. Mutual Life Ins. Co. v. Morris*, 61 F. (2d) 104 (C. C. A. 9th, 1932); *United Life & Acc. Ins. Co. v. Reynolds*, 62 F. (2d) 776 (C. C. A. 2d, 1933); *Chaffee v. Locomotive Engrs. Mut. L. & Acc. Ins. Assn.* 67 F. (2d) 279 (C. C. A. 10th, 1933); *Howells State Bank v. Novotny*, 69 F. (2d) 32 (C. C. A. 8th, 1934); *Spiro State Bank v. Bankers' Nat. Life Ins. Co.*, 69 F. (2d) 185 (C. C. A. 8th, 1934); *Solomon v. Benjamin*, 75 F. (2d) 564 (C. C. A. 7th, 1935), cert. denied 295 U. S. 749 (1935); *Hintz v. Hintz*, 78 F. (2d) 432 (C. C. A. 7th, 1935), statute not cited; *Meyer v. Meyer*, 79 F. (2d) 55 (C. C. A. 8th, 1935); *N. Y. L. Ins. Co. v. Hageman*, 80 F. (2d) 446 (C. C. A. 7th, 1935), statute not cited; *Deutser v. Marlboro Shirt Co., Inc.*, 81 F. (2d) 139 (C. C. A. 4th, 1936) aff'g *Union Central L. Ins. Co. v. Deutser*, 13 F. Supp. 313 (D. Md. 1935); *Metropolitan Life Ins. Co. v. Dunne*, 2 F. Supp. 165 (S. D. N. Y. 1931); *N. Y. Life Ins. Co. v. Nydes*, 2 F. Supp. 381 (W. D. Pa. 1932); *American Surety Co. v. Calcasieu Oil Co.*, 58 F. (2d) 1039, 2 F. Supp. 200, 3 F. Supp. 939 (W. D. La. 1932, 1933); *Aetna Life Ins. Co. v. Hartley*, 4 F. Supp. 639 (D. Md. 1933), statute not cited; *Lawrence v. Travelers Ins. Co.*, 6 F. Supp. 428 (E. D. Pa. 1934); *N. Y. Life Ins. Co. v. Cross*, 7 F. Supp. 130 (S. D. N. Y. 1934); *Mutual Life Ins. Co. v. Corodemus*, 7 F. Supp. 349 (D. Mass. 1934), statute not cited.

*Interpleader denied.* 4 cases are listed in Chafee, *supra* note 4 at 1165, n. 106. The only subsequent case denying relief is *Klaber v. Maryland Casualty Co.*, 69 F. (2d) 934 (C. C. A. 8th, 1934), (interested stakeholder), discussed in second article.

*Inconclusive cases.* One such case is noted in Chafee, *supra* note 4 at 1165, n. 105. The only later case of the sort is *Mass. Mutual Life Ins. Co. v. Grossman*, 4 F. Supp. 990 (S. D. N. Y. 1933), (diversity of citizenship insufficiently averred).

8. *Pittsburgh & W. Va. Gas Co. v. Ankrom*, 83 W. Va. 81 (1918), noted on the merits in (1920) 5 A. L. R. 1162.

indicated that the benefits of interpleader in the United States courts could be justly extended to these other kinds of businesses. Such an extension is the main purpose of the fourth Interpleader Act, which has just been passed.

The Interpleader Act of 1936<sup>9</sup> removes all previous limits on the kinds of companies that are permitted to file bills of interpleader. This remedy is now available to individuals and corporations generally if they are subjected to claims by residents of two or more states. In addition, the new act was drawn to eliminate a few other obstacles that restricted the power of the United States courts to handle conflicting claims satisfactorily. So far as possible, the phraseology of the 1926 Act was followed. The new statute preserves to life insurance companies, casualty companies, and surety companies all the benefits of the earlier law, and also contains some provisions to take care of points in life insurance litigation not covered by the 1926 Act. Finally, the new law was framed with the intention of protecting the interests of claimants by furnishing a cheap and speedy method for the settlement of their disputes.

The need for such legislation had received attention in Congress for several years. In 1931 bills were introduced by Representative Thatcher of Kentucky and Senator Barkley of Kentucky,<sup>10</sup> allowing "any person, firm, corporation, association, or society" to interplead under specified conditions. These pioneer bills contained much of the substance of the draft that finally became law. In 1933 two bills, identical with each other and somewhat similar to the 1931 bills, were introduced by Representative Knutson of Minnesota and Senator Hebert of Rhode Island,<sup>11</sup> and referred to the respective Judiciary Committees. Favorable action thereon was recommended by the American Bar Association in 1933.<sup>12</sup> In February, 1934, the Attorney General sent to the House Judiciary Committee an office memorandum approving the Hebert-Knutson bill subject to some suggested changes.<sup>13</sup>

In the spring of 1934 the Section on Insurance Law of the American Bar Association<sup>14</sup> became actively interested in the enactment of the

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9. Public No. 422, 74th Cong. 2nd sess. (1936).

10. 72d Congress, H. R. 16335 introduced Jan. 19, 1931, 74 CONG. REC. 2628 (1931); S. 2216 introduced Dec. 17, 1931, 75 CONG. REC. 670 (1931).

11. 73d Congress, H. R. 2852 introduced Mar. 10, 1933, 77 CONG. REC. 173 (1933); S. 1538 introduced on Apr. 17 (calendar day, Apr. 26), 1933, 77 CONG. REC. 2370 (1933). This Hebert-Knutson bill is reprinted in Appendix B to the three memoranda cited *infra* note 16.

12. (1933) 58 A. B. A. REP. 195-6. The bill was also recommended by the Standing Committee on Insurance Law, *id.* at 368, Arthur T. Vanderbilt of Newark, chairman, and described by Senator Hebert during his address to the Association, *id.* at 586-7.

13. This memorandum is reprinted in Appendix C to the three memoranda cited *infra* note 16.

14. This section, with Mr. Vanderbilt as chairman, had replaced the standing committee,

Hebert-Knutson bill with some modifications. Its special committee on interpleader legislation,<sup>15</sup> in collaboration with Senator Hebert, framed a draft bill with an explanatory memorandum.<sup>16</sup> In June, 1934, Senator Hebert reported his bill, out from the Committee on the Judiciary, with an amendment producing in effect a substitute bill conforming to the draft; and submitted an accompanying report recommending passage.<sup>17</sup> The session ended shortly afterwards without further action on the bill.

In the 74th Congress the measure eventually became law.<sup>18</sup> Bills in identical form were introduced by Representatives Knutson of Minnesota and Senator Barkley of Kentucky.<sup>19</sup> Upon the recommendation of Senator Barkley, his bill was amended so as to conform to the substitute bill reported out by Senator Hebert in 1933, and the latter's report was resubmitted. On May 1, 1935, after hearing a concise statement by Senator Barkley of the purposes of his bill, the Senate adopted the amendment and passed the bill.<sup>20</sup> The bill as it came from the Senate was recommended by the House Judiciary Committee with a few technical variations,<sup>21</sup> and in this form it passed the House on January 6,

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*supra* note 12. Frank C. Haymond of Fairmont, W. Va., was chairman in 1934-5, and W. E. Stanley of Wichita in 1935-6.

15. Judge Arthur G. Powell of Atlanta was chairman throughout. For other members, see (1933) 58 A. B. A. REP. 25; (1934) 59 *id.* 34; (1935) 60 *id.* 36. Lawyers participating actively in either the preparation of the draft or its presentation to members of Congress included Judge Powell, A. T. Vanderbilt, W. E. Stanley, Washington Bowie, Jr. of Baltimore, J. H. McChord of Louisville, J. S. Conwell of Philadelphia, H. S. Weaver of New York, J. L. Barton of Omaha, Professor J. M. Landis, and Professor E. M. Morgan.

16. Three successive stages of the draft and memorandum were printed. (1) Federal Interpleader Bill: Draft and Memorandum. Prepared by Z. Chafee, Jr., for the Section of Insurance Law of the American Bar Assn. May, 1934. (2) [Same title.] Revised May 11, 1934. (3) [Same title.] (1934) Am. Bar Assn. Section of Insurance Law, Program and Committee Reports, 68-100. Copies of these three documents are in the Yale and Harvard Law Libraries. All material of permanent value therein is in the present article.

This draft was informally approved by the Section of Insurance Law at its Washington meeting, May 11, 1934, and formally at the annual meeting in Milwaukee, Aug. 30, 1934. See (1934) 50 A. B. A. REP. 205, 652.

17. 73d Congress, 2d Session, June 6 (calendar day, June 13), 1934, Senate Calendar No. 1517, S. 1538 [Report No. 1417]; and Report No. 1417, *Federal Interpleader Bill*, Report [To accompany S. 1538].

18. The substitute bill received the approval of the committee on federal legislation of the Association of the Bar of the City of New York, the Association of Life Insurance Presidents, and the International Association of Insurance Counsel. As the measure was of a technical and non-controversial nature, it did not give rise to public hearings or debate on the floor of either house, but many Senators and Representatives took an active interest in its passage, particularly Mr. Barkley and Mr. Knutson.

19. 74th Congress, H. R. 2025 introduced Jan. 3, 1935, 79 CONG. REC. 51 (1935); S. 1277 introduced Jan. 21, 1935, 79 CONG. REC. 684 (1935). These bills corresponded to the Hebert-Knutson bills of 1933, *supra* n. 11. See Senate Report No. 558 (Apr. 15, 1935).

20. 79 CONG. REC. 6711 (1935).

21. 79 CONG. REC. 10811 (1935). The bill became House Calendar No. 178, and Consent Calendar No. 362.

1936.<sup>22</sup> The Senate concurred in the House amendments on January 16,<sup>23</sup> and the bill was signed by President Roosevelt on January 20, 1936.<sup>24</sup>

#### TEXT OF THE ACT OF 1936

The title of the new statute is "An Act to Amend Section 24 of the Judicial Code<sup>25</sup> by Conferring on District Courts Additional Jurisdiction of Bills of Interpleader and of Bills in the Nature of Interpleader." After the amending clause, the act reads as printed in the accompanying footnote,<sup>26</sup> changes from the Act of 1926 being indicated by italics.

22. 80 CONG. REC., Jan. 6, 1936, at 81.

23. 80 CONG. REC., Jan. 16, 1936 at 464. Examined and signed by President of Senate pro tem. and Speaker, id., and id. at 574 (Jan. 17). Sent to President, id. at 648 (Jan. 18).

24. 80 CONG. REC., Jan. 22, 1936, at 790.

25. 28 U. S. C. A. § 41.

26. That section 24 of the Judicial Code, as amended, is amended by inserting at the end thereof the following:

[The district courts shall have original jurisdiction as follows:]

(26) "Original jurisdiction of bill of interpleader *and of bills in the nature of interpleader—* Twenty-sixth. (a) Of suits in equity begun by bills of interpleader or *bills in the nature of bills of interpleader* duly verified, filed by *any person, firm, corporation, association, or society* having in his or its custody or possession money or property of the value of \$500 or more, or having issued a *note, bond, certificate, policy of insurance, or other instrument* of the value or amount of \$500 or more, or providing for the delivery or payment or *the loan of money or property of such amount or value, or being under any obligation written or unwritten to the amount of \$500 or more, if—*

"(i) Two or more adverse claimants, citizens of different States, are claiming to be entitled to such money or property, *or to any one or more of the benefits arising by virtue of any note, bond, certificate, policy, or other instrument, or arising by virtue of any such obligation; and*

"(ii) The complainant (a) has deposited such money or property or has paid the amount *of or the loan or other value of such instrument or the amount due under such obligation* into the registry of the court, there to abide the judgment of the court; *or (b) has given bond payable to the clerk of the court in such amount and with such surety as the court or judge may deem proper, conditioned upon the compliance by the complainant with the future order or decree of the court with respect to the subject matter of the controversy. Such a suit in equity may be entertained although the titles or claims of the conflicting claimants do not have a common origin, or are not identical, but are adverse to and independent of one another.*

"b. *Such a suit may be brought in the district court of the district in which one or more of such claimants resides or reside.*

"c. 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 United States court* on account of such money or property or on such *instrument or obligation* 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

SUMMARY OF THE PRINCIPAL POINTS OF DIFFERENCE BETWEEN THE  
NEW STATUTE AND THE 1926 ACT

1. The persons who can interplead are not limited to insurance, casualty, and surety companies.
2. Bills in the nature of interpleader are included.
3. The prerequisites of interpleader are stated as facts to be proved and not as averments in the bill.
4. The subject-matter in controversy is broadly defined to correspond with the extension of the persons who can interplead.
5. Provisions are made for controversies over various benefits of life insurance policies, such as loans, surrender value, etc.
6. The stakeholder may either deposit the fund in court or file a bond.
7. Privity is expressly abolished.
8. The venue provision is shortened to conform to judicial interpretation of the 1926 Act.
9. Interpleader is allowed defensively in actions at law.

## II

This article proposes to take up in the order of their appearance in the statute the clauses which require explanation, either as to the reasons for their insertion or as to the purposes which the language was meant to

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respective districts wherein said claimants reside or may be found.

"d. 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 necessary or convenient to carry out and enforce the same.

"e. *In any action at law in a United States District Court against any person, firm, corporation, association, or society, such defendant may set up by way of equitable defense, in accordance with section 274b of the Judicial Code (U.S.C. title 28, sec. 398), any matter which would entitle such person, firm, corporation, association, or society to file an original or ancillary bill of interpleader or bill in the nature of interpleader in the same court or in any other United States District Court against the plaintiff in such action at law and one or more other adverse claimants, under the provisions of paragraph (a) of this subsection or any other provision of the Judicial Code and the rules of court made pursuant thereto. The defendant may join as parties to such equitable defense any claimant or claimants who are not already parties of such action at law. The district court in which such equitable defense is interposed shall thereby possess the powers conferred upon district courts by paragraphs (c) and (d) of this subsection and by section 274b of the Judicial Code.*

SEC. 2. The Act entitled, "An Act authorizing casualty companies, surety companies, insurance companies or associations or fraternal or beneficial societies to file bills of interpleader," approved May 8, 1926 [U.S.C., Supp. III, title 28, sec. 41 (26)] is hereby repealed. Said repeal shall not affect any act done or any right, accruing or accrued in any suit or proceeding had or commenced under said Act hereby repealed, prior to the passage of this Act, but all such acts or rights, suits or proceedings shall continue and be valid and may be prosecuted and enforced in the same manner as if said Act had not been repealed hereby.

accomplish. The various points of difference from the previous statute, listed above, will thus be reviewed, except as to the first point which needs no discussion beyond what has already been said.

#### BILLS IN THE NATURE OF BILLS OF INTERPLEADER

A bill in the nature of a bill of interpleader describes a suit filed by a stakeholder who has some special ground for equitable relief besides the double vexation. For instance, he is a trustee or wants cancellation of an instrument for fraud. On the other hand, double vexation is the only reason for equitable jurisdiction over a bill of interpleader (often called a strict bill) and the substantive questions at issue are nearly always legal. The practical difference between the two types of bills is that the long-established equitable principles limiting strict bills are considerably relaxed in cases of bills in the nature of bills of interpleader.<sup>27</sup> Federal jurisdiction over such proceedings may be very valuable for the just settlement of many controversies, especially where surety companies are involved. For example, a surety company writes a non-statutory bond covering a building contractor, and it is doubtful whether it runs to the benefit of materialmen as well as of the landowner, who is a citizen of a different state from the materialmen. The company may have certain defenses if the bond be construed one way and not if it be construed the other. The amount of the bond is insufficient to cover the materialmen and the landowner in full, so that the surety company wishes to pay the total amount of the bond into court and interplead these various claimants. A strict bill of interpleader might be denied in many courts in this case, because the above-mentioned situation as to defenses gives the surety company some interest in the outcome of the dispute. Such interest would not bar a bill in the nature of a bill of interpleader, and the great multiplicity of parties would furnish the needed special equitable ground for such a bill. In such a case federal jurisdiction and the unlimited area for service of process will enable the surety company to interplead and determine its just liabilities. It is easy to imagine other cases where federal jurisdiction over bills in the nature of interpleader is desirable, for example, the case of a casualty company with a limited liability, discussed in the second half of this article. Another reason for jurisdiction is that the distinction between these bills and strict bills of interpleader is not always clear, so that the simplest plan is to allow the United States district courts to handle both types without being obliged to draw fine distinctions between them for jurisdictional purposes.

The 1917, 1925, and 1926 Acts mentioned only bills of interpleader,

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27. CHAFEE, CASES ON EQUITABLE REMEDIES, 75 (1936); Chafee, *Modernizing Interpleader* (1921) 30 YALE L. J. 839.



and all the reported cases where relief was given under those acts involved strict bills. Perhaps their language was sufficiently broad to cover bills in the nature of bills of interpleader, but two cases under the 1926 Act took the view that such bills were not within its provisions.<sup>23</sup> Therefore, these bills have been expressly included in the 1936 statute.

#### METHOD OF STATING PREREQUISITES FOR RELIEF

The Act of 1926, like the preceding statutes, stated the prerequisites for relief as rules of pleading. The stakeholder must aver that certain facts exist. The new statute, however, requires substantially the same facts to be proved and not merely averred. The Act of 1926 would doubtless have been judically interpreted to mean what the new act expressly says; if all the specified averments were made in a bill and then found to be false at the hearing, interpleader would have been denied. The change is only formal, but it has the advantage of directness.

#### THE DISPUTED SUBJECT MATTER

This portion of the statute describes the situation in which interpleader will be necessary and the types of subject matter which are claimed by two or more persons. The Act contemplates three kinds of disputed subject matter (*res*):

1. The phrase "money or property of the value of \$500 or more" takes care of the situation where the *res* is money, a chattel, or land; this was in the 1926 Act.

2. The situation where the *res* is an instrument is covered by the words "having issued a note, bond, certificate, policy of insurance, or other instrument of the value or amount of \$500 or more, or providing for the delivery or payment or the loan of money or property of such amount or value." Under the 1926 Act, the only instruments recognized were a bond, a policy of insurance, and a certificate of membership in a fraternal society. This limitation was entirely proper when the only persons allowed to interplead were insurance, casualty, and surety companies, and beneficial societies. Now, however, any person subject to conflicting claims by residents of different states is entitled to interplead, and the range of instruments will be correspondingly very much wider.

3. The words "being under any obligation written or unwritten to the amount of \$500 or more" take care of other obligations which are not embodied in a formal promise to pay money, like a life insurance policy, a bond, or a note. This third type will take care of claims arising out of building contracts between contractors and subcontractors.

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28. *Pacific Mut. Life Ins. Co. v. Lusk*, 46 F. (2d) 505 (W. D. La. 1930); *Klaber v. Maryland Casualty Co.*, 69 F. (2d) 934, 939-941 (C. C. A. 8th, 1934).

It will also take care of unwritten obligations such as debts. The word "obligation" seems broad enough to include tort obligations where the stakeholder is only a technical tortfeasor and so will not be barred from relief on the ground that the controversy is due to his own wrongdoing. An example of such tort claims is this: An automobile has been left in a garage by *A*. It is claimed by *A* and also by *X*, who says that it was obtained from him by fraud or theft. The garage, confronted with these conflicting claims, does not know to whom it should deliver the automobile. Both *A* and *X* bring actions of conversion against the garage for the value of the automobile. *A* and *X* reside in different states. The obligation of the garage is not represented by a written instrument and yet interpleader is badly needed. Under the Act of 1936 it could be obtained.

The jurisdictional amount is made \$500 as in the 1926 statute. This is much lower than the jurisdictional amount of \$3000 required in other federal suits based on diversity of citizenship.<sup>29</sup> Justice demands such a differentiation. The ordinary plaintiff whose controversy concerning \$1000 is too small to support a federal suit can bring an action in a state court, but a stakeholder subjected to conflicting claims of \$1000 asserted by citizens of different states must either be allowed to interplead in a United States court or be denied interpleader altogether. Unlike the ordinary plaintiff, the stakeholder cannot be helped by a state court because of its powerlessness to compel the appearance of claimants residing in different states. Consequently, it is desirable to keep the jurisdictional amount for federal interpleader low.<sup>30</sup>

*Loans.* Practically all life insurance policies are now required by statute to contain provisions under which the insurance company agrees to make loans on the security of the policy. Disputes have often arisen between persons claiming to be entitled to borrow under the policy. It is admitted that a loan can be made, but more than one person may maintain that by the terms of the policy he is entitled to the full amount of the loan. The 1926 Act looked to the payment of a single sum due on the maturity of the policy. In order to make it clear that the moneys available under a loan may be the subject of interpleader, the words "or the loan" have been inserted. They may have application also to claims of a similar nature arising under instruments other than insurance policies.

Corresponding references to loans have been inserted in the deposit provision in clause (ii).

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29. 18 STAT. 470 (1875), 28 U. S. C. A. § 41 (1) (1926).

30. For the only case under the previous statutes which involved a question of jurisdictional amount, see *Metropolitan Life Ins. Co. v. Dunne*, 2 F. Supp. 165 (S. D. N. Y. 1931).

## DIVERSITY OF CITIZENSHIP

The act of 1936, like the previous statutes, authorizes interpleader when there are "two or more adverse claimants, citizens of different States." Some important questions of federal jurisdiction arise under this legislation whenever there is partial cocitizenship.<sup>31</sup>

*Cocitizenship between the stakeholder and one claimant.* It will happen quite often that one claimant is a cocitizen of the stakeholder. For example, a New York life insurance company is sued by a New Yorker and a Pennsylvanian, each of whom claims to be the proper beneficiary under the policy. The language of Congress seems sufficiently flexible to authorize interpleader in this situation, since the act refers specifically to diversity among the claimants. The only remaining question is whether Congress can constitutionally confer jurisdiction upon the courts in spite of the partial cocitizenship. Article III, section 2, of the Constitution says that the federal judicial power shall extend to "Controversies . . . between Citizens of different States." It is a fairly safe conclusion that this clause does not prevent federal interpleader in a case like that described above, since the necessary diversity of citizenship is supplied by the main dispute between the New Yorker and the Pennsylvanian.

The Supreme Court has never held that the constitutional grant of power to the federal courts is not broad enough to include a case in which one codefendant is of diverse citizenship from the plaintiff and the other is not. In many cases not involving interpleader, the court has decided that, however broad the possible jurisdiction given by the Constitution, actual jurisdiction did not extend beyond the congressional grant in the statutes regulating federal courts; and that the statutes then applicable to federal suits required that every indispensable party on one side of the controversy should be of diverse citizenship from every party on an opposite side. But it is important to notice that the Supreme Court drew this requirement of complete diversity of citizenship from the legislation then in force and not from the Constitution. It merely held that Congress had not as yet permitted federal suits where there was partial cocitizenship. It did not hold that Congress could not constitutionally permit such suits if it wished.<sup>32</sup>

The argument can fairly be made that since these decisions the various Interpleader Acts have done just what Congress seems able to do within its constitutional powers, and have removed the bar of partial

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31. For a more extended discussion of these problems, see Chafee, *supra* note 4 at 1141-1143, 1165-1169.

32. See *Strawbridge v. Curtiss*, 3 Cranch 267 (U. S. 1806); *Sewing Machine Cases*, 18 Wall. 553, 558-563, 586-587 (U. S. 1873); *Bradley, J., in the Removal Cases*, 100 U. S. 457, 479 (1879).

cocitizenship from interpleader, although the bar remains for federal litigation in general. There are sound reasons of policy for such a distinction. If federal jurisdiction be denied in an ordinary case of partial cocitizenship, the controversy can be adequately handled in the state courts. But interpleader against residents of different states is usually impossible in the state courts, and this is just as true when the stakeholder and one claimant are cocitizens. If the stakeholder cannot interplead in the United States courts, he cannot interplead at all. Hence those courts should not prevent relief under the 1936 Act by imposing a requirement of complete diversity of citizenship which is not expressly stated in either the statute or the Constitution. Furthermore, the citizenship of the stakeholder is not practically important when the real controversy is that between the claimants, which is fought out in the second stage of the interpleader after the stakeholder has dropped out.

The judicial authority, so far as it goes, is in favor of relief under the Interpleader Acts in such a situation.<sup>33</sup>

*Cocitizenship among claimants.* Must there be complete diversity of citizenship among the claimants? If there are only two claimants, they must, of course, be citizens of different states in order to bring an original bill of interpleader within the terms of the statute.<sup>34</sup> However, it occasionally happens that three or more persons make claims and that some of these claimants are cocitizens. If the cocitizens have exactly the same interest, no real difficulty arises, for instance, when insurance money is claimed by the widow living in one state and by two children of a dead first wife living in another state. Under such circumstances the non-antagonistic cocitizen claimants may be considered aligned together on one side of the controversy in opposition to the claimant who lives in another state. This position is supported by several cases.<sup>35</sup> The real problem arises when the cocitizen claimants are antagonistic to each other. For example, life insurance money is claimed by each of three successive assignees, two of whom live in the same state. Since the state courts of that state cannot force the non-resident third claimant to come in, the insurance company badly needs to inter-

33. See *Ackerman v. Tobin*, 22 F. (2d) 541 (C. C. A. 8th, 1927); *Allen v. Hudson*, 35 F. (2d) 330 (C. C. A. 8th, 1929); *Mutual Life Ins. Co. v. Lott*, 275 Fed. 365, 372 (D. Cal. 1921). For non-statutory cases see *Von Herberg v. Seattle*, 27 F. (2d) 457 (C. C. A. 9th, 1928); (1935) 48 HARV. L. REV. 854; Chafee *supra* note 4 at 1141-2. The office memorandum from the Attorney General, *supra* note 13, also takes the view that the stakeholder may be a cocitizen of one claimant.

34. However, it may be possible to interplead under a nonstatutory ancillary bill or under an equitable defense within the terms of paragraph (e) of the 1936 Act. See *infra*, p. 989.

35. *Mutual Life Ins. Co. v. Lott*, 275 Fed. 365, 372 (D. Cal. 1921), *semble*; *New York L. Ins. Co. v. Bidoggia*, 15 F. (2d) 126, 17 F. (2d) 112 (D. Idaho 1926); *Mutual L. Ins. Co. v. Bondurant*, 27 F. (2d) 464 (C. C. A. 6th, 1928), cert. denied 278 U. S. 630 (1928).

plead in the United States courts in such a situation, but it does seem doubtful whether the necessary diversity of citizenship exists. Here there is a real controversy between the two co-citizen assignees. The 1936 Act may mean that each claimant must reside in a separate state, no matter how numerous the claimants. On the other hand, jurisdiction exists if the statute can be construed to require only that *two* adverse claimants must be citizens of different States.<sup>36</sup> Such an interpretation conforms to the general purpose of the 1936 act, that the United States courts should be given power to settle all interpleader cases that cannot be handled by the state courts. This view is supported by five cases<sup>37</sup> under the 1917 and 1926 Acts, which granted interpleader where some antagonistic claimants were apparently co-citizens. The liberal attitude adopted by the courts in giving relief under former Interpleader Acts may be adopted as well toward the Act of 1936.

The new statute made no special attempt to meet these two problems of partial cocitizenship in strict bills of interpleader, but simply used the same words as the jurisdictional clause of the 1926 Act,<sup>38</sup> since both stakeholders and claimants seemed to be entirely satisfied with that clause, under which partial cocitizenship has created no serious obstacles to strict interpleader.

*Special diversity problems created by bills in the nature of bills of interpleader.* Such bills, which are authorized by the new statute, may present somewhat greater difficulties if cocitizenship exists between the stakeholder and one claimant. In bills in the nature of interpleader the stakeholder sometimes disputes the extent of his liability to the claimants,<sup>39</sup> and in the supposed case his particular controversy would

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36. The question whether the statute, when so construed, is constitutional in view of the want of complete diversity of citizenship resembles the constitutional problem created by partial cocitizenship between the stakeholder and one claimant. This has already been considered, *supra* p. 973.

37. *Lowther v. New York Life Ins. Co.*, 278 Fed. 405 (C. C. A. 3d, 1922); *Ackerman v. Tobin*, 22 F. (2d) 541 (C. C. A. 8th, 1927); *Ross v. International Life Insurance Co.*, 24 F. (2d) 345 (C. C. A. 6th, 1928); *Fidelity & Deposit Co. v. Reid*, 16 F. (2d) 502 (E. D. Pa. 1926); *Globe & Rutgers Fire Ins. Co. v. Brown*, 52 F. (2d) 164 (W. D. La. 1931). See Chafee, *supra* note 4 at 1169, n. 120, for comment on these cases. The point was left open in *Mutual Life Ins. Co. v. Lott*, 275 Fed. 365 (D. Cal. 1921). For non-statutory cases, see Chafee, *supra* note 4 at 1142-3; *Turman Oil Co. v. Lathrop*, 8 F. Supp. 870 (N. D. Okla. 1934); Note (1935) 48 HARV. L. REV. 854. The office memorandum from the Attorney General, *supra* note 13, also supports the existence of jurisdiction.

38. The office memorandum from the Attorney General, *supra* note 13, proposed an amendment which would permit cocitizenship among all the claimants so long as the stakeholder resided in a different state. For the reasons given in the text, it seemed better to adhere to the language of the 1926 Act, and not include bills of interpleader which could be filed in a state court.

39. For an example of such a bill in a state court where all the parties were cocitizens of the state, see *Aleck v. Jackson*, 49 N. J. Eq. 507 (Ch., 1892). The court first determined

not be between citizens of different states. Still, the main controversy between the claimants would be between citizens of different states and in itself a proper subject of federal jurisdiction. This fact might be enough to bring the whole case into the United States courts. In other words, the stakeholder's subsidiary dispute might be saved by the doctrines concerning separable controversies and ancillary suits.<sup>40</sup> It might be argued that, if it be constitutional for a United States district court to take jurisdiction of a strict interpleader bill where one of the claimants is a cocitizen with the stakeholder and the other is not, on the ground that the case involves a controversy between two parties (the claimants) who are of diverse citizenship, jurisdiction of a bill in the nature of a bill of interpleader would exist on the same ground, although, as a preliminary to the final determination of the controversy between the parties of diverse citizenship (the claimants), it is also necessary for the court to determine the stakeholder's own controversy which is not free from cocitizenship.<sup>41</sup> However, even if this argument is unsound and the cocitizenship between the stakeholder and one claimant would defeat the bill, it was felt that the situation was too infrequent to impair the chief purposes of the new legislation. The insertion of special language to take care of it was therefore deemed inadvisable.

The other kind of partial cocitizenship, that among the claimants, is less troublesome in situations where equitable principles would support the bill in the nature of a bill of interpleader. Since the stakeholder has by hypothesis an independent ground for getting into equity besides double vexation, he can usually file an original bill on that independent ground against such claimants as are not cocitizens of each other, and later file an ancillary bill against the claimants who are cocitizens of the previous defendants. Similar ancillary proceedings in the nature of interpleader have been allowed without legislation,<sup>42</sup> and the new statute seems to facilitate the use of this ancillary procedure.

*Residents of the District of Columbia and the territories.* An insurance company or other stakeholder sometimes needs interpleader if one

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the extent of the stakeholder's liability, and then heard the contest between the claimants over the amount so fixed.

40. As to such suits, see Chafee, *supra* note 4 at 1145-1160.

41. See *Sutton v. English*, 246 U. S. 199, 204 (1918), an original bill (not interpleader) filed by non-residents of Texas against residents, in which one defendant whose interest was altogether adverse to the plaintiffs in a substantial controversy was held to be properly aligned for jurisdictional purposes as a defendant, although as to other issues she had the same interest as the plaintiffs. Jurisdiction in that case was denied, however, on another ground not material here. See DOBIE, *FEDERAL JURISDICTION*, 211-212 (1927) 40 *HARV. L. REV.* 1015.

42. *Sherman Nat. Bank v. Shubert Theatrical Co.*, 247 Fed. 256 (C. C. A. 2d, 1917); *Fleming v. Phoenix Assurance Co.*, 40 F. (2d) 38 (C. C. A. 5th, 1930), cert. denied, 282 U. S. 869 (1930).

claimant lives in the District of Columbia (or a territory) and the other claimant lives in one of the states. Unfortunately, it seems impossible to confer federal jurisdiction in such a situation. *Mutual Life Insurance Co. v. Lott*,<sup>43</sup> under the 1917 Act, held that a resident of the District of Columbia was not a citizen of a state and so could not be interpleaded under the existing legislation. This obstacle is not only statutory; it is constitutional, and therefore nothing could be done in the new statute to take care of it.<sup>44</sup>

#### CLAIMS TO THE BENEFITS OF AN INSTRUMENT OR OBLIGATION

This provision for claims "to any one or more of the benefits arising by virtue of any note, bond, certificate, policy, or other instrument, or arising by virtue of any such obligation" was inserted primarily to take care of certain disputes relating to life insurance policies. The claimants may be claiming, not the amount of "money" promised by such a policy on death or maturity, but some other benefit of the policy offered by its terms or by law. For example, they may both be seeking a loan or the cash surrender value of the policy, or to have the amount thereof paid by monthly installments over a long period of years. It may even happen that one claimant is demanding a different benefit from the other. Thus one may be seeking the surrender value while the other wishes to continue the insurance in full force. The phrase "to any one or more of the benefits" was inserted instead of "to the benefits" as originally drafted, because it was not perfectly clear whether the plural alone would cover a case, except by construction, where the right to *only one* "benefit" under a policy was being contested.

#### DEPOSIT OR BOND

Paragraph (a) of the 1936 Act describes successively the persons who can file bills of interpleader, the subject matter in dispute, and the claimants; and then proceeds to state the requirement of deposit of the *res* in court. The deposit clause departs from the previous statute in some respects. First, where the 1926 Act said "has paid the amount of such bond or policy", the recent statute says "the amount of . . . such instrument or the amount of such obligation" in order to take care of the new types of stakeholders allowed to interplead and the new types of subject-matter. Secondly, "or the loan or other value" is inserted to take care of life insurance cases where adverse claimants are seeking

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43. 275 Fed. 365 (D. Cal. 1921).

44. If the state claimant brings a federal law suit against the stakeholder, the latter might be able to bring in the district or territorial claimant by an ancillary proceeding. See *supra* note 34.

to borrow on the policy, or to obtain its cash surrender value or some other benefit other than the payment of the full face of the policy.

Finally, the 1936 statute allows the stake holder, as an alternative to a deposit of the *res*, to file a surety bond approved by the court.<sup>45</sup> Although the disputed subject matter will ordinarily be deposited in court, situations sometimes arise where the rigid requirement of a deposit would prevent just relief. For example, it is obvious that a deposit is impracticable when one claimant to the benefits of life insurance demands one disposition (or option) under the policy and the other claimant demands a very different disposition (or option). To illustrate, if claimant *A* demands the cash surrender value of the policy and claimant *B* demands the continuance of the insurance with the cash surrender value left intact, the requirement to deposit the thing in dispute cannot readily be complied with. Yet it would be harsh to deny interpleader under such circumstances. A bond in such a case will protect the claimants. Also the deposit of the fund in court involves a deduction for the clerk's commission (sometimes called poundage) and there will be no such deduction in the case of a bond. Moreover, the bond will entitle the winning claimant to interest. Of course the court should be very careful to insist on an adequate surety.

#### OMISSION OF ANY REQUIREMENT OF WANT OF INTEREST

Want of interest in the stakeholder is often required by state interpleader statutes, and the bills introduced in 1931 by Senator Barkley and Representative Thatcher specify as a condition of relief: "Complainant does not have or claim any interest in the thing or fund which is the subject matter of the controversy." On the other hand, nothing of the sort appears in the 1926 Act and its predecessors, or in the Hebert-Knutson bill. The draftsman of the 1936 Act considered a clause on this point to be both unnecessary and undesirable.

It is unnecessary because equity judges have long regarded any substantial interest in the controversy as a bar to strict interpleader; and the United States courts in construing the federal interpleader legislation

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45. The provision allowing a bond is taken from the Hebert-Knutson bill, *supra* note 11. Mr. Conwell says, in *THE FEDERAL INTERPLEADER ACT DOWN TO DATE*, op. cit. *supra* note 1 at 479, that an attempt was made to relax the deposit requirement when the act of 1926 was drafted, "but the Judiciary Committee was not willing to be convinced of the good intention of the companies, and insisted that the money or the proceeds of the policy be deposited at the time of the filing of the bill." Because of the express deposit requirements of the 1917 and 1926 Acts, failure to deposit the *res* prevented interpleader in several cases. Chafee, *supra* note 1, 42 *YALE L. J.* at 55, n. 58. However, in federal cases not under the Interpleader Acts, it has been held sufficient to offer to hold the *res* at the disposition of the court, and failure to do even this is sometimes excused, especially in bills in the nature of interpleader. Chafee, *id.* at 55, n. 59.



have repeatedly said that the relief authorized by the statute must conform to the recognized equitable principles of interpleader.<sup>46</sup> The main effect of this legislation has been to extend the jurisdiction of the United States courts to grant interpleader, but the nature of the remedy has remained as it was administered in equity before the statutes. In accordance with this view, serious interest has been held a bar to relief under the 1926 Act.<sup>47</sup> The courts will doubtless continue this rule, though the Act says nothing about want of interest.

The insertion of a clause requiring want of interest would also be undesirable. Several state courts have interpreted such a provision in state legislation very rigidly so as to make the slightest interest fatal to bills of interpleader; and if the federal statute should expressly prohibit the stakeholder's interest, there is danger that some United States courts will begin running down these state cases and will follow them. A more satisfactory view of bills of interpleader is that the stakeholder's interest should not be an absolute bar to relief, but should be only a factor going to the discretion of the court in the exercise of its jurisdiction. Some state courts have already adopted this view. For example, a small amount of interest on the part of the stakeholder will not prevent those courts from granting interpleader, although it may lead them to deny him the incidental privilege of having his costs and counsel fees paid out of the fund.<sup>48</sup> The danger of rigidity is particularly strong where the stakeholder's interest arises from a small charge for freight, warehouse storage, commissions, etc. Such a situation would arise if merchandise shipped by rail were claimed by two persons, and the railroad asserted its right to be paid freight charges. Another illustration arises in life insurance cases where the company asserts its right to deduct an unpaid premium from the disputed insurance money. The liberality which the United States courts have usually shown toward interpleader is indicated by a decision (before the Interpleader Acts) in this life insurance situation allowing the insurance company to deduct the unpaid premium and interplead the claimants as to the balance.<sup>49</sup> Consequently, any requirement of want of interest has been left out of

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46. See for example, *Mutual Life Ins. Co. v. Bondurant*, 27 F. (2d) 464 (C. C. A. 6th, 1928); *National Life Ins. Co. v. Sanders*, 38 F. (2d) 212 (C. C. A. 5th, 1930), quoted by McReynolds, J., in *Sanders v. Armour Fertilizer Co.* 292 U. S. 190, 200 (1934); *Klaber v. Maryland Casualty Co.*, 69 F. (2d) 934 (C. C. A. 8th, 1934).

47. *Sanders v. Armour Fertilizer Co.*, 292 U. S. 190 (1934), *semble*; *Pacific Mutual Life Ins. Co. v. Lusk*, 46 F. (2d) 505 (W. D. La. 1930); *Connecticut General Life Ins. Co. v. Yaw*, 53 F. (2d) 684 (W. D. N. Y. 1931); *Klaber v. Maryland Casualty Co.*, 69 F. (2d) 934 (C. C. A. 8th, 1934). See Chafee, *supra* note 45 at 59.

48. CHAFEE, *CASES ON EQUITABLE REMEDIES*, 31-32 (1936); Chafee, *supra* note 1, 30 *YALE L. J.* at 840-842. See *infra* note 80.

49. *McNamara v. Provident Savings Life Ins. Society*, 114 Fed. 910 (C. C. A. 5th, 1902), *aff'g.* 115 Fed. 357 (C. C. E. D. La. 1901).

the 1936 act, with the hope that the United States courts will continue to follow this liberal view that interest goes only to the discretion of the court.

Besides these general objections, a clause making the stakeholder's interest a bar to relief would fit in badly with two new features of the statute. First, it might hamper the court in settling some of the disputes over life insurance benefits, previously described. For example, if a life insurance company has agreed to hold the proceeds of the policy in trust for the beneficiary and to pay him monthly installments, and a dispute arises as to who is beneficiary, the company would be technically unable to allege that it had no interest whatever in the fund. Another example is a controversy over the loan value of a policy. Because the money is advanced by the insurance company and repayment of the loan with interest is contemplated, the company might have some difficulty in satisfying the court that it was complying with a clause requiring want of interest. The actual wording of the statute, however, leaves the court free to apply general equitable principles, which do not bar relief in such situations. Secondly, the 1936 Act authorizes bills in the nature of bills of interpleader, where courts of equity have always held that a very substantial interest of the stakeholder does not prevent relief. The flexible procedure in such bills permits him to dispute the amount of his liability, which can be settled before the second stage begins between the claimants; and he may even claim a large lien upon the fund in controversy or otherwise participate in the second stage.<sup>50</sup> An interest clause in the statute would, of course, be wholly inconsistent with the above-mentioned equitable principles governing such bills.

#### ABOLITION OF PRIVY AND IDENTITY

State courts have frequently, because of an artificial requirement of privity among the claimants, denied interpleader in situations where in justice it ought to be granted.<sup>51</sup> For example, a warehouseman has been denied interpleader against the bailor and a claimant under a paramount title. The unfortunate results of this doctrine have been frequently recognized by text-writers, and in several cases courts have refused to apply the doctrine. The Uniform Warehouse Receipts Act, section 17, and the Uniform Bills of Lading Act, section 20, were drafted in a manner to prevent the application of this technical doctrine. The Uni-

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50. *Levinson v. United States*, 258 U. S. 198 (1922); *Provident Savings Life Ass. Soc. v. Loeb*, 115 Fed. 357 (C. C. E. D. La. 1901); *Hayward v. McDonald*, 192 Fed. 890 (C. C. A. 5th, 1912); *Sherman Nat. Bank v. Shubert Theatrical Co.*, 247 Fed. 256 (C. C. A. 2d, 1917); *Marine Midland Trust Co. v. Irving Trust Co.*, 56 F. (2d) 385 (S. D. N. Y. 1932), *aff'd* in 58 F. (2d) 165 (C. C. A. 2d, 1932). None of these suits was under the Interpleader Acts.

51. Chafee, *op. cit. supra* note 48 at 40-63; Chafee, *supra* note 1, 30 YALE L. J. 828-840.

form Warehouse Receipts Act has been interpreted by the courts not to require privity.<sup>52</sup> The corresponding provision of the Uniform Bills of Lading Act, which has been enacted by Congress,<sup>53</sup> has not received judicial construction on this question. Fortunately the United States courts thus far have been fairly free from this narrow doctrine of privity.<sup>54</sup> In a recent case (not under the Interpleader Acts) Judge Mack said:<sup>55</sup>

"I do not deem the kind of 'privity' originally held essential to an interpleader or to a bill in the nature of interpleader, to be required for the maintenance of such a bill. That one is subject to two or more judgments and thus to double or greater liability, if and when but one obligation has been entered into, suffices. Likewise, in absence of an estoppel or of independent obligations entered into in respect of property, conflicting claims to the same piece of property, each of which might be sustained when in justice the possessor should be subject to but one claim, justifies such a bill."

In spite of this liberality in the United States courts, it was felt that there was danger, when federal interpleader suits became more numerous because of the federal interpleader legislation, that some United States district judges might be influenced by narrow decisions in their own state courts barring interpleader because of want of privity. Therefore, it seemed desirable to take advantage of the opportunity offered by the new Interpleader Act to insert an explicit provision negating the application of this doctrine. The extension of interpleader to new classes of stakeholders should not be hampered by narrow limitations that might prevent justice from being accomplished in many situations where interpleader is badly needed.

Another narrow limitation abolished by the same clause of the 1936 Act is that of identity, which judges and text-writers often define by saying that the claims must be identical or that all the claimants must be claiming the same debt, duty or thing. In using such language, courts are probably groping unsuccessfully toward the sound principle that the claims must be mutually exclusive, i.e., if one claim is right the other must be wrong.<sup>56</sup> Nevertheless, the identity test as commonly applied may cause an unjust refusal of interpleader where mutual exclusiveness is present.<sup>57</sup> Although the influence of the identity test on

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52. *New Jersey Title Guarantee & Trust Co. v. Rector*, 76 N. J. Eq. 587, 75 Atl. 931 (ch., 1910); *Manhattan Storage Co. v. Art Museum*, 155 App. Div. 196, 139 N. Y. Supp. 1073 (1st Dep't. 1913). See CHAFEE, *op. cit. supra* note 48 at 62, n. 2.

53. 39 STAT. 541 (1916), 49 U. S. C. A. § 97 (1926).

54. See Chafee, *supra* note 45 at 58-59.

55. *Marine Midland Trust Co. v. Irving Trust Co.*, 56 F. (2d) 385, 387 (S. D. N. Y. 1932).

56. Chafee, *supra* note 1, 30 YALE L. J. 818-819.

57. Chafee, *supra* note 48 at 823-828; CHAFEE, *supra* note 1, 30 YALE L. J. 22-27.

federal judges has been chiefly confined to *dicta*,<sup>58</sup> a definite repudiation of the test seemed desirable.

The provision of the 1936 Act abolishing privity and identity follows closely the phraseology of the California Code of Civil Procedure, section 386, which was enacted in 1881 and has since been adopted in Idaho, Montana, and Utah. It appears to have worked very well in practice.<sup>59</sup>

#### VENUE

The new statute says as to venue: "Such a suit may be brought in the district court of the district in which one or more of such claimants resides or reside." This liberalizes the venue provisions of the 1926 Act, which appeared at two points in that statute. In section 1, where the prerequisites of federal interpleader were stated as necessary averments in the stakeholder's bill, the first averment specified was "that one or more persons who are *bona fide* claimants . . . resides or reside within the territorial jurisdiction of said court." The words "*bona fide*" were inserted by a Senator in committee, presumably to prevent an insurance company from obtaining interpleader through a pretended claim.<sup>60</sup> Inasmuch as such a claim, if proved, would lead to the dismissal of the bill under well-settled equitable principles, these words were unnecessary and their meaning was obscure.<sup>61</sup> They have therefore been omitted, but the rest of the clause just quoted is substantially embodied in paragraph (b) of the new statute. The second passage of the 1926 Act relating to venue appeared in four long sentences at the beginning of section 2. Inasmuch as that act and its predecessors related chiefly to interpleader by life insurance companies, Congress was much concerned with the problem whether suit ought to be brought at the residence of a beneficiary or an assignee, and the 1917, 1925, and 1926 statutes all went into this question in great detail. The courts had considerable difficulty in understanding these provisions and were inclined to disregard their detailed requirements and allow interpleader to be brought in any district where a claimant resided.<sup>62</sup> Since the Act of 1936 permits interpleader for all

58. Chafee, *supra* note 45 at 58.

59. In England, privity was abolished by somewhat similar language in a statute of 1860 and by a rule of court in 1883. Thus English interpleader has operated successfully without the privity requirement for over seventy years. *Attenborough v. London & St. Katharine's Dock Co.*, L. R. 3 C. P. D. 450 (C. A. 1878); *In re Mersey Docks and Harbour Board*, L. R. [1899] 1 Q. B. 546 (C. A.). However, the English provisions differ from the California Code in that they do not abolish the identity test. *Sun. Ins. Office v. Galinsky*, [1914] 2 K. B. 545 (C. A.).

60. See CONNELL, *THE FEDERAL INTERPLEADER ACT (1920)*, op. cit. *supra* note 1 at p. 3.

61. The only reported case discussing "*bona fide*" is *Aetna Life Ins. Co. v. Mason*, 30 F. (2d) 715 (D. N. J. 1929), in which the court treated these words as superfluous.

62. *Kansas City Life Insurance Co. v. Adamson*, 24 F. (2d) 107 (N. D. Tex. 1928); *Bankers' Life Co. v. Ebbert*, 48 F. (2d) 907 (W. D. Pa. 1928). Stricter cases dealing with

sorts of stakeholders, the former provisions relating to venue in suits by insurance companies appeared to be unnecessary, and they were completely discarded in favor of the present simple venue clause, which conforms to actual judicial practice under the preceding statute.<sup>63</sup>

The language of paragraph (b) is not unduly rigid. It says "suit *may* be brought" and not "suits *must* be brought" in the district of a claimant. This phraseology makes the paragraph a regulation of venue rather than of jurisdiction. It was held in *Commercial Casualty Insurance Co. v. Consolidated Stone Co.*<sup>64</sup> that the general venue provision in section 51 of the Judicial Code<sup>65</sup> is a personal privilege of the defendant which may be waived, so as to permit of suit in a district where neither plaintiff nor defendant resides. Although this was not an interpleader case, the same principle will probably allow the venue provisions of paragraph (b) of the Interpleader Act of 1936 to be waived by the agreement of the stakeholder and all the claimants, so as to permit suit in the stakeholder's own district or in any other convenient district. This point may prove important if a stakeholder makes a mistake and files his bill in a district where a claimant has been personally served, but later it turns out that the claimant is not domiciled there. Unless one claimant objects to the venue at an early stage in the proceedings,

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the narrower venue provisions of the 1917 Act were *Penn. Mutual Life Insurance Co. v. Henderson*, 244 Fed. 877 (N. D. Fla. 1917); *New York Life Ins. Co. v. Kennedy*, 253 Fed. 287 (S. D. Fla. 1918). For adverse criticisms of the former venue provisions see the pamphlets by CONWELL, both op. cit. *supra* note 1.

63. The Hebert-Knutson bill, *supra* note 11, also allowed the stakeholder to sue in his own district (1) if one or more of the claimants resided there, or (2) if one or more of the claimants consented to this venue. The first alternative would mean that a Massachusetts stakeholder could interplead a Massachusetts claimant and a Rhode Island claimant in the Massachusetts district court. But paragraph (b) as enacted impliedly permits this, because the Massachusetts claimant's residence confers a Massachusetts venue. It is true that the cocitizenship of the stakeholder and one claimant might prevent jurisdiction. This question was discussed *supra* p. 973, 4. If this partial cocitizenship is a constitutional bar, any attempt to deal with it in the statute would have been useless. On the other hand, if there are no constitutional obstacles, it seems better to stick to the wording of the jurisdictional clause of the 1926 Act, which has proved so successful in operation (*supra* notes 7, 33) and leave questions of partial cocitizenship to be settled by judicial decisions.

The second alternative stated above would give the stakeholder a new privilege of interpleading in his own district where no claimants reside, so long as one claimant consents to the venue. This raises no constitutional problems, but there might be serious practical objections. The stakeholder's residence, e.g., its place of incorporation if corporate, might be very inconvenient to one claimant, and the other claimant might be induced to consent by a collusion hard to prove. The stakeholder has a sufficiently wide range of choice by being able to select the residence of any claimant. If *all* the claimants consent, the stakeholder can sue in his own district, as the statutory venue would then be waived. But determination of the controversy in the stakeholder's district should not be forced on an unwilling claimant.

64. 278 U. S. 177 (1929).

65. 36 STAT. 1101 (1911), 28 U. S. C. A. § 112 (1926).

venue will be waived, and the interpleader decree will be valid. On the other hand, if the requirement of the district of suit in paragraph (b) were phrased so as to be a jurisdictional requirement, it probably could not be waived by the parties, and a mistake would be fatal to the validity of the whole proceeding.

Two other phrases of paragraph (b) deserve attention. In the first place, it may be objected that this paragraph will cause occasional injustice to the particular claimant who lives outside the district in which the interpleader is brought. Suppose that one claimant resides in Massachusetts and the other in California, and that interpleader is brought in the Massachusetts district court, as the act of 1936 permits. It is hard on the Californian to be forced to join in litigation in Massachusetts, at the other end of the country. Ordinarily this is no objection to the Massachusetts venue, because it would be equally hard on the Massachusetts claimant to interplead in California. Furthermore, we can reply that a similar possibility of hardship exists under the 1926 Act. The partial attempt of Congress to meet such a situation in insurance cases by trying to give a preferential venue to the beneficiary amounted to practically nothing in the courts. An insurance company seemed able under the 1926 Act to file its bill wherever any claimant resided, and such a free choice was certainly possessed under the same act by surety companies. In spite of these arguments in favor of the proposed phrasing of paragraph (b), the objectors may put their case a little differently so as to make the hardship on the Californian still more evident. Let us further suppose that the Massachusetts claimant is in the habit of spending his winters in California. In that event it would not be difficult for him to litigate in a California district, and Massachusetts becomes clearly an unsuitable venue although still permitted by the wording of the statute. The objectors may urge that some express language should have been inserted in the Act to take care of the situation, and to insure that the interpleader bill must then be filed in the district of the Californian claimant. The answer to this objection is, that the present phrasing of paragraph (b) ("may be brought") does not oblige the Massachusetts district court to entertain the suit, but leaves it free to exercise its discretion to dismiss the bill and tell the stakeholder to start suit in the more convenient forum in California. This point, that the court having statutory jurisdiction may occasionally decline, in the interests of justice, to exercise jurisdiction, is clearly brought out by Mr. Justice Brandeis in *Canada Malting Co., Ltd. v. Paterson Steamships, Ltd.*<sup>66</sup> In sustaining the discretionary action of a district court, which had dismissed admiralty libels within its statutory jurisdiction for reasons of inconvenience, he said:

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66. 285 U. S. 413, 422-423 (1932).

"Obviously, the proposition that a court having jurisdiction must exercise it, is not universally true. . . . Courts of equity and of law also occasionally decline, in the interest of justice, to exercise jurisdiction, where the suit is between aliens or non-residents or where for kindred reasons the litigation can more appropriately be conducted in a foreign tribunal."

Furthermore, it would have been unwise to attempt to regulate discretion by an express provision. The judge's discretion will depend upon the facts of each particular case, which make his forum more or less inconvenient for the various claimants and the stakeholder. If this statute tried to deal with the matter, it would only hamper the application of the judge's common sense and his endeavor to do justice to all parties concerned. The Act as worded leaves the district courts free to use their discretionary powers to refuse relief and send the stakeholder to another forum, whenever the facts make such a course just and convenient.

The second difficulty about paragraph (b) concerns the question, where does a corporate claimant "reside"? Although the claimants interpleaded by life insurance companies under the Interpleader Acts have almost always been individuals,<sup>67</sup> fire insurance companies are more likely to be subjected to claims by corporations,<sup>68</sup> and after the 1926 Act allowed surety and casualty companies to interplead, corporate claimants became more frequent.<sup>69</sup> They will be much commoner in suits under the new Act, which extends relief to many kinds of business controversies. Therefore, it becomes necessary to consider the meaning of "resides or reside" as applied to corporate claimants. It seems clear that a corporation "resides" in the district covering the state of its incorporation; or, if this state includes two or more districts, then in the district where the head office of the corporation is situated. This conclusion naturally follows from the judicial construction of the similar language of section 51 of the Judicial Code,<sup>70</sup> dealing with venue in general. That section says that where jurisdiction is founded on diversity of citizenship, "suit shall be brought only in the district of the residence of either the plaintiff or the defendant." Although this section, like the jurisdiction and venue provisions of the 1936 Act, makes no express mention of corporations, "residence" in the case of corporations has been repeatedly construed to refer to the district in the state of incorporation where the head office is situated.<sup>71</sup> A similar result was reached

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67. The only exception noted is *Pacific Mutual Life Insurance Co. v. Lusik*, 46 F. (2d) 505 (W. D. La. 1930).

68. Examples under the Interpleader Acts are *Sanders v. Armour Fertilizer Co.*, 292 U. S. 190 (1934); *Globe & Rutgers Fire Insurance Co. v. Brown*, 52 F. (2d) 164 (W. D. La. 1931).

69. *Fidelity & Deposit Co. v. Reid*, 16 F. (2d) 502 (E. D. Pa. 1926); *American Surety Co. v. Calcasieu Oil Co., Inc.*, 58 F. (2d) 1039 (W. D. La. 1932).

70. 36 STAT. 1101 (1911), 28 U. S. C. A. § 112 (1926).

71. See the annotations in 28 U. S. C. A. § 112 (1926) on pp. 68-78; *DOBIE, FEDERAL PROCEDURE*, (1928) 482-3. See also cases cited *infra* notes 73 and 74.

without discussion under the 1926 Interpleader Act in two suits where a surety company interpleaded a corporate claimant in the district in the state of incorporation where the head office was situated.<sup>72</sup> These cases under the 1926 Act and the judicial construction of section 51 of the Judicial Code make it plain that the new interpleader statute will operate smoothly when one or more claimants are corporations. Some persons may wish to permit an interpleader bill to be filed against a corporate claimant in the district where it has its principal place of business, although this is outside the state of incorporation; or even to allow suit in any district in which a corporate claimant does business. But in order to accomplish either of these purposes, a clause would have had to be added to paragraph (b) creating special regulations of venue with respect to corporate claimants. This would have complicated the bill and would have been entirely inconsistent with the well-settled rule under section 51 of the Judicial Code, that for purposes of suits based on diversity of citizenship a corporation with its place of incorporation and legal office in one district does not "reside" in a district in another state by doing business there, however great the volume and importance of that business.<sup>73</sup> It does not even "reside" in another district in the same state.<sup>74</sup> Paragraph (b) as enacted has the advantage of simplicity and of following the venue scheme of both the 1926 Act (as judicially interpreted) and of federal litigation in general.

#### POWERS OF THE COURT

In the 1926 Act, the subject-matter of paragraphs (b) and (c) is contained in one paragraph as section 2. It seemed better drafting to have two separate paragraphs in the new statute, paragraph (b) dealing with venue and (c) with the powers of the court. Paragraph (c) follows the corresponding portion of section 2 of the 1926 Act. There are only two changes. First, the new statute allows an injunction in the interpleader proceeding against a suit "in any United States court," whereas the 1926 Act said "in any other Federal court." The revised wording uses the proper technical description of the United States courts. The

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72. See *Fidelity & Deposit Co. v. Reid* and *American Surety Co. v. Calcasieu Oil Co.*, both cited *supra* note 69. Although the insurance cases cited in notes 67 and 68 involved corporate claimants, the "residence" of such a claimant does not appear to have determined the venue.

73. *Shaw v. Quincy Mining Co.*, 145 U. S. 444 (1892); *Southern Pacific Co. v. Denton*, 146 U. S. 202 (1892); *In re Keasbey and Mattison Co.*, 160 U. S. 221, 228-9 (1895), quoted with approval in *Macon Grocery Co. v. Atlantic Coast Line Rr. Co.*, 215 U. S. 501, 508-10 (1910); *Camp v. Gress*, 250 U. S. 308 (1919); *Seaboard Rice Milling Co. v. Chicago, Rock Island & P. Ry. Co.*, 270 U. S. 363 (1926); DOBIE, *FEDERAL PROCEDURE*, (1928) 483.

74. *Galveston, H. & S. A. Ry. Co. v. Gonzales*, 151 U. S. 496 (1893).



omission of "other" allows the injunction to forbid further suits in the same court in which the interpleader is filed. Probably under the 1926 Act the district court would issue a stay against any suits in the same court conflicting with the interpleader, but it seemed desirable for the new statute to permit the injunction to be sufficiently wide to take care of the matter without the necessity of a stay. Both the old and new statutes allow injunctions against threatened or pending suits in state courts.<sup>75</sup> Secondly, in the provision as to enjoinable suits, "on such instrument or obligation" takes the place of "on such policy or certificate of membership" in the 1926 Act. This change carries out the purpose of the new statute in widening the types of obligations with respect to which interpleader is permitted.

#### HEARING AND FINAL DECREE

This paragraph conforms exactly to section 3 of the 1926 Act, which has worked well in practice.

The insertion of an express provision about costs and counsel fees was suggested by one of the United States district judges, but after careful consideration this suggestion was not adopted. The new statute says nothing about costs and counsel fees, because the judicial construction of the 1926 Act shows that the present wording takes care of the matter satisfactorily without any express provision. Under the non-statutory Chancery practice and under interpleader statutes in most jurisdictions,<sup>76</sup> the stakeholder is entitled to obtain his costs and counsel fees from the fund deposited in court, since he is a neutral person who has been involved in the quarrel between the claimants without any fault of his own. This privilege has been frequently recognized in federal interpleader suits not brought under the interpleader legislation.<sup>77</sup> The peculiar wording of the Interpleader Act of 1917 created a good deal of difficulty about this matter, because it expressly allowed the stakeholder only his actual court costs, which did not include counsel fees.<sup>78</sup>

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75. The acts of 1917 and 1925 did not authorize this, and § 265 of the JUDICIAL CODE, 36 STAT. 1162 (1911), 28 U. S. C. A. § 379 (1926), was held to prevent an injunction against a pending state suit. See Chafee, *supra* note 45 at 41-45.

76. A contrary view prevails in a few states. The authorities are collected in (1933) 17 MINN. L. REV. 449; (1929) 39 YALE L. J. 286.

77. *McNamara v. Provident Savings Life Assurance Society*, 114 Fed. 910 (C. C. A. 5th, 1902); *Louisiana State Lottery Co. v. Clark*, 16 Fed. 20 (C. C. E. D. La. 1883); *Penn Mutual Life Insurance Co. v. Union Trust Co.*, 83 Fed. 891 (N. D. Cal. 1897); *Mutual Life Insurance Co. v. Lane*, 151 Fed. 276 (E. D. Ga. 1907), *aff'd* by memorandum 157 Fed. 1002 (C. C. A. 5th, 1908); *Mutual Life Insurance Co. v. Farmers' & Mechanics' National Bank*, 173 Fed. 390 (S. D. Oh. 1909); *Caten v. Eagle Building & Loan Assn.*, 177 Fed. 996 (W. D. Pa. 1909); *Thomas Kay Woolen Mill Co. v. Sprague*, 259 Fed. 338 (D. Ore. 1919).

78. See *Guardian Life Insurance Co. v. Rosenbaum*, 280 Fed. 861 (C. C. A. 3d, 1922); *New York Life Insurance Co. v. Bidoggia*, 15 F. (2d) 126, 17 F. (2d) 112 (D. Idaho 1926).

The omission of this express provision about costs in the 1925 and 1926 Acts, coupled with the authorization of suitable and proper orders and decrees, left the courts free to follow the usual equitable practice and allow counsel fees, as they have done in several subsequent decisions.<sup>79</sup> Because of this abundant judicial construction of the previous law, it seems certain that the statutory language continued in the act of 1936 will take care of costs and counsel fees for the stakeholder in a very satisfactory manner. The courts will normally allow them, but will have discretion to deny either or both when the stakeholder cannot fairly claim such a privilege.<sup>80</sup>

#### INTERPLEADER ALLOWED DEFENSIVELY IN ACTIONS AT LAW<sup>81</sup>

Although paragraph (e) of the 1936 act does not correspond to anything in the three previous Interpleader Acts, the convenient procedure herein authorized of interpleader by way of equitable defense in an action at law<sup>82</sup> was used by many federal courts under section 274b of the Judicial Code,<sup>83</sup> and seemingly authorized by the United States Supreme

79. *Mutual Life Insurance Co. v. Bondurant*, 27 F. (2d) 464 (C. C. A. 6th, 1928); *Allen v. Hudson*, 35 F. (2d) 330 (C. C. A. 8th, 1929); *Mass. Mut. Life Ins. Co. v. Morris*, 61 F. (2d) 104 (C. C. A. 9th, 1932); (1933) 17 MINN. L. REV. 449; *Terry v. Supreme Forest*, 21 F. (2d) 158 (D. Tenn. 1926); *Ackerman v. Tobin*, 22 F. (2d) 541 (C. C. A. 8th, 1927); *Globe & Rutgers Fire Insurance Co. v. Brown*, 52 F. (2d) 164 (W. D. La. 1931); *Metropolitan Life Insurance Co. v. Dunne*, 2 F. Supp. 165 (S. D. N. Y. 1931); *American Surety Co. v. Calcasieu Oil Co., Inc.*, 2 F. Supp. 200 (W. D. La. 1932).

The only case since the 1926 Act denying the power to give counsel fees was *Continental Life Insurance Co. v. Sailor*, 47 F. (2d) 911 (S. D. Cal. 1930), which does not mention the 1926 Act and which was influenced by the special practice of the California state courts with regard to counsel fees. This decision in the California district seems impliedly overruled by *Massachusetts Mutual Life Insurance Co. v. Morris*, *supra*, which reversed the district court for the southern district of California and held that the stakeholder was entitled to a reasonable attorney's fee.

80. Cases not under the interpleader legislation have denied costs and counsel fees to an interested stakeholder who was allowed to file a bill in the nature of interpleader. *Groves v. Sentell*, 153 U. S. 465, 486 (1894).

81. See Chafee, *supra* note +5 at 45-52.

82. Defensive interpleader is authorized by statute in a large number of states, beginning with the NEW YORK CODE OF CIVIL PROCEDURE in 1851 (now N. Y. CIVIL PRACTICE ACT, § 287). The same procedure is expressly permitted by § 17 of the UNIFORM BILLS OF LADING ACT, 39 STAT. 541 (1916), 49 U. S. C. A. § 97 (1926).

83. 38 STAT. 956 (1915), 28 U. S. C. A. § 398 (1926). The cases allowing a defendant at law to interplead under this section are as follows:

First Circuit: *Pearson v. Holden*, 58 F. (2d) 1050 (D. Mass. 1932). Fourth Circuit: see *United States ex rel. Morris v. Richardson*, 233 Fed. 1010 (C. C. A. 4th, 1915), cited in *Liberty Oil Co. v. Condon*, 260 U. S. 235 at 242. Fifth Circuit: *Duell v. Greiner*, 15 F. (2d) 726 (S. D. Fla. 1926). Sixth Circuit: *Kentucky Distilleries & Warehouse Co. v. Louisville Public Warehouse Co.*, 19 F. (2d) 866 (C. C. A. 6th, 1927). Seventh Circuit: *Hintz v. Hintz*, 78 F. (2d) 432 (C. C. A. 7th, 1935). Eighth Circuit: *Liberty Oil Co. v. Condon*, 271 Fed. 928 (C. C. A. 8th, 1921), modified in 260 U. S. 235 (1922). Tenth Circuit: *Brown*

Court in *Liberty Oil Co. v. Condon National Bank*.<sup>84</sup> However, the Second Circuit took a different view, and would not allow a stakeholder to obtain interpleader defensively.<sup>85</sup> The new statute offered an excellent opportunity to make it certain that a defendant can interplead at law whenever he would also be entitled to interplead by a bill in equity.

The following example will illustrate the desirable operation of paragraph (e). A Connecticut life insurance company is sued at law in the United States District Court in Connecticut by a New York woman, who claims to be the sole beneficiary under a matured policy. A Massachusetts woman also claims to be the sole beneficiary and threatens to sue the company in a Massachusetts state court. The company could file an original bill of interpleader in equity in a United States district court in New York or Massachusetts (at the residence of either claimant) and have the Connecticut action at law enjoined. But under paragraph (e) the company can take the simpler course of filing an equitable defense in the Connecticut federal action at law, asking that the plaintiff therein (the New York claimant) shall interplead with the Massachusetts claimant as to the amount of the policy, which the company therewith pays into the Connecticut federal court. This court will thereupon issue process against the Massachusetts claimant ordering her to appear in the same action, and the writ can be served upon her in Massachusetts under paragraph (c), which also allows her to be enjoined from prosecuting her claim elsewhere. Thus, instead of having to go to New York or Massachusetts and start a new federal suit there, the company can have everything settled in the existing Connecticut suit.

In addition, if a stakeholder who is a defendant in an action at law in a United States district court would be allowed to file an ancillary bill of interpleader (or in the nature of a bill of interpleader) in that court against the law plaintiff and against other claimants who were not originally joined in the action at law, paragraph (e) of the new Act lets the defendant stakeholder obtain the same relief by the simpler method of an equitable defense. This is possible even if he could not have filed an original bill in equity against these claimants under the provisions of paragraph (a) of the Act of 1936. For example, a New York life insurance company is sued in a New York district court by *P*, a citizen of

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v. *Home Life Insurance Co.*, 3 F. (2d) 661 (E. D. Okla. 1925). No cases have been found in the Third and Ninth Circuits. The Second Circuit is opposed; see note 85.

84. 260 U. S. 235 (1923). The defendant had interpleaded under § 274b in a federal action at law, and the main holding was that this defensive interpleader proceeding must be tried on the equity side of the court and in accordance with equitable principles. No suggestion was made by Chief Justice Taft that interpleader is impossible under § 274b.

85. *Marine Midland Trust Co. v. Irving Trust Co.*, 56 F. (2d) 385 (S. D. N. Y. 1932), following *Sherman National Bank v. Shubert Theatrical Co.*, 247 Fed. 256, 260 (C. C. A. 2d, 1917).

Virginia who professes to be a beneficiary under the policy. *X*, another Virginian, is an adverse beneficiary claimant and threatens suit. The insurance company cannot file a bill of interpleader against the two claimants under the 1926 act or under paragraph (a) of the new statute because the two claimants are both Virginians and not citizens of different states. However, the insurance company would, independently of federal interpleader legislation, be allowed by decisions in the Second Circuit (and perhaps elsewhere)<sup>86</sup> to file an ancillary bill of interpleader in connection with the pending federal lawsuit if the company could overcome the difficulty of getting service in the New York district upon *X*, a Virginian.<sup>87</sup> In circuits which entertain such ancillary bills, paragraph (e) will allow the insurance company to interplead *P* and *X* by its answer in the lawsuit in the New York district, and under paragraph (c) the process of the district can be served on the Virginian claimant, *X*, at his Virginia residence so as to give the New York district court jurisdiction over claimant *X* as well as over *P*. The proceedings in the interpleader will be on the equity side of the district court of New York, as required in *Liberty Oil Co. v. Condon National Bank*.<sup>88</sup>

[To be Continued]

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86. *Sherman National Bank v. Shubert Theatrical Co.*, 247 Fed. 256 (C. C. A. 2d, 1917), aff'g 238 Fed. 225 (S. D. N. Y. 1916); *Irving Trust Co. v. Marine Midland Trust Co.*, 47 F. (2d) 907 (S. D. N. Y. 1931). See also *Stone v. Bishop*, 23 Fed. Cas. no. 1,312, p. 134 (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); *Wells, Fargo & Co. v. Miner*, 25 Fed. 533 (C. C. Cal. 1885); *Hirschmann v. Bank of Dassel*, 21 F. (2d) 263 (C. C. A. 8th, 1927); *Fleming v. Phoenix Assurance Co.*, 40 F. (2d) 38 (C. C. A. 5th, 1930), certiorari denied, 282 U. S. 869 (1930). None of these cases was under the Interpleader Acts. See also Chafee, *supra* note 4 at 1145-1160.

87. See the second installment of this article in the May, 1936 issue of the YALE LAW JOURNAL for the reply to the objection that the Interpleader Act of 1936 is exhaustive and does not allow any federal interpleader suits to be maintained except under the jurisdictional conditions specified in paragraph (a)(i) of the statute. This objection interprets the statute as abolishing ancillary bills where all the claimants are cocitizens, but such an interpretation seems unsound.

88. 260 U. S. 235 (1923).