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NEW YORK LIFE INSURANCE COMPANY v. DUNLEVY REVISITED:

THE POWER OF A COURT TO EXERCISE JURISDICTION FOR THE WRONG REASON

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Judgments can be divided into two classes: those that are valid and those that are void.[1] Furthermore, according to Section 5 of the *Restatement of Judgments*:

> A judgment is void unless the State in which it is rendered has jurisdiction to subject to its control the parties or the property or status sought to be affected.[2]

The bases of jurisdiction, it is to be noted, are stated in the alternative —the parties or the property or the status. It is difficult to see how, in any realistic sense, a court can control property or status, without also having control over at least one of the parties, for some person must act to bring the property or status under a court's control. It, therefore, would be more accurate to say that a judgment is void unless the state, that is, a court has subjected the parties, or at least one party and the property, or at least one party and the status to its control.

Suppose that a court should purport to exercise jurisdiction on the theory that it has control over the parties, when in legal contemplation it does not have jurisdiction over all of the parties, but it does have jurisdiction over one of the parties and the property. Is a judgment entered in such a proceeding valid or void? This was the situation presented in the 1916 case of *New York Life Insurance Company v. Dunlevy*,[3] although it was not discussed in these terms.

Suppose, again, that a court exercises jurisdiction on the theory that it has control over three interested parties, when actually it

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1. RESTATEMENT, JUDGMENTS § 4, comment *a* (1942).

2. The requisites of a valid judgment are set forth in § 4 and include the requirement that the judgment be rendered by a court with competency to render it.

3. 241 U.S. 518 (1916).

only has control over two parties. Is the judgment valid or void as to the two parties that are subject to the court's control? This was the situation presented in *Hanson v. Denckla,*[4] although the basic issue was obscured by a surfeit of discussion of the general subject of jurisdiction.

In short, does a court have power to exercise jurisdiction for the wrong reason?

Some light is thrown on the subject by the decision of the United States Supreme Court in *Western Union Telegraph Company v. Pennsylvania,*[5] in which the Court reversed a Pennsylvania judgment[6] that had escheated to the state certain undelivered money orders held by Western Union. The Court said:

> And our prior opinions have recognized that when a state court's jurisdiction purports to be based, as here, on the presence of property within the State, the holder of such property is deprived of due process of law if he is compelled to relinquish it without assurance that he will not be held liable again in another jurisdiction or in a suit brought by a claimant who is not bound by the first judgment.[7]

Due process of law could be satisfied, the Court said, by the state, which is seeking to escheat these funds, invoking the United States Supreme Court's constitutional jurisdiction over controversies between states. In this way the claims of the different states to escheat intangibles can "be settled in a forum where all the States that want to do so can present their claims for consideration and final, authoritative determination."[8]

The remedy so outlined in *Western Union* represents an indirect, rather than a direct, approach to the problem the case undertakes to solve. The problem is to find the state in which property, an intangible, is present or has a situs for purposes of escheat.[9] The

4. 357 U.S. 235 (1958).

5. 368 U.S. 71 (1961).

6. Commonwealth of Pennsylvania v. Western Union Telegraph Co., 400 Pa. 337, 162 A.2d 617 (1960).

7. 368 U.S. at 75.

8. *Id.* at 79.

9. A discussion of intangibles in terms of situs, of course, involves the use of a fiction. However, it seems to be the most convenient way to discuss the subject, and the attribution of a situs to an intangible is well established both in the cases and in legal literature. RESTATEMENT (SECOND), CONFLICT OF LAWS ch. 7 (1957): Property, Introductory Note, uses the word "thing" to include both tangibles and intangibles, and the "situs" of a thing is said to refer

remedy offered is the binding of all claimants under the principle of res judicata to a judgment that adjudicates the rights of the parties in a proceeding in which the court has jurisdiction over all the parties.[10]

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to the place where the thing is. See also EHRENZWEIG, CONFLICT OF LAWS 83 (1962); Andrews, *Situs of Intangibles in Suits Against Nonresident Claimants,* 49 YALE L.J. 241 (1939); Simmons, *Conflict of Laws and Constitutional Law in Respect to Intangibles,* 26 CALIF. L. REV. 91 (1937).

10. The opinion in Western Union is not as clear as it might be as to the role the Court envisions for itself in the settlement of escheat problems. This ambiguity may have led Mr. Justice Stewart, while agreeing with the decision, to remark that for him the opinion created "more problems than it solves." 368 U.S. at 80. There are two distinct possibilities.

The Court may be visualizing the adjudication of a limited number of suits between states in which the entire problem of escheat will be explored and authoritative rules laid down, which then can be applied by others without further extensive participation by the Supreme Court itself. This approach bears a strong resemblance to that taken to the problems of state taxation of intangibles during the late 1920's and the 1930's. Then, the Court followed a single-tax rule—only the state of the domicile of a decedent could impose an inheritance tax on the decedent's intangible estate and other states could not do so. Farmers Loan & Trust Co. v. State of Minnesota, 280 U.S. 204 (1930); First National Bank of Boston v. Maine, 284 U.S. 312 (1932).

The single-tax approach, though, soon broke down, and any state with some reasonable relationship to the subject matter of the tax, and with the power to make the tax effective, was permitted to tax intangibles. Curry v. McCanless, 307 U.S. 357 (1939); Graves v. Elliott, 307 U.S. 383 (1939); Graves v. Schmidlapp, 315 U.S. 657 (1942); State Tax Commission of Utah v. Aldrich, 316 U.S. 174 (1942).

The adoption of uniform laws has mitigated the evils that followed abandonment of the single-tax rule. See Uniform Act of Interstate Arbitration of Death Taxes, 9B U.L.A. 213 and Uniform Act on Interstate Compromise of Death Taxes, 9B U.L.A. 223. The cynic can find more than a superficial parallel between problems of double state taxation and double state escheat of intangibles.

The other possibility is that the Court is envisioning its role as something in the nature of a "supreme court of escheat." Cf. Mr. Justice Frankfurter's discussion of the possibility of the U.S. Supreme Court becoming a court of probate and divorce. Williams v. North Carolina II, 325 U.S. 226, 233 (1945). Under this approach the Court would actually adjudicate the escheat controversies arising among the states. While jurisdiction would be assumed in these cases, the Court suggested that procedures might be developed for referring the cases to the United States district courts for decision, at least in the first instance. 368 U.S. at 79. The Court's strong reliance on the unique case of Texas v. Florida, 306 U.S. 398 (1939), also indicates the Court is thinking in terms of actual adjudication of run-of-the-mill escheat cases.

In his opinion for the Court, Mr. Justice Black said that the Western Union situation was "in all material respects like that which caused us to take jurisdiction in Texas v. Florida." 368 U.S. at 77. In making this statement, the Justice ignored the fact that in Texas v. Florida the total tax claims of the states and the federal government exceeded the net estate of the decedent. This meant that there were not sufficient assets to satisfy all claimants. The Justice left

Western Union announces a new and unique doctrine, which, if extended into ordinary civil litigation virtually abolishes the exercise of in rem and quasi in rem jurisdiction, since it denies that jurisdiction can ever be exercised unless all interested partes are bound by the judgment.[11]

Under traditional doctrines of jurisdiction, as they have operated in the United States under the full faith and credit clause of the federal constitution, the jurisdictional fact on which Pennsylvania acted, presence of the funds within the state, is open to re-examination and re-determination in another proceeding by anyone not bound by the Pennsylvania proceeding. This is the teaching of a whole series of cases, notably *Thompson v. Whitman*[12] and *Williams v. North Carolina II.*[13] If New York later seeks to escheat the same property, New York may impeach the Pennsylvania judgment by showing that the property was not present in Pennsylvania at the time of the Pennsylvania proceeding. Of course, Western Union can undertake to defend the Pennsylvania judgment by showing that the property was present in that state, and so Pennsylvania did have jurisdiction and its judgment is valid and binding on New York, by reason of the full faith and credit clause, even though New York was not a party to the Pennsylvania proceeding.

Since different courts may place the situs of the same intangible in different states, this opens the way to double escheat. The potentiality for this double liability imposed by a double escheat was limited somewhat by the United States Supreme Court in *Standard Oil Company v. New Jersey,*[14] in which the Court gave its blessing to a race of diligence by the states to obtain the first "valid judg-

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uncited and unexplained the cases in which the Supreme Court refused to take jurisdiction, the tax claims not exceeding the amount of the net estate. New Jersey v. Pennsylvania, 287 U.S. 580 (1932); Massachusetts v. Missouri, 308 U.S. 1 (1939). Insofar as the opinion shows, there was no allegation in Western Union that the escheat claims of the states exceeded the total assets of Western Union. Consequently, in this significant respect, Western Union goes much beyond Texas v. Florida.

11. The funds in the possession of Western Union presumably are subject to escheat by some state. Consequently, it is one thing to say, as Western Union does, that New York's claim to be the situs of funds "could not be cut off where New York was not heard as a party," 368 U.S. at 75, and quite a different thing to say that Pennsylvania has no jurisdiction to escheat funds having a situs in Pennsylvania, simply because New York, another claimant, was not a party to the proceeding.

12. 85 U.S. (18 Wall.) 457 (1874).

13. 325 U.S. 226 (1945). See also RESTATEMENT, JUDGMENTS § 11, comment *c*, and § 12 (1942).

14. 341 U.S. 428 (1951).

ment."[15] But *Standard Oil* did not modify the *Thompson v. Whitman* rule under which a second state could show that no *valid* judgment of escheat had been obtained in the first state. *Western Union* modifies these holdings since it requires the presence of all interested states in an escheat proceeding, so that double escheat is barred because the court has jurisdiction over all the interested parties, rather than jurisdiction over one party and the property. Double escheat is barred because only an in personam judgment is recognized as valid, the exercise of in rem and quasi in rem jurisdiction being eliminated.

It will be interesting to see whether this same approach is extended to the problem of double taxation, as illustrated by the familiar Dorrance litigation.[16]

The most certain solution for the problem of potential double liability, whether escheat, taxation, or some other subject is involved, is to get all of the interested parties before the same court so that

15. The Court said, "The debts or demands . . . having been taken from the appellant company by a valid judgment of New Jersey, the same debts or demands against appellant [Standard Oil] cannot be taken by another State. The Full Faith and Credit Clause bars any such double escheat." *Id.* at 443. The full faith and credit clause would not bar double escheat by an American state and a foreign country. *But see* Cities Service Co. v. McGrath, 342 U.S. 330 (1952).

16. In re Dorrance's Estate, 309 Pa. 151, 163 Atl. 303 (1932); New Jersey v. Pennsylvania, 287 U.S. 580 (1932); In re Dorrance's Estate, 115 N.J. Eq. 268, 170 Atl. 601; 116 N.J. Eq. 204, 172 Atl. 503 (Prerogative Ct. 1934), *aff'd mem.*, Dorrance v. Martin, 13 N.J. Misc. 168, 176 Atl. 902 (Sup. Ct. 1935), *aff'd mem.*, 116 N.J.L. 362, 184 Atl. 743 (1936), *cert. denied*, 298 U.S. 678 (1936); Hill v. Martin, 296 U.S. 393 (1935). Among the law review discussions of the case are Tweed and Sargent, *Death and Taxes are Certain—But What of Domicile*, 53 HARV. L. REV. 68 (1939); Harper, *Final Determination of Domicil in the United States*, 9 IND. L.J. 586 (1934) reprinted from 19 PA. BAR Q. 213 (1934); Note, *Dorrance's Estate: Conflicting Adjudications of Domicil*, 81 U. OF PA. L. REV. 177 (1932). See also State Tax Commission of Utah v. Aldrich, 316 U.S. 174 (1942); Worcester County Trust Co. v. Riley, 302 U.S. 292 (1937); Massachusetts v. Missouri, 308 U.S. 1 (1939).

Double state taxation can be rationalized on the basis that more than one state can exact a tax on the same subject matter, because more than one state has conferred a benefit. It only requires a little stretch of the imagination to extend the same logic to escheat—more than one state may escheat specific property because each state has conferred a benefit with reference to the property. In the escheat of intangibles, as in Western Union, the property to be escheated is not specifically identifiable, as chattels are. In recognition of this, the Supreme Court of Pennsylvania based its jurisdiction to escheat on personal jurisdiction over the Western Union Company. The principal distinction between escheat and taxation must be founded on some theory that in escheat the whole of the property is taken by the state, while in taxation the state does not take any specific property, but only a part of the value of the whole.

they will all be bound by a single judicial determination. This solution is not of recent origin, but the basic problem continues to be how to accomplish this result. The *Western Union* case finds a solution insofar as the problem of double escheat is involved in the grant of the federal constitution to the United States Supreme Court of jurisdiction over controversies between states.[17] The constitutional grant to the federal judiciary of jurisdiction over controversies between citizens of different states provides the basis for a solution of an earlier problem of double liability.[18] This was the double liability imposed in *New York Life Insurance Company v. Dunlevy,*[19] which also grew out of litigation originating in Pennsylvania, and led to the adoption of the first Federal Interpleader Act.[20] Even so, the potentialities of a federal system of courts to handle problems arising from controversies between citizens of different states have only been partially realized. [21]

This paper will re-examine the *Dunlevy* case, in the light of some of the developments that have occurred since 1916 and which culminated in the *Western Union* decision, with a view to determining whether there may not be available some view of the complex subject of jurisdiction that will deny double liability on the *Dunlevy* facts without the necessity of resorting to the use of federal judiciary. In 1957, in pursuit of this goal the Supreme Court of California in *Atkinson v. Superior Court,*[22] relying particularly upon *International Shoe Co. v. State of Washington,*[23] questioned whether the *Dunlevy* case would still be followed. It will, therefore, be useful, first, to consider the facts of *New York Life Insurance Company v. Dunlevy.*[24]

In 1889, New York Life Insurance Company issued a $5,000 life insurance policy to Joseph W. Gould,[25] which after being in force

17. U.S. CONST. art. III, § 2.

18. *Ibid.*

19. 241 U.S. 518 (1916). For other cases of double liability see CHAFFEE, *Interstate Interpleader,* 33 YALE L.J. 685, 714 n.102, 718 n.120 (1924).

20. Act of February 22, 1717, ch. 113, 39 STAT. 929. For the present statute see 28 U.S.C. §§ 1335, 1397, 2361 (1958). For development leading up to the adoption of the Act see Chaffee, *Modernizing Interpleader,* 30 YALE L. J. 814 (1921).

21. See Ritz, *Migratory Alimony: A Constitutional Dilemma in the Exercise of in Personam Jurisdiction,* 29 FORDHAM L. REV. 83 (1960), for a discussion of the potentialities in one area.

22. 49 Cal.2d 338, 316 P.2d 960 (1957).

23. 326 U.S. 310 (1945).

24. 241 U.S. 518 (1916), *affirming* 214 Fed. 1 (9th Cir. 1914), *affirming* 204 Fed. 670 (N.D. Calif. 1913).

25. The circuit court referred to this as a tontine policy. 214 Fed. at 3. The Supreme Court said that "the tontine dividend period" of the life policy having ex-

twenty years was said to have a cash surrender value of $2,479.70. In accordance with the rules of the company, in 1893 Gould made an assignment of the policy to his thirteen-year old daughter, Effie. It was this assignment that later became the subject of controversy, the daughter, now Mrs. Dunlevy, claiming that it was absolute, and carried the right to this cash surrender value, while Gould claimed that the assignment was limited, and gave the daughter only the right to the death benefits. It is not clear from the opinions whether the policy had "matured" so a liability in the amount of $2,479.70 had become fixed, or whether the "owner" of the policy had to take affirmative action to reach the cash surrender value.

In 1907, while the daughter was still a resident of Pennsylvania, Boggs & Buhl recovered a valid judgment[26] against her in a Pennsylvania state court. In November 1909, after the daughter, Mrs. Dunlevy, had become a resident of California, Boggs & Buhl learned of the assignment and cash surrender value of the policy. They caused execution to issue on the 1907 judgment, seeking to reach this in satisfaction of the judgment.

The writ of execution was served on the local agent of the insurance company and upon Gould, but not on Mrs. Dunlevy. Gould appeared and denied the assignment, claiming the cash surrender value for himself. Before the insurance company answered, Mrs. Dunlevy, on January 14, 1910, instituted her own action against the insurance company in a California state court, claiming the cash surrender value. Thereafter, when the insurance company answered in the Pennsylvania proceeding, it admitted indebtedness on the policy and set up the conflicting claims of Gould and Mrs. Dunlevy. When other creditors of Mrs. Dunlevy levied additional garnishments, the insurance company asked the Pennsylvania state court for leave to pay the money into court and to interplead the various claimants for the purpose of determining their respective rights. The request was granted. The court directed that personal notice of the proceeding should be given to Mrs. Dunlevy in California, which was done, but she did not appear. The other parties having appeared, the court

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pired, the company became liable for $2,479.70. 241 U.S. at 519-20. The district court referred to "the cash surrender value accrued under the tontine provisions." 204 Fed. at 671. Chaffee, who examined the record and briefs, refers to the policy as being an endowment policy that had matured. Chaffee, *Interstate Interpleader,* 33 YALE L.J. 685, 711 (1924).

26. The amount of this judgment is not set forth in the opinions. Chaffee says the judgment was for about $500. Chaffee, *Interstate Interpleader,* 33 YALE L.J. 685, 712 (1924).

directed the framing of a "feigned issue"[27] to obtain a jury determination regarding the assignment of the policy. This was done and the jury returned a verdict that no assignment had been made and that Gould was entitled to the fund. Thereafter, the court directed payment to Gould.

The insurance company removed Mrs. Dunlevy's California suit to a federal court, wherein it relied upon the Pennsylvania proceeding as a defense. The defense was overruled and the federal district court entered judgment in favor of Mrs. Dunlevy for the cash surrender value of the policy, a judgment which was affirmed by the Ninth Circuit Court of Appeals and the United States Supreme Court. Thus, New York Life Insurance Company was subjected to double liability on this insurance policy. Each of the federal courts found that this result was required, but gave somewhat differing reasons for their conclusions.

The Ninth Circuit Court of Appeals, in an opinion by Judge Gilbert, assumed that the Pennsylvania proceeding was quasi in rem to determine ownership of a fund of money in custody of the court. It examined a Pennsylvania Act of April 6, 1859, authorizing such proceedings,[28] and found that the statute had not been complied with. The notice given to Mrs. Dunlevy had not fixed a time period within which she was to appear, as required by the statute, but instead directed her to answer by February 26. Since notice was not served on her until February 18, this meant she only had eight days to appear, although under Pennsylvania law, if served within the state, she would have been given ten days. While Circuit Judge Gilbert couched his opinion as to the reason for the invalidity of the Pennsylvania judgment in terms of noncompliance with the Pennsylvania statute, a preferable and more tenable ground[29] would have been to base the result squarely on a denial of the notice and opportunity

27. The technique of a "feigned issue" was used in England by the Court of Chancery to obtain a finding of fact by a jury in the Court of King's Bench. It is also said to have been frequently used in courts of law, by consent of the parties, to determine some disputed right without the formality of pleading, thereby saving much time and expense in the decision of the cause. 3 BLACKSTONE, COMMENTARIES § 452.

28. This statute, of course, predates the fourteenth amendment, so that at the time of its enactment and for some years thereafer, there was no question of its validity under the federal constitution. Hanson v. Denckla, 357 U.S. 235, 250 (1958). This does not mean, however, that a federal court sitting in Pennsylvania in a diversity case would necessarily have applied the statute, or that a judgment based on the statute would have been enforced in another state, the full faith and credit clause notwithstanding.

29. See Ritz, *Should Utah Courts Review Judgments of Illinois Courts on Questions of Illinois Law?*, 18 WASH. & LEE L. REV. 62 (1961).

to be heard required by the due process clause of the fourteenth amendment. Consequently, the same result should be reached today on the precise facts of the *Dunlevy* case.

Both the district court and the Supreme Court, though, proceeded upon a rationale that would have upheld double liability even though the Pennsylvania law had been fully complied with and Mrs. Dunlevy had been given adequate notice and full opportunity to be heard. It is this reasoning that merits further examination.

In the district court, Judge Van Fleet took the view that the garnishment and interpleader proceedings were independent of each other. Since there was a valid unsatisfied judgment against Mrs. Dunlevy, the Pennsylvania court had acquired judisdiction over her in the garnishment proceeding to determine, as between her and Boggs & Buhl, whether she had any property in Pennsylvania, including debts owing to her, that could be used to satisfy the judgment.[30] In the interpleader proceeding, however, the Pennsylvania court did not acquire jurisdiction over either the person of Mrs. Dunlevy or any property of hers, and so she was not bound by the proceeding. Judge Van Fleet said:

> A court must, to render an effectual judgment, have jurisdiction either of the person of the defendant or the res. Pennoyer v. Neff, supra. *The judgment of the court of common pleas itself determines that it had no jurisdiction of the latter, since it is adjudged that the debt* levied upon, and which alone would give it jurisdiction, *was not the debt of plaintiff,* but of a third party, as against whom the creditors of plaintiff had no rights.[31]

The United States Supreme Court, in an opinion by Mr. Justice McReynolds, agreed with the district court that the garnishment and interpleader proceedings were distinct, and that while Pennsylvania had jurisdiction over Mrs. Dunlevy for the garnishment, it did not have jurisdiction for the interpleader and so that proceeding was not binding upon her. In the course of his opinion Mr. Justice McReynolds said:

> Beyond doubt, without the necessity of further personal service of process upon Mrs. Dunlevy, the court of common pleas at Pittsburgh had ample power through garnshment proceedings to inqure whether she held a valid

30. The court cited Pennoyer v. Neff, 95 U.S. 714 (1878); Harris v. Balk, 198 U.S. 215 (1905); and Louisville and Nashville Railroad Co. v. Deer, 200 U.S. 176 (1906).

31. 204 Fed. at 674. (Emphasis added.)

> 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.[32]

Considerable controversy has developed as to whether interpleader can be treated as an in rem proceeding or whether it must be characterized as in personam, so that personal jurisdiction must be had over a claimant to bind him to the judgment in the interpleader proceeding.[33] The *Dunlevy* case is generally understood to establish that:

> . . . a person against whom in personam liability is asserted may not transform that liability into a res by depositing money into court and thus enable the court to proceed to an adjudication, by in rem or quasi in rem process, of the defendants' in personam claims against the plaintiff.[34]

Whatever might be the result in other cases, it is difficult to see on the facts of *Dunlevy* how Mrs. Dunlevy could have been prejudiced by treating the interpleader as a quasi in rem proceeding. If she was not entitled to the policy proceeds she suffered no injustice, and if she was entitled to them, admittedly they could have been taken to the extent necessary to satisfy the judgment against her. In either event, she would not have received the proceeds.[35]

However this may be, the argument of this paper is based on the premise that double liability in the *Dunlevy* case should have been barred, even though it is accepted that interpleader is purely in personam and the Pennsylvania court was wrong in treating it as quasi in rem.

Since the United States Supreme Court, as well as the district court, took the view that if the Pennsylvania court had found that Gould had made an absolute assignment to his daughter, the cash surrender value of the policy would have been a claim located in Pennsylvania that could have been condemned and appropriated to the judgment creditor's claim, the finding of the federal court in California that the claim did belong to Mrs. Dunlevy established a sound basis for

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32. 241 U.S. at 520.

33. 33 YALE L.J. 685 (1924).

34. 3 MOORE'S FEDERAL PRACTICE §22.06 (2d ed. 1948).

35. It is not clear whether Mrs. Dunlevy would have obtained any of the proceeds, if the Pensylvania court had found that an assignment had been made to her. Although the Boggs & Buhl judgment is said to have been only for $500, other creditors also tried to garnish the proceeds.

the exercise of jurisdiction by Pennsylvania. Judge Van Fleet did not follow his own reasoning to its logical conclusion. True, assuming that a claim owned by either Gould or Mrs. Dunlevy was involved, when the Pennsylvania court found that the intangible belonged to Gould it had necessarily also found that there was no intangible in Pennsylvania belonging to Mrs. Dunlevy, and so Pennsylvania had no more jurisdiction to enter a quasi in rem judgment than a personal judgment binding on Mrs. Dunlevy. But to paraphrase Judge Van Fleet, just as the judgment of the Pennsylvania court determined that the Pennsylvania court had no jurisdiction, so Judge Van Fleet's finding in the second suit in California that Mrs. Dunlevy did own the claim was a determination that the Pennsylvania court *did* have jurisdiction.

It is familiar learning that the judgment of a court with jurisdiction is not subject to collateral attack, even though the judgment may have been wrong.[36] The worst then that can be said of the Pennsylvania judgment, in light of the later finding in California that Mrs. Dunlevy owned an intangible that was situated in Pennsylvania at the time of the Pennsylvania proceeding, is that the Pennsylvania court exercised jurisdiction for the wrong reason.

Developments in the law relating to jurisdiction have eliminated clear cut distinctions between the exercise of in personam and in rem jurisdiction. This was illustrated in *Hanson v. Denckla*[37] in which the United States Supreme Court considered whether a Florida judgment was entitled to recognition in Delaware because it represented a valid exercise by Florida of in rem jurisdiction, or alternatively, because it represented valid in personam action. It was pointed out that a stronger case could be made out, for the exercise of in personam jurisdiction, on the basis of cases such as *McGee v. International Life Ins. Co.*,[38] than for the exercise of an in rem jurisdiction.[39]

Something in the nature of an imperfect merger of in rem, including quasi in rem, and in personam jurisdiction has been effected when the presence of property within a jurisdiction, which supports the

36. Sherrer v. Sherrer, 334 U.S. 343 (1948); Angel v. Bullington, 330 U.S. 183 (1947); Milliken v. Meyer, 311 U.S. 457 (1940); Treinies v. Sunshine Mining Co., 308 U.S. 66 (1939); RESTATEMENT, JUDGMENTS § 11, comment *b* (1942).

37. 357 U.S. 235 (1958).

38. 355 U.S. 220 (1957).

39. The majority, in an opinion by Mr. Chief Justice Warren, denied the power of Florida to exercise jurisdiction on either basis. Three justices, in an opinion by Mr. Justice Black, thought that Florida could exercise jurisdiction on an in personam basis. Mr. Justice Douglas, without expressly saying so, indicated he would have supported Florida's jurisdiction on an in rem basis.

exercise of in rem or quasi in rem jurisdiction, is in and of itself taken to be the "minimum contact" that supports in personam jurisdiction under the *International Shoe* doctrine. The broad jurisdictional states recognize "ownership, use, or possession of any real estate situated" within a state as the basis for exercise of in personam jurisdiction.[40] Is there any reason why possession of real estate should be considered sufficient to give judicial jurisdiction, while "possession" of an intangible is not?

The *Restatement of Conflict of Laws (Second)* goes even further and says that ownership of a thing, defined as either a tangible or intangible,[41] within a state is sufficient to give a state in personam jurisdiction over an individual as to any cause of action arising out of the thing "within limitations of a reasonableness appropriate to the relationship derived from the ownership of the thing."[42] Is a thing any the less owned because more than one person is claiming to be the owner? In fact, the *Dunlevy* view of interpleader notwithstanding, the existence of conflicting claims as to ownership would seem to increase the reasonableness of the situs of the intangible adjudicating those claims.

It is this tendency to merge that led the Supreme Court of California in *Atkinson v. Superior Court*[43] to question whether the *Dunlevy* case is still good law. In *Atkinson* a group of employees attacked the validity of a collective bargaining contract made between their employers and a union under which certain royalties were being paid to a New York trustee. The employees were seeking to have the agreement invalidated, as being in breach of the union's duty as a collective bargaining agent, and the payments made to them as wages. The question presented was whether a California court could acquire sufficient jurisdiction over the New York trustee so as to settle the controversy. The obligation of the employer to make the payments, either to the trustee or the employees, was recognized as an intangible without any definite situs. The plaintiff-employees, relying on the garnishment and escheat cases,[44] argued that this intangible was in California, so that a court within the state had jurisdiction to cut off the nonresident trustee's claim to it. The defendants, however, argued that the jurisdiction recognized in garnishment and escheat cases existed only when it was admitted that

40. *E.g.*, 2 ILL. REV. STAT., ch. 110 § 17 (1959).

41. *Supra* note 4.

42. Section 84a.

43. 49 Cal.2d 338, 316 P.2d 960 (1957).

44. Harris v. Balk, 198 U.S. 215 (1905); Standard Oil Co. v. New Jersey, 341 U.S. 428 (1951); Security Savings Bank v. California, 263 U.S. 282 (1923).

the nonresident owned the intangible property, and, pointing to the *Dunlevy* case, argued that such jurisdiction did not exist when the question presented was *whether or not* the nonresident owned the property. The Supreme Court of California refused to recognize the relevancy of such a distinction, but instead relied on the *International Shoe* doctrine as supporting a view that a state can exercise a quasi in rem jurisdiction, as well as personal jurisdiction, without violating the due process clause, whenever there are sufficient minimum contacts of the transaction with the state. Finding that such contacts did exist in the case, the court distinguished *Dunlevy* and upheld the exercise of jurisdiction of the California court to determine the rights of the employees and the New York trustee with reference to the payments owing by the employers. In referring to the *Dunlevy* case, the court said:

> It is doubtful whether today the United States Supreme Court would deny to a state court the interstate interpleader jurisdiction that federal courts may exercise. A remedy that a federal court may provide without violating due process of law does not become unfair or unjust because it is sought in a state court instead.[45]

It is difficult to agree that whatever the federal courts can do, the state courts can do, in the exercise of jurisdiction. Such a view ignores the nature of the federal system, and, in effect, denies that the federal judiciary can serve a unique function in resolving problems of double liability. It must be admitted, though, that the broadening of the bases of in personam jurisdiction has gone far towards giving the state courts a nationwide jurisdiction, and that there is no reason of substance to create an exception thereto and deny to them jurisdiction in interpleader proceedings. However, it is not necessary to resort to either the federal judiciary or to give state judiciaries a nationwide jurisdiction in order to deny double liability in situations such as presented in the *Dunlevy* case.

The facts of *Dunlevy* are the converse of the situation most frequently met. Ordinarily, the second court denies effect to the judgment of the first court, because, upon re-examination the second court finds that the jurisdictional facts did not exist that would have permitted the first court to enter a valid judgment. Thus in *Williams v. North Carolina II*,[46] the court in North Carolina re-examined the

45. 316 P.2d at 966. *But see* Hobbs v. Lewis, 197 Tenn. 44, 270 S.W.2d 352 (1954) and Lewis v. Hogwood, 300 F.2d 697 (D.C. Cir. 1962), holding that Tennessee will not exercise jurisdiction over a trust located outside the state.

46. 325 U.S. 226 (1945).

question of domicile, and found that the defendant had not acquired a bona fide domicile in Nevada, even though the Nevada court had found he did acquire such a bona fide domicile, and so Nevada had no jurisdiction to grant a divorce that was entitled to recognition in North Carolina under the full faith and credit clause.[47] In *Dunlevy,* on the other hand, the second court found that, contrary to the view of the first court, the jurisdictional fact *did* exist. The first court had exercised jurisdiction for what the second court thought was the wrong reason.

Double liability in *Dunlevy* would have been denied by recognition that the judgment of a court exercising jurisdiction for the wrong reason is valid. Such a rule provides a useful basis for reasoning in the somewhat analogous situation presented in *Hanson v. Denckla.*[48] In this case the Florida court erroneously thought that it had personal jurisdiction over a nonresident trustee. The United States Supreme Court indicated that it would have been constitutional for Florida to have exercised jurisdiction binding upon the parties over whom it did have personal jurisdiction, if Florida law had been that the trustee was not an indispensable party to such a proceeding. Since the United States Supreme Court found that Florida law was that the trustee was an indispensable party, the Court denied any res judicata effect to the Florida judgment as it related to the parties before the Florida court. It thus appears that the Florida court had constitutional jurisdiction over the parties before it, but exercised that jurisdiction for the wrong reason. If the judgment of a court exercising jurisdiction for the wrong reason is recognized as valid, the Florida judgment would be binding on the parties actually before the Florida court.

The rule advocated by this article is: A judgment is valid if the court entering the judgment has jurisdiction, even though it exercises jurisdiction for the wrong reason.

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47. The decision did not determine whether the Nevada divorce was valid in Nevada; similarly, the Dunlevy case did not determine whether the Pennsylvania judgment was valid in Pennsylvania.

48. 357 U.S. 235 (1958).