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### The Statute of Limitations and Interpleader

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accord with the state statutes, and by eliminating the juvenile's right of waiver. In construing a revision in such tenor, it is probable that a clear-sighted judiciary would give due weight to the statement that "It is the unquestioned right and imperative duty of every enlightened government, in its character of *parens patriae*, to protect and provide for the comfort and well being of such of its citizens as, by reasons of infancy \* \* \* are unable to take care of themselves. The performance of this duty is justly regarded as one of the most important of government functions, and all constitutional limitations must be so understood and construed as not to interfere with its proper and legitimate exercise."<sup>62</sup>

BENJAMIN M. BIENSTOCK.

THE STATUTE OF LIMITATIONS AND INTERPLEADER.—On June 8, 1939, Section 51a of the Civil Practice Act<sup>1</sup> went into effect. This is a statute introducing a novel way of handling the problem of the hazard of double liability to which debtors are subjected. The method employed is a short statute of limitations. The passage of the statute was made necessary by the practical defects of the existing state<sup>2</sup> and federal<sup>3</sup> interpleader acts insofar as service upon adverse claimants is concerned. This need was further intensified by the recent political developments in Europe and the Far East.<sup>4</sup> In order to guard against threatened liquidation and confiscation of their monies and assets, prospective refugees in the former republics of Austria and Czechoslovakia had deposited monies with New York residents, banks or insurance companies. When these refugees sought to satisfy their claims in New York, the bank or other depositories were also met with claims made by a foreign government, or its representative, the liquidator, who alleged an assignment in fact or an assignment by operation of law.<sup>5</sup> In order to determine the controversy completely so as to avoid the risk of double liability, multiplicity of suits, the possibility of inconsistent jury verdicts, and to save costs and expenses, the interpleader procedure suggests itself.<sup>6</sup>

The unavailability of the New York interpleader statute<sup>7</sup> in

<sup>62</sup> *McLean County v. Humphreys*, 104 Ill. 378 (1882).

<sup>1</sup> N. Y. Laws 1939, c. 805; the bill was introduced by Assemblyman Mitchell.

<sup>2</sup> N. Y. CIV. PRAC. ACT §§ 285, 287.

<sup>3</sup> 49 STAT. 1096 (1936), 28 U. S. C. A. § 41(26) (Supp. 1939).

<sup>4</sup> But the Act is by no means intended to be an emergency one, but is to be a permanent enactment. See *Bulletin of Legislative Reporter*, N. Y. L. J., April 18, 1939.

<sup>5</sup> See *Stern v. Steiner*, N. Y. L. J., April 20, 1939, p. 1810, col. 4.

<sup>6</sup> *Metropolitan Life Ins. Co. v. Segaritis*, 20 F. Supp. 739 (D. C. Pa. 1937).

See 11 CARMODY, PLEADING AND PRACTICE (2d ed. 1935) at 608, § 727.

<sup>7</sup> See note 2, *supra*.

such a situation is evident. To entertain the action, the court must obtain jurisdiction either of the person, or of the *res*, *i.e.*, the subject matter of the action. If the non-resident appears or voluntarily submits himself to the jurisdiction of the court, or if the process is served upon him personally in New York, there is no problem. The difficulty arises where personal jurisdiction is lacking, and whether in such case, service by publication, pursuant to Section 232 of the Civil Practice Act, can be availed of. One could proceed under subdivision 6, if the complaint demanded that the defendant, the adverse claimant, be excluded from a vested or contingent interest in or upon a lien on property situated in this state, *i.e.*, if the *res* or the debt had its situs in New York.<sup>8</sup> But the courts have consistently held that the debt in interpleader cases does not have its situs where the debtor resides;<sup>9</sup> nor does the depositing into court of the amount claimed, give jurisdiction, for according to the leading Supreme Court case of *N. Y. Life Insurance Company v. Dunlevy*,<sup>10</sup> the claim of the non-resident is not directed against a particular deposit,<sup>11</sup> but runs against the stakeholder upon the original debt; it is an *in personam* action, and cannot be transformed into an *in rem* action by deposit into court.<sup>12</sup> Hence, the adverse claimant, who is sought to be substituted as the real defendant, must be served personally to avail himself of Section 287 of the Civil Practice Act.

The Federal Interpleader Act<sup>13</sup> was an attempt to solve the jurisdictional problems arising from the weakness of the state statutes. It made possible for the federal courts, unrestricted by state boundaries, to obtain jurisdiction of citizens of different states with-

<sup>8</sup> *Garfein v. McInnis*, 248 N. Y. 261, 162 N. E. 73 (1928).

<sup>9</sup> *Hanna v. Stedman*, 230 N. Y. 326, 130 N. E. 566 (1921) (holding that the action of interpleader, under N. Y. CIV. PRAC. ACT § 285, is an action *in personam* and that the Maryland court did not have to give full faith and credit to the New York judgment against a non-resident who was not served personally and who failed to appear); *Bullowa v. Provident Life and Trust Co.*, 125 App. Div. 545, 109 N. Y. Supp. 1058 (1st Dept. 1908) (holding that the motion of interpleader under N. Y. CIV. PRAC. ACT § 287 must be served personally); *Schoenholz v. N. Y. Insurance Co.*, 197 App. Div. 91, 188 N. Y. Supp. 596 (1st Dept. 1921), *aff'd*, 234 N. Y. 24, 136 N. E. 227 (1922).

<sup>10</sup> 241 U. S. 518, 36 Sup. Ct. 613 (1916).

<sup>11</sup> *Cf. Morgan v. Mutual Benefit Life Ins. Co.*, 189 N. Y. 447, 82 N. E. 438 (1907) (where jurisdiction by service by publication was good as the proceeding was against a particular fund); *Ebsary Gypsum Co. v. Ruby*, 256 N. Y. 406, 176 N. E. 820 (1931) (service by publication was ineffectual because the situs of the debt was the domicile of the owners of the patent, outside of New York).

<sup>12</sup> See *Hanna v. Stedman*, 230 N. Y. 326, 335, 130 N. E. 566, 571 (1921), citing with approval *New York Life Insurance Co. v. Dunlevy*, 241 U. S. 518, 36 Sup. Ct. 613 (1916); PRASHKER, *CASES AND MATERIALS ON NEW YORK PLEADING AND PRACTICE* (2d ed. 1937) 857, n.7.

<sup>13</sup> See note 3, *supra*. The first Federal Interpleader Act was passed in 1917, 39 STAT. 929, 28 U. S. C. A. § 41(26), permitting insurance companies to interplead. Subsequent amendments extended the lists to other stakeholders. The present 1936 amendment (note 3, *supra*) extends the list to "any person, firm, corporation, association or society."

out the need of serving process within the narrow confines of a sovereign state.<sup>14</sup> But even the federal courts have no jurisdiction in the following cases:

- (1) if the adverse claimants are not citizens of different states;<sup>15</sup>
- (2) if process of the federal courts is to be effected outside the territorial limits of the United States;<sup>16</sup> and
- (3) if the amount deposited by the stakeholder in the interpleader action is less than \$500.<sup>17</sup>

Thus, a stakeholder cannot serve the adverse claimant, a resident of former Czechoslovakia, since he is a citizen of a different country (not a different state), and because the process of the federal courts cannot be effected in that country. There is also the difficulty involved in determining when a diversity of citizenship exists, so as to bring the case within the purview of the United States Constitution. It has been held that if one of the claimants is a citizen of one state, and all other claimants and stakeholder are citizens of others, there is a diversity of citizenship.<sup>18</sup> But it has not yet been finally determined by the Supreme Court whether diversity of citizenship exists when all claimants are citizens of the same state, and only the stakeholder is a citizen of a different state.<sup>19</sup>

## I.

Cognizant of the weaknesses of these statutes, the Legislature adopted and passed, at the recommendation of the Committee on Law Reform of the Association of the Bar of the City of New York,<sup>20</sup> Section 51a of the Civil Practice Act.<sup>21</sup> In order to avoid the jurisdictional difficulties and limitations of the state and federal statutes, a stakeholder should proceed under this Act. The provisions<sup>22</sup> of

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<sup>14</sup> 49 STAT. 1096 (1936), 28 U. S. C. A. § 41(26)e (Supp. 1938).

<sup>15</sup> *Id.* §41(26)a.

<sup>16</sup> *Id.* §41(26)e.

<sup>17</sup> *Id.* §41(26)a.

<sup>18</sup> *Cramer v. Phoenix Mutual Life Ins. Co.*, 91 F. (2d) 141 (C. C. A. 8th, 1937).

<sup>19</sup> *Mutual Life Insurance Co. v. Meguire*, 13 F. Supp. 967 (D. C. Ky. 1936) (holding there is jurisdiction). See Chafee, *Interpleader in the United States Court* (1932) 41 YALE L. J. 1166. But see early cases denying existence of diversity of citizenship. *Strawbridge v. Curtis*, 3 Cranch 267 (U. S. 1806); *Mutual Life Ins. Co. v. Allen*, 134 Mass. 389 (1833).

<sup>20</sup> See THE ANNUAL REPORT OF THE COMMITTEE ON LAW REFORM OF THE ASSOCIATION OF THE BAR OF THE CITY OF NEW YORK FOR 1938-1939, at 234 235.

<sup>21</sup> See note 1, *supra*.

<sup>22</sup> Section 1 of the Act provides: "No action for the recovery of any sum of money due and payable under or on account of a contract, or for any part thereof, shall be commenced by any person who has made claim to said sum

the Act will be discussed under three divisions: prerequisites to proceeding thereunder, procedure, and effect of compliance.

*Prerequisites.*

In order for the stakeholder to avail himself of the statute, it seems that the following conditions must exist:

- (a) an action against the stakeholder must be *pending*; <sup>23</sup>
- (b) the action must be for *money* over \$50 in amount, due and payable under, or on account of, a contract; <sup>24</sup>
- (c) the adverse claimant or claimants cannot, with due diligence, be personally served with process within this state; <sup>25</sup>
- (d) the general requirements for entertaining any interpleader action must be present: the conflicting claims must be for the same thing or the same debt, the stakeholder must claim no interest in the subject matter and must not be in collusion with the plaintiff, but must be in doubt as to the rightful owner; <sup>26</sup> and
- (e) the stakeholder must comply with a prescribed procedure and serve the adverse claimant with a notice of the pendency of the action, stating his rights will be barred unless he commences an action to enforce his claim, or applies to intervene in the pending action, within one year from the date of service of the notice. <sup>27</sup>

*Procedure.*

Assume that *claimant-1* prosecutes an action for \$450 against *S*, stakeholder. *Claimant-2* has also made a claim on *S* to the same

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after the expiration of one year from the giving of notice, as hereinafter provided, to the said claimant that an action commenced by another person is pending to recover said sum or any part thereof exceeding fifty dollars in amount."

<sup>23</sup> N. Y. CIV. PRAC. ACT § 51a, subds. 1, 2, 3.

<sup>24</sup> *Ibid.* Cf. CIV. PRAC. ACT §§ 287a-287c, N. Y. Laws 1939, c. 804, which were introduced as companion bills to the statute under consideration and went into effect on the same date. These sections, constituting Article 28a of the CIV. PRAC. ACT pertain to actions in which the stakeholder is interested in determining adverse claims to specific personal property, whereas under the statute under consideration, the stakeholder is interested in determining claims to money; FEDERAL INTERPLEADER ACT, note 17, *supra*, where the minimum amount is \$500; N. Y. CIV. PRAC. ACT § 287, in which the action may be based on ejectment and replevin as well as contract.

<sup>25</sup> *Id.* § 51a, subd. 2.

<sup>26</sup> 4 POMEROY, EQUITY JURISPRUDENCE (4th ed. 1919) § 1328.

<sup>27</sup> N. Y. CIV. PRAC. ACT § 51a, subds. 2, 3.

money. *Claimant-2* is a non-resident of New York, who refuses to appear in the action and upon whom personal service (and therefore substituted service)<sup>28</sup> cannot be had.<sup>29</sup> *S* may, within twenty days from the date of service upon him of the complaint (or within twenty days from the date of receipt by him of the claim) of *claimant-1*, apply to the court where the action is pending for an order permitting him to give notice to *claimant-2* of the pendency of the action and to inform him that his rights will be barred unless he commences an action to enforce his claim, or intervenes in the pending action within one year and ten days from the date of said order.<sup>30</sup> The form of the notice is prescribed by the statute and must be substantially complied with.<sup>31</sup> It must be sent by registered mail to the last known address of *claimant-2*, and must be accompanied with a copy of the summons and complaint with which *claimant-1* served *S*.<sup>32</sup> *S* must then file proof of the mailing of such notice within ten days from the date of the order,<sup>33</sup> otherwise the order becomes inoperative.<sup>34</sup> The court will thereafter make an order staying further prosecution of the action by *claimant-1* for a period not to exceed one year from the date of the giving of notice to *claimant-2*.<sup>35</sup> At the same time, or at any time thereafter (for the protection of *claimant-1*), the court may order *S* to give an undertaking, or, in lieu thereof, pay the cash into court.<sup>36</sup>

### Effect.

If the adverse non-resident claimant complies with the notice by intervening in the pending action within the prescribed one year from the date of service of the notice, the court has jurisdiction over his person,<sup>37</sup> and can render an *in personam* judgment,<sup>38</sup> and thus the controversy will be finally decided in one action. If the adverse non-resident claimant complies with the notice by commencing an action to enforce his claim in this state within the prescribed time, the same

<sup>28</sup> *Id.* § 230; PRASHKER, *op. cit. supra* note 12, at 242.

<sup>29</sup> Although diversity of citizenship exists, and *S* has deposited the amount into court, the Federal Interpleader Act is unavailable to *S* because the amount involved is less than \$500. See note 17, *supra*.

<sup>30</sup> N. Y. CIV. PRAC. ACT § 51a, subd. 2. But "The limitation herein prescribed shall not be construed to enlarge the time within which the cause of action, if any, of the said claimant would otherwise be barred." *Id.* § 51a, subd. 1.

<sup>31</sup> *Id.* § 51a, subd. 2.

<sup>32</sup> *Cf.* N. Y. VEHICLE AND TRAFFIC LAW § 52, where a similar procedure is used.

<sup>33</sup> N. Y. CIV. PRAC. ACT § 51a, subd. 2.

<sup>34</sup> *Ibid.*

<sup>35</sup> *Id.* § 51a, subd. 3.

<sup>36</sup> *Ibid.*

<sup>37</sup> *Id.* § 237. Voluntary submission is effected by a general appearance. *Reed v. Chilson*, 142 N. Y. 152, 36 N. E. 884 (1894).

<sup>38</sup> *Pennoyer v. Neff*, 95 U. S. 714 (1877).

result will follow, for the two actions may then be consolidated into one, on motion by either party.<sup>39</sup> The suit culminating in the judgment, being one for money by a court which had personal jurisdiction<sup>40</sup> over a defendant, must be given full faith and credit by a sister state under the Federal Constitution.<sup>41</sup> A subsequent suit by the adverse non-resident claimant in his own or other state will, therefore, be barred, as the New York judgment is *res adjudicata* and estops the adverse non-resident claimant.<sup>42</sup> If the adverse non-resident claimant refuses or fails to intervene in the pending action or to commence an action within the one year, the action originally commenced against the stakeholder will be prosecuted to a conclusion, and the non-resident claimant will be barred from litigating his claim.<sup>43</sup>

## II.

The constitutionality of the Act may be attacked on four grounds: that it deprives the non-resident claimant of property without due process of law;<sup>44</sup> that it violates the equal protection clause of the Federal Constitution;<sup>45</sup> that it impairs the obligation of contract clause;<sup>46</sup> and that it violates the power of the Federal Government to make treaties.<sup>47</sup>

*Under the due process clause.* It may be claimed that the Act arbitrarily reduces the period from the present six-year limitation in contract cases<sup>48</sup> to a one-year limitation. But the power of the Legislature to accelerate the time within which a right, even a vested right, is barred, is well recognized.<sup>49</sup> The only restriction is that it accord a reasonable time within which it may be enforced.<sup>50</sup> It is submitted that one year is a reasonable time<sup>51</sup> for it will not work a hardship, since every precaution for giving notice of pendency of the action is provided for.<sup>52</sup>

<sup>39</sup> N. Y. CIV. PRAC. ACT § 96. Because of compliance the stay may be vacated and the undertaking discharged. *Id.* § 51a, subd. 3. If the non-resident starts the suit in the federal court consolidation may be had in certain cases. See FED. RULES OF CIVIL PROCEDURE 20, 22, 24.

<sup>40</sup> See note 37, *supra*.

<sup>41</sup> U. S. CONST. Art. IV, § 1; *Lynde v. Lynde*, 181 U. S. 183, 21 Sup. Ct. 555 (1901); *Sistare v. Sistare*, 218 U. S. 1, 30 Sup. Ct. 682 (1910).

<sup>42</sup> *Emery v. Hovey*, 84 N. H. 499, 153 Atl. 322 (1931); *Guaranty Trust Co. v. International Trust Co.*, 144 Misc. 127, 258 N. Y. Supp. 465 (1932).

<sup>43</sup> N. Y. CIV. PRAC. ACT § 51a, subd. 1.

<sup>44</sup> U. S. CONST. Art. IV, § 1.

<sup>45</sup> *Id.* § 2 ("The citizens of each state shall be entitled to all privileges and immunities of citizens in the several states.").

<sup>46</sup> *Id.* Art. I, § 10.

<sup>47</sup> *Id.* Art. IV, § 2.

<sup>48</sup> N. Y. CIV. PRAC. ACT § 48(1).

<sup>49</sup> WOOD, *LIMITATION OF ACTIONS* (4th ed. 1916) § 12b.

<sup>50</sup> *Gilbert v. Ackerman*, 159 N. Y. 118, 124, 53 N. E. 753, 754 (1899).

<sup>51</sup> For existing statutes wherein the period of limitation is one year see N. Y. CIV. PRAC. ACT § 51; N. Y. NEGOTIABLE INSTRUMENT LAW § 326.

<sup>52</sup> *Cf.* N. Y. VEHICLE AND TRAFFIC LAW § 52, where similar notice is pro-

*Under the equal protection clause.* It may be objected that the Act makes an unjust distinction between a non-resident claimant, who is limited by a one-year period of limitation, and a resident, to whom the one-year period is inapplicable. But this classification seems reasonable,<sup>53</sup> especially since the state has an interest in protecting its resident debtors against the hazard of double liability. Furthermore, a state may impose reasonable conditions for access to its courts.<sup>54</sup>

*Under the impairing of obligation of contract clause.* It may be objected that by permitting a one-year stay of the action, there is a violation of Article I, Section 10 of the Federal Constitution. But existing obligations of contract must be distinguished from existing remedies for enforcement of contracts.<sup>55</sup> While the former may not be impaired, the latter may be changed or modified, provided substantial rights are not affected.<sup>56</sup> A stay for a definite and reasonable time (one year in this instance) should be valid.<sup>57</sup>

*Under the power to make treaties clause.* It may be objected that the Act conflicts with the Federal Government's power to make treaties because it governs actions of foreign claimants. But the Act applies to all non-residents and, in absence of conflict with the terms of a treaty, the statute will unquestionably control.<sup>58</sup>

The constitutionality of the statute may be based on a firmer ground—the power of the state to pass statutes of limitations.<sup>59</sup> This right of the Legislature has long been recognized and is founded on sound public policy, based on the general experience of mankind.<sup>60</sup> Such a statute is one of repose, intended to bar stale and vexatious claims, to effect a prompt administration of justice, and to prevent surprise against parties who after a period of time may have lost their evidence or cannot locate their witnesses.<sup>61</sup> A conclusive presumption against its original validity is indulged in, due to the failure and neglect of the owner of a right to pursue his remedy in time. If payment is sought, the presumption is that it has been paid.<sup>62</sup> Such a statute, therefore, affects no substantive right, but is one of procedure and remedy.<sup>63</sup> Nor is it an unconscionable or dishonorable

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vided for. Such form of notice is reasonable and satisfies the due process law. *Schushereba v. Ames*, 255 N. Y. 490, 175 N. E. 187 (1931).

<sup>53</sup> *Canadian Northern Ry. v. Eggen*, 252 U. S. 553, 40 Sup. Ct. 402 (1920).

<sup>54</sup> *Atchinson v. Matthews*, 174 U. S. 96, 19 Sup. Ct. 609 (1899).

<sup>55</sup> *Waltmire v. Westover*, 14 N. Y. 16, 21 (1856).

<sup>56</sup> *Von Hoffman v. City of Quincy*, 4 Wall. 535, 553 (U. S. 1867).

<sup>57</sup> *Breitenbach v. Bush*, 44 Pa. 313, 319 (1863).

<sup>58</sup> *Santovincenzo v. Egan*, 284 U. S. 30, 52 Sup. Ct. 81 (1931).

<sup>59</sup> *Hamilton v. The Royal Ins. Co.*, 156 N. Y. 327, 50 N. E. 863 (1898).

<sup>60</sup> *Ibid.*

<sup>61</sup> *United States v. Oregon Lumber Co.*, 260 U. S. 290, 43 Sup. Ct. 100 (1922).

<sup>62</sup> *Conkling v. Weatherwax*, 181 N. Y. 258, 73 N. E. 1028 (1905).

<sup>63</sup> STORY, *CONFLICT OF LAW* (8th ed. 1883) 793; WOOD, *op. cit. supra* note 49, § 8. In Europe it is considered part of the substantive law. Note (1919) 28 *YALE L. J.* 492.



defense,<sup>64</sup> but a meritorious one.<sup>65</sup>

But the New York statute has no extra-territorial effect.<sup>66</sup> If the adverse claimant pursues his remedy in another state where he can obtain jurisdiction over the stakeholder, how shall this stakeholder meet the claim? He cannot successfully defend on the ground of a prior judgment in favor of another claimant.<sup>67</sup> He must rely on the defense that the present claim is barred by the Statute of Limitations.<sup>68</sup> The recognition of this defense will, in turn, depend upon the conflict of laws doctrine of the forum.<sup>69</sup> If the forum's law is similar to our own, as expressed in Section 13 of the Civil Practice Act, the action cannot be maintained if the cause of action is barred in the state or country where it arose, except where the cause of action originally accrued in favor of a resident of the forum.<sup>70</sup>

It will therefore be incumbent upon the stakeholder to show that the cause of action arose in New York. In contract cases, the cause of action is said to arise in the place where breach of performance takes place—where payment is to be made but refused.<sup>71</sup> But even if the cause of action arose in New York, the stakeholder cannot succeed if the claimant sues in the state where he was a resident at the time the cause of action accrued.<sup>72</sup> Thus, suppose *claimant-1* sued *S* insurance company in New York (where the money is payable on January 1, 1939), and *S* proceeded under Section 51a of the Civil Practice Act, notifying *claimant-2*, a resident of Ohio. *Claimant-2* failed to comply with the notice properly served by *S*. The defense of the Statute of Limitations in New York will be good provided *claimant-2* was not a resident of Ohio on January 1, 1939. But this is only true if Ohio's conflict of laws doctrine is similar to our own.<sup>73</sup>

Another problem must be considered—whether the stakeholder's

<sup>64</sup> Hart v. Goadby, 72 Misc. 232, 129 N. Y. Supp. 892 (1911).

<sup>65</sup> Abbott v. Johnson, 130 Ark. 1, 195 S. W. 676 (1917).

<sup>66</sup> Cooper v. Jewett, 233 Fed. 618 (C. C. A. 8th, 1916); Goodrich v. Rochester Trust Co., 173 App. Div. 577, 582, 160 N. Y. Supp. 454, 458 (4th Dept. 1916).

<sup>67</sup> See note 9, *supra*.

<sup>68</sup> See note 65, *supra*.

<sup>69</sup> RESTATEMENT, CONFLICT OF LAWS (1934) § 604.

<sup>70</sup> A majority of the states have enacted legislation by which they apply the statutes of limitation of other states to suits in the forum. CHEATHAM, DOWLING AND GOODRICH, CONFLICT OF LAWS (1st ed. 1936) 371. See Note (1935) 35 COL. L. REV. 762, 764, n.11 (listing thirty-three states that have adopted such "borrowing" statutes). These statutes are held to be additional limitations. Brown v. Case, 80 Fla. 703, 86 So. 684 (1920). For the constitutionality of such statutes see Klotz v. Angle, 220 N. Y. 347, 116 N. E. 24 (1917).

<sup>71</sup> Zimmermann v. Sutherland, 274 U. S. 253, 47 Sup. Ct. 625 (1927); Dougherty v. Equitable Life Assurance Society, 266 N. Y. 71, 193 N. E. 897 (1934).

<sup>72</sup> N. Y. CIV. PRAC. ACT § 13.

<sup>73</sup> The basis for applying the foreign statute of limitations is not as a substitute for that of the forum, but really because we adopted it as our own. Isenberg v. Rainier, 145 App. Div. 256, 130 N. Y. Supp. 27 (1st Dept. 1911). See (1934) 4 BKLYN. L. REV. 76.

defense of the Statute of Limitations will be a bar to a subsequent suit by a foreign government or liquidator. A statute of limitations cannot run against a domestic sovereign,<sup>74</sup> unless it has consented to be bound by it.<sup>75</sup> This is for the reason that otherwise the sovereign's dignity is encroached upon, and that public policy requires that the state and its taxpayers should not be penalized for the negligence and laches of its officers.<sup>76</sup> The rule does not apply when the federal or state government sues in a private capacity.<sup>77</sup> *Dictum* in a case has extended the rule for the benefit of foreign sovereignties.<sup>78</sup> In another case<sup>79</sup> doubt was expressed as to the soundness of such extension. Recently, *Guaranty Trust Co. v. United States*<sup>80</sup> seems to have settled the issue and upheld the sounder view that the Statute of Limitation of the forum runs against a foreign government as much as it runs against private litigants.<sup>81</sup> The Statute of Limitation is part of the rules of the forum, and the foreign government having chosen to litigate in the forum, must comply with its procedure.<sup>82</sup> Hence, it appears that the Statute will be effective to bar the claim of a liquidator—whether he be considered by the courts as a foreign sovereign or not.<sup>83</sup>

### III.

The Statute is another step in the direction of meeting the intolerable burden of rendering debtors twice liable on the same debt; but it is by no means all-inclusive. It is restricted to actions based on contract. It has no application to conflicting claims to specific personal property. But in that case the stakeholder may proceed under Sections 287a–287e of the Civil Practice Act, a companion statute of the one under consideration.<sup>84</sup> The Act's primary weakness is that its effect depends upon the conflict of laws doctrine of the forum wherein the second suit is brought by the adverse non-resident claimant.<sup>85</sup> But when the suit is brought in New York, its importance to the stakeholder is far-reaching and will avoid such anomalous results as experienced in the *Hanna* and *Bullowa* cases.<sup>86</sup> When a foreign liquidator is the claimant, it seems to be the sole re-

<sup>74</sup> *United States v. Hoar*, 2 Mason 311 (U. S. 1821).

<sup>75</sup> By the N. Y. CIV. PRAC. ACT § 54 this state is bound by the Statute of Limitations except in actions for recovery of real property.

<sup>76</sup> WATKINS, THE STATUS OF A PARTY LITIGANT (1927) 197, 198.

<sup>77</sup> *United States v. Beebe*, 127 U. S. 338, 347 (1888).

<sup>78</sup> *Porto Rico v. Ramos*, 232 U. S. 627, 631, 34 Sup. Ct. 461 (1914).

<sup>79</sup> *French Republic v. Saratoga Vichy Spring Co.*, 191 U. S. 427, 24 Sup. Ct. 145 (1903).

<sup>80</sup> 304 U. S. 126, 58 Sup. Ct. 785 (1938).

<sup>81</sup> *Id.* at 136, Sup. Ct. at 790.

<sup>82</sup> *Ibid.*; *Le Roy v. Cawningshield*, 15 Fed. Cas. No. 8269 (1820).

<sup>83</sup> See note 4, *supra*.

<sup>84</sup> See note 24, *supra*.

<sup>85</sup> See note 70, *supra*.

<sup>86</sup> See note 9, *supra*.

relief to the stakeholder. The basis for its constitutionality also seems sound.<sup>87</sup> None the less, it is more advisable to proceed wherever possible under Section 287 of the Civil Practice Act, or the Federal Interpleader Act<sup>88</sup> not only because they have survived constitutional tests, but because the relief thereunder is quicker; under the new statute as much as one year might pass before a case is disposed of.<sup>89</sup> At any rate, if the legislation proves as successful as it is hoped, the Statute of Limitations will become an important weapon in the hands of the Legislature with which it can overcome jurisdictional obstacles in the courts. From the economic point of view, the statute should be an important factor in relieving American businessmen of fear and danger in doing business with foreign citizens.

SAMUEL M. SINGER.

**THE UNCLAIMED LIFE INSURANCE FUNDS ACT.**—The economic plague has, for the last ten years, devastated the financial fields, consumed all the fruits of prosperity investments, exhausted all accumulated reserves and rendered unbearable the burden of the taxpayer. It has constrained the legislatures to enact more and more revenue legislation. The New York Legislature, in its quest for new modes of taxation, has discovered a new source for revenue, the unclaimed funds in the domestic life insurance corporations.

On June 17, 1939, Governor Lehman had the choice of signing one of two bills<sup>1</sup> on the same subject. He signed the McNaboe bill, which immediately became the law.<sup>2</sup> The draftsmen, in planning the bill, intended, to use the proverbial saying, to kill two birds with one stone. Not only was the bill designed to alleviate the troublesome details confronting the life insurance corporations in their safeguarding the funds of forgetful policyholders,<sup>3</sup> but also to add new income to the coffers of the state treasury, and this, perhaps, was the primary purpose of the legislation.<sup>4</sup>

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<sup>87</sup> See note 59, *supra*.

<sup>88</sup> See note 3, *supra*.

<sup>89</sup> See note 22, *supra*.

<sup>1</sup> The McNaboe bill (Senate No. 2896) and the Hampton bill (Senate No. 2962), both imposing similar requirements on domestic life insurance corporations, were presented to the Governor for signature. The Governor vetoed, without memorandum, the Hampton bill.

<sup>2</sup> N. Y. Laws 1939, c. 923, §§ 295-299; N. Y. INS. LAW §§ 295-299; N. Y. STATE FINANCE LAW § 44-h.

<sup>3</sup> According to Mr. Morris H. Siegel, the insurance counselor and director of the Policyholders Advisory Council who helped prepare the bill, the Metropolitan Life Insurance Corporation alone in its industrial department is holding \$250,000,000 in reserves on lapsed policies.

<sup>4</sup> Mr. Siegel estimates that with the McNaboe bill the State of New York should receive approximately \$25,000,000 in the first year of the law's operation,