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Interpleader in New York—Jurisdictional Problem

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INTERPLEADER IN NEW YORK—JURISDICTIONAL PROBLEM

Interpleader[1] is an effective tool in preventing multiple litigation and multiple liability, generally, but where the dispute arises over a debt, and one or more of the claimants are nonresidents of the state in which the suit is initiated, serious jurisdictional difficulties arise. While federal interpleader comes to a partial solution, it falls short of completely satisfying the needs of banks and surety companies because of the five hundred dollar minimum limit on the amount in controversy and diversity of citizenship restrictions.[2] State courts, on the other hand, are inhibited by the traditional notion of a debt as being a personal relationship between creditor and obligor of such intangibility as to prevent a debtor from interpleading the creditor-claimant by serving him by publication.[3]

Besides providing a short term statute of limitations applicable to such situations,[4] and providing for an interstate interpleader compact,[5] New York enacted in 1954 a jurisdictional provision in its interpleader statute intended to remedy the situation outlined above.[6] Section 286 of the Civil Practice Act now provides that a stakeholder entitled to interplead for money, provided he is a domiciliary or a firm doing business within the state, may apply for an order permitting him to pay money into court and serve nonresident claimants by publication as provided by the concurrently enacted subdivision four of section 232.[7]

1. Interpleader is a procedure by which A can bring C and D into one action to determine which of them is entitled to the property or fund. A can originate an action against C or D or, if he has been sued by C, he may bring D into that suit. 5 CARMODY-WAIT, CYCLOPEDIA OF NEW YORK PRACTICE 187 (1953).

2. 62 STAT. 931 (1948), 28 U.S.C. §1335 (1953). The constitutionality of this statute was upheld in *Treinies v. Sunshine Mining Co.*, 308 U.S. 66 (1939). While the statute merely requires two or more adverse claimants to be of diverse citizenship, the nature and degree of adversity required is still somewhat uncertain. See Haynes v. Felder, 239 F.2d 868 (5th Cir. 1957).

3. New York Life Insurance Co. v. Dunlevy, 241 U.S. 518 (1916); Hanna v. Stedman, 230 N.Y. 326, 130 N.E. 566 (1921); Mechanics & Travelers Insurance Co. v. McVay, 142 Ark. 522, 219 S.W. 34 (1920); Palmer v. Bank of Sturgeon, 281 Mo. 72, 218 S.W. 873 (1920); Davidson v. Henry L. Doherty & Co., 214 Iowa 739, 241 N.W. 700 (1932).

4. N.Y. CIV. PRAC. ACT. §51-a. The case of *Solicitor for the affairs of His Majesty's Treasury v. Bankers Trust Co.*, 304 N.Y. 282, 107 N.E.2d 448 (1952) has substantially limited the effectiveness of this section.

5. N.Y. Sess. Laws 1957, c. 775. See Zimmerman, Wendell, Heller, *Effective Interpleader via Interstate Compacts*, 55 COLUM. L. REV. 56 (1955).

6. N.Y. Sess. Laws 1954, c. 561.

7. N.Y. CIV. PRAC. ACT §286(2) provides:

> Where a stakeholder is otherwise entitled to proceed, under section two hundred and eighty-five for the determination of a right to, interest in, or lien upon, a sum of money, whether or not liquidated in amount, payable in the state under or on account of a contract, express or implied, or claimed as damages for the alleged unlawful retention of specific real or personal property within the state, and the stakeholder is a natural person having a permanent residence or an established place of business in the state or subject to service of process within the state, he may apply to the court either

(Footnote continued on following page.)

The Judicial Council extended a *caveat* about the future of the statute,[8] but thought that the trend in the recent decisions of the United States Supreme Court indicated an expansion of the in rem and quasi in rem concepts. In the apparent absence of litigation involving the statute since its enactment, and in view of recent developments in other areas of the law relating to the prospective in rem treatment of a debt, some interesting questions are raised in respect to section 286.

Fundamental to any discussion involving jurisdiction is the proposition that the foundation of jurisdiction is physical power.[9] This power may be asserted over persons by personal service of process, or over things by an action directed against the thing with notice to "all the world" by publication. While the distinction between in rem and quasi in rem actions is seldom identified in recent cases, the latter is a means of creating jurisdiction over an absent owner of property within the state in order to adjudicate personal rights and obligations by proceeding against the property.[10] Otherwise it is necessary that the individual whose rights may be affected be physically present with the state, domiciled therein, even though temporarily absent,[11] or he must have consented, actually or constructively, to the exercise of jurisdiction over him.[12]

A judgment of a court purporting to adjudicate a personal claim or obligation of an absent defendant without acquiring jurisdiction over his person is not entitled to full faith and credit by constitutional mandate in another jurisdiction,[13]

(Footnote continued from preceding page.)

> before the action or at any time during the pendency of an action commenced against such stakeholder, upon good cause shown, for an order permitting him to deliver or pay into the court or to a person designated by the court to retain to the credit of the action said sum of money or part thereof to be disposed of in accordance with further order or final judgment. The court shall make such order upon satisfactory proof by affidavit or otherwise of the facts alleged in the stakeholder's application regarding stakeholder's compliance with the requirements of this subdivision.
>
> Upon compliance with the order of the court, such sum of money shall be deemed to be property within the state for the purposes of this subdivision and subdivision four of section two hundred thirty-two.

8. "However, the only way to ascertain whether such a concept or statute is constitutional is by litigation resulting in a determination by the Supreme Court of the United States." TWENTIETH ANNUAL REPORT OF THE N.Y. JUDICIAL COUNCIL, 1954, p. 284.

9. See McDonald v. Mabee, 243 U.S. 90, 91 (1917), per Holmes, J.:

> The foundation of jurisdiction is physical power, although in civilized times it is not necessary to maintain that power throughout proceedings properly begun . . . . No doubt there may be some extension of the means of acquiring jurisdiction beyond service or appearance but the foundation should be borne in mind.

10. Pennoyer v. Neff, 95 U.S. 714 (1877).

11. Milliken v. Meyer, 311 U.S. 457 (1940).

12. Hess v. Pawloski, 274 U.S. 352 (1927).

13. Thompson v. Whitman, 18 Wall. 457 (U.S. 1873); Bell v. Bell, 181 U.S. 178 (1901); Vanderbilt v. Vanderbilt, 354 U.S. 416 (1957).

and where such a judgment would not be honored, and the possibility of double liability exists, it would not be due process of law.[14] A judgment against an individual without establishing those minimum contacts which amount to jurisdictional control, is not due process.[15]

These concepts, it must be noted, are more readily applicable to tangibles and relationships of individuals with property that can be said to be "located" or have its "situs" within certain spatial limitations within the state. It is interesting to note that at very early common law the writ in debt was a *praecipe quod reddat* (command that he render) in the same manner as writs for the recovery of land.[16] In other words, as in the case of real actions, the defendant was conceived of as having in his possession something belonging to the plaintiff which he might not rightfully keep, but ought to surrender. Thus the requirement that the obligations of the debtor be always in a definite sum of money or a fixed quantity of chattels.[17] Such is not the law today. A debt is a relationship between the parties, at once a right of the creditor and an obligation of the debtor[18] but the confusion surrounding the persistent efforts to ascribe such a situs to a debt as to allow an action in rem is well out of proportion to the seemingly elementary nature of the subject. An outstanding example is the line of cases which terminated near the beginning of this century, concerning garnishment.

Basically garnishment is a form of attachment in which the property attached is not in the hands of the debtor but is with a third person. The question is, are wages owing to an employee, or is a bank account at the call of an out-of-state depositor, such property that may be attached and used to constitute a res so as to justify service by publication upon the absent creditor? In London, where the custom of garnishment originated, a debt could be attached if it were due in London and the garnishee were a citizen of that city.[19] The colonies accepted this custom as part of the common law but in the evolution of the cases, the requirement of place of payment, with the exception of one early case,[20] appears to have been forgotten,[21] and a hopeless conflict developed as to whether the debt could be reached at the location of the debtor or creditor, in the absence of one or the

14. Mahr v. Norwich Union Fire Insurance Society, 127 N.Y. 452, 28 N.E. 391 (1873); Ward v. Boyce, 152 N.Y. 191, 46 N.E. 180 (1897).

15. Blackmer v. United States, 284 U.S. 421 (1932); Baker v. Baker, Eccles and Co., 242 U.S. 394 (1917).

16. AMES, LECTURES ON LEGAL HISTORY 88 (1913).

17. See 2 POLLOCK AND MAITLAND, HISTORY OF ENGLISH LAW 205 (1895); 3 HOLDSWORTH'S HISTORY OF ENGLISH LAW 421 (3d ed. 1927).

18. Ward v. Boyce, *supra* note 14.

19. Mayor of London v. Cox, L.R. 2 H.L. 239 (1867).

20. Tingley v. Bateman, 10 Mass. 343 (1813).

21. See King v. Cross, 175 U.S. 396 (1899); Molyneux v. Saymour, 30 Ga. 440 (1860); Rothschild v. Knight, 176 Mass. 48, 57 N.E. 377 (1900).

other at the place of suit.[22] Finally the Supreme Court, in *Chicago, Rock Island and Pacific Railway v. Sturm*,[23] decided in favor of the former, in allowing a Missouri garnishment to be used as a defense by the garnishee against his principal debtor, who was served by publication in the first action, when sued on the debt in Kansas. Justice McKenna, speaking for the Court, there conceived of the right of the creditor and the obligation of the debtor as each having an individual quality of a res, which would seem rather unrealistic since the reciprocal relationship of the debtor and creditor will allow for no such separation. However the Court in *Harris v. Balk*,[24] finally crystallized interstate garnishment by holding that a debt may be attached wherever the garnishee can be served, regardless of domicile if the primary obligor could have sued his debtor in that jurisdiction.[25]

Following the explicit reasoning of these cases, it would seem to have been a short step to allow constructive service upon a claimant to a debt in an action in interpleader, since the rights of the principal debtor in garnishment were determined on that basis. But such was not to be the case. In 1910 one Mrs. Dunlevy owed a debt to Boggs & Buhl, who instituted a garnishment proceeding in Pennsylvania against the New York Life Insurance Company claiming it owed a debt to Mrs. Dunlevy, now in California, arising out of an assignment by Gould to her. Thereupon the insurance company paid the amount of money in dispute into court and interpleaded Boggs & Buhl, Gould and Mrs. Dunlevy, serving the latter out of state. Meanwhile Mrs. Dunlevy obtained a judgment against the insurance company in her favor in California, having obtained personal service of process over all the necessary parties. The Supreme Court[26] held the conflicting Pennsylvania judgment, for Boggs & Buhl, void, saying:

> Beyond doubt without the necessity of further personal service of process upon Mrs. Dunlevy, the court of common pleas at Pittsburgh had ample

22. At the domicil of the creditor: State Tax on Foreign Held Bonds, 15 Wall. 300 (U.S. 1872); Williams v. Ingersoll, 89 N.Y. 508 (1882); Louisville & Nashville N.R.R., 118 Ala. 477, 23 So. 825 (1898). At the domicil of the debtor: Burlington & M.R. Co. v. Thompson, 31 Kan. 180, 1 Pac. 622 (1884); Morgan v. Neville, 74 Pa. 52 (1873); Glover v. Wells, 40 Ill. App. 350 (1891), *aff'd*, 140 Ill. 102, 29 N.E. 680 (1892); Bragg v. Gaynor, 85 Wisc. 488, 55 N.W. 919 (1893).

23. 174 U.S. 710 (1899).

24. 198 U.S. 215 (1905).

25. See Holt, *The Federal Interpleader Act and Conflict of Laws in Garnishment*, 4 U. CHI. L. REV. 403 (1937) for a discussion of the problems created by this doctrine where there are simultaneous garnishments in different jurisdictions. Until recently New York apparently continued to follow the pre-*Harris* decision of *Douglass v. Phenix Ins. Co.*, 138 N.Y. 209, 33 N.E. 938 (1893), which held the situs of a debt for purposes of garnishment to be at the domicil of the debtor. See Salim v. Krieg, 182 Misc. 721, 49 N.Y.S.2d 694 (Sup. Ct. 1944); Kennedy, *Garnishment of Intangible Debts in New York*, 35 YALE L. J. 689 (1926). *Morris Plan Industrial Bank v. Gunning*, 295 N.Y. 324, 67 N.E.2d 510 (1946), however, gave full effect to section 916 of the Civil Practice Act in a situation analogous to that in *Harris v. Balk*.

26. New York Life Insurance Co. v. Dunlevy, 241 U.S. 518 (1916).

> power through garnishment proceedings to inquire whether she held a valid claim against the insurance company, and, if found to exist, then to condemn and appropriate it so far as necessary to discharge the original judgment. Although herself outside the limits of the state, such disposition of the property would have been binding on her. . . . But the interpleader initiated by the company was an altogether different matter. This was an attempt to bring about a final and conclusive adjudication of her personal rights, not merely to discover property and apply it to debts.[27]

The line here drawn between garnishment and interpleader may be one without a difference since in *Harris* the property sought to be discovered was itself nothing more than a debt and therefore an adjudication of the principal debtor's right to recover in apparently the same degree as was the Pennsylvania judgment of Mrs. Dunlevy's rights.

This "discovery of property" distinction was elaborated upon by Professor Carpenter[28] in his defense of the garnishment cases against attack by Professor Beale.[29] "In the case of a debt," he says, "the relationship between creditor and debtor has two aspects of significance for the law; one, the direct relationship between the creditor and debtor, i.e., the right *in personam* which the creditor has against the debtor, and the correlative duty of the debtor to the creditor as it relates to third persons as a property right. The debt is an asset of the creditor in the same way in which any tangible property he owns is an asset."[30]

It is true that a debt has some characteristics in common with tangible property insofar as the creditor's rights in relation to third persons are concerned[31] but an action in rem is an altogether different matter since there the question is whether the state has sufficient contact with the res as to lend efficacy to its judgment and not infringe upon the sovereignty of another state.[32] Simply to denominate a debt "property" would not seem to convert it from an intangible personal relationship, to a thing of such substance that one state can control it to the exclusion of all others.

Perhaps the argument might have been more palatable if garnishment had been restricted to the place where the debt was payable and where the debtor was domiciled, since there would be at least some element of consent or reciprocal obligation in the same sense that the power of the state to proceed againset property

27 *Id.* at 520.
28. Carpenter, *Jurisdiction Over Debts for the Purpose of Administration, Garnishment, and Taxation,* 31 HARV. L. REV. 905 (1918).
29. Beale, *Jurisdiction In Rem to Compel Payment of a Debt,* 27 HARV. L. REV. 107 (1913).
30. Carpenter, *supra* note 28, at 912.
31. Cook, *The Powers of Courts of Equity,* 15 COLUM. L. REV. 38 1915).
32. Pennoyer v. Neff, 95 U.S 714, 727 (1877).

is sometimes said to adhere because the owner accepts the privilege granted by the state to utilize its protection in respect to the property.[33] But whether the requirement of section 286, that the debt be payable within New York State, will be found sufficient to overcome, or obscure, the primary distinction drawn in the *Dunlevy* case, that is, that in interpleader the rights of the litigants are passed on directly, is too speculative to venture. It would seem, since in that case money was paid into court, that it will be necessary for the courts to meet the *Dunlevy* decision head on in dealing with section 286.

The recent decisions of the Supreme Court cited by the Judicial Council[34] as indicating a liberal trend in the modern application of the in rem concept deal with other aspects of the judicial treatment of debts. The first of these concerns the problem of the transfer of an obligation from an open account with the debtor to the state under a statute giving protective custody of the obligation to the state, or one escheating the account to the state. The latter differs from the former only in that, the obligation having been transferred to the state, it is then terminated by exercise of sovereign power; the account having been abandoned for a sufficient length of time to be deemed abandoned by the owner, the money is then held for the benefit of the whole community.[35] In *Standard Oil Company v. New Jersey*,[36] cited by the Judicial Council, the state, pursuant to statute, declared escheated dividends on shares which the state declared presumably abandoned, a reasonable length of time having passed since the declaration. Standard Oil had issued the stock and held the dividends in other states, keeping only its stock and transfer books within New Jersey. The Court held that the state, having sufficient power of coercion over the company, had control over the obligation. While this case is actually a step further than those cases relied upon in the opinion in which the debtors had held funds within the state,[37] the basic rationale is still intact: The obligation is transferred to the state and subsequently or simultaneously the state may terminate all rights against it.[38]

Shading off from this line of cases are those where the state is deemed to have such an interest in the disposition of the obligation as to outweigh individual

33. *Ibid.*
34. TWENTIETH ANNUAL REPORT, *op. cit. supra* note 8 at 283.
35. In re Melrose Ave., 234 N.Y. 48, 136 N.E. 235 (1922).
36. 341 U.S. 428 (1951).
37. Anderson National Bank v. Luckett, 321 U.S. 233 (1943); Security Savings Bank v. California, 263 U.S. 282 (1923).
38. In *Connecticut Mutual Life Ins. Co. v. Moore*, 333 U.S. 541 (1948), the Court held that the state may escheat claims where the owners of the claims were residents of the state when they matured. The *Standard Oil* case, since it allows the state of domicile of the corporation-debtor also to escheat, would seem to lead to a "race of diligence" between the various states having contacts with the transaction to attach the debt. However constitutional due process will prevent a too unseemly haste in declaring the debt abandoned. See Davidson v. New Orleans, 96 U.S. 97 (1897); Anderson National Bank v. Luckett, 321 U.S. 233 (1943).

rights. Among these is the case of *Mullane v. Central Hanover Bank*,[39] the second case relied upon by the Judicial council. There section 100-c of the New York Banking Law, which provides for the pooling of small trusts into single large trusts, was challenged. Nonresident beneficiaries stood to be affected by the pooling arrangement since they lost their right to have the original trustee answer for impairment of their interest and their interest was subject to some diminution in the proceedings, therefore it was necessary that they be made parties to the consolidation proceedings and this was done by service by publication. The Supreme Court, while reversing on the grounds that publication was not sufficient where more realistic notice was available to nonresidents of known addresses, upheld the jurisdiction of the state upon reasonable notice to nonresidents on the grounds that the interest of the state in preventing small trusts from becoming depleted by rising administrative costs outweighed the effect on individual nonresidents. Mr. Justice Jackson, speaking for the Court, also analogized the power granted in section 100-c to the power of the state to discharge trustees, said to be "rooted in custom."[40] But in the instance where the corpus of the trust may be affected, at least two jurisdictions have held that the residence of the trustee alone within the state would not grant them jurisdiction,[41] and several others have considered personal jurisdiction over the beneficiary the determinative factor,[42] so that this custom does not seem analogous to the problem at hand. Nevertheless, the principal grounds for the decision add little to the present discussion since no direct determination as to the beneficial ownership of the obligations of the trustees was necessary. The duty of the trustee was simply transferred, not the ownership of the beneficiary.

The leading case in New York on interstate interpleader is *Hanna v. Stedman*,[43] wherein the Court of Appeals refused to recognize the jurisdiction of its own court when a nonresident had been interpleaded by publication in a suit to determine the ownership of proceeds of an insurance fund. The decision was, of course, founded on the in personam nature of the relationship between the insurance organization and the potential beneficiary, but the money had not been paid into court and the statement by the majority that this would not alter the decision, remains as dictum. Nevertheless payment into court has been held by the United States Supreme Court to be not sufficient to grant jurisdiction over a

39. 339 U.S. 306 (1950).
40. *Id.* at 313.
41. Schuster v. Superior Court, 98 Cal. App. 619, 277 Pac. 509 (1929); Swartz v. Gerhardt, 44 Ore. 425, 75 Pac. 698 (1904); *contra*, Brannan v. Brannan, 236 App. Div. 164, 258 N.Y. Supp. 181 (1st Dep't 1932).
42. Lines v. Lines, 142 Pa. 149, 21 Atl. 809 (1891); Paget v. Stevens, 143 N.Y. 172, 38 N.E. 273 (1894); Dittmar v. Gould, 60 App. Div. 94, 69 N.Y. Supp. 708 (1st Dep't 1901); Coyne v. Plume, 90 Conn. 293, 97 Atl. 337 (1916); People v. Surrogate's Court, 229 N.Y. 495, 128 N.E. 890 (1920); Garland v. Higgins, 160 Tenn. 381, 25 S.W.2d 583 (1930); Harvey v. Fiduciary Trust Co., 299 Mass. 457, 13 N.E.2d 299 (1938).
43. 230 N.Y. 326, 130 N.E. 566 (1921).

nonresident.[44] The *Hanna* case, plus dictum, has been generally followed and concurred in:[45]

A recent development in New York which may influence the future of section 286 concerns surrogate's practice. Sections 205 and 206 of the Surrogate's Court Act provides that upon facts tending to show that "money or other personal property" is in the possession of a person who withholds the same, the surrogate may order an inquiry to determine conflicting claims and direct delivery of the money or property to the successful claimant. As the Court of Appeals said in *In re Trevor's Estate*:[46]

> The legislature has not vested in the Surrogate's Court jurisdiction over actions at law for the recovery of common debts or to enforce ordinary contract obligations and . . . an action to establish and enforce a debt must be brought in the common law forums. The nature of such an action is in personam and it does not come within the purview of the statute authorizing in rem discovery proceedings. The relationship between a bank and its depositor is that of debtor and creditor with the result that the obligation of the bank to the depositor remains merely a chose in action *in possession of the depositor.* (emphasis added).

Soon after this decision, the legislature amended section 205 specifically to include bank accounts within the term "money or personal property."[47] The effect of such a statute upon the otherwise personal nature of the depositor-bank relationship must remain a mystery for the time being, no less so in view of the holding in *In re Balthazar's Estate*[48] that the new amendment did not weaken the rule that discovery does not lie to recover on debts or contract claims.

The quick response of the legislature to the *Trevor* case may be interpreted

44. Bank of Jasper v. First National Bank, 258 U.S. 112 (1922).

45. Schoenholz v. New York Life Ins. Co., 197 App. Div. 91, 188 N.Y. Supp. 596 (1st Dep't 1921), *aff'd*, 234 N.Y. 24, 136 N.E. 27 (1922); Redzina v. Provident Institution of Savings, 96 N.J. Eq. 346, 125 Atl. 133 (1924); Gallagher v. Rogan, 322 Pa. 315, 185 Atl. 707 (1936); *contra*, St. Louis, Southwestern Ry. v. Meyer, 364 Mo. 1057, 272 S.W.2d 249 (1954), criticized in Note, 9 OKLA. L. REV. 194 (1956).

The law review writers are also generally in accord: "There is money within the court's control, but that money is not the debt unless the creditor consents or he can be personally ordered by the court to accept the substituted situation and release the debtor," Chafee, *Interstate Interpleader*, 33 YALE L. J. 711 (1924); "This would be carrying reification a bit too far," Andrews, *Situs of Intangibles in Suits Against Nonresident Claimants*, 49 YALE L. J. 241, 261 (1939); ". . . it would not seem to be due process to permit a plaintiff to terminate obligations in what is in substance an ex parte action . . . . The plaintiff shouldn't be allowed to garnish himself," Fraser, *Actions in Rem*, 34 CORN. L. Q. 29 (1948).

46. 309 N.Y. 389, 393, 131 N.E.2d 561, 563 (1955).

47. N.Y. Sess. Laws 1956, c. 270.

48. 4 Misc.2d 800, 156 N.Y.S.2d 64 (Surr. Ct. 1956), holding that discovery under section 205 does not include insurance proceeds.

as a recognition of the need within the state of settling small claims against banks[49] and insurance companies practicably, quickly and inexpensively. This is also the function proposed to be fulfilled by section 286. Nevertheless both statutes effect a radical change in present decisional law. Obligation and right are not separate entities but different aspects of the same relationship. It may be that when a debt is upon a specialty, the acknowledgment of the parties, and the custom of business, will not allow a creditor to deny that it operates as the embodiment of the obligation so as to facilitate transfer and allow an in rem judgment upon it;[50] but in the absence of such an instrument there is usually no such consent or custom in regard to a debt.[51]

This is not to say that there may not be ways to circumvent the general weight of present law. It has been suggested that the garnishment and interpleader cases can be reconciled upon the theory that an interpleader decree, being of equitable cognizance, operates only upon the person.[52] The action now being made statutorily in rem, the action is no longer inhibited by its equitable origins, and may be entitled to out-of-state recognition under ordinary conflict of laws principles. However, the essential fact of the transaction, the personal relationship of debtor and creditor, is entirely overlooked by this argument.

It may also be contended that since the debt, under the requirements of the statute, must be payable within the state, and the debtor must be a domiciliary, the parties by their own consent have fixed the forum and given as much power over the transaction to the state as the state could have over any in rem action.[53] In addition the state may be said to have found it to be in the general public interest to expedite such multiple claims, thereby adding up enough *jurisdictional fact* within the state to entitle such a judgment relating to the ownership of the

49. Section 286 received strong support from a committee of lawyers representing New York Banks. TWENTIETH ANNUAL REPORT OF N.Y. JUDICIAL COUNCIL, 1954, p. 284.

50. Loaiza v. Superior Court, 85 Cal. 11, 24 Pac. 707 (1890); Manning v. Berdan, 132 Fed. 382 (C.C.D.N. J. 1904).

51. Cases involving attorney's liens are sometimes cited for the proposition that an in rem action is allowed on a debt. *E.g.*, Bank of Jasper v. First National Bank, 258 U.S. 112 (1922); Andrews, *Situs of Intangibles in Suits Against Nonresident Claimants*, 49 YALE L. J. 241, 258 (1939), both citing *Oishei v. Pennsylvania R.R.*, 117 App. Div. 110, 102 N.Y.Supp. 368 (1st Dep't 1907), *aff'd mem.*, 191 N.Y. 544, 85 N.E. 1113 (1908). These cases involve the problem of a settlement of a suit by the defendant directly with the plaintiff who then leaves the jurisdiction. Plaintiff's attorney is then allowed to enforce his lien against the defendant by serving the absent plaintiff by publication, since the defendant is presumed to have retained in his actual possession enough of the settlement fund to satisfy the lien and this constitutes the res. See McKennell v. Payne, 197 App. Div. 340, 189 N.Y. Supp. 7 (2d Dep't 1921); In re Levine's Estate, 154 Misc. 700, 278 N.Y. Supp. 37 (Surr. Ct. 1935); Smith v. Young, 268 App. Div, 802, 49 N.Y.S.2d 572 (2d Dep't 1944); Morgan v. Drewry, 124 N.Y.S.2d 495 (Sup. Ct. 1953).

52. STUMBERG, CONFLICT OF LAWS 109 (2d ed. 1951).

53. See note 25 *supra* on the former New York position in respect to the requirement of domicile in garnishment.

debt to credit elsewhere.[54] This view would seem to be supported by language in the recent Supreme Court case of *McGee v. International Life Insurance Company*.[55] There an insurance company having no connection with California other than by a single insurance policy was held amenable to service of process by registered mail in Texas in a suit brought on the policy in California. Mr. Justice Black, speaking for a unanimous Court, said:[56]

> It is sufficient for purposes of due process that the suit was based on a contract which had substantial connection with that State. . . . It cannot be denied that California has a manifest interest in providing effective means of redress for its residents when their insurers refuse to pay claims. These residents would be at a severe disadvantage if they were forced to follow the insurance company to a distant State in order to hold it legally accountable.

This decision, of course, like *International Shoe Company v. Washington*,[57] concerns a state's power over foreign corporations. The Court has, in the past, held that the mere transaction of business in a state by nonresident natural persons does not imply consent to be bound by the process of its courts.[58] However the implication is present that the traditional concept that political boundaries are not coincidental with economic boundaries is considerably weakened.

Nevertheless there as yet seems no clear indication that the courts will align interpleader with the interstate garnishment doctrine. The state, by the nature of a debt, may not acquire such contact with it in an interpleader action against a nonresident either to entitle the judgment to full faith and credit in another state, or to deprive the nonresident creditor of the right to later assert his claim in this state. "The nature of such a case is one of jurisdictional facts,"[59] and it would seem that New York, by section 286 is not attempting a change in the law, but rather the facts of the transaction.[60]

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54. Alaska Packers Association v. Industrial Accident Commission, 294 U.S. 532 (1935); Griffen v. McCoach, 313 U.S. 498 (1941); Pink v. A.A.A. Highway Express 314 U.S. 201 (1941).
55. 78 Sup. Ct. 199 (1957).
56. *Id.* at 201.
57. 326 U.S. 310 (1945).
58. Flexner v. Farson, 248 U.S. 289 (1919).
59. Hanna v. Stedman, 230 N.Y. 326, 333, 130 N.E. 566, 569 (1921).
60. See Cross v. Armstrong, 44 Ohio St. 613, 10 N.E. 160 (1887).