

FEDERAL INTERPLEADER SINCE THE ACT OF 1936

By ZECHARIAH CHAFEE, JR. †

THE main purpose¹ of the Federal Interpleader Act of January 20, 1936,² was to give the United States courts power to protect any stakeholder who was threatened with conflicting claims asserted by citizens of different states. The previous Act of 1926³ limited such relief to insurance, casualty and surety companies. Ordinarily, such a controversy cannot be satisfactorily handled by a state court in the state where either claimant resides, because a state court lacks the personal jurisdiction over the non-resident claimant which is necessary to bind all parties. Thus the test for success of the federal legislation is the frequency with which interpleader has been granted in situations where state interpleader is impossible. Judged by this test, the Act has worked well. Relief has been granted in every case but one where it was invoked against citizens of different states, and in this single exception (as we shall see) the Supreme Court denied jurisdiction on the special ground that the real claimants to the disputed inheritance tax were two states. In the two other recent cases where the Court considered the Act or its predecessor, it interpreted the legislation very liberally.

This Article will review significant points of federal interpleader cases decided since the present statute became law. Many of them were under

† Professor of Law, Harvard Law School.

1. This Article is the fifth of a series by the author which has appeared in the YALE LAW JOURNAL. The other four are: *Modernizing Interpleader* (1921) 30 YALE L. J. 814; *Interstate Interpleader* (1924) 33 YALE L. J. 685; *Interpleader in the United States Courts* (1932) 41 YALE L. J. 1134, 42 *id.* 41; *The Federal Interpleader Act of 1936* (1936) 45 YALE L. J. 963, 1161. The author plans to combine the whole series, after revision, into a book on Interpleader, which will also contain a discussion of the numerous state interpleader statutes. Articles by the author in the YALE LAW JOURNAL will hereafter be cited without titles.

See also Burchmore, *Interstate Interpleader under the Federal Act of 1936* (1937) 15 CHI-KENT L. REV. 165; Holt, *Federal Interpleader Act and Conflict of Laws in Garnishment* (1937) 4 U. OF CHI. L. REV. 403; Cleary [Note] *Federal Interpleader and Some Recent Cases* (1938) 26 GEO. L. J. 1017; and references in Chafee, (1936) 45 YALE L. J. 963, n. 1. Discussions of specific cases are cited in subsequent footnotes.

2. 49 STAT. 1096 (1936), 28 U. S. C. § 41 (26) (Supp. 1938).

3. 44 STAT. 416 (1926), 28 U. S. C. § 41 (26) (1926).

this 1936 statute; but some were under the Act of 1926, which was continued in force as to pending suits.⁴ Also some attention will be paid

4. Lists of 45 reported cases under the first three Interpleader Acts until January, 1936, will be found in Chafee (1932) 41 YALE L. J. 1161, 1164-1165, nn. 103-106, and Chafee (1936) 45 YALE L. J. 963, 965, n. 7. The citations in this footnote add 35 cases, under the 1936 Act unless otherwise noted, making 80 cases in all decided before November 15, 1939. In addition, there are doubtless many unreported district court cases.

Interpleader granted. 38 cases are previously listed, and 29 are given below, making 67 in all. The new cases granting interpleader under the statutes are: Dugas v. American Surety Co., 300 U. S. 414 (1937), *aff'g*, 82 F. (2d) 953 (C. C. A. 5th, 1936) (under 1926 Act); Treinies v. Sunshine Mining Co., 60 Sup. Ct. 44 (1939), *aff'g*, 99 F. (2d) 651 (C. C. A. 9th, 1938), *aff'g*, 19 F. Supp. 587 (D. Idaho 1937); Sbisa v. Lazar, 78 F. (2d) 77 (C. C. A. 5th, 1935) (under 1926 Act; Act not cited); Carnes v. Franklin Life Ins. Co., 81 F. (2d) 800 (C. C. A. 5th, 1936) (under 1926 Act); Parker v. Parker, 82 F. (2d) 575 (C. C. A. 10th, 1936) (under 1926 Act, Act not cited); Dee v. Kansas City Life Ins. Co., 86 F. (2d) 813 (C. C. A. 7th, 1936); Conn. Gen. Life Ins. Co. v. Benedict, 88 F. (2d) 436 (C. C. A. 2d, 1937), *cert. denied*, 301 U. S. 694 (1937) (act not cited, probably 1926 Act); Fort Atkinson Loan & Inv. Co. v. Merchandise Bank & T. Co., 89 F. (2d) 942 (C. C. A. 7th, 1937) (probably under 1926 Act); Cramer v. Phoenix Mut. Life Ins. Co., 91 F. (2d) 141 (C. C. A. 8th, 1937), *aff'g*, Phoenix Mut. Life Ins. Co. v. Lafferty, 16 F. Supp. 740 (S. D. Iowa 1936) (under 1926 Act); Clark v. Sovereign Camp, W. O. W., 91 F. (2d) 519 (C. C. A. 10th, 1937) (act not cited, probably 1926 Act); Roberts v. Metropolitan Life Ins. Co., 94 F. (2d) 277 (C. C. A. 7th, 1938), *cert. denied*, 303 U. S. 660 (1938) (act not cited, perhaps 1926 Act); Andrews v. Andrews, 97 F. (2d) 485 (C. C. A. 8th, 1938); Metropolitan Life Ins. Co. v. Mason, 98 F. (2d) 668 (C. C. A. 3d, 1938), *rev'g*, 21 F. Supp. 704 (E. D. Pa. 1937); Toomey v. Toomey, 98 F. (2d) 736 (C. C. A. 7th, 1938) (act not cited, perhaps 1926 Act); Nance v. Hilliard, 101 F. (2d) 957 (C. C. A. 8th, 1939); Stewart v. Conn. Mut. Life Ins. Co., 102 F. (2d) 147 (C. C. A. 1st, 1939), *aff'g*, 22 F. Supp. 68 (D. Mass. 1938) (bill in nature of interpleader; act not cited, perhaps 1926 Act); Kohler v. Kohler, 104 F. (2d) 38 (C. C. A. 9th, 1939) (under 1926 Act); New England Mut. Life Ins. Co. v. Spence, 104 F. (2d) 665 (C. C. A. 2d, 1939), *rev'g*, 25 F. Supp. 633 (W. D. N. Y. 1938); Standard Surety & Casualty Co. v. Baker, 105 F. (2d) 578 (C. C. A. 8th, 1939), *rev'g*, 26 F. Supp. 956 (W. D. Mo. 1939) (bill in nature of interpleader); Railway Express Agency v. Jones, 106 F. (2d) 341 (C. C. A. 7th, 1939) (defensive interpleader); Bankers Life Co. v. Landers, 13 F. Supp. 521 (S. D. Iowa 1935) (under 1926 Act, Act not cited); Mutual Life Ins. Co. v. Patterson, 15 F. Supp. 759, 17 F. Supp. 416 (W. D. N. Y. 1936) (act not cited); Metropolitan Life Ins. Co. v. Segaritis, 20 F. Supp. 739 (E. D. Pa. 1937); Kansas City Life Ins. Co. v. Jones, 21 F. Supp. 159 (S. D. Cal. 1937) (act not cited, perhaps 1926 Act); John Hancock Mut. Life Ins. Co. v. Kegan, 22 F. Supp. 326 (D. Md. 1938); Equitable Life Ass. Soc. v. Kit, 22 F. Supp. 1022 (E. D. Pa. 1938), s. c., 26 F. Supp. 880 (E. D. Pa. 1939), s. c., 29 F. Supp. 260 (E. D. Pa. 1939); Equitable Life Ass. Soc. v. Arnold, 27 F. Supp. 360 (D. Mass. 1939); Metropolitan Life Ins. Co. v. Richardson, 27 F. Supp. 791 (W. D. La. 1939); Acacia Mut. Life Ins. Co. v. Bathurst, 28 F. Supp. 781 (D. N. J. 1939).

Interpleader denied under statutes. Five cases are previously listed, and two are given below, making seven in all. The recent cases are: Worcester County Trust Co. v. Riley, 302 U. S. 292 (1937) (no interpleader against states), *aff'g*, 89 F. (2d) 59 (C. C. A. 1st, 1937) (Morton, J., dissenting), and *rev'g*, Worcester County Trust Co. v. Long, 14 F. Supp. 754 (D. Mass. 1936); Security Trust & Sav. Bank v. Walsh, 91 F. (2d) 481 (C. C. A. 9th, 1937) (all claimants cocitizens but interpleader granted on other grounds), *aff'g*, as to 1936 Act, Eagle, Star & British Dominions v. Tadlock, 14 F. Supp. 933 (S. D.

to cases brought under the general diversity jurisdiction of the United States courts and outside the scope of both interpleader statutes.⁵

RULE 22

On September 1, 1938, the Rules of Civil Procedure for the district courts of the United States went into effect. Rule 22, entitled *Interpleader*, provides:

“(1) Persons having claims against the plaintiff may be joined as defendants and required to interplead when their claims are such that the plaintiff is or may be exposed to double or multiple liability. It is not ground for objection to the joinder that the claims of the

Cal. 1936), s. c. *on 2d stage*, Walsh v. Tadlock, 104 F. (2d) 131 (C. C. A. 9th, 1939), *aff'g*, Eagle, Star & British Dominions v. Tadlock, 22 F. Supp. 545 (S. D. Cal. 1933).

Inconclusive cases. Two cases are previously listed, and four more can be added, making six in all: Mellers v. Equitable Life Ass. Soc., 87 F. (2d) 233 (C. C. A. 7th, 1936), *cert. denied*, 301 U. S. 685 (1937), s. c. 104 F. (2d) 567 (C. C. A. 7th, 1939) (both claimants cocitizens but 1926 Act discussed); Penn Mut. Life Ins. Co. v. Meguire, 13 F. Supp. 967 (W. D. Ky. 1936) (all claimants cocitizens but 1926 Act discussed); American United Life Ins. Co. v. Luckman, 21 F. Supp. 39 (S. D. Cal. 1937) (costs and attorney's fees not allowed where interpleader unnecessary; act not cited); The Pan Two, 26 F. Supp. 990 (D. Md. 1939) (*semble*, interpleader available for conflicting claims under Jones Act).

5. *Interpleader granted under general federal jurisdiction outside statutes:* Texas v. Florida, 306 U. S. 398 (1939), noted in (1939) 121 A. L. R. 1200 (bill in nature of interpleader under original jurisdiction); Laws v. New York Life Ins. Co., 81 F. (2d) 841, 82 F. (2d) 811 (C. C. A. 5th, 1936); Mellers v. Equitable Life Ass. Soc., 87 F. (2d) 233 (C. C. A. 7th, 1936), *cert. denied*, 301 U. S. 685 (1937), s. c., 104 F. (2d) 567 (C. C. A. 7th, 1939) (both claimants cocitizens); Security Trust & Sav. Bank v. Walsh, 91 F. (2d) 481 (C. C. A. 9th, 1937) (all claimants cocitizens), *superseding on this point*, Eagle, Star & British Dominions v. Tadlock, 14 F. Supp. 933 (S. D. Cal. 1936), s. c. *on 2d stage*, Walsh v. Tadlock, 104 F. (2d) 131 (C. C. A. 9th, 1939), *aff'g*, Eagle, Star & British Dominions v. Tadlock, 22 F. Supp. 545 (S. D. Cal. 1933); Carter v. Thorton, 93 F. (2d) 529 (C. C. A. 8th, 1938) (both claimants cocitizens); Rosenthal v. New York Life Ins. Co., 94 F. (2d) 675, *judgment vacated*, 304 U. S. 263 (1938), s. c., 99 F. (2d) 578 (C. C. A. 8th, 1938) (bill in nature of interpleader, both claimants apparently cocitizens); Century Ins. Co., Ltd. v. First National Bank, 102 F. (2d) 726 (C. C. A. 5th, 1939) (defensive interpleader under § 274b, citizenship of claimant not stated); Penn Mut. Life Ins. Co. v. Meguire, 13 F. Supp. 967 (W. D. Ky. 1936) (all claimants cocitizens); First Nat. Bank v. Baker, 16 F. Supp. 869 (W. D. La. 1936) (both claimants apparently cocitizens).

Interpleader denied under general federal jurisdiction: Massachusetts v. Missouri, 60 Sup. Ct. 39 (U. S. 1939) (bill in nature of interpleader under original jurisdiction); Carroll v. New York Life Ins. Co., 94 F. (2d) 333 (C. C. A. 8th, 1938) (bill in nature of interpleader, both claimants cocitizens, one claimant not joined though necessary party); United States to Use of Deacon Bros., Inc. v. Starrett Bros. & Eken, Inc., 18 F. Supp. 671 (E. D. Pa. 1937) (defensive interpleader under § 274b, citizenship of claimants not stated, stakeholder interested).

Inconclusive case: Hunter v. Federal Life Ins. Co., 103 F. (2d) 192 (C. C. A. 8th, 1939) (both claimants cocitizens, appeal from interpleader decree dismissed because issues not completely determined below).

several claimants or the titles on which their claims depend do not have a common origin or are not identical but are adverse to and independent of one another, or that the plaintiff avers that he is not liable in whole or in part to any or all of the claimants. A defendant exposed to similar liability may obtain such interpleader by way of cross-claim or counterclaim. The provisions of this rule supplement and do not in any way limit the joinder of parties permitted in Rule 20.⁶

"(2) The remedy herein provided is in addition to and in no way supersedes or limits the remedy provided by Section 24 (26) of the Judicial Code, as amended [the Interpleader Act of 1936]. Action under that section shall be conducted in accordance with these rules."⁷

Rule 65 on Injunctions makes several important regulations as to notice, bond, form, etc., which might easily hamper relief under the Interpleader Act of 1936 if they were not expressly rendered inapplicable thereto. Consequently subdivision (e) of this rule specifies that it does not modify the provisions of the Interpleader Act of 1936 "relating to preliminary injunctions in actions of interpleader or in the nature of interpleader."⁸

It will be observed that Rule 22 embraces both interpleader under the general diversity powers of the United States courts and interpleader under the Act of 1936. The rule will probably find its greatest usefulness in proceedings outside the statute. So far as proceedings within the statute are concerned, the provisions of the rule substantially repeat the statutory clauses abolishing privity and identity and permitting defensive interpleader. However, the rule makes one important liberalization of relief under the Act of 1936; it allows relief when the stakeholder is interested in the controversy by disputing his liability. Judicial applications of the rule have been few as yet⁹ and its main result to date

6. Rule 20 relates to permissive joinder of plaintiffs and defendants when the right to relief or liability is asserted jointly, severally or in the alternative.

7. The Note of the Advisory Committee to Rule 22 says: "The first paragraph provides for interpleader relief along the newer and more liberal lines of joinder in the alternative. It avoids the confusion and restrictions that developed around actions of strict interpleader and actions in the nature of interpleader. . . . It does not change the rules on service of process, jurisdiction, and venue, as established by judicial decision. The second paragraph allows an action to be brought under the recent interpleader statute when applicable. By this paragraph all remedies under the statute are continued, but the manner of obtaining them is in accordance with these rules." The Note adds that the rule substantially continues such statutory provisions as those providing for interpleader under the Uniform Bills of Lading Act and by the United States as to veterans' contracts of insurance.

8. The Note of the Advisory Committee says that words in the quoted phrase are "words of description and not of limitation."

9. Rule 22 has been twice applied. *Century Ins. Co. v. First Nat. Bank*, 102 F. (2d) 726 (C. C. A. 5th, 1939) (not under Interpleader Acts); *Standard Surety & Casualty*

has been to encourage the district courts to take a friendly attitude toward interpleader.

NEW TYPES OF STAKEHOLDERS

The most important provision of the Act of 1936 allowed interpleader to be brought "by any person, firm, corporation, association, or society," whereas the 1926 Act benefited only insurance, casualty or surety companies. It was hoped that the new law would be helpful to railroads, warehouses, banks (especially savings banks) and oil companies, which are all likely to be vexed by conflicting claims made by citizens of different states. So far, however, nearly all the suits under the present statute have been brought by life insurance companies, and very little advantage has been taken of it by new kinds of businesses. Perhaps this is because railroads, warehouses and banks need help much less than insurance companies, but it is also possible that they have not yet fully realized the opportunity offered them. At all events, the remedy is there, ready for them to use it when needed.

Already new types of stakeholders have appeared in three or four cases. In the important *Treinics* case discussed hereafter, a mining corporation was able to adjust conflicting claims to the ownership of a block of stock.¹⁰ Thus it is clear that the Act does what was expected of it in a recent article by a member of the New York Bar on *The Transfer Agent's Dilemma: Conflicting Claims to Shares of Stock*.¹¹

An express company obtained relief in an interesting situation.¹² A group of promoters was running a fraudulent scheme to recover the estate of Sir Francis Drake, which they asserted to be unclaimed in England, and had obtained much money in small sums from deluded participants in the venture. When the Federal Government prosecuted the leader, Hartzell, part of the victims' donations, which had been forwarded in packages by collectors to three alleged lieutenants of Hartzell, were in transit in the hands of an express company incorporated in Delaware. The company retained possession of the packages, which it opened and found to contain \$24,000. After Hartzell's conviction, a victim residing in Ohio began a federal class suit against the express company on behalf of himself and all others similarly situated, to establish rights to the \$24,000. Six other claimants were later given leave to join in the suit. Then the internal revenue collector for northern Illinois asserted a claim and lien on the fund because of Hartzell's unpaid income tax of \$140,000. Other victims who had not contributed to this fund sought to recoup

Co. v. Baker, 105 F. (2d) 578 (C. C. A. 8th, 1939), *rev'g*, 26 F. Supp. 956 (W. D. Mo. 1939) (under Act of 1936). Rule 65 (e) has not yet been cited by courts.

10. See note 44 *infra*.

11. Dewey (1939) 52 HARV. L. REV. 553, 577-578.

12. Railroad Express Agency v. Jones, 106 F. (2d) 341 (C. C. A. 7th, 1939).

their losses therefrom. The three consignees also claimed the money, asserting that they were not acting for Hartzell. The company was allowed to file a counterclaim in the nature of a bill of interpleader, so as to bring into the class suit the internal revenue collector, the new group of victims and the consignees. The court said that the difficult question whether the victims' claims could be combined to present the jurisdictional amount of \$3,000 for the class suit did not affect the company's right to interplead. It was enough under the 1936 Act that the fund in the stakeholder's possession exceeded \$500, so long as the other statutory requirements were fulfilled. The court considered that the right to relief under the 1936 Act was absolute when the jurisdictional facts were established; but even if relief was discretionary, the case here warranted a favorable exercise of the court's discretion.

In *The Pan Two*, though not an interpleader suit, a novel use for interpleader was proposed.¹³ The Jones Act gives an action for the wrongful death of a seaman in the course of employment to "the personal representative," without saying whether he is to be appointed at the domicile or at the place of suit or elsewhere.¹⁴ A libel in admiralty under this statute was held properly brought in the Maryland district by an administrator appointed in Ohio, apparently the seaman's domicile. The defendant unsuccessfully argued that the administrator could not sue extra-territorially. Judge Chesnut admitted the possibility that two administrators appointed in different states on behalf of different sets of relatives might sue in different districts; each court might determine its plaintiff to be *the* personal representative; then if each plaintiff recovered judgment, the defendant might have to pay twice. To meet this difficulty, Judge Chesnut suggested that if the two courts reached divergent conclusions as to who were the real beneficiaries, a double payment could possibly be avoided by prompt resort to the Interpleader Act of 1936. Such an interpleader, according to another recent case,¹⁵ could not be obtained in admiralty, for an admiralty court has very few equity powers; but that case lends support to the position that the United States district court which was entertaining the proposed interpleader action could enjoin pending admiralty suits.

Another new situation where interpleader is badly needed is presented when the domicile of a decedent is disputed and his estate is threatened with death taxes in two states. The Supreme Court denied such relief

13. 26 F. Supp. 990 (D. Md. 1939). *See also* on interpleader against administrators and executors appointed outside the forum, *Cramer v. Phoenix Mut. Life Ins. Co.*, 91 F. (2d) 141 (C. C. A. 8th, 1937).

14. 38 STAT. 1185 (1920), 46 U. S. C. § 688 (1934).

15. *Eagle, Star & British Dominions v. Tadlock*, 14 F. Supp. 933, 935 (S. D. Cal. 1936), *disapproving the contrary view of*, 1 BENEDICT, ADMIRALTY (5th ed. 1925) and Benedict's decision in *Copp v. De Castro & Sugar Ref. Co.*, 8 Ben. 321, 6 Fed. Cas. 520 (E. D. N. Y. 1875).

from double taxation in *Worcester County Trust Company v. Riley*.¹⁶ Mr. Hunt had retired from business in Massachusetts, where he left his securities in charge of the Trust Company and continued to pay Massachusetts income tax. He built a house in California where he died. Each state asserted that he was domiciled therein for the purpose of levying inheritance taxes. The Trust Company as Massachusetts executor made use of the Act of 1936 soon after its passage, and interpleaded the tax officials of Massachusetts and California in the United States district court in Boston. The Massachusetts officials readily acquiesced in the use of the simple and convenient procedure of the statute to settle these vexatious disputes over domicile, and Mr. Ronan, the Assistant Attorney General of the Commonwealth, argued orally in the Supreme Court in favor of interpleader. But the California tax officials objected to a contest so far from home. They appeared specially to question the jurisdiction of the district court, on the ground that the executor was not really suing them but was seeking to interplead the sovereign state of California in violation of the Eleventh Amendment. This contention was rejected by the district court, but accepted by the circuit court of appeals, Judge Morton dissenting, and by a unanimous opinion of the Supreme Court, written by Mr. Justice Stone.

This decision cannot be adequately examined except as part of a long series of cases on double taxation. Such a discussion would carry us far away from interpleader and might easily require a whole article to itself. Furthermore, the decision has been widely discussed elsewhere.¹⁷ Consequently, only a few observations will be ventured here.

In the first place, there are two kinds of double taxation. In one kind, the same property or person is taxed in two states on two different theories. Thus *X* taxes *A*'s income because he lives in *X*, and *Y* taxes it because he earns it in *Y*; or *X* taxes stock as the home of the decedent and *Y* taxes it as the place of incorporation. In the other kind of double

16. 302 U. S. 292 (1937), *aff'g*, 89 F. (2d) 59 (C. C. A. 1st, 1937), *which rev'd*, Worcester County Trust Co. v. Long, 14 F. Supp 754 (D. Mass. 1936). After the district court decision, certiorari was denied, 299 U. S. 567 (1936); but it was granted after the circuit court of appeals had denied relief. 301 U. S. 678 (1937).

17. See Chafee (1936) 45 YALE L. J. 1161, 1169-1176 (relying on the district court decision); Nash, *And Again Multiple Taxation?* (1938) 26 GEO. L. J. 223; Tweed and Sargent, *Death and Taxes are Certain—But What of Domicile?* (1939) 53 HARV. L. REV. 68; Tannenbaum, *Double Domicile* (1938) 11 SO. CALIF. L. REV. 329; Burchmore, *supra* note 1, (1937) 15 CHI-KENT L. REV. 184; and the following notes and comments in law reviews on various stages of litigation: (1937) 5 U. OF CHI. L. REV. 137; (1936) 15 CHI-KENT L. REV. 41; (1937) 6 FORDHAM L. REV. 470; (1937) 25 GEO. L. J. 760; (1938) 26 GEO. L. J. 1016, 1025; (1936) 49 HARV. L. REV. 1378; (1936) 31 ILL. L. REV. 546; (1938) 23 IOWA L. REV. 430; (1938) 22 MINN. L. REV. 577; (1937) 15 N. Y. U. L. Q. REV. 128; (1937) 85 U. OF PA. L. REV. 844; (1938) 86 U. OF PA. L. REV. 306; (1937) 11 ST. JOHN'S L. REV. 348; (1936) 11 TEMP. L. Q. 103; (1938) 16 TEX. L. REV. 556; (1938) 24 VA. L. REV. 457; (1939) 25 VA. L. REV. 967; (1938) 44 W. VA. L. Q. 393.

taxation, a single theory is applied in both states to tax the same person or property, but the two state governments disagree on a vital issue of fact. The *Worcester County Trust Company* case falls into this class. Both states had the same law, that a death tax is levied only at the decedent's domicile and that a man has only one domicile. The only dispute was, where was that domicile?

It is rather surprising that almost all the attacks on double taxation in the Supreme Court have been directed against the first kind,¹⁸ because the second kind seems much more unjust. There is some sense if one tax is based on ability and another on protection, just as there was some sense in the old English system of plural voting where the citizen could help choose officials wherever he owned property subject to their control. But it is highly unfair for both state governments to tell the taxpayer, "You have to pay only one tax," and then make him pay twice.¹⁹ The injustice of the situation is clearly brought out by the fact that the courts of each state regard the other state as acting unlawfully,²⁰ and yet neither state gives the taxpayer any remedy.

Next, the possible reasons for federal relief can be briefly considered. In the first kind of double taxation, the statute in one state may be attacked on the ground that its theory of taxation violates some provision of the United States Constitution, usually the Fourteenth Amendment. Interpleader does not seem an appropriate remedy here. Mutual exclusiveness is usually absent, for the validity of the tax in one state does not necessarily mean that the tax in the other state is invalid. And the taxpayer can contest one of the tax statutes without having to bring in the officials of the other state.

But when we are concerned with the second type of double taxation, as in the *Worcester County Trust Company* case, the remedial possibilities are quite different. Here the objection is not to the theory of

18. The only exception noted besides the *Worcester County Trust Co.* case itself is *City Bank Farmers Trust Co. v. Schnader*, 291 U. S. 24 (1934), 293 U. S. 112 (1934). Here the law of both states agreed that a death tax on chattels could be imposed only at their permanent situation, and the issue was where that place was. But it took an earlier double taxation case of the first class to force this single rule of law upon these two states. *Frick v. Pennsylvania*, 268 U. S. 473 (1925).

19. The distinction between these two kinds of double taxation resembles that between two kinds of double jeopardy. An analogy to the second type is presented by the attempt to punish a man twice for the same crime, which is constitutionally forbidden. Yet (as in the first type of double taxation) he can be punished twice or more for the same act on different theories. For example, in prohibition days, the single act of selling liquor in a padlocked saloon might lead to several prison sentences,—for a federal crime, a state crime, contempt of a federal injunction and contempt of a state injunction.

20. Thus in the *Dorrance* controversy, the New Jersey courts regarded the Pennsylvania tax unwillingly paid by the estate as illegal and refused to make it an allowable deduction in computing the net value of the estate. *Chafee* (1936) 45 YALE L. J. 1161, 1170, n. 21.

the taxes, but to their doubleness. The activities of one state government seem fair enough when viewed in isolation. It is only when the activities of the two governments are combined, that the injustice becomes obvious. It is like the union of the two ingredients of a Seidlitz powder. Neither state statute can be attacked under the Fourteenth Amendment, for the tax theory common to both statutes is admittedly reasonable. The attack must be directed at the doubleness, due to the absence of any state machinery for confining the taxpayer to the single tax contemplated by the law of both states.

The vital purpose here is to get all the parties into one court with the necessary powers to settle the controversy in that one court. Issues of unconstitutionality are secondary and merely a means to accomplish this purpose of a binding adjudication. Clearly this one court must be a United States court, since no state court possesses nationwide process. Federal jurisdiction may conceivably be obtained by the contention that the doubleness of the tax is so unreasonable as to violate the Fourteenth Amendment. However, if the parties can get into one court in some other way, then the main issue to be decided is not a question of unconstitutionality, but a clear-cut issue of fact under the state law of both states—where is the domicile? This issue seems as appropriate for determination in the second stage of a federal interpleader suit as many other non-constitutional questions of fact which are constantly decided under the Act of 1936, *e.g.*, whether an attempted change of the beneficiary in a life insurance policy was effectively carried out.

This non-constitutional issue may conceivably be brought before a United States court in either two ways: (1) under the diversity of citizenship jurisdiction of the district courts; (2) under the original jurisdiction of the Supreme Court over controversies between the states. Both ways have been tried in recent cases.

The diversity of citizenship jurisdiction,²¹ as implemented by the Interpleader Act of 1936, was invoked in the *Worcester County Trust Company* case. However, it was impossible to avoid constitutional problems, because of the Eleventh Amendment. In order to deprive the tax officials of the cloak of sovereign immunity, the stakeholder had to contend that they were acting outside their constitutional powers. And so the Fourteenth Amendment had to come into the case, after all, though not in the direct manner in which it is involved in double taxation cases of the first type, where the taxation theory of one state is attacked as invalid.

The stakeholder contended that the *Worcester County Trust Company* case fell within the doctrine of *Ex parte Young*,²² under which a federal

21. The cocitizenship between the executor and the Massachusetts tax official was not considered to be a bar by the district court, and would be immaterial under the *Treminis* case, *infra* note 44.

22. 209 U. S. 123 (1908).

injunction suit or other equity suit was permitted against a state official who was threatening action alleged to violate the Fourteenth Amendment. This contention was rejected by the Supreme Court.

It is difficult to determine the proper limits to the doctrine of *Ex parte Young*, because that doctrine is built around a paradox. The suit is said not to be against the state because the acts sought to be enjoined are threatened by a private person; and yet the Fourteenth Amendment cannot be invoked unless the plaintiff is deprived of his liberty or property by a state. For example, negroes could not obtain its protection when they were persecuted in Reconstruction days by the Ku Klux Klan. In short, when the doctrine of *Ex parte Young* is employed, the threatened official action is state action for purposes of the Fourteenth Amendment, and not state action for purposes of the Eleventh Amendment. I have never seen a satisfactory solution of this paradox.²³ When a doctrine is illogical, it is naturally hard to determine its logical limits. The best explanation of the doctrine of *Ex parte Young* seems to me this: the immunity given to state officials by the Eleventh Amendment should not be greater than that possessed by federal officials under the general principles of sovereign immunity. In spite of this amendment, it is necessary to permit federal suits against state officials in order to prevent serious wrongs in violation of other parts of the Constitution, particularly the Fourteenth Amendment. Suits against officials may be the only way to make the Fourteenth Amendment effective under the circumstances. The solution then becomes practical rather than logical. Is the wrong so serious and the emergency so urgent that the United States district court should be permitted to block the normal operation of state machinery? Thus a problem under the Eleventh Amendment imposes on the federal courts the duty of weighing the seriousness of the wrong against the undesirability of interference with proceedings by state officials.

Hence the decision of the Supreme Court in the *Worcester County Trust Company* case that the Eleventh Amendment barred interpleader may rest on either of two grounds: (1) if the estate were ultimately subjected to taxation in both states, the Fourteenth Amendment would not be violated; (2) although actual collection of the two taxes would violate the Fourteenth Amendment, the mere present possibility of such double taxation in the steps thus far taken by the tax officials in submitting the issues to their respective state courts did not constitute such a serious wrong as to warrant the United States in stopping the officials now. On this second view, the decision can be classed with the Supreme

23. See CORWIN, *TWILIGHT OF THE SUPREME COURT* (1934) 83; *Home Tel. & Tel. Co. v. Los Angeles*, 227 U. S. (1913); *Ex parte Virginia*, 100 U. S. 339 (1879); *Isseks, Jurisdiction of the Lower Federal Courts to Enjoin Unauthorized Action of State Officials* (1927) 40 HARV. L. REV. 969.

Court cases denying an injunction against an alleged unconstitutional statute on the ground that the suit is premature.²⁴ The decision would then mean that this sort of double taxation may be unconstitutional, but that interpleader is not the proper remedy. There is language in the opinion to support both explanations, and the final choice between them must await further cases.

Finally, some procedural objections to relief deserve attention. These were raised by the California officials, but expressly left undecided by the Court. In some respects the proceeding differed from ordinary interpleader. (1) The *res* had not been paid into court. This was obviously impossible, because the amount of the tax had not been officially computed in either Massachusetts or California. However, the executor was ready to comply with the alternative requirement of the statute and file a bond for the payment of the tax in whichever state was decided to be the decedent's domicile. (2) Still another difficulty arose. In the ordinary interpleader, the stakeholder is discharged on making the deposit or filing the bond. But here, as counsel for the California officials pointed out, the district court would merely determine whether the executor was liable to be taxed in California or Massachusetts and then leave him to go back to the courts and officials of *that* state to get his discharge. "This," he said, "is not interpleader in its wildest dreams."²⁵ To me the important point is that the executor, after protecting both sides by the bond, stands completely aside from the controversy as to domicile. The estate would naturally prefer the domicile wherever the taxes were lower, but the executor would make no effort to secure such a determination. The proposed procedure finds analogies in other interpleader situations where the stakeholder takes no part in the second stage, but may later be called upon to settle questions between the winning claimant and himself.²⁶ (3) One more objection is that the injunction which is ordinarily issued against the claimants in interpleader cannot be so effective as usual. For example, it would run in terms only against the existing California officials, and if these were replaced by others, those successors would not be bound by the injunction and therefore would not be in contempt if they pressed the California tax proceedings. Still, this difficulty could be easily overcome by a supplemental injunction against the successors, who could be substituted as parties to the suit.²⁷ Furthermore, the in-

24. Examples are *Prentis v. Atlantic Coast Line*, 211 U. S. 210 (1903); *Gilchrist v. Interborough Rapid Transit Co.*, 279 U. S. 159 (1929). See CHAFFEE, *CASES ON EQUITABLE REMEDIES* (1936) 281-284.

25. Extract from the writer's notes of the oral argument in the Supreme Court.

26. See pp. 409-412 *infra*.

27. During the oral argument, the Court cited *Ex parte La Prade*, 289 U. S. 444 (1933), which held that when the term of office of a state attorney general expired after he had been enjoined from enforcing a statute, his successor in office was not bound by the injunction. However, it seems inconceivable that this can be more than a procedural

junction does not seem an indispensable element in interpleader, although it is usual. When the claimants are state officials, a determination of the true domicile by the United States district court might very well end the controversy. The losing state officials would be bound by a sense of public decency to abide by the result without being enjoined.²⁸ Thus a court which took a liberal attitude toward the procedural requirements of interpleader might well have granted relief in the *Worcester County Trust Company* case, if it had not been for the Eleventh Amendment.

In a nation with a unified government, the situation in which estates of decedents are here left remediless would be impossible. Either only one agency would impose death taxes; or else a single court of review would determine domicile as between two local taxing agencies. It is our federal system which creates the possibility of double taxation. Somewhere within that federal system we should be able to find remedies for the frictions which that system creates. The framers of the Constitution took pains to adjust many such frictions, for instance, by the provisions for interstate free trade, for the surrender of fugitive slaves, for the rendition of fugitives from justice; and they set up the United States courts to handle justiciable disputes which cut across state lines. The Interpleader Act of 1936 provided machinery which could have given a remedy for interstate disputes over domicile. Hence, it is disappointing that the Supreme Court felt unable to overcome the obstacles to its use. As Judge Morton said in his dissenting opinion below:

"Considering the recognized defect in our system of taxation which this statute is designed to cure, the example of shocking injustice to which it has led in the *Dorrance* case, which is a reproach to our law, and the constant threat of similar injustice in all cases in which there is a dispute as to domicile, I think this statute should receive a liberal interpretation, and that, on points which are at best rather technical and procedural in character, doubt should be resolved in favor of jurisdiction under this statute, which appears to be the only practicable method of remedying the evil."²⁹

In *Texas v. Florida*,³⁰ another attempt was made to use interpleader for the purpose of avoiding double inheritance taxation by bringing all

obstacle to the doctrine of *Ex parte Young*. If Mr. Young had resigned as attorney general after the injunction in order to evade its operation and been succeeded by Mr. Old surely the court would have been immediately able to issue a fresh injunction against Mr. Old. Even though the state authorities succeed for a time in keeping one jump ahead of the United States courts, the judge must be able to catch up with them eventually or else the Fourteenth Amendment would be flouted.

28. See the quotation from *Texas v. Florida*, p. 390 *infra*.

29. 89 F. (2d) 59, 69 (C. C. A. 1st, 1937).

30. 306 U. S. 398 (1939), noted in (1939) 14 *IND. L. J.* 464; (1939) 24 *IOWA L. REV.* 782; (1939) 45 *W. VA. L. Q.* 375; (1937) 46 *YALE L. J.* 1235; (1939) 121 *A. L. R.* 1200.

the parties to the dispute over domicile into one United States court. This suit was not brought under the Interpleader Act of 1936. The Eleventh Amendment, which had proved an insuperable bar to the use of that statute, was avoided by an entirely different method. One of the states involved in the dispute went directly to the United States Supreme Court and asked it to determine the decedent's domicile by the exercise of the Court's original jurisdiction over cases "in which a State shall be Party." All the states and the representatives of the estate were before the Court. In such a suit, as I have previously pointed out,³¹ the issue does not mainly concern the constitutionality of the double taxation under the Fourteenth Amendment. The issue may be simply a question of fact under state law, *i.e.*, the law of all the states involved. Where is the domicile at which alone the state law imposes the tax? But a new difficulty arises, whether the plaintiff state has a sufficient interest in the prevention of double taxation to give it a cause of action. So long as this state gets its death tax, what does it lose if another state gets paid as well? How is either state concerned in obtaining a binding adjudication as to a single domicile?

In *Texas v. Florida*, the majority of the Court got around this difficulty because of a special factor which will rarely recur. Here, four states (Texas, Florida, New York and Massachusetts) all claimed to be the domicile of the late Colonel E. H. R. Green, son of Hetty Green; and Texas, the plaintiff, alleged that if all four states collected death taxes, there would not be enough property in the estate to go around. Furthermore, Texas would be deprived of its lawful tax, since the decedent's property actually in that state was insufficient to pay the Texas tax. Hence Texas would lose a large revenue unless it was determined that Green's domicile was not in the other three states.

Both the bill and the majority opinion of Mr. Justice Stone stated the suit to be a bill in the nature of interpleader, and the opinion contains a valuable statement about such bills and strict bills of interpleader.³² The necessary independent equitable ground of relief which distinguished this case from a strict bill was evidently the presence of a fund, which would be exhausted if all the claims were enforced. The Court nowhere discussed the odd feature, that interpleader here was not sought by the stakeholder as is usual. Although Chief Justice Doe of New Hampshire allowed a strict bill of interpleader to be initiated by the claimant, and this sensible practice is permitted in the corresponding Scotch action of multiplejoinder, the weight of authority denies the claimant this relief.³³

31. See pp. 384-385 *supra*.

32. 306 U. S. 398, 406-407 (1939).

33. *Sprague v. West*, 127 Mass. 471 (1879); *Hathaway v. Foy*, 40 Mo. 540 (1867); *Browning v. Hilig*, 69 Mo. App. 594 (1897); *Arn v. Arn*, 81 Mo. App. 133 (1899); *Wenstrom Electric Co. v. Bloomer*, 85 Hun. 389 (N. Y. 1895); *Brown v. Arbogast &*

The case at bar might conceivably be differentiated as a bill in the nature of interpleader, although the cases of such a bill cited by Mr. Justice Stone were all filed by the stakeholders. Of course, the executor and next of kin could not have filed this bill in view of *Worcester County Trust Company v. Riley*, so that some state had to initiate the proceedings in order to get a determination in which all parties could be present.

To the argument that interpleader did not lie because the usual injunction against the claimants could not properly be granted here against sovereign states, Mr. Justice Stone made the interesting reply that a declaration of the rights of the claimants may suffice to end the controversy, without an injunction:

"While courts of equity in such suits may and frequently do give incidental relief by injunction to secure the full benefits of the adjudication and to terminate the litigation in a single suit, they are not bound to do so and their adjudication of the conflicting claims is not any the less effective as *res judicata* because not supplemented by injunction. We do not doubt that when the equity powers of the Court have been invoked it has power in its discretion to give such incidental relief by way of injunction as will make its determination the effective means of avoiding risk of loss to any of the parties by reason of the asserted multiple tax liability. But the plenary effect of its decision as *res judicata*, and considerations of convenience in the levying of the tax by the usual state procedure, make it unnecessary and undesirable that the Court should proceed beyond adjudication. The fact that the Court, for reasons of policy or convenience, does not exercise the power which it possesses and which has been traditionally exercised in like cases between private suitors does not deprive the suit of its character as a case or controversy cognizable by the Court in an original suit."⁸⁴

The dissenting opinion of Mr. Justice Frankfurter, in which Mr. Justice Black concurred, thought that the original jurisdiction of the Court should not be exercised to apply the doctrine of "one man, one domicile" when this doctrine was so inappropriate to the facts. (We suggest the possibility of a doctrine of fractional domiciles for migratory millionaires; each state might get a percentage of an annual tax or of a death tax, proportioned to the fraction of a year he resided therein.) Mr. Justice Frankfurter also thought that the possibility of exhaustion of the estate was too slight to serve as the chief basis of

Bastian Co., 162 App. Div. 603, 147 N. Y. Supp. 998 (1914). *Contra*: Webster v. Hall, 60 N. H. 7 (1880). Connecticut has allowed relief under a broad statute. Brown v. Clark, 80 Conn. 419, 68 Atl. 1001 (1908). Cf. Ackerman v. Union & New Haven Trust Co., 90 Conn. 63, 69, 96 Atl. 149, 152 (1915). See also ALA. CODE ANN. (Michie, 1928) § 10390.

34. Texas v. Florida, 306 U. S. 398, 412 (1939).

jurisdiction, especially as the master had now found that Texas was not entitled to any tax and so could lose nothing. He continued:

"To extend the neat procedural device of interpleader to such a situation is another illustration of transferring a remedy from one legal environment to circumstances qualitatively different. To settle the interests of different claimants to a single *res* where these interests turn on narrow and relatively few facts and where conflicting claims cannot have equal validity in experience, is one thing; it is a wholly different thing to bring into court in a single suit all states which even remotely might assert domiciliary claims against a decedent and where one state court might with as much reason as another find domicile within its state."³⁵

In the latest Supreme Court case on double taxation, *Massachusetts v. Missouri*,³⁶ decided on November 6, 1939, the same method of getting before the Court proved unsuccessful, because there was no possibility of exhaustion of the estate. In this case there was no dispute as to the decedent's domicile. Madge Barney Blake undoubtedly lived in Massachusetts. But she had placed the bulk of her property in the hands of Missouri trustees under an *inter vivos* trust, and Missouri was stated to be intending to impose an inheritance tax on this trust estate. The bill of complaint filed by Massachusetts claimed the sole right to tax this property under the reciprocity statutes of both states. The decedent's estate in Massachusetts was so small that it would be exhausted by costs and federal taxes, and hence the Massachusetts tax would have to be paid out of the Missouri trust estate, if paid at all. So Massachusetts sought to sue Missouri and the Missouri trustees in the Supreme Court under its original jurisdiction, alleging that Massachusetts otherwise had no adequate remedy, and praying the Court to adjudge which state had jurisdiction to impose inheritance taxes on the trust estate. (Of course, the Interpleader Act was not involved.) Leave to file the bill was denied by a unanimous Court in an opinion of the Chief Justice. The case is important in many ways, but only its interpleader aspects will be discussed here.

The issues here involved the validity of the taxation theories of the two states. Hence the case belongs to the first type of double taxation set forth above,³⁷ and not to the type represented by *Worcester County Trust Company v. Riley* and *Texas v. Florida*. The Chief Justice pointed out this distinction:

35. *Texas v. Florida*, 306 U. S. 398, 432 (1939).

36. 60 Sup. Ct. 39 (U. S. 1939). Mr. Justice Butler took no part in this case. The report does not mention interpleader, but the resemblances to *Texas v. Florida* lead me to classify this case as an unsuccessful bill in the nature of interpleader.

37. See pp. 383-384 *supra*.

“. . . in *Texas v. Florida* . . . the controlling consideration was that by the law of the several States concerned only a single tax could be laid by a single State, that of the domicile.”³⁸

The nature of the issues in the case at bar made interpleader inappropriate:

“It is not shown that the tax claims of the two States are mutually exclusive. On the contrary, the validity of each claim is wholly independent of that of the other and, in the light of our recent decisions, may constitutionally be pressed by each State without conflict in point of fact or law with the decision of the other.”³⁹

There was no danger of depletion of a fund as in *Texas v. Florida*, for the Missouri property was amply sufficient to pay both taxes. And the Chief Justice intimated that Massachusetts had an adequate remedy to collect its tax by suing the trustees in a Missouri state court, or perhaps in a United States court in Missouri. Hence, since Massachusetts ran no risk of losing any revenue in the event of double taxation, the Commonwealth was suffering no wrong and there was no justiciable controversy between the two states.

Some humble doubts may be ventured about the proposition that a state has no “interest” in getting the proper place for inheritance taxes determined, except when double taxation will make the state lose some money. Shall we say that a state is only a money-making enterprise, “nothing better than a partnership agreement in a trade of pepper or coffee, calico or tobacco, or some other such low concern”?⁴⁰ A state is a government and not a corporation for profit, and one of its greatest functions is to do justice. It is interested not only in taxing, but in taxing justly. Only thus can loyalty of citizens be preserved. Even on a sordid basis, fairness in taxation prevents the resentment of taxpayers which eventually leads to evasion and a loss of revenues. So when a state finds itself in danger of imposing an unfair tax because of the difficulty of protecting the taxpayer from a double burden, and asks help from a court which can solve the dilemma by an adjudication binding all parties, surely it presents no frivolous case. The “interest” of a state in suing should not be limited to pecuniary interests alone.⁴¹

When Massachusetts and Missouri both sought to have the proper place of taxation determined in order to avoid unfairness, they presented an issue of justice worthy of decision by some court. But to say that such controversies between states should always be determined by the United States Supreme Court is another matter. That Court has some-

38. 60 Sup. Ct. 39, 42 (U. S. 1939).

39. *Ibid.*

40. BURKE, REFLECTIONS ON THE FRENCH REVOLUTION (1790).

41. *Georgia v. Tennessee Copper Co.*, 206 U. S. 230 (1907).

thing better to do than survey all the wanderings of migratory millionaires.⁴² Such issues are much more appropriate for a United States district court.

The best hope yet offered for relief from the persistent problem of duplicated inheritance taxes is the intimation at the end of the Chief Justice's opinion that the controversy could be brought before a United States district court in Missouri. There the State of Missouri, if it consented, could become a party. Similarly, the dilemma of double domicile in *Worcester County Trust Company v. Riley* could perhaps have been solved if California had voluntarily begun a federal suit in Boston or if Massachusetts had voluntarily brought such a suit in California. Perhaps the convenience of this procedure will lead states to submit their claims to such a single impartial tribunal.

DIVERSITY OF CITIZENSHIP

Cocitizenship between the stakeholder and one claimant. It frequently happens that a life insurance company or other stakeholder is subjected to conflicting claims by residents of different states, and one of the claimants lives in the state where the stakeholder is incorporated. Federal interpleader is just as badly needed here as when the stakeholder is incorporated in a third state. No state court can give effective relief. However, there has been some doubt whether the absence of complete diversity of citizenship prevented jurisdiction. The Interpleader Acts of 1926 and 1936 required "two or more adverse claimants, citizens of different States," but were silent as to the citizenship of the stakeholder. Still, the legislation can reasonably be construed to allow interpleader, if constitutionally permitted, because the statutory purpose is to protect from double taxation stakeholders who are remediless in state courts. This view was taken by several lower United States courts before and after 1936.⁴³

Fortunately, the power to grant interpleader is now assured by the Supreme Court. In *Treinius v. Sunshine Mining Company*, decided on November 6, 1939,⁴⁴ a Washington mining company had brought interpleader under the 1936 Act in the United States district court in Idaho,

42. See the language of Hughes, C. J., in *Massachusetts v. Missouri*, 60 Sup. Ct. 39, 43 (U. S. 1939).

43. Cases cited in Chafee (1936) 46 YALE L. J. 963, 974, n. 33; *Cramer v. Phoenix Mut. Life Ins. Co.*, 91 F. (2d) 141 (C. C. A. 8th, 1937); *Worcester County Trust Co. v. Long*, 14 F. Supp. 754 (D. Mass. 1936), *rev'd by Supreme Court on other grounds*, 302 U. S. 292 (1937); *Mut. Life Ins. Co. v. Patterson*, 15 F. Supp. 759, 17 F. Supp. 416 (W. D. N. Y. 1936). See also Chafee, *Interpleader in the United States Courts* (1932) 41 YALE L. J. 1134, 1141-1142; Burchmore, *supra* note 1.

44. 60 Sup. Ct. 44 (U. S. 1939), *aff'd*, 99 F. (2d) 651 (C. C. A. 9th, 1938), *which aff'd*, 19 F. Supp. 587 (D. Idaho 1937). Mr. Justice Butler took no part in this case.

against Idaho and Washington claimants, to determine the ownership to 15,299 shares of its stock and to dividends thereon. The disputed stock was half of a block formerly owned by Mrs. Pelkes, who died in 1922. Her will left three-quarters of her property to her second husband, a resident of Washington, and one-quarter to a daughter by a former marriage, Mrs. Mason, who lived in Idaho. However, the widower and his stepdaughter, who were then on good terms, made an agreement to take equally in accordance with the orally expressed wishes of the dead woman; and the bulk of her property was distributed under this agreement and not under the will. The Sunshine stock was then considered to be valueless, so that no clear-cut division was made, and a certificate for the whole block was left in the name of Mr. Pelkes. Subsequently, the mine became a bonanza producer of silver, and Mrs. Mason claimed that she held half the stock under a constructive trust created by the agreement. By the time the Supreme Court had established her claim, the 15,299 shares in dispute were worth over \$150,000, and they have sold for much more than that during the litigation. In 1933, Mr. Pelkes assigned the disputed shares to Miss Treinies, also a citizen of Washington, who, as he asserted, had promised to support him in his old age. Then began a long series of suits, in which the daughter claimed half the shares, while her stepfather and Miss Treinies claimed them all. (1) In 1935 a Washington state court in probate proceedings, in which Mrs. Mason had appeared, upheld Pelkes' ownership in full.⁴⁵ (2) In 1936, in a proceeding where all three claimants and the mining company were parties and which was begun before the Washington probate suit, the Idaho Supreme Court held that the Washington judgment was void for lack of jurisdiction over the subject-matter, and awarded the disputed 15,299 shares to Mrs. Mason.⁴⁶ A final decree to that effect was then entered by the lower state court. Each claimant thus had a judgment on his home grounds. (3) The mining company, faced with these inconsistent judgments and a new Washington state suit to have the Idaho decree declared void for lack of jurisdiction,⁴⁷ decided it had to do something to protect itself. So it interpleaded Pelkes, Miss Treinies and Mrs. Mason under the Act of 1936, and got relief. The jurisdictional objection, that the stakeholder and the Washington claimants were cocitizens,

45. Mrs. Mason applied to the Supreme Court of Washington for a writ of prohibition, on the ground that the probate court could not determine rights to the stock under the agreement. The writ was refused.

46. *Mason v. Pelkes*, 57 Idaho 10, 59 P. (2d) 1087 (July 23, 1936), *cert. denied*, 299 U. S. 615 (1937). Certiorari was not requested to the lower Idaho court, after its final decree on Aug. 18, 1936.

47. This was filed, after the Idaho Supreme Court decision, by Pelkes and Miss Treinies against Mrs. Mason and the mining company to quiet title to all the stock. Further proceedings in this suit were enjoined in the federal interpleader.

was not pleaded or discussed in either court below, but the Supreme Court raised it on its own motion.

Jurisdiction in spite of the partial cocitizenship may conceivably be sustained on either of two grounds.

First, the broad ground is tenable, that complete diversity of citizenship is not required by Article III, Section 2 of the Constitution: "The judicial Power shall extend . . . to Controversies . . . between Citizens of different States." This clause may be satisfied when there is a genuine controversy between two claimants who reside in different states, even though the litigation also involves another controversy between the stakeholder and the cocitizen claimant. Although in many cases not involving interpleader the Supreme Court has denied jurisdiction unless all the parties on one side live in different states from all those on the other side,⁴⁸ the Court drew this requirement of complete diversity of citizenship from the language of the statutes, and not from the Constitution. These cases merely held that Congress had not as yet permitted federal suits where there was partial cocitizenship. They did not hold that Congress could not constitutionally permit such suits if it wished, for example, by the Interpleader Acts.

The objection may be urged that the wording of the statutes under which the Supreme Court has required complete diversity of citizenship is exactly the same as the wording of Article III, Section 2 of the Constitution. If these words in the statute demand complete diversity of citizenship, do not they also demand it when they occur in the Constitution? The best reply to this objection is, that constitutional language may properly be given a wider interpretation than statutory language. Since the Constitution has a broader purpose than a statute and is intended to last for a much longer time, its wording should possess a flexibility which is not needed in a statute. Such is the view of Mr. Justice Holmes:

"But 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 vary greatly in color and content according to the circumstances and the time in which it is used."⁴⁹

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

49. *Towne v. Eisner*, 245 U. S. 418, 425. See Holmes's dissenting opinion in *Eisner v. Macomber*, 252 U. S. 189, 219 (1920); Brandeis, J., dissenting in the same case at 234; "*Towne v. Eisner* . . . involved a question not of constitutional power but of statutory construction . . ." However, Pitney, J., for the majority, refused to admit the distinction in the particular situation. *Id.* at 203.

Holmes, J., said in *Lamar v. United States*, 240 U. S. 60, 65 (1916): "The question is in what sense the word 'officer' is used in the criminal Code [whether it includes impersonating a Congressman] . . . The same words may have different meanings in dif-

An additional argument for the position that partial cocitizenship is permitted by the Constitution is found in the fact that the Supreme Court has frequently sanctioned it in federal litigation under the judge-made doctrines of separable controversy⁵⁰ and the ancillary jurisdiction.⁵¹ If in these complex cases where one suit includes several controversies and where justice and convenience require that the presence of two parties from the same state in one of the controversies shall not prevent the settlement of the entire litigation, the United States courts are enabled to go ahead through judicial law-making, why can they not also receive the same power to promote convenience and justice in interpleader cases from Congressional legislation? Partial cocitizenship ought to be just as constitutional under a statute as under a doctrine declared by a court.

Second, a narrow ground for jurisdiction in strict interpleader, despite cocitizenship between stakeholder and one claimant, is, that the only real controversy is that between the claimants, which is fought out in the second stage after the stakeholder has dropped out. Since the stakeholder admits liability to one claimant or other, he may be regarded as a nominal party to the litigation, and it does not matter where he lives.

In the *Treinies* case, jurisdiction was squarely placed by Mr. Justice Reed on this narrow ground. He expressly refused to decide whether partial cocitizenship in an actual controversy was constitutionally permitted:

"Without ruling as to possible limitations of the constitutional grant, it is held by this Court that the statutory language of the respective judiciary acts forbids suits in the federal courts unless all the parties on one side are of citizenship diverse to those on the other side. For the determination of the validity of the Interpleader Act we need not decide whether the words of the Constitution, 'Controversies . . . between citizens of different States,' have a different meaning from that given by judicial construction to similar words in the Judiciary Act."⁵²

Having thus left the broad question open, he went ahead to state the narrow ground, which is appropriate to a strict bill of interpleader:

"Even though the constitutional language limits the judicial power to controversies wholly between citizens of different states, that requirement is satisfied here.

ferent parts of the same act and of course words may be used in a statute in a different sense from that in which they are used in the Constitution."

See also Rugg, C. J., in *Tax Comm'r v. Putnam*, 227 Mass. 522, 533, 116 N. E. 904, 909 (1917).

50. *Barney v. Latham*, 103 U. S. 205 (1881). *See* Burchmore, *supra* note 1, at 172-177; (1936) 36 COL. L. REV. 794.

51. *Supreme Tribe of Ben-Hur v. Cauble*, 255 U. S. 356 (1921); *Chafee* (1932) 41 YALE L. J. 1134, 1145.

52. *Treinies v. Sunshine Mining Co.*, 60 Sup. Ct. 44, 47 (U. S. 1939).

"This is for the reason that there is a real controversy between the adverse claimants. They are brought into the court by the complainant stakeholder who simultaneously deposits the money or property, due and involved in the dispute into the registry of the court. This was done in this case. The act provides that the 'court shall hear and determine the cause and shall discharge the complainant from further liability.' Such deposit and discharge effectually demonstrates the applicant's disinterestedness as between the claimants and as to the property in dispute, as essential in interpleaders. The complainant is a proper party for the determination of the controversy between the adverse claimants, citizens of different states. Their controversy could have been settled by litigation between them in the federal courts."⁵³

This decision is very gratifying because it removes an undesirable obstacle to strict bills of interpleader.

Sooner or later, the United States courts will face the question whether cocitizenship between stakeholder and one claimant is also permitted in bills in the nature of interpleader, which are expressly authorized by the Act of 1936. It will sometimes happen that the stakeholder disputes the amount claimed, or denies liability altogether because of an equitable defense like fraud, or asserts an interest in a fund in his possession which is insufficient to meet the demands of all the claimants. Suppose that there is the requisite diversity of citizenship among the claimants, so that such a stakeholder who lived in a different state from any of them could maintain his action. Shall he be denied relief if he happens to be a cocitizen of one claimant? Such a result would be unfortunate, because no relief can be obtained in any state court and the stakeholder needs the help of the United States courts just as badly as if there were no partial cocitizenship.

This problem was expressly left open by Mr. Justice Reed.⁵⁴ When it does arise, the narrow ground used in the *Treimies* case will not suffice to give jurisdiction. The stakeholder can no longer be regarded as a nominal party. His controversy with the cocitizen claimant is as vigorous as the controversy between the claimants. Therefore, federal relief must rest on the broad ground above, that the Constitution permits Congress to authorize United States courts to decide a controversy between cocitizens in connection with another controversy between citizens of different states. Congress has apparently sanctioned this partial cocitizenship in the bills in the nature of interpleader, without expressly

53. *Id.* at 47-48. Mr. Justice Reed relied on the doctrine of separable controversy, which was applied to a stakeholder in *Salem Co. v. Manufacturers' Finance Co.*, 264 U. S. 182, 189 (1924).

54. *Treimies v. Sunshine Mining Co.*, 60 Sup. Ct. 44, 48, n. 11 (U. S. 1939): "Diversity requirements for federal equity jurisdiction to avoid a multiplicity of suits from diverse claimants with claims contested by the debtor is [are] not involved."

mentioning the point, because the same statutory language which the *Treimies* case construed to permit strict interpleader against a cocitizen claimant applies equally well to bills in the nature of interpleader. The only serious question is whether this statutory authorization is constitutional. Inasmuch as federal relief is badly needed and the Supreme Court itself has allowed partial cocitizenship to secure justice in other complex situations,⁵⁵ it is much to be hoped that the *Treimies* case will be extended to uphold jurisdiction here.⁵⁶

Conflicting state judgments. Before we take up two other diversity problems left undecided by the *Treimies* case, something must be said about an important and entirely different point, which was discussed by Mr. Justice Reed. Which was binding in the federal interpleader — the Washington judgment or the Idaho decree? Since federal interpleader seems an admirable way out of the dilemma caused by conflicting judgments in different states and is likely to be employed again for that purpose, the matter demands attention here.

Court No. 1 (Washington) awarded the disputed shares to the Washington claimant. Then Court No. 2 (Idaho) awarded them to the Idaho claimant. Now Court No. 3 (federal) has to decide whether the first winner or the second prevails. The claimants had appeared in both state courts so that only jurisdiction over the subject-matter can be questioned. Which judgment should the United States court follow? Should it apply the familiar doctrine of first come first served ("*prior tempore, potior jure*")? Or does some other rule govern, for instance, "Second thoughts are best?" Furthermore, if Court No. 1 (Washington) actually had jurisdiction of the controversy,⁵⁷ then Court No. 2 (Idaho) was wrong in refusing full faith and credit to the Washington judgment. Is this Idaho judgment, even though erroneous, entitled to full faith and credit from the United States court? That is what Mr. Justice Reed held. He

55. See notes 50 and 51 *supra*.

56. See on this point, Chafee (1936) 45 YALE L. J. 963, 975-976; Cleary, *supra* note 1, at 1020-1021.

57. Although the Supreme Court refused to review the Idaho decree by collateral attack, it seems likely that this decree would have been set aside by the court if it had been attacked directly through a grant of certiorari to the lower Idaho state court. Since the highest court in Washington, by refusing prohibition, had upheld the jurisdiction of the probate court over the subject-matter and since all claimants appeared in this Washington jurisdictional contest, the Idaho courts seemed bound to recognize the Washington judgment, under *Stoll v. Gottlieb*, 305 U. S. 165 (1938). On the other hand, one wonders whether the Washington courts reached a sound result. It was odd for a probate court to pass on rights under an *inter vivos* agreement disconnected with the executor's duties. And on the merits, the Washington judgment seems doubtful in awarding all the stock to the widower when his stepdaughter was given a quarter under the will and her case for a half under the agreement looks fair. So perhaps, although both sets of state courts erred, the right claimant won in the end.

refused to reconsider whether the Washington court had jurisdiction, because this question had already been decided in the negative by the Idaho court. Hence, the later Idaho decree in favor of the daughter was *res judicata* in the federal interpleader.

"This is true even though the question of the Washington jurisdiction had been actually litigated and decided in favor of Pelkes in the Washington proceedings. If decided erroneously in the Idaho proceedings, the right to review that error was in those (the Idaho) proceedings. . . . The power of the Idaho court to examine into the jurisdiction of the Washington court is beyond question. Even where the decision against the validity of the original judgment is erroneous, it is a valid exercise of judicial power by the second court.

"One trial of an issue is enough. 'The principles of *res judicata* apply to questions of jurisdiction as well as to other issues,' as well to jurisdiction of the subject matter as of the parties."⁵⁸

So far as can be ascertained, this is the first decision on the precise point, that when a jurisdictional issue is contested between the parties in one court, another court is bound by a holding in the *negative*. Several cases have taken the converse position, giving the effect of *res judicata* to a contested jurisdictional decision in the *affirmative*.⁵⁹ Thus the triple play of the *Treinies* case went the other way around in *Bidwell v. Bidwell*.⁶⁰ There Court No. 2 held that Court No. 1 had jurisdiction; and hence Court No. 3 felt bound to apply the judgment of Court No. 1, although its jurisdiction would have been considered doubtful by Court No. 3, if that issue had been still open for relitigation. (1) The husband got an absolute divorce in North Dakota, where the wife appeared. (2) The wife sued for divorce in Massachusetts, contending that the North Dakota divorce was void since neither party had a bona fide domicile there. The husband contested and won; Massachusetts recognized the North Dakota divorce and held that the parties were no longer married. (3) Thereafter wife sued the husband for support in North Carolina, alleging desertion. He set up the two prior decrees. The wife again tried to question the validity of the North Dakota divorce. The North Carolina court decided in the husband's favor, holding that, even though it might not recognize the North Dakota divorce *per se*, it was nevertheless bound by the Massachusetts decree. Consequently, questions of domicile or fraud in North Dakota were no longer open. The same principle, that it is the latest decision between the parties which is *res judicata*, was applied to a non-jurisdictional issue in *Donald v. J. White Lumber*

58. *Treinies v. Sunshine Mining Co.*, 60 Sup. Ct. 44, 50-51 (U. S. 1939).

59. See Comment (1934) 47 HARV. L. REV. 525; (1939) 18 ORE. L. REV. 326.

60. 139 N. C. 402, 52 S. E. 55 (1905), noted in (1905) 2 L. R. A. N. S. 325.

Company, where Judge Bryan said: "Where there are two conflicting judgments, the latest in point of time is the one which controls."⁶¹

The doctrine that contested decisions upholding jurisdiction are binding on the parties has been carried even farther in recent Supreme Court cases. A court has been allowed to pass conclusively on its own jurisdiction, although this looks like raising one's self by his bootstraps. In *Baldwin v. Traveling Men's Association*,⁶² the plaintiff obtained judgment in a United States court in Missouri against an Iowa corporation, which had appeared specially and unsuccessfully sought to deny personal jurisdiction for want of service on any authorized agent. The plaintiff then sued the corporation on the judgment in the United States court in Iowa, which held for the corporation because it had neither appeared generally in Missouri nor been properly served there. This decision was reversed by the Supreme Court, on the ground that the jurisdictional issue had been settled affirmatively in the first suit. The public policy which favors an end of litigation applies to decisions on jurisdiction as on other matters. In *Davis v. Davis*,⁶³ a Virginia divorce where both spouses appeared was held binding on a court in the District of Columbia where the couple had formerly had their home, although that court found that neither spouse had a real Virginia domicile. Mr. Justice Butler said that when Virginia decided *inter partes* that the husband lived there, that ended the matter. This is an extreme application of the principle of *res judicata*, because it obviously facilitates collusive divorces. In *Stoll v. Gottlieb*,⁶⁴ the same principle was applied to jurisdiction over the subject-matter. A bankruptcy court with all the parties before it had held that it had power to release a non-bankrupt guarantor of bonds issued by the bankrupt corporation, and this release was decided by the Supreme Court to be a good defense for the guarantor when sued by a bondholder in a state court. And yet Mr. Justice Reed, who wrote the opinion, was by no means ready to say that bankruptcy courts have jurisdiction to terminate the obligations of solvent persons.

The *Treimies* case differs from the decisions just discussed. Those cases would have made the Idaho decree conclusive in the interpleader if that

61. 68 F. (2d) 441, 442 (C. C. A. 5th, 1934).

62. 283 U. S. 522 (1931).

63. 305 U. S. 32 (1938), discussed in many law reviews. Was the government of the District of Columbia (the probable matrimonial domicile) bound by the Virginia decree as to Virginia's jurisdiction *in rem*? This government was not represented in the divorce proceedings. Perhaps the decision will start an American movement for a king's proctor to go into other states and contest migratory divorces.

64. 305 U. S. 165 (1938), discussed in many law reviews. Other cases treating affirmative holdings of jurisdiction as *res judicata* are: *American Surety Co. v. Baldwin*, 287 U. S. 156 (1932); *Adam v. Saenger*, 303 U. S. 59 (1938); *Hall v. Wilder Mfg. Co.*, 293 S. W. 760 (Mo. 1927), noted in (1927) 52 A. L. R. 740; *Harjie v. Anderson*, 133 Wash. 506 (1925), noted in (1925) 44 A. L. R. 457. *Contra*: *Jones, Inc. v. Toronto Gen. Ins. Co.*, [1933] 2 D. L. R. 660 (three courts).

decree had upheld the jurisdiction of the Washington court, and the widower claimant had won. The *Treinies* case held it conclusive when it denied Washington jurisdiction. Yet this distinction was wisely ignored by the Supreme Court. The rule ought to work both ways. If an Idaho decision for jurisdiction shut out the daughter, an Idaho decision against jurisdiction ought to shut out her stepfather. Otherwise he could say: "Heads I win, tails you lose."

Of course, there is a certain humor in the application of the principle that jurisdiction ought not to be relitigated so as to enforce the judgment of the Idaho court, which had itself flagrantly violated that principle. Mr. Justice Reed gets out of this paradox by saying that the Supreme Court should have been asked to review the refusal of the Idaho court to give full faith and credit to the Washington judgment.⁶⁵ This suggestion creates an interesting practical situation. Since erroneous decisions of one state court denying jurisdiction to another state court are henceforth to be final unless immediately reviewed, it seems only fair that *certiorari* should be rather freely granted to ascertain whether such decisions are valid under the full faith and credit clause. Consequently, the *Treinies* case may result in a marked increase of Supreme Court decisions about that clause.

Some claimants cocitizens. The *Treinies* case left open two problems about cocitizenship among the claimants. First comes the question of partial diversity of citizenship among three or more claimants. Assume that C-1 and C-2 reside in state X and C-3 resides in state Y. If the two cocitizen claimants share the same interest, like Miss *Treinies* and the widower, there is no difficulty; but suppose that they are opposed to each other and also to C-3. Is federal interpleader possible, or must there be a different state for each adverse claimant? Relief is badly needed, since no state court can reach all three claimants. A previous Article urged that there was sufficient diversity of citizenship to satisfy the Interpleader Acts, and several United States courts have so held.⁶⁶ Some

65. In fact a request was actually made for *certiorari* to the Supreme Court of Idaho, and denied. *Pelkes v. Mason*, 299 U. S. 615 (1937). Mr. Justice Reed disposes of this point by saying that no *certiorari* was sought after the subsequent final decree of the Idaho lower court, on new findings of fact and conclusions of law, after remittitur from the Idaho Supreme Court. This indicates that the previous refusal of *certiorari* may have been based on the prematurity of the petition. Even if it had been seasonably brought after the lower court decree, possibly the importance of the controversy would not have been so apparent as it became after the federal interpleader suit was heard.

66. Cases cited in Chafee (1936) 45 *YALE L. J.* 961, 975, n. 37; *Fort Atkinson Loan & Inv. Co. v. Merchandise Bank & T. Co.*, 89 F. (2d) 942 (C. C. A. 7th, 1937); *Cramer v. Phoenix Mut. Life Ins. Co.*, 91 F. (2d) 141 (C. C. A. 8th, 1937); *Roberts v. Metropolitan Life Ins. Co.*, 94 F. (2d) 277 (C. C. A. 7th, 1938); *Standard Surety & Cas. Co. v. Baker*, 105 F. (2d) 578 (C. C. A. 8th, 1939); *Railway Express Agency v. Jones*,

of the reasoning in the *Treinies* case that the real controversy is in the second stage leans against jurisdiction, because two cocitizens are actively participating in that controversy. On the other hand, the existence of jurisdiction seems to be implied by the Supreme Court in *Dugas v. American Surety Company*.⁶⁷ There, several adverse claimants to the fund lived in Louisiana, and presumably some of the other claimants belonged in the same outside state. Yet the Supreme Court enforced the interpleader decree without question.

All claimants cocitizens. A much more difficult problem arises when both claimants reside in the same state, and the stakeholder in a different state. Of course suit cannot lie under the Interpleader Act, because the claimants are not "citizens of different States," but may they be interpleaded under the general diversity jurisdiction of the United States courts? This problem was discussed in a previous Article,⁶⁸ citing cases in lower United States courts which allowed interpleader. Several cases since 1936 granted relief and cast fresh light on the problem.⁶⁹ It was expressly left open by Mr. Justice Reed in the *Treinies* case:

"We do not determine whether the ruling here is inconsistent with the conclusion in those cases where jurisdiction was rested on diversity of citizenship between the applicant and cocitizens who are claimants."⁷⁰

106 F. (2d) 341 (C. C. A. 7th, 1939); *Metropolitan Life Ins. Co. v. Richardson*, 27 F. Supp. 791 (W. D. La. 1938).

The only recent judicial discussion is in the report of the *Cramer* case in the district court. *Phoenix Mut. Life Ins. Co. v. Lafferty*, 16 F. Supp. 740 (1936). Burchmore, *supra* note 1, at 170, suggests that the Interpleader Act of 1936 expressly sanctions jurisdiction, since paragraph (b) puts the venue in the district of "one or more of such claimants" thus implying that two or more claimants may live in the same state. In my opinion not much stress can be laid on this point because the statute might conceivably refer to the situation where the two cocitizens are asserting the same interest, which is clearly permitted. See Chafee (1936) 45 YALE L. J. 961, 974, n. 35.

67. 300 U. S. 414 (1937), stated in full *infra* pp. 414-417. Although the claimants made no objection to jurisdiction, the Supreme Court might have raised the point on its own motion as in the *Treinies* case. *Quaere*, does the doctrine that a jurisdictional issue cannot be relitigated apply to the unappealed interpleader decree in the *Dugas* case? Does it include (a) federal diversity jurisdiction, and (b) cases where jurisdiction was not actively contested by the parties, but merely assumed by them?

68. Chafee (1936) 45 YALE L. J. 1161, 1167-1169.

69. These are cited *supra* note 5, 1st par. For recent discussion of the question, see Burchmore, *supra* note 1, at 178-181; (1938) 26 GEO. L. J. 1017, 1020; Comment (1937) 51 HARV. L. REV. 168.

An analogous case, in which interpleader was granted against two claimants although one of them could not have maintained an action against the other, is *De La Rue v. Herner, Peron & Stockwell, Ltd.* [1936] 2 K. B. 164 (C. A.), noted in (1936) 10 AUST. L. J. 279 and in (1936) 36 COL. L. REV. 1174.

70. *Treinies v. Sunshine Mining Co.*, 60 Sup. Ct. 44, 48, n. 17 (U. S. 1939), citing lower court cases which granted relief.

The problem divides itself into two parts. *First*, is the Act of 1936 exclusive, abolishing all possibility of federal interpleader except when the stakeholder complies with the statutory requisites for relief? A strong argument to this effect was made by Judge Yankwich in the Southern District of California:

"An interpretation which would, as the statute stands now, allow one form of interpleader under general equity principles based upon diversity of citizenship as between the plaintiff and the defendant, and another form under the statute, in cases involving diversity of citizenship of claimants, would give us two kinds of bills in interpleader; one, dependent upon diversity of citizenship as between plaintiffs and defendants with the jurisdictional minimum of \$3,000, and another dependent upon diversity of citizenship between claimants, with a jurisdictional minimum of \$500. I cannot conceive that the Congress, by enlarging the interpleader statute, has sought to create such a situation. Rather do I believe that they intended to cover the entire field by broadening the scope of what had previously been a statute of limited scope for the benefit of insurance companies only. So doing they viewed the citizenship or alienage of the stakeholder as entirely immaterial, and his interest in the controversy as that of a nominal party only and grounded jurisdiction upon diversity of citizenship of the real parties in interest—the claimants."⁷¹

But jurisdiction was upheld in an even more persuasive argument by Circuit Judge Evans:

"Its [the insurance company's] position is grounded upon the assertion that the ancient remedy of interpleader available before the interpleader statute is still efficacious . . . not having been abrogated by [the Interpleader Act].

"It must be admitted that there is force in appellant's [the claimant's] contention that the interpleader statutes are in *pari materia* and that as to them the maxim *generalia specialibus non derogant* may be appropriately invoked. All rules of construction relative in their importance, however, are helpful only in ascertaining legislative intent. To be helpful as a guide the two statutes in *pari materia* must conflict, overlap or disclose ambiguity. We must not overlook the fact that we are here dealing with remedial statutes, and we should therefore hold, if possible, that one supplements rather than supplants the other. The new legislation filled a need not met by the older act. We are therefore convinced that the views which express the Congressional intention should be adopted. In fact we cannot

71. *Eagle, Star & British Dominions v. Tadlock*, 14 F. Supp. 933, 940 (S. D. Cal. 1936), *superseded on this point by*, *Security Trust & Savings Bank v. Walsh*, 91 F. (2d) 481, 481-483 (C. C. A. 9th, 1937). Also *contra* are: *Mallors v. Equitable Life Ass. Soc.*, 87 F. (2d) 233 (C. C. A. 7th, 1936); *Penn Mut. Life Ins. Co. v. Meguire*, 13 F. Supp. 967 (W. D. Ky. 1936).

understand the purpose of the later legislation, if it merely limited and curtailed existing remedies."⁷²

It is to be hoped that this view that the Interpleader Act is not exclusive will continue to prevail, regardless of the way in which the Supreme Court handles the special situation of complete cocitizenship among the claimants.

Second, if the old general federal jurisdiction over interpleader has survived the Interpleader Acts, as previously argued, may it be invoked when all the claimants are citizens of the same state? For strict interpleader, the argument used by Mr. Justice Reed in the *Treinic* case indicates that this question will be answered by the Supreme Court in the negative. The argument that the real controversy is between the claimants and that the stakeholder is only a nominal party works *for* relief, when there is cocitizenship between the stakeholder and one claimant, but it works *against* relief when the claimants are all cocitizens. Jurisdiction, if it here exists, must rest on the fact that the stakeholder resides in a different state from that of all the claimants, and this diversity seems purely formal if it accompanies no real controversy, and the stakeholder's presence in court is merely incidental. In addition, we have the practical argument against federal relief, that it is not really needed, because the stakeholder can interplead all the claimants in their own state courts.

Against this view it may be urged that the original purpose of the diversity jurisdiction to avoid local prejudice applies here, for the hostility of a state court towards an out-of-state stakeholder may bring about a refusal of interpleader on more or less technical grounds. Also, some federal courts have contended that the stakeholder is more than a nominal party, since if interpleader is denied and he is sued by claimants in two separate actions at law, he will then have to put up a vigorous defense twice over. Judge Evans stressed this point in the *Mallors* case:

"Appellant [a claimant] argues that it was never intended that an interpleader suit should become the instrumentality whereby residents of the same state might be forced to litigate their civil controversies in the Federal court. This criticism is on the assumption that the insurance company is not a real party to the litigation. But such assumption is unfounded. It is true, the insurance company concedes a liability for the full amount due upon its contracts. It does not, however, concede liability to each [both?] of the defendants for the full amount. Appellant asserts a liability on the part of the insurance company to him of the entire sum of \$77,232.88. Likewise, coappellees claim a liability on the part of the insurance company to

72. *Mallors v. Equitable Life Ass. Soc.*, 87 F. (2d) 233, 235 (C. C. A. 7th, 1936).

them for a like sum. Inasmuch as it seeks to avoid a double liability, the insurance company is a real party in interest.

"Like many another law suit, when the pleadings are settled and the trial is over, some of the controverted issues cease to be controverted. So here, the mere fact that the court will ultimately limit the insurance company's liability in this interpleader suit to \$77,232.88 does not change the fact that until this question is settled, the company is subject to claims and to litigation for a sum aggregating \$154,465.76. As a real adverse party to the beneficiaries named in the policies and to those who assert that they are beneficiaries, the insurance company is permitted to bring this suit in the Federal court upon a showing that its domicile is New York, and the domicile of all the claimants is Illinois.

"Subsequent disposition of some of the issues by the court before judgment cannot oust the Federal court of jurisdiction any more than a change of residence of one or more of the parties after suit is begun in the Federal court may accomplish such a result."⁷³

Finally, if the broad ground which I have suggested for the *Treimies* case (that the Constitution does not require complete diversity of citizenship) should later be adopted, this may permit interpleader against cocitizen claimants. Thus much can be said on both sides of this question, and its eventual decision by the Supreme Court will be awaited with interest.

Whatever the fate of strict bills of interpleader of this type, it seems pretty clear that a bill in the nature of interpleader against cocitizen claimants lies whenever the stakeholder disputes liability or has some other serious interest in the *res*. In that event, there is a real controversy between citizens of different states, stakeholder versus claimants. For example, a life insurance company, which asserts that the policy was obtained by fraud, can seek cancellation in a United States court, even though two citizens of the same state are contesting which is the beneficiary.⁷⁴ Even if the insurance company loses on the issue of fraud, it ought to be able to have the issue of ownership decided.

If the stakeholder who seeks a strict bill of interpleader against two citizens of a different state is shut out at the front door, he may be able to get in at the back door, by interpleading defensively. Suppose *C-1* and *C-2*, citizens of state *X*, have conflicting claims against *A*, a citizen of state *Y*. *C-1* sues *A* in a state court of *X* for more than \$3,000. *A* removes to the United States court on account of diversity of citizenship, and then files an equitable defense interpleading *C-2*. This method of bringing in a cocitizen claimant was allowed by the Supreme Court in

73. See note 72 *supra*.

74. *Rosenthal v. New York Life Ins. Co.*, 94 F. (2d) 675, 99 F. (2d) 578 (C. C. A. 8th, 1938). See other cases cited *supra* note 5, 1st par.

*Liberty Oil Company v. Condon National Bank.*⁷⁵ Since that decision, defensive interpleader has been facilitated by Rule 22.⁷⁶

ALIENS

Aliens are not mentioned in the Interpleader Act, but some interesting problems are suggested by two recent cases. Article III, Section 2, of the Constitution reads: "The Judicial Power shall extend . . . to controversies . . . between a State, or the Citizens thereof, and foreign . . . Citizens or Subjects."

1. *F* is an alien stakeholder; the claimants *C-1* and *C-2* are citizens of different states. Each claims more than \$3,000. *F* should be able to interplead under the Act of 1936, which makes no requirement about the citizenship or nationality of the stakeholder. No cases have been found.

2. If, however, *C-1* and *C-2* are citizens of the same state, *F* cannot interplead under the statute, because the requisite diversity of citizenship among the claimants is lacking. Does the general federal jurisdiction over controversies between aliens and citizens apply? The problem is substantially the same as when interpleader against cocitizen claimants is sought by a citizen of another state. The only case found, *Security Trust & Savings Bank v. Walsh*,⁷⁷ allowed the alien to interplead.

3. *F*, an alien residing in Maryland, has brought an action for damages exceeding \$3,000 in the United States District Court in Maryland against a Connecticut insurance company, *A*, over which the court has personal jurisdiction. The proceeds of the policy are also claimed by *C-2*, a New Yorker who can be personally served in Maryland. Can *A* maintain a federal bill of interpleader in Maryland against *F* and *C-2*? Not under the 1936 Act, which requires the two claimants to be "citizens of different States." But the bill seems to fall under the jurisdiction over controversies with an alien. If the second stage of an interpleader be regarded

75. 260 U. S. 235 (1922), discussed in Chafee (1932) 42 YALE L. J. 41, 50.

76. Quoted pp. 379-380 *supra*.

Defensive interpleader in actions at law. This relief was expressly authorized by Congress in paragraph (e) of the Interpleader Act of 1936. See Chafee (1936) 45 YALE L. J. at 988; Burchmore, *supra* note 1, at 180. The only case noted where such relief was given because of diversity of citizenship between the claimants is *Railway Express Agency v. Jones*, 106 F. (2d) 341 (C. C. A. 7th, 1939), discussed pp. 381-382 *supra*. Defensive interpleader against cocitizens was granted in *Laws v. New York Life Ins. Co.*, 81 F. (2d) 841, 82 F. (2d) 811 (C. C. A. 5th, 1936); *Century Ins. Co., Ltd. v. First Nat. Bank*, 102 F. (2d) 726 (C. C. A. 5th, 1939) (citing Rule 22); *First Nat. Bank v. Baker*, 16 F. Supp. 869 (W. D. La. 1936). It was denied in an action at law brought under a federal statute. *United States to Use of Deacon Bros., Inc. v. Starrett Bros. & Eken, Inc.*, 18 F. Supp. 671 (E. D. Pa. 1937).

77. 91 F. (2d) 481 (C. C. A. 9th, 1937). Compare the discussion pp. 402-406 *supra*.

as the real controversy, as Mr. Justice Reed thought in the *Treanics* case,⁷⁸ then an alien is fighting a citizen of New York. However, if the line-up of parties in the first stage is material, as was held in the *Walsh* case in Problem 2 above, then a citizen of Maryland as stakeholder is on one side, and on the other side are a citizen of New York and an alien. That seems to be diversity enough. Two objections may be made: (1) if the Act of 1936 covers the whole field of federal interpleader, no relief can be given here; but this contention has already been rejected in numerous cases;⁷⁹ (2) there is some authority in non-interpleader cases that federal jurisdiction is lacking when an alien and a citizen are aligned against a citizen of another state. For example, although a Maryland citizen can maintain a federal tort action against two aliens as joint wrongdoers, it is questioned whether such an action lies against one alien and a New Yorker. In short, it is contended that the parties on one side must be either all aliens, or else all citizens of different states from the plaintiff. This view is unnecessarily rigid. The Constitution and the Judicial Code seem to be satisfied so long as two citizens of the same state are not present on both sides of the controversy. Hence the weight of authority in non-interpleader cases favors jurisdiction.⁸⁰ By analogy, although no cases have been found, the interpleader bill should lie when service can be obtained in Maryland on both claimants.

4. Suppose, however, that the New York claimant *C-2* cannot be personally served in Maryland and *F* cannot be served in New York. This would prevent the Maryland stakeholder from interpleading by an original federal bill in either Maryland or New York. But another remedy is conceivably open to him. The stakeholder may perhaps interplead defensively in the pending federal action at law in Maryland, and bring in the New York claimant by serving him in New York. This United States court in Maryland now seems to have personal jurisdiction over both claimants, under the Interpleader Act of 1936. Paragraph (2) of that statute permits the defendant in an action at law "to set up by way of equitable defense . . . any matter which would entitle such person . . . to file an original or ancillary bill of interpleader . . . against the plaintiff . . . and one or more other adverse claimants, under [the Interpleader Act] or any other provision of the Judicial Code and the Rules of Court made pursuant thereto" (including Rule 22); and confers on the court in which such defense is interposed the power of nationwide service of process. Inasmuch as the discussion of Problem 3 has shown that an original bill of interpleader would lie under general

78. See note 44 *supra*.

79. See pp. 402-404 *supra*.

80. ROSE, FEDERAL JURISDICTION AND PROCEDURE (4th ed. 1931) §253; the opposite view is expressed in DOBIE, HANDBOOK OF FEDERAL JURISDICTION AND PROCEDURE (1923) 207.

federal jurisdiction when there is no difficulty about personal service, and inasmuch as this difficulty can here be overcome through nationwide service under the Act, it seems that paragraph (e) authorizes defensive interpleader in the present situation.⁸¹

5. *A*, a Maryland stakeholder, is subjected to three adverse claims by *C-1*, a citizen of New York, *C-2* a citizen of Massachusetts and *F*, an alien residing in Connecticut. Here interpleader under the Act of 1936 seems possible, because of the diversity of citizenship between *C-1* and *C-2*. The absence of citizenship on the part of *F* may be immaterial. A good analogy is the cases taking jurisdiction when two out of three adverse claimants are cocitizens and the third is a citizen of another state.⁸²

EQUITABLE REQUISITES OF INTERPLEADER

Even though federal jurisdiction exists, interpleader will be denied unless the facts entitle the stakeholder to this remedy. Some of the requisites developed by English courts in the first part of the nineteenth century and given their classical statement by Pomeroy were so rigid that interpleader was frequently denied in situations where it was badly needed and might have been given without any injustice to the claimants. Consequently, the Interpleader Act of 1936 sought to define the remedy broadly enough to take care of most, if not all, of the cases where relief was warranted against double vexation from claimants residing in different states. The position of the stakeholder and the nature of the claims were broadly stated. Pomeroy's two requirements of "same debt, duty, or thing" and privity were expressly abolished by the clause permitting the suit to 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." Nothing was said about Pomeroy's other two requirements of want of interest and absence of independent liability, in the hope that they would be very flexibly administered. The provisions of the statute have worked well, and interpleader has been granted in practically every case where the district court had jurisdiction. And in cases outside the Act, the United States courts have continued the liberality toward interpleader which they almost always showed before its enactment.

81. This situation existed in an unreported case in the District Court of Maryland before Judge Chesnut, for which I am indebted to Mr. J. Crossan Cooper, Jr., of the Maryland Bar. The case was finally settled by a consent decree.

82. See notes 68 and 69 *supra*. But see *Mutual Life Ins. Co. v. Lott*, 275 Fed. 365 (D. Cal. 1921) (claimants in Calif., N. Y., and D. C.), denying interpleader under 1917 Act. However, residents of the District of Columbia (unlike aliens) have no status under Article III, Section 2, of the Constitution. And it is doubtful if the *Lott* case would be similarly decided today. I am now inclined to modify slightly the views expressed about residents of territories and the District in (1936) 45 YALE L. J. 963, 975-976.

The effect of the Act on privity has not been judicially discussed. However, the relief granted in the case of the Sir Francis Drake frauds⁸³ might easily have been refused if privity were still held essential. Lord Cottenham would have found it hard to discern any relation between the victims whose actual money was in the hands of the express company, the other victims who had not contributed to this precise fund but wanted to recoup their losses from it, and the revenue officer who sought to collect the defrauder's income tax out of the same money.

The abolition of the identity test (Pomeroy's "same debt, duty, or thing") was involved in several interesting cases, which also raise questions of possible interest in the stakeholder.

In *Metropolitan Life Insurance Company v. Mason*,⁸⁴ two life insurance policies were issued by a New York company to a Pennsylvanian, who began suit in a Pennsylvania state court for the cash surrender value of both policies. The other claimant, a South Carolinian, possible assignee, ordered the company not to pay the insured, and wanted to keep the policies alive for the full face amounts by continuing to pay premiums. The company sought to interplead under the Act of 1936 and enjoin the state suit. The district judge dismissed the bill, saying that the South Carolinian was not a "claimant," since he was not seeking payment or other benefit, but only possession of the policy and prevention of the payment to the Pennsylvanian. This view seems too rigid. The claims were flatly inconsistent with each other. The South Carolinian was claiming ownership and the eventual benefit of full payment. If he collected, the Pennsylvanian was not entitled to the surrender value, and *vice versa*. Although the two claims differed in their nature, the fact that they were not to the "same debt, duty, or thing" was immaterial under the Act. And so the circuit court of appeals reversed and gave relief, relying on the statutory abolition of the identity test. Buffington, J., said: "The statute has in view the two-fold broad equitable relief, first, to relieve a stakeholder without interest from present litigation, and secondly to relieve such a one from future litigation by adjudicating the claims of all parties in one suit."

This case is very interesting because the stakeholder's liability was not completely discharged by the interpleader, as is usual. If the South Carolinian claimant won, the company continued liable on the policies until the death of the insured. It could not discharge itself as to both claimants by putting any *res* into court. If the company deposited the surrender value, this would obviously not fulfill its possible liability to

83. *Railway Express Agency v. Jones*, 106 F. (2d) 341 (C. C. A. 7th, 1939). The facts are stated on pp. 381-382 *supra*.

84. 98 F. (2d) 668 (C. C. A. 3d, 1938), *rev'g*, 21 F. Supp. 704 (E. D. Pa. 1937); (1938) 51 HARV. L. REV. 1448. *Contra*: *Travelers' Ins. Co. v. Healey*, 86 Hun. 524 (N. Y. Sup. Ct. G. T. 1895).

the South Carolinian. And of course it was not willing to deposit the face of the policies while the insured was alive. Sometimes a stakeholder can take care of a difference in the nature of the claims by filing a bond, as the Act permits. Should the company here have had to make two deposits, the surrender value in cash to satisfy the Pennsylvanian claimant and a bond for the face of the policies to satisfy the South Carolinian? I think not. The South Carolinian was sufficiently protected by the promises in the two policies, if their ownership and custody were awarded to him; the company should not be required to reenforce these promises by the additional obligation of a bond. If the court received the surrender value from the company and the policies from the insured, the stakeholder could properly be dismissed from the suit, and the court could go ahead to decide between the two claimants in the second stage.⁸⁵

The situation is somewhat the same, if after the death of an insured, C-1 wants the face of the policy in cash, while C-2 wishes the company to keep the proceeds and make periodic payments of income under a so-called "insurance trust." Here again the company cannot get out of its obligation completely by putting the cash amount of the policy into court, because, if the second claimant wins, the company should hold the money and remain obligated in the future. However, the want of identity should not prevent interpleader; the court can hold the money until the final decree, and then if the second claimant wins, the court can pay the money back to the company in return for the delivery of the necessary documents to the persons interested under the "trust."

Relief was given in a situation of this sort in *Connecticut Mutual Life Insurance Company v. Stewart*.⁸⁶ When one claimant demanded the face of the policy and the other sought the benefits of an "income trust," the life insurance company was thought to be interested so as to prevent strict interpleader, but the cause was retained for determination as a bill in the nature of interpleader. The independent equitable ground was not described. Perhaps the "trust" was thought to provide the necessary equity; but two objections present themselves. (1) There is no "trust" as against the claimant who demands cash down. (2) The existence

85. *Jurisdictional amount*. In the *Mason* case each policy was for less than \$500, the sum required by the statute, but the total amount of the two policies exceeded that sum. This was held sufficient. *Accord*: *Metropolitan Life Ins. Co. v. Dunne*, 2 F. Supp. 165 (S. D. N. Y. 1931). In *Metropolitan Life Ins. Co. v. Segaritis*, 20 F. Supp. 739 (E. D. Pa. 1937), the single policy involved was for \$486, but the company just got under the wire by paying in \$14.03 for dividends and accumulations.

86. 22 F. Supp. 68 (D. Mass. 1938), *aff'd without discussion of this point*, 102 F. (2d) 147 (C. C. A. 1st, 1939). An interesting state case granting interpleader, when one claimant wanted a full cash payment and the other desired to have only a life-income with remainder to the other claimant, is *Equitable Life Ins. Co. v. Johnston*, 222 Iowa 687, 269 N. W. 767 (1936) (one J. dissenting), *superseding on rehearing*, 263 N. W. 808 (1935); *see* (1936) 21 IOWA L. REV. 644, disapproving original decision.

of a true trust is doubtful, because there is no *res*.⁸⁷ However, the action of the court in granting interpleader is most desirable. In the numerous cases of this sort which are likely to arise in future, it might be argued that the insurance company is sufficiently disinterested if it refrains from participating in the second stage.

The possibility of the use of flexible devices in the second stage of interpleader was not realized in another case.⁸⁸ The insured had attempted to substitute his son and daughters as beneficiaries of a \$5,000 policy instead of his wife, and requested the company to withhold enough of the \$5,000 to pay his son that sum when he came of age with gifts over if he died a minor. The district court discharged the company and ordered it to pay \$5,000 into court, with part of which the clerk was to buy an endowment policy for the son, etc., as directed by the insured; the rest of the \$5,000 was to be held in court for further orders upon submission of proper testimony. An appeal by the widow was dismissed for want of jurisdiction, inasmuch as part of a controversy cannot be appealed. The appellate court said that the record did not show a purchase of the endowment policy by the clerk or the disposition of the rest of the fund, and therefore the district court had not completely determined the issues of the case. It is submitted that the clerk could not properly purchase the endowment policy until after the widow's claim had been negatived on appeal. If the widow won the appeal, the endowment policy would be futile and embarrassing. On the other hand, the clerk might have ascertained the cost of the endowment policy, so that the district court could award the rest of the \$5,000 before the case was submitted on appeal.

Another decision of practical importance is *John Hancock Mutual Life Insurance Company v. Kegan*.⁸⁹ A \$30,000 policy for the benefit of the wife was assigned by the insured to a bank to secure a loan. The bank supposed it had the wife's signature to the assignment. A premium was defaulted, and then the insured died. The bank chose the optional privilege of substituting \$13,000 paid up insurance. The wife asserted that her signature to the assignment was forged, and elected extended term insurance for the face of the policy. The company interpleaded. The claimants moved to dismiss the bill on the ground that the bank claimed \$13,000 and the widow \$30,000, so that the company was interested to have the bank win. Judge Chesnut refused to dismiss. He said that the bill was at any rate good as a bill in the nature of interpleader, within the statutory clause allowing such bills. At least it was good as to \$13,000, although perhaps if the widow won, the case should be trans-

87. See SCOTT, *CASES ON TRUSTS* (2d ed. 1931) §02, n. 2.

88. *Hunter v. Federal Life Ins. Co.*, 103 F. (2d) 192 (C. C. A. 8th, 1936) (not under Acts).

89. 22 F. Supp. 326 (D. Md. 1938).

ferred to the law side for the balance of \$17,000. I welcome the result, but should prefer to say that difference in amounts claimed is not "interest," since the company can pay \$30,000 into court and step aside till the claimants have fought it out. Whatever the company hopes and prays, it does not help the bank to win or take part in the contest. Of course, if the bank wins, the company gets \$17,000 back, but it is not arguing for that. Hence, this seems to me a good strict bill of interpleader, and I have a little trouble in finding an independent equity to make it a bill in the nature of interpleader as the court does.

The modern inclination is to disregard slight possible interests of the stakeholder. In a dispute over the validity of an assignment or a change of beneficiary, the life insurance company may properly waive compliance with its formal requirements for such action and obtain interpleader. The payment of the money into court is often regarded as such a waiver.⁹⁰ A life insurance company is entitled to make a deduction from the face of the policy for an unpaid premium or loan. When both claimants agree with the company as to the amount of the deduction, the company is plainly disinterested.⁹¹ A more difficult problem arises when the deduction or its size is disputed by one or both claimants. It is to be hoped that the much needed relief will not be denied on this ground, especially if the deduction sought is a small fraction of the face of the policy.⁹² Furthermore, Rule 22 should now take care of most cases of an interested stakeholder, because it is immaterial thereunder that he "avers that he is not liable in whole or in part to any or all of the claimants." This will usually enable the court to handle a case involving interest like a bill in the nature of interpleader, without needing to find a ground for equitable relief in addition to double vexation.

The old rule that a possible independent liability of the stakeholder to one of the claimants is a bar to interpleader is not mentioned in the Interpleader Act of 1936, as it was hoped that the statutory abolition of privity would also dispose of this other rigid requirement. Such has been the case under the English legislation and the Uniform Warehouse Receipts Act.⁹³ This hope appears to be realized.⁹⁴ A liberal decision

90. *Mutual Life Ins. Co. v. Patterson*, 15 F. Supp. 759, 17 F. Supp. 416 (W. D. N. Y. 1936); *Equitable Life Ass. Soc. v. Kit*, 26 F. Supp. 880 (E. D. Pa. 1939); *Metropolitan Life Ins. Co. v. Richardson*, 27 F. Supp. 791 (W. D. La. 1939). Cf. *Carter v. Thornton*, 93 F. (2d) 529 (C. C. A. 8th, 1938) (not under Act).

91. *Cramer v. Phoenix Mut. Life Ins. Co.*, 91 F. (2d) 141, 148 (C. C. A. 8th, 1937).

92. See *Chafee* (1936) 45 YALE L. J. 961, 978-980; *Smith v. Grand Lodge A. O. U. W.*, 124 Mo. App. 181, 101 S. W. 662 (1907). In a case not under the Act, interpleader was denied because of a dispute as to amount. *United States to Use of Deacon Bros., Inc. v. Starrett & Eken Bros., Inc.*, 18 F. Supp. 671 (E. D. Pa. 1937).

93. *In re Mersey Docks & Harbor Board*, L. R. [1899] 1 Q. B. 546 (C. A.); *Rosenberg v. P. Viane, Inc.*, 109 Misc. 215, 109 N. Y. Supp. 447 (N. Y. 1919).

94. See (1938) 26 GEO. L. J. 1017, 1021-1022.

was made under the 1926 Act, although it did not expressly abolish privity. In *Dee v. Kansas City Life Insurance Company*,⁹⁵ the company had issued a policy payable to the wife of the insured, who reserved no power to change the beneficiary. After the wife obtained a divorce, the insured sought to change the beneficiary to his son, but the company refused so long as the wife did not consent. After the death of the insured, the son asserted that by state statutes and decisions he was entitled to the insurance as the beneficiary designated by the insured, after the divorce. The company interpleaded the divorced wife and the son. The wife opposed interpleader because of an alleged independent liability of the company to her based on letters and conversations, which were asserted to create an agreement to give her the benefits of the policy if she continued to pay the premiums. Consequently, even if the beneficiary was effectively changed so that the son was entitled under the policy, the company would also have to pay the wife under the agreement, if binding. The district court agreed that such an independent obligation, if existent, would defeat interpleader under the 1926 Act. However, it said that the mere presentation of an issue of independent liability did not automatically throw out the bill or deprive the court of the right to ascertain whether such a liability existed. Accordingly, the court took evidence on the issue, found that there was no binding agreement in the wife's favor, and awarded the insurance money to the son. This commendable decision was affirmed on appeal.

That the same result would be more easily reached under the 1936 Act is indicated by *Metropolitan Life Insurance Company v. Segaritis*.⁹⁶ A life insurance policy was in terms payable to the executor or administrator, but under the "facility of payment" clause the company had the right at its election to pay the proceeds to a widow or relative or any person who had incurred expense for the insured or for his burial. One claimant sought payment under this clause. The other claimant was the administrator, who unsuccessfully argued that since payment under the clause was not of right but at the company's election, her opponent could not have an enforceable claim against the company; consequently, she said, there were not two bona fide adverse claimants and the court had no jurisdiction. In refusing to dismiss the bill Judge Maris stated a broad ground for interpleader:

"It thus becomes clear that the jurisdiction of this court to entertain an interpleader bill does not depend upon the validity or even bona fides of the claims of the respective defendants. It is obvious

95. 86 F. (2d) 813 (C. C. A. 7th, 1936), noted in Comment (1937) 25 ILL. B. J. 290. See also *Mallors v. Equitable Life Ass. Soc.*, 87 F. (2d) 233, 235 (C. C. A. 7th, 1936), not under Act; *Penn. Mut. Life Ins. Co. v. McGuire*, 13 F. Supp. 967, 971 (W. D. Ky. 1936), not under Act.

96. 20 F. Supp. 739 (E. D. Pa. 1937).

that in almost every case the claim of one of the parties will ultimately be determined to be invalid. That, however, is a matter for determination at the trial and cannot affect the jurisdiction of the court. As we have shown, the purpose of an interpleader bill is as much to protect a stakeholder from the expense of double litigation, however groundless, as it is to protect him from the risk of double liability. That in the opinion of the court he will ultimately escape the latter is no ground for refusing interpleader. Nor does the mere fact that a contractual relationship exists between the plaintiff and one of the defendants, under which the fund is required to be paid to such defendant, defeat the right to interpleader."⁹⁷

SCOPE OF INTERPLEADER DECREE

The normal purpose of interpleader is to settle the whole controversy among the three or more parties. The stakeholder is discharged from further liability at the end of the first stage, and the dispute between the claimants is settled in the second stage. This purpose would be impaired or defeated if outside litigation between two parties were permitted. Consequently, the decree at the end of the first stage usually enjoins the claimants from suing the stakeholder; and the Interpleader Acts of 1926 and 1936 expressly authorize such injunctions.⁹⁸ An out-

97. *Metropolitan Life Ins. Co. v. Segaritis*, 20 F. Supp. 739, 741. Judge Maris disapproved of *Calloway v. Miles*, 30 F. (2d) 14 (C. C. A. 6th, 1929), under 1926 Act. See Chafee (1932) 42 YALE L. J. 41, 54-55, 60.

Attorney's fees and costs. In *American United Life Ins. Co. v. Luckman*, 21 F. Supp. 39 (S. D. Cal. 1937), discussed in (1938) 26 GEO. L. J. 1017, 1025, n. 32, counsel fees and costs were denied to the stakeholder because he did not disclose the basis of one claim. This insistence on two colorable claims is somewhat opposed to Judge Maris's reasoning in the *Segaritis* case. Another objection was the stakeholder's failure to interplead defensively in a pending state suit; even if the out-of-state claimants were amenable to California process, should resort to the federal courts be penalized? Other recent cases on attorney's fees and costs are: *Laws v. New York Life Ins. Co.*, 81 F. (2d) 841, modified on rehearing, 82 F. (2d) 811 (C. C. A. 5th, 1936); *Century Ins. Co., Ltd. v. First Nat. Bank*, 102 F. (2d) 726, 729 (C. C. A. 5th, 1939); *Kohler v. Kohler*, 104 F. (2d) 38 (C. C. A. 9th, 1939), under 1926 Act; *Railway Express Agency v. Jones*, 106 F. (2d) 341 (C. C. A. 7th, 1939); *First Nat. Bank v. Baker*, 16 F. Supp. 869 (W. D. La. 1936) (attorney's fees allowed when claimant intervenes); *Equitable Life Ass. Soc. v. Kit*, 22 F. Supp. 1022 (E. D. Pa. 1938).

Laches. The Supreme Court twice sustained interpleader though the bill was filed after one claimant had obtained a judgment. *Treinius v. Sunshine Mining Co.*, 60 Sup. Ct. 44 (U. S. 1939); *Dugas v. American Surety Co.*, 300 U. S. 414 (1937). This is a desirable departure from the view of several earlier state decisions that relief in such a situation is necessarily barred by laches. See (1937) 21 MINN. L. REV. 752; CHAFEE, CASES ON EQUITABLE REMEDIES (1938) 105; Chafee (1936) 45 YALE L. J. 1161, 1166, n. 12. Unreasonable delay in interpleading may lead to a denial of counsel fees. *Equitable Life Ass. Soc. v. Kit*, 22 F. Supp. 1022 (E. D. Pa. 1938), *semble*.

98. See Chafee (1932) 42 YALE L. J. 41, 41-45. This clause excepting interpleader from § 265 of the Judicial Code was held valid in *Treinius v. Sunshine Mining Co.*, 60 Sup. Ct. 44 (U. S. 1939).

side suit between the claimants paralleling the second stage can be stopped by a supplemental injunction,⁹⁹ although not ordinarily forbidden by the interpleader decree itself. May the court of equity go still farther and enjoin a claimant from suing somebody who was not a party to the interpleader?¹⁰⁰

This novel and interesting question was before the Supreme Court in *Dugas v. American Surety Company*.¹⁰¹ The stakeholder *A* was a New York surety company, which was surety on a \$20,000 qualifying bond filed in Louisiana by a Texas insurance company, so that it could write workmen's compensation insurance. After the insurance company had become embarrassed and gone into a Texas receivership, the Surety Company was threatened with many claims under the qualifying bond, aggregating over \$60,000. Some claimants were citizens of Louisiana and some of other states. Dugas (apparently a Louisianan), who had a compensation claim against the insurance company, recovered a Louisiana state judgment against *A* as surety for substantial weekly payments. For the purpose of suspending execution pending appeal to the highest state court, *A* filed an appeal bond for \$10,000 with the New York Casualty Company *S* as surety; the condition was to prosecute the appeal diligently and satisfy any judgment rendered against *A* if cast in the appeal. Next month *A* interpleaded all the claimants including Dugas in a United States district court in Louisiana under the 1926 Act, paying \$20,000 into court for distribution among the claimants as the court should decree. The Casualty Company *S* was not a party. The bill recited all the facts about the Dugas judgment, and Dugas unsuccessfully resisted relief. The final decree allowed interpleader and declared *A* to have "complied with all of its obligations under the qualifying bond . . . and . . . to be released and discharged from any and all further liability on account of such bond." It enjoined all of the claimants including Dugas from instituting or prosecuting any state or federal suit "against the American Surety Company [*A*] on account of any right or claim growing out of such bond." No appeal was taken.

The special master appointed to report on distributing the fund reported claims exceeding \$60,000, and fixed Dugas's claim as \$4,160.68. He recommended a *pro rata* distribution of the \$20,000 fund, by which Dugas would be cut down to \$1,141.29. Dugas and other claimants entered a stipulation acquiescing in the report, which the court confirmed and thus Dugas got paid about a quarter of his total claim.

99. *Horner v. Lehman*, 130 Md. 275, 100 Atl. 285 (1917).

100. An analogous question about the powers of a bankruptcy court to discharge a non-bankrupt guarantor was raised but not decided in *Stoll v. Gottlieb*, 305 U. S. 165 (1938).

101. 300 U. S. 414 (1937) (2 JJ. dissenting), *aff'g*, 82 F. (2d) 953 (C. C. A. 5th, 1936) (1 J. dissenting). Mr. Justice Stone took no part in this case.

Then the vital issue of the case arose: could Dugas get his other three-quarters from the Casualty Company *S*, as surety on the appeal bond? The Casualty Company was a stranger to the interpleader suit. This suit had halted the appeal, but the final interpleader decree did not profess to discharge the appeal bond. Also there was a big loophole in the final injunction. It forbade Dugas to sue the Surety Company stakeholder *A* on account of the qualifying bond, but it did not forbid him to sue the Casualty Company *S* on the entirely different appeal bond. Taking advantage of this loophole, Dugas went into the same Louisiana state court where he got his original judgment, and sued the Casualty Company *S* for \$3,019.39, the rest of his compensation claim. Dugas averred the appeal bond to be forfeited, because the appeal had not been diligently prosecuted, having been abandoned after *A* interpleaded. Dugas carefully refrained from joining the stakeholder *A* as co-defendant in this new suit. With equal shrewdness, he amended his petition by reducing the amount sought to \$2,999, thus forestalling a removal to the federal court.¹⁰²

The Surety Company stakeholder *A* then returned to the United States district court, and was allowed to file a supplemental bill in the interpleader suit to restrain Dugas from prosecuting his state suit against the Casualty Company *S*. The stakeholder averred that as principal on the appeal bond it would be bound to reimburse the Casualty Company for whatever it had to pay as surety to Dugas. Therefore, the new suit on the appeal bond was essentially an effort to enforce the old judgment against the stakeholder on the qualifying bond. Thus Dugas was attempting to subject the stakeholder indirectly to liability beyond the \$20,000 deposited in the interpleader. This contention prevailed. Although Dugas challenged the jurisdiction of the United States court, it enjoined him on final hearing, saying that the new suit contravened the spirit if not the letter of the interpleader decree. This injunction was affirmed by the circuit court of appeals. Judge Sibley dissented, on the ground that the appeal bond antedated the interpleader suit and was nowise affected by it. He regarded that bond as like additional security given to a creditor, who gets the full benefit of his security even though the debtor pays unsecured claims *pro rata* because of bankruptcy or some other sort of limitation upon liability. "The bond is the price of a delay which was enjoyed."

The majority of the Supreme Court sustained the injunction against suit on the appeal bond, although the Chief Justice and Mr. Justice Cardozo agreed with Judge Sibley. Mr. Justice Van Devanter, who delivered the opinion of the Court, said that Dugas was attempting to

102. A decision of the lower state court dismissing this suit as premature was reversed on appeal, and the suit was remanded for further proceedings. *Dugas v. New York Casualty Co.*, 181 La. 322, 159 So. 572 (1935).

realize on the prior judgment, notwithstanding the extinguishment of his rights under it, and was plainly acting in contravention of the original unappealed interpleader decree. In discussing this decree, he drew an interesting distinction between its broad effect as an adjudication of rights and the more limited effect of its injunction clause forbidding suits against the stakeholder:

"His counsel . . . seeks to support the [his] contention by pointing out that the injunction did not directly forbid Dugas from suing on the appeal bond, but only from instituting or prosecuting any suit against the complainant surety on account of a right or claim growing out of the qualifying bond. But the injunction, being only one part of the decrees, is not the exclusive criterion of what was determined and affected by them. Its purpose was to forestall anticipated departures, not to limit other provisions or restrict their operation and effect."¹⁰³

The *Dugas* case, although it has apparently received no attention in legal periodicals, opens up fascinating lines for exploration. It concerns the extent to which discharge of the principal releases the surety. It bears on the nature of equity decrees in general, particularly their extraterritorial effect.¹⁰⁴

BILLS IN THE NATURE OF INTERPLEADER

One of the most important provisions of the Interpleader Act of 1936 allows bills in the nature of interpleader. There was considerable judicial doubt whether they could be brought under the 1926 Act.¹⁰⁵ Such a bill may be maintained by a stakeholder who has some special ground for equitable relief besides double vexation. The advantage is that equitable rules limiting strict bills are considerably relaxed. For example, the stakeholder can get relief in the nature of interpleader although he has a substantial interest in the controversy. Some such cases have already been discussed in this article.¹⁰⁶ As already suggested, the

103. *Dugas v. American Surety Co.*, 300 U. S. 414, 427 (1937).

104. See *Fall v. Eastin*, 215 U. S. 1 (1909); *Dobson v. Pearce*, 12 N. Y. 156 (1854). The controversy is summarized in Lorenzen, *Application of Full Faith and Credit Clause to Equitable Decrees for the Conveyance of Foreign Land* (1925) 34 YALE L. J. 591; 1 CHAFEE AND SIMPSON, *CASES ON EQUITY* (1934) 143. This problem is also affected by *Stoll v. Gottlieb*, 305 U. S. 165 (1938).

105. See Chafee (1936) 45 YALE L. J. 961, 970-971.

106. Relief was given under the 1936 Act in *Connecticut Mut. Life Ins. Co. v. Stewart*, 22 F. Supp. 68 (D. Mass. 1938); *John Hancock Mut. Life Ins. Co. v. Kegan*, 22 F. Supp. 326 (D. Md. 1938). As to the *Dugas* case under the 1926 Act, see note 111 *infra*. Federal jurisdiction outside these statutes was involved in *Texas v. Florida*, 306 U. S. 398 (1939); *Rosenthal v. New York Life Ins. Co.*, 91 F. (2d) 481 (C. C. A. 9th, 1937). See additional cases of bills in the nature of interpleader cited *supra* note 5. For previous discussion of such bills, see under Diversity of Citizenship and under Equitable Requisites of Interpleader. On the effect of Rule 22, see p. 412 *supra*.

adoption of Rule 22 tends to minimize this distinction and turn all interpleader into bills in the nature of interpleader.

The most important application of this clause of the 1936 Act was in *Standard Surety & Casualty Company v. Baker*.¹⁰⁷ The stakeholder was surety on a \$5,000 qualifying bond filed by a broker, in order to do business in Missouri, and conditioned upon faithful compliance with a state statute by the broker and his salesmen. After the broker's bankruptcy, his customers filed numerous actions at law against the surety for a total of over \$20,000. The surety interpleaded all the claimants under the Act of 1936 and Rule 22. It deposited a new \$5,000 bond, conditioned on compliance with the further orders of the court with respect to the subject matter of the controversy. The bill denied liability as to certain types of claims. The surety company prayed judgment that its maximum liability was \$5,000; that either it was not indebted to any claimant, or at least was not liable for certain types of wrongs of the broker; that if there was any liability on the stakeholder's part, the claimants should be required to interplead and the stakeholder be discharged as to all persons except those whom the court should adjudge entitled to participate in the \$5,000 fund; and that action on the bond be enjoined. A temporary injunction, issued accordingly, was afterwards dissolved by District Judge Otis; but the Circuit Court of Appeals for the Eighth Circuit restored the injunction and sent the cause back for a trial of the second stage.

Here strict interpleader was barred apart from Rule 22; the surety disputed liability and so was heavily interested. The difficulty about a bill in the nature of interpleader, according to Judge Otis, was in finding conflicting claims as to the same subject matter. Each customer had a separate and distinct claim against the broker; and the liability of the surety was the same as that of the principal. Judge Otis thought that it was just as if the stakeholder had signed as surety five separate notes for \$1,000 each. In his opinion, the maximum liability on the bond did not mean that the separate claims were against one fund or subject matter, which is essential for a bill in the nature of interpleader. Mere multiplicity of distinct suits is not enough.¹⁰⁸ Rule 22¹⁰⁹ was considered inapplicable by Judge Otis, on the ground that "double or multiple liability" meant such liability on the same obligation. "This plaintiff was not under the same obligation to any two claimants against it." He apparently overlooked the fact that the Interpleader Act of 1936 allowed the suit to be entertained although "the claims . . . are not identical."

107. 105 F. (2d) 578 (C. C. A. 8th, 1939), *rev'd*, 26 F. Supp. 956 (W. D. Mo. 1939).

108. Judge Otis said that the "admirably expressed views" of Judge Chesnut in *John Hancock Life Ins. Co. v. Kegan*, 22 F. Supp. 326 (D. Md. 1938) could not prevail against all authority.

109. Quoted pp. 379-380 *supra*. See end of note 106 *supra*.

Fortunately, the circuit court of appeals found the independent equitable ground for a bill in the nature of interpleader (if this be still necessary since Rule 22 took effect) in the fact that the aggregate demands of the claimants exceeded the maximum liability of the surety. This seems to me to constitute a fund. Although some of Judge Gardner's language about mutual exclusiveness is open to question,¹¹⁰ he clearly realizes that the identity test is no longer in force. The evils of a refusal of interpleader are emphatically described:

"It may finally be determined that one or two [claimants] only are entitled to recover, yet judgments might be procured on many of these claims simultaneously if defendants may proceed to the prosecution of their various suits. There might not be opportunity to plead by way of amendment or supplemental answer, the recovery of a prior judgment against plaintiff [stakeholder] on the same bond. Again, courts might not permit such a defense because, perchance, the courts might hold that satisfaction and adjudication of liability alone would satisfy the requirements of the bond. After recovery of judgments, execution might issue on all, and plaintiff might find it impossible to set aside final judgments. Even if it be assumed that the first to recover judgments or to issue execution should first be paid until the liability on the bond was exhausted, subsequent claimants in order of recovery on judgment or issuing of execution might insist that the penalty should be apportioned . . . , and liability on that ground might be asserted. In these circumstances there is a real threat of liability, and it was to meet such a situation that the interpleader statutes were adopted. . . .

"It appears here that the aggregate of the claims is far in excess of plaintiff's liability. In such circumstances, each claimant is interested in reducing or defeating the claim of every other claimant, and the adversity of claim required by statute is, we think, satisfied."¹¹¹

This decision is strong authority for interpleader in a different situation where relief is badly needed. An insurance company issues a liability policy with a \$10,000 limit to an automobile owner. By statute and the

110. Compare what he says on p. 581 (top of 2d column) [Standard Surety & Casualty Co. v. Baker, 105 F. (2d) 578 (C. C. A. 8th, 1939)] with Chafee, *Modernizing Interpleader* (1921) 30 YALE L. J. 814, 818-819; (1909) 22 HARV. L. REV. 294 (probably influenced by Ames); Clark v. Childs, 234 App. Div. 561, 256 N. Y. Supp. 69 (1932). Although each claim may be partly right under a *pro rata* distribution, the claims must be wrong to the extent that their total amount exceeds the limit of liability.

111. Standard Surety & Casualty Co. v. Baker, 105 F. (2d) 578, 581-582 (C. C. A. 8th, 1939). Judge Gardner relied on Dugas v. American Surety Co., 300 U. S. 414 (1937), where interpleader was also allowed to a surety subject to a limited liability. Although the necessary elements of a bill in the nature of interpleader were present in the *Dugas* case, it was possible to handle the case as a strict bill, inasmuch as there was apparently no interest on the stakeholder's part. In the *Dugas* case, the surety did not deny the right of any claimant to share in the fund; but in the *Baker* case the surety disputed its liability to some or even all claimants.

terms of the policy, victims of an accident who recover judgments against the insured get a direct right of action against the insurance company. A bad accident occurs, and the company is faced with claims by residents of different states aggregating far more than \$10,000, which have not yet been reduced to judgments. Can the insurance company, after paying \$10,000 into court, interplead the victims by confining their rights under the policy to this fund and enjoining them from otherwise proceeding against the company? Before the 1936 Act, such relief was denied in *Klaber v. Maryland Casualty Company*.¹¹² A strict bill of interpleader was held not to lie, for the company was strongly interested in the controversy because of its duty under the policy to defend pending and future accident suits brought by the victims against the automobile owner. And a bill in the nature of interpleader was held impossible because not named in the 1926 Act.

It was hoped that the new clause in the 1936 Act authorizing such bills would enable the United States courts to handle controversies like the *Klaber* case. Although no automobile liability insurance case has arisen under this Act, the *Baker* case is closely analogous because it also involves a limited liability on the part of an insurance company. The bad consequences described by Judge Gardner will exist unless the company can force all the victims of the automobile accident to resort to the sum deposited in court.

At the same time, it would be undesirable to go quite so far in an automobile accident controversy as in the *Baker* case of the bankrupt broker. There the claimants were barred from suing the insured at law, and the amount of each claim against him was fixed by a court in the bankruptcy proceedings. (The second stage of the interpleader decided whether a claim so fixed was enforceable against the fund in court, and for how much.) On the other hand, in a situation like the *Klaber* case, the victims of the automobile accident should not be enjoined from suing the insured at law before a jury. That is the proper way to determine the validity and amount of each accident claim. Although claims arising out of brokerage failures are often handled in equity or bankruptcy without juries, automobile accident claims are peculiarly appropriate for jury trial. Hence, when an automobile liability insurance company is allowed to interplead, the law actions of the victims should be allowed to proceed for the purpose of determining such issues as negligence, contributory negligence, and the extent of the damage, with the insurance company fighting its best. Judgments at law against the insured will then be entered on the verdicts. But the enforcement of those judgments against the insurance company and its property should be enjoined. The

112. 69 F. (2d) 934 (C. C. A. 8th, 1934), discussed by Chafee (1936) 45 YALE L. J. 1161, 1163-1167. Here one victim had already obtained a judgment against the insured, for less than the maximum limit in the policy.

judgment creditors should be left to get payment from the fund in court, either ratably or according to some scheme of priority imposed by the court in accordance with prior local decisions. Thus the second stage will not be concerned with determining the validity and fixing the amount of the claims, but only with the distribution of the fund. In that task the insurance company should probably not participate.

WHAT LAW GOVERNS THE SECOND STATE OF INTERPLEADER

While the doctrine of *Swift v. Tyson*¹¹³ was in force, the rights of claimants to life insurance or other substantive matters in the second stage of interpleader could be decided, in the absence of a state statute, by rules of "general law" worked out by United States courts independently of the decisions of state courts.¹¹⁴ The situation was entirely changed when *Erie Railroad Company v. Tompkins*¹¹⁵ overruled *Swift v. Tyson* and held that United States courts are bound to apply the law of a state as established by the courts of that state. This new doctrine has been followed in the second stage of several interpleader cases under the Act of 1936.¹¹⁶ And a decree in the nature of interpleader cancelling a reinstated life insurance policy for fraud, under the general diversity jurisdiction, was remanded by the Supreme Court after the *Erie Railroad* case with instructions to redetermine the case on the basis of state decisions.¹¹⁷

However, the *Erie Railroad* case creates a host of new problems in place of those it ends. For example, uniformity of judicial doctrines on private law inside a state has been obtained at the sacrifice of nationwide uniformity. United States courts tended to follow each other and had to follow the Supreme Court. Now, the decisions of the courts of a state govern, but what state? At least two states are involved in every interpleader under the Act of 1936. Suppose that two claimants reside in X and Y, whose respective courts have laid down different rules as to the issue in the second stage. A federal interpleader suit is filed in a district court in X. The decisions in X ought not to govern merely

113. 16 Pet. 1 (U. S. 1842).

114. *Kansas City Life Ins. Co. v. Adamson*, 24 F. (2d) 712 (N. D. Texas, 1928); *Chafee* (1936) 45 YALE L. J. 1161, 1180.

115. 304 U. S. 64 (1938), abundantly discussed in law reviews.

116. *Toomey v. Toomey*, 98 F. (2d) 736 (C. C. A. 7th, 1938), noted on the merits in (1939) 33 ILL. L. REV. 732; *New England Mut. Life Ins. Co. v. Spence*, 104 F. (2d) 665 (C. C. A. 2d, 1939), *rev'g*, 25 F. Supp. 633 (W. D. N. Y. 1938); *Mut. Life Ins. Co. v. Richardson*, 27 F. Supp. 791 (W. D. La. 1939).

117. *Rosenthal v. New York Life Ins. Co.*, 304 U. S. 263 (1938), *vacating judgment in* 94 F. (2d) 675 (C. C. A. 8th, 1938). After redetermination, cancellation was again granted in 99 F. (2d) 578 (1938).

because the forum is in that state.¹¹⁸ The stakeholder is free under the Act to lay the venue in either *X* or *Y*, and should not be able to swing the substantive rights of the claimants this way or that. The purpose of the Interpleader Act was to give the stakeholder protection, but in nowise to change the rights of the claimants by its operation. Therefore, some principle of conflict of laws must be found by the United States court to determine which group of state decisions is to govern. This means that perplexing conflicts questions will frequently arise in federal interpleader cases. To make matters worse, suppose that each state has its own conflicts doctrine. Can the United States courts then apply a "general law" of conflicts?

The difficulty created by the *Erie Railroad* case is already illustrated by *New England Mutual Life Insurance Company v. Spence*.¹¹⁹ A Massachusetts life insurance company issued a policy payable to the wife of the insured, without power to change the beneficiary. The couple were then living in New York, and the contract was made either there or in Massachusetts. Later the couple moved to Texas, where the wife got a divorce. She returned to New York and remarried. After the death of the insured, the company interpleaded the divorced wife and a Texan who had been appointed New York administrator. By Texas law, a divorce eliminates the wife, and transfers the insurance to the insured husband. By New York and Massachusetts law, a divorce has no effect upon the wife's vested interest as beneficiary. The district court and Circuit Judge Charles Clark thought that New York law governed; but Circuit Judges Learned Hand and Patterson applied Texas law, and gave the insurance to the administrator.

Special complications arise when a garnishment has been obtained by one or more creditors. Under the 1926 Act, the Supreme Court held in *Sanders v. Armour Fertilizer Works*¹²⁰ that under certain procedure garnishment of a fire insurance company in *X* by a creditor of the insured had the effect of impounding the insurance obligation in *X* and making it subject to *X*'s law with respect to exemptions, which were asserted by the insured as opposing claimant. The influence of the subsequent 1936 Act and the doctrine of the *Sanders* case upon other garnishment situations was discussed in a previous article, and has recently received extensive consideration by other writers.¹²¹ If both claimants have obtained garnishments in different states, and the law of each state gives

118. The contention that the state law of the forum should govern was rejected in *Sanders v. Armour Fertilizer Works*, 292 U. S. 190-200 (1934). Although this decision antedated the *Erie Railroad* case, the reasoning still holds good.

119. 104 F. (2d) 665 (C. C. A. 2d, 1939). See (1939) 49 YALE L. J. 335.

120. 292 U. S. 190 (1934).

121. Chafee (1936) 45 YALE L. J. 1161, 1176-1180; Holt, *Federal Interpleader Act and Conflict of Laws in Garnishment* (1937) 4 U. OF CHI. L. REV. 403; (1939) 27 ILL. B. J. 165.

priority to its own garnishment, then the *Erie Railroad* case creates a puzzle which is baffling indeed. Formerly, the United States courts could determine priority according to federal doctrines. Now, must they look to state decisions in order to choose between state decisions?

Fortunately, this puzzle has not arisen in the two recent interpleader cases involving garnishment, since only one of the claimants had garnished. In *Cramer v. Phoenix Mutual Life Insurance Company*,¹²² the dispute was between the named beneficiary in a life insurance policy and some relatives of the insured who claimed equitable ownership of the policy by virtue of loans to the insured. These alleged equitable assignees garnished Connecticut banks which were indebted to the insurance company stakeholder. Interpleader was brought in a United States court in Ohio. It was held that the doctrine of the *Sanders* case, where the stakeholder was garnished, did not apply. So the garnishment did not fix the *res* in Connecticut. The garnishing claimants showed no previous right to the insured money, and they could not turn a bad claim into a good one by garnishment.

In *Roberts v. Metropolitan Life Insurance Company*,¹²³ there was a dispute between assignees of the beneficiary and his creditor, who had garnished the insurance company stakeholder. The assignment was made in New York after the Illinois garnishment action began, but before the writ was served. The situation was quite different from the *Sanders* case, where the dispute was between the garnishing creditor and the principal debtor (the insured). Here the dispute was as to which claimant had acquired the interest of the insured first? Obviously the garnishing creditor can stand no higher than the principal debtor. So the garnishment avails the creditor claimant nothing, if, as in the *Cramer* case, the principal debtor never owned the *res*, or if, as alleged in the *Roberts* case, the principal debtor had parted with his ownership prior to garnishment. Hence, the court in the *Roberts* case refused to apply the *Sanders* case, or to decide that the garnishment necessarily impounded the *res* and made Illinois law govern. However, the garnishing creditor won because the assignment was in fraud of creditors.

The next few years are likely to see an increasing use of the Interpleader Act of 1936, especially by new types of stakeholders, and further interpretation of the "disputes" clause in Rule 22. Experience will show whether the Act needs to be amended to give United States courts nationwide power to compel the appearance of witnesses,¹²⁴ just as they can now compel the appearance of parties regardless of the state of residence.

122. 91 F. (2d) 141, 147-148 (C. C. A. 8th, 1937), *aff'g*, *Phoenix Mut. Life Ins. Co. v. Lafferty*, 16 F. Supp. 740 (S. D. Iowa 1936).

123. 94 F. (2d) 277 (C. C. A. 7th, 1938), *cert. denied*, 303 U. S. 660 (1938); (1939) 27 ILL. B. J. 165.

124. See Burchmore, *supra* note 1, at 169-170.