No matter how thoroughly the law of a particular jurisdiction is
overhauled and changed to conform with modern conditions, it must
still face the difficulty that political boundaries are not coincident with
economic boundaries. For the sovereign states of our nation this diffi-
culty was partly removed by the adoption of the United States Con-
stitution. The jurisdiction of the United States within the territory
of the state over interstate and foreign commerce does much to make
the nation a legal unit as well as an economic unit, but many interstate
transactions are not commerce and fall outside Federal control, or
although commerce are somewhat subject to state action. While our
present governmental machinery is adequately adapted for preventing
state interference with national powers, or vice versa, a serious and
little discussed difficulty is the absence of machinery to adjust clashes
and secure co-operation among the states. Thus, nothing in the Con-
stitution prevents Massachusetts from taxing the income of New
Jersey state bonds though the United States probably cannot tax
them. This typifies the odd situation of forty-eight partially sovereign
states regulating economic forces whose natural operations disregard
state lines. Other examples are furnished by the inability of the six
New England states to adopt a uniform railroad policy; the obstacles
to interstate rendition of deserting husbands; the want of reciprocity
between states as to automobile licenses; the duplication and triplica-
tion of state inheritance taxes on the same securities, when justice and
a healthy attitude toward fresh capital require the levy of a single tax
which should be distributed among the states concerned in a ratio
roughly based on their respective interests.

It is true that state lines have grown somewhat fainter during the
last century and that some writers think that our states will eventually be superseded by large administrative areas similar to the regional divisions of the Federal Reserve System. Yet, whatever the unifying tendencies in other fields, for purposes of legislation and judicial decisions each state remains almost a law unto itself. The action of its courts upon the citizens of another state is indeed restricted by the jurisdiction of the United States courts for diversity of citizenship, the full faith and credit clause, the privileges and immunities clause, and the Fourteenth Amendment, but these do not suffice to secure certainty and justice. Our system of forty-eight water-tight legal compartments within the nation (not to mention nine Federal circuits and the District of Columbia), creates more frequent problems of conflict of laws than arise between the various countries of Europe, because with us no national jealousies hinder the flow of business and population from one state to another. Bryce has remarked that a very large portion of our citizens live in a state different from that in which they were born, and this fact, as well as the vast extent of interstate business relations, brings before our courts a large number of controversies involving the application of the law of more than one state. Even the enactment of a Uniform Law may not terminate the conflicting decisions of state courts on commercial or other interstate transactions, but may merely lead to inconsistent interpretations of the same section of such a law. An additional bad result of interstate legal barriers is the frequent difficulty of getting all the parties to an interstate controversy into a single court, either state or Federal, which has the power to compel the settlement of the disputes, and one phase of this situation is the subject of this article.

Interpleader is a type of judicial proceeding admirably fitted to achieve justice in complicated controversies. A previous article in this JOURNAL has discussed the unfortunate technicalities which have sprung up to lessen the usefulness of interpleader, and the possibility that they will be removed in the near future. Yet even if interpleader be modernized so that complete relief from multiple vexation may be given in a controversy between citizens of the same state, the law will remain unsatisfactory unless a stakeholder may obtain the same protection when one or more of the claimants lives in a different state from him-

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1 See Laski, The Problem of Sovereignty (1917) 267-285; Foundations of Sovereignty, (1921) 30, the chapter on "The Problem of Administrative Areas."
3 Modernizing Interpleader (1921) 30 YALE LAW JOURNAL, 814. The writer takes advantage of this opportunity to call attention to two oversights in his proof-correction of this article. Page 823, line 6 from bottom of text, insert "not" before "be possible." Page 834, lines 5 and 6 from bottom of text, omit "of bailees" and also omit the words in this sentence following "etc.," so that the last part of the sentence will read: "the boarding-house case, the tax cases, etc."
self. It is the purpose of this article to examine the present limitations upon such interstate interpleader.

In order to give complete relief to the applicant who seeks interpleader, the court must have the power to enjoin the claimants from prosecuting their claims outside of the interpleader proceeding, for otherwise its decree would not terminate the controversy. If actions against the applicant are already pending in the courts of another state, or if one or more claimants cannot be brought within the jurisdiction of the court which is asked to compel them to interplead, serious difficulties arise.

Let us suppose that a stakeholder, A, is threatened with litigation by two claimants C₁ and C₂; that both claims relate to the same res; and that while A and C₁ both reside in state X, C₂ resides in state Y. It may be that A is a savings bank, and that the deposit made by a decedent is claimed by both the administrator and an alleged donee inter vivos of the savings-bank book; or that A is an interstate railroad from which freight is claimed by the consignee and a person who states that the goods were stolen from him by the consignor; or that A is an insurance company and the proceeds of the policy are claimed by the administrator of the original policy holder and an alleged assignee, or perhaps by an administrator of the beneficiary who predeceased the policy holder. In all these situations and many others, it frequently happens that the claimants live in different states. If they were citizens of the same state with the applicant, interpleader would be his natural remedy. He would put the res into court, and both claimants could be summoned in to settle to which it should be awarded. But in the case supposed, whether A brings interpleader in X or in Y, one of the claimants is necessarily a non-resident with respect to the forum. Suppose he sues in X, and C₂ though notified, refuses to appear. Is this want of personal jurisdiction over C₂ a fatal bar to the relief sought?

It will be worth while for us to begin by examining the decisions in England and the other jurisdictions of the British Empire before we take up the cases in the United States, which are somewhat complicated by constitutional factors that do not exist elsewhere.

Jurisdiction to grant interpleader against non-residents is supported by the powerful authority of Lord Eldon. In Stevenson v. Anderson,¹ decided in 1814, the applicant in England held bills of exchange for collection. They were claimed by three sets of claimants, one of whom resided in England, and the other two in Scotland. An action of trover had been brought in England and garnishment proceedings in Scotland.

¹ (Ch.) 2 Ves. & Bea. 407. The statement at the end of the report that the motion was granted, if it refers to the motion for the discharge of the injunction, must be erroneous, for the injunction was obviously continued.
The applicant prayed that all the claimants should interplead. The Vice-Chancellor granted an injunction, and the English claimant, who alone had appeared, demurred for want of equity and moved that the order be discharged. Lord Eldon continued the injunction for the following reasons:

“It was objected, that the Goodalls and the attaching creditors are out of the jurisdiction; and, as there is only one creditor within the jurisdiction, a bill of interpleader cannot be filed. Upon the authorities, that proposition cannot be maintained; as a person, out of the jurisdiction, may threaten, and bring, an action; and, though he should never come within the jurisdiction, there is a familiar mode of concluding him. The plaintiff is bound to bring all persons into the field to contend together. That rests upon him. I have had occasion to consider that with reference to persons, not residing in Scotland, but foreigners; and the opinion I formed upon it, without any difficulty, or the aid of a precedent, which I could not find, though there is precedent enough of willing Defendants, is that the plaintiff in a bill of interpleader against persons within and without the jurisdiction is bound to bring them all within the jurisdiction in a reasonable time; if he does not, the consequence is, that the only person within the jurisdiction must have that which is represented to be the subject of competition; and the plaintiff must be indemnified against those who are out of the jurisdiction, when they think proper to come within it, and sue either at Law or in this Court. If the Plaintiff can show he has used all due diligence to bring persons, out of the jurisdiction, to contend with those who are within it, and they will not come, the Court, upon that default, and their so abstaining from giving him the opportunity of relieving himself, would, if they afterwards came here and brought an action, order service on their Attorney to be good service, and enjoin that action forever; not permitting those, who refused the Plaintiff that justice, to commit that injustice against him."

It is necessary to distinguish carefully three problems, which are raised in this case and other similar situations:

1. Should the court, instead of dismissing the bill or motion for interpleader, order notice to be served upon the non-resident claimant, with the hope that he will be induced to appear and contest?
2. If, however, he fails to appear, should the court of state X (the forum) enjoin the non-resident from afterwards suing the applicant in the courts of X, award the res to the domestic claimant if his ex parte case seems good, and leave the non-resident, if he subsequently comes into X, to proceed against the domestic claimant?
3. May the court of X also enjoin the absent non-resident from suing the applicant outside of X by a decree which will be recognized as a valid bar to such an action in the claimant's own state (Y) and in foreign courts? For example, in *Stevenson v. Anderson* could Lord Eldon give a decree which would be recognized by the Scotch

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*Supra* note 4.
INTERSTATE INTERPLEADER

Consider these three problems in the light of the cases in England and the Dominions.

(1) The first question may be safely answered in the affirmative. The court ought to go at least this far. It is true that if the other two questions are answered in the negative, the non-resident C₂ may prefer to remain aloof from a contest in equity with C₁, the domestic claimant, and take his chances in a subsequent jury trial in an action against the applicant in state Y, or even in X. On the other hand, there is a reasonably good possibility that he will respond to the notice and appear. If he wins the second stage of the interpleader, the res is in court ready for him, while if he insists on an action at law, he will have to enforce his judgment by execution against the applicant’s property, which may be hard to reach. This consideration possesses special force if the res is a chattel physically located in state X, or if it is a debt which could not easily be collected in an action outside of X. For example, if the applicant is a savings-bank, and the res a deposit, it would be hard to find property of the bank outside the state where it does business. Furthermore there is no injustice to the claimants if the bill is retained long enough to ascertain whether the non-resident will come in, and no longer. If he refuses to respond to the notice and the bill is then dismissed, he suffers no harm. As for the domestic claimant, C₁, his action at law is temporarily enjoined until it becomes clear that the notice will be ineffective, and afterwards allowed to proceed as if nothing had happened.

Consequently, service of notice on the non-resident claimant is permitted in interpleader both in England and the other courts of the British Empire. The decision of Lord Eldon has been followed, at least to this extent, by later English judges. The leading modern case is Credits Gerundaeuse, Ltd. v. Van Weede, in which service was permitted on the non-resident Spanish shipper of goods, held in England by a bailee, who had been sued by an English firm under an alleged assignment from the shipper. The Spaniard had threatened to sue in England, and had not yet come into the jurisdiction. However, the English courts regard the practice as peculiar to interpleader, and refuse to

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1 (1884) L. R. 12 Q. B. Div. 171. Mathews, J., refused to issue a summons upon the Spaniard, on the ground that the court would have no authority to enforce any order which might be made against a non-resident foreigner, but was reversed by Pollock, B., and Lopes, J. Accord: Stevenson v. Anderson, supra note 4; Martinus v. Helmuth (1817, Ch.) 2 Ves. & Bea. 412, note, s. c. (1814, Ch.) Coop. t. Eld. 245; East & West India Dock Co. v. Littledale (1848, Eq.) 7 Hare, 57; Attenborough v. London & St. Katherine’s Dock Co. (1878) L. R. 3 C. P. Div. 450—the report indicates that the non-resident responded to the summons; Belmonte v. Aymard (1879) 4 L. R. C. P. Div. 221; s. c. (1879, C. A.) ibid. 352—same indication; Van der Kun v. Ashworth (1884, Q. B.) W. N. 58. Contra: Putnmi v. Campbell (1843, Exch.) 12 M. & W. 277 (semble).
extend it to other types of proceedings. Even for interpleader, the effect of the summons will be narrowly limited. In Ireland service on a non-resident will be authorized for purposes of notice only, and the Canadian and Scotch courts probably go at least as far. In Canada, Weldon v. Gounod (1885) L. R. 15 Q. B. Div. 622. The plaintiff obtained a judgment against a non-resident foreigner, and applied for the appointment of a receiver of certain money which it was alleged was about to be paid for the defendant. The plaintiff's motion for service of a summons on the defendant abroad was denied. See the comments of Coleridge, C. J., and Smith, J., on Credits Gerundeuse, Ltd. v. Van Weede, supra note 7, emphasizing the fact that there the non-resident was coming within the jurisdiction to enforce a claim, so that it was desirable to anticipate him so that he might employ a proper method for determining the validity of his claim.

In re Busfeld (1886, C. A.) L. R. 32 Ch. Div. 123. A residuary legatee took out an originating summons for an accounting by the executors and trustees, and applied for leave to serve the summons on one defendant who, though English, was temporarily resident in France. The application was refused because such service was unauthorized by the Rules of the Supreme Court for an originating summons, but it would have been authorized if the action had been begun by writ of summons the proceedings under which are in court whereas under an originating summons they are in chambers. Cotton, L. J., said at p. 122: "Credits Gerundeuse v. Van Weede was a case of interpleader, and the decision may perhaps be supported on the ground that the object of service was not to give jurisdiction over the party served, but only to give him notice of a proceeding affecting his rights, that he might if he pleased come in and defend them, and it is on this that Baron Pollock rests his judgment."

In re La Compagnie Générale d'Eaux Minérales et de Bains de Mer (1891) 3 Ch. 451. An originating notice of a motion to remove the non-resident company's trademark from the register was served upon the company abroad without leave of court. The service was set aside as an abuse of process on the authority of In re Busfeld, but a proceeding in rem was allowed to be directed against the Comptroller-General of Patents, Designs and Trademarks, of which notice was to be given the non-resident company.

See also Western National Bank of the City of New York v. Perez, Triana & Co. (1891, C. A.) 1 Q. B. 304, non-resident alien firm not bound by service on partner temporarily in England, but only that partner; quoted infra note 24; Ex parte Brandon (1886, Q. B.) 54 L. T. (n. s.) 128; In re Cliff (1894) 2 Ch. 21.

Escher & Co. v. Morrison (1890, C. A.) 6 T. L. R. 145. The non-resident claimant apparently appeared in response to the interpleader summons. The domestic plaintiff wished to counterclaim in the second stage with respect to another transaction, but leave to do so was refused. For cases allowing resident claimants to settle disputes disconnected from the res in the second stage, see Something Interest with Regard to the Remedy by Interpleader (1968) 66 Cent. L. J. 107.

Keane v. Crozier (1893, Q. B.) 27 Ir. L. T. 81; City of Dublin Packet Co. v. Cooper (1899, Q. B.) 2 Ir. 381; Galabrun v. Bruce, Synes & Williams (1903, K. B.) 2 Ir. 458, giving form of order for service. Cf. Spence v. Parkes (1900, Q. B.) 2 Ir. 619; intervention, but not true interpleader.

however, interpleader will be refused altogether to a resident debtor if
the debt is payable elsewhere, especially if the claimants reside at the
place of payment. The court considers in such a situation that there
is no res within the jurisdiction.18

(2) The actual decision in Stevenson v. Anderson involved only
an answer to the first question. The report does not show what hap-
pened after the demurrer was overruled and the applicant told to bring
the Scotch claimants in if he could. We do not know whether they
failed to appear, and if so, whether Lord Eldon carried out his threat
to award the res to the home claimant and to enjoin the Scotch claimants
from subsequently suing the applicant. Indeed, the question could be
decisively settled only if after such an injunction the Scotch claimants
did sue and were held to be barred. But Eldon's reasoning leaves no
doubt that he would have so held. In the same way, the actual decision
in Credits Gerundens, Ltd. v. Van Weede is expressly limited to
authorizing the issue of the summons on Jordi, the non-resident. But
there is a dictum by Pollock, which, though not entirely consistent, indi-
cates that if the non-resident should not come into the interpleader, he
would be barred from bringing subsequent proceedings in England:19

"... It is one of the first principles of all judicature that, wherever
there is a dispute as to the right to property or its value, all the parties
interested therein should be before the Court, in order that the matter
may if possible be finally settled and complete justice be done.

"Now in the present case the Court by making the order asked for,
does not assert any present jurisdiction over Jordi, or propose to compel
him to submit to its process, but merely gives him notice of the pro-
ceedings which are being taken; so that if after such notice he should
decline to submit to the jurisdiction of the Court, and allow the rights
as between the plaintiffs and defendant to be determined in his absence,
and hereafter commence an action against the defendant in respect of
the identical claim now made by the plaintiffs, he may be barred from
continuing proceedings which would be harassing upon the defendant,
who would thereby be twice vexed for the same cause. If Jordi has
a good claim, as he asserts, against the defendant, he is not put in a
worse position by prosecuting it now instead of waiting till the action
by the defendant is determined."

Thus it may be assumed that the second question would be answered
in the affirmative in England, although the point has never been

18 Re Benfield and Stevens (1896, Master in Chambers) 17 Ont. Pr. 300, 339;
Harris v. Bank of British North America (1900, Div. Ct.) 19 Ont. Pr. 51; both
stated in the second paragraph of note 26, infra, with analogous references.
19 Supra note 4; see p. 687, supra.
14 Supra note 7 at pp. 173, 175; see p. 689, supra.
18 Ibid. 173. Contra: Patorni v. Campbell, supra note 7 (semble). The other
English interpleader cases leave the point uncertain.
16 It is significant that in Martinus v. Helmuth, supra note 7, Lord Eldon
followed Stevenson v. Anderson, supra note 4, so far as to award the res (insur-
ance money) to the home claimant and pass on the question of costs. This could
actually decided and although later cases have somewhat doubted Pollock’s *dictum* and show a disposition to limit the effect of his decision to the authorization of the issue of the summons. The Irish courts, however, would probably answer the second question in the negative if an original bill of interpleader was brought, and dismiss the bill should the non-resident fail to respond to the summons; but a different result might be reached if the interpleader was sought by motion in an action at law brought by the home claimant against the applicant. The only Scotch case discovered leaves the question in doubt. In Canada interpleader would probably be allowed, if the *res* was considered to be in the jurisdiction.

On grounds of practical convenience, much may be said for the solution of our problem which was reached by Eldon and Pollock. If the non-resident does not come in after receiving notice, it is his own fault and he is in a poor position to complain if he is later refused the chance to assert his rights against the applicant in the forum whose request he had previously disregarded and if the *res* has been awarded to the home claimant in the second stage of the interpleader proceedings from which he deliberately absented himself. Such a victory by the home claimant is automatic, under Eldon’s view, and is highly probable in any event since only his side of the controversy is presented to the court. It may be that this claimant is still subject to proceedings by the non-resident if the latter subsequently chooses to come into the forum and sue him—neither Eldon nor Pollock is quite clear on this—but the applicant, having done all in his power to settle a controversy in which he was unexpectedly entangled, is protected from further litigation in this forum both by the injunction and by the indemnity given him by the home claimant.

Nevertheless, even if we leave theoretical questions of jurisdiction aside for the moment, the question is by no means clear as a matter of concrete justice. What sort of service on a non-resident is necessary to bar him? Must he actually learn of the pending interpleader, or is it enough if the notice is mailed to his last-known address or even published in a newspaper without ever reaching his eyes? Moreover,
although it may be fair to ask a resident of Scotland or Belgium or even Spain to appear in the courts of England or Ireland at a time specified, may the same remedy be rightfully used if he lives in Australia, or India or the United States? And were the Scotch claimants in Stevenson v. Anderson at fault if they preferred to try to enforce their rights in the Court of Session before subjecting themselves to technical English rules of evidence? Finally, if the third question is answered in the negative, so that the English decree will not protect the applicant from suits abroad (except for the indemnity bond), ought the English court to try to protect him even in England? It may conceivably be objectionable to do justice by halves, and better to keep hands off entirely if interpleader will not close the controversy once and for all. Too little consideration has been given by the English courts to such objections and to the question of jurisdiction; but Baron Parke observed: "There would be great difficulty, in the case where the claimant is a foreigner, residing abroad, in doing justice between the parties"; and Baron Anderson agreed, saying, "I do not see what right we have to bar a foreigner, resident out of the jurisdiction of the court."

(3) The third question, whether the interpleader decree bars a foreign suit, must be deferred until we review the cases in the United States, for it is not discussed by the English or Irish judges, and receives

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22 See p. 687, supra.
23 The English and Irish cases turn largely on the construction of Acts of Parliament and Rules of Court, with little discussion whether there is jurisdiction in rem over the subject matter of interpleader. The reasons for this are suggested by Esher, M. R., dissenting in Western National Bank of the City of New York v. Perea, Triana & Co. [1891, C. A.] 1 Q. B. 304, 311, 313, 314, service on partner temporarily in England in suit against firm of non-resident foreigners: "If the foreigner thus sued is not found in England, or, indeed, if an English subject sued in England is not in England, the English laws of procedure could not be exercised outside the territorial jurisdiction of England by an English Court, unless the Court were authorized to do so by an English Act of Parliament which it was bound to obey. . . . Whether such enactment is strictly within international comity is a question which no English Court can entertain. The order binds the Court. The order is conclusive that, to the extent to which it goes, the Court must exercise its jurisdiction over a foreigner neither resident nor domiciled in England. . . ."

24 "Again, it has been said, that no foreign Court would enforce in its own country a judgment obtained in this country, procured under the rules and orders in the manner above described. . . . But, supposing that the judgment would be ineffectual abroad, it may well stand as a valid judgment in this country, effectual against any partnership or personal property which may hereafter come into this country."

See also Middleton, J., McMaiken v. Traders Bank of Canada (1912, Div. Ct.) 26 Ont. L. R. 1, 6: "Upon the argument, much was made of the difficulty that might in some cases arise if the Courts of Ontario were to assume authority to take in execution a debt of this kind, because, it was suggested, foreign Courts might not accord the judgment of the Ontario Court any extra-territorial recognition. It is a sufficient answer to this to point out that this is a question of policy, affecting those who make the law, and that it cannot be considered by the Courts, who are called upon to administer the law as they find it."

See note 28, infra.
25 Patorni v. Campbell, supra note 7, at p. 279.
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only a passing mention in the Canadian decisions, which intimate that if the res is physically situated at the forum or is a debt payable there, the interpleader decree would be a defense to actions elsewhere. There is nothing comparable to our full faith and credit clause in the British North American Act, but an interpleader decree given where there is jurisdiction in rem according to the Canadian doctrine would normally be enforced in another province on the principle of Castrique v. Imrie.27

A word of caution is, however, necessary. The fact that a judge in England, Ireland, or Canada might grant interpleader against a defaulting non-resident does not prove that the proceeding is in rem. The judge may issue the summons and bar the alien from suing the applicant in this particular forum because such procedure is ordered by legislation which the court is bound to obey even though he considers that the legislation is ordering something beyond the proper scope of its territorial jurisdiction. The very same judge might refuse to recognize a similar interpleader decree in another province or nation, on the ground that interpleader was a proceeding in personam. The situation would be parallel to Schibsby v. Westenholtz,28 in which Lord Black-

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In Re Brunswick Balke Co. & Martin (1885, in Chambers) 3 Manitoba, 328, the res was a chattel physically outside the jurisdiction and interpleader was denied although all parties were before the court; one reason being that a decree would not bar an action at law against the applicant at the situs. In Harris v. Bank of British North America, supra note 12, the debtor in Ontario was not allowed to interplead a resident claimant who had sued in Ontario, and an English claimant who had sued in England, on the grounds that the debt was not payable in Ontario and this court could not stay the English suit or give a judgment which would be a defense thereto. Accord, Re Benjield and Stevens, supra note 12, where an Ontario debtor was not allowed to interplead residents of the United States, on the ground that the debt was payable there, so that there was no res at the forum, distinguishing Credits Gerundense, Ltd. v. Van Weede, supra note 7, because the res was there a chattel in England. See Holmested, loc. cit. note 33.

These cases indicate that if the res were a chattel at the forum or a debt payable there, interpleader would be granted against a non-resident and might possibly bar a foreign suit. The interpleader cases in this country where the res is a debt do not emphasize the place of payment. In a few garnishment cases this factor was emphasized, Louisville & Nashville R. R. v. Nash (1898) 118 Ala. 477, 23 So. 825, but is now generally disregarded; Beale, The Exercise of Jurisdiction In Rem to Compel Payment of a Debt (1913) 27 Harvard Law Rev. 107, 117; also, 20 L. R. A. (n. s.) 264, note. Even in Canada, garnishment is valid though the debt is not payable in the province where the garnishee is served. McMulken v. Traders Bank of Canada, supra note 24.

27 (1870) L. R. 4 H. L. 414; the lower court opinions, (1860, C. P.) 8 C. B. n. s. 1, and (1860, Exch. Ch.) 8 C. B. n. s. 405 were followed in Burn v. Bletcher (1863) 23 Upper Canada Q. B. 28, which was relied on in the interpleader case of Buffalo & L. H. Ry. v. Hemmingway, supra note 11.

28 (1870) L. R. 6 Q. B. 155, 159. Blackburn, J.: "Should a foreigner be sued under the provisions of [the Common Law Procedure Act], and then come to the
burn dismissed a suit upon a French judgment against Danes residing outside France, although conceding that an English statute would oblige him to give exactly the same sort of judgment against aliens residing outside England. But Parliament had left him free to consider the French procedure on sound principles of Conflict of Laws, and the absence of national power to bind the non-resident threw the case out of court. Thus before we can infer an affirmative answer to our third question from cases answering the second question affirmatively, we must be sure whether this judicial disposition of the second question is merely compelled by legislation or represents the court's opinion that interpleader is within its territorial jurisdiction. Now it is more than possible that Credits Gerundense, Ltd. v. Van Weede and similar Irish and Canadian cases of interpleader against non-residents are the result of extra-jurisdictional statutes. Stevenson v. Anderson is not such a case for it was decided without statutory influence, but the other decisions turn largely on the wording of Procedure Acts and Rules of Court without much discussion of jurisdiction. And when the English courts do feel free to inquire into jurisdiction as in Schibsby v. Westenhole, they lay down tests which seem fatal to the extra-territorial efficacy of interpleader decrees given without personal service. For example, one of the strongest arguments in the United States for jurisdiction in rem in interpleader where the res is a debt has been found in the foreign garnishment cases, and it is consequently significant that the House of Lords has refused to regard such garnishments as valid except in a special class of cases. Even this argument, we shall see, does not suffice to convince our courts in the interpleader cases; and when it is lacking as in England, it would seem a fortiori that interpleader requires personal jurisdiction over the claimants as well as the applicant-debtor. Consequently, it is very doubtful whether an English court would afford recognition to an interpleader decree given against a defaulting non-resident. And indeed several English text-writers answer both our second and third questions in the negative,

courts of this country and desire to be discharged, the only question which our courts could entertain would be whether the Acts of the British legislature, rightly construed, gave us jurisdiction over this foreigner, for we must obey them." See supra note 24; Beale, The Jurisdiction of a Sovereign State (1923) 36 Harv. L. Rev. 241, 242.

Supra note 7; see also cases in supra notes 11 and 19.

Supra note 4.

Supra note 28. And see cases in supra note 8.


Merlin, The Law and Practice of Interpleader (1907) 30: "Since [Re Bysfield, supra note 8] the practice of judges in chambers has been to refuse applications for leave to serve interpleader summons out of the jurisdiction." But he thinks that the authorities justify such service to inform the non-resident though not to bind him.
taking the view that Stevenson v. Anderson is no longer law and that the statutes when properly construed do not order the courts to bind an alien in interpleader. If this view be sound, the courts can, at most, notify the alien to come in if he wishes, and interpleader is now impossible in England unless all the claimants are either domiciled there or consent to enter their appearance in the proceeding. Under the same view, the Ontario statutes and rules of court perhaps compel an affirmative answer to the second question, but the third must be answered in the negative as in England.

II

In the United States, the Constitution influences the solution of our problem in three ways. (a) The due process clause makes impossible the peculiar situation described in the last paragraph, in which the English courts are obliged to obey a statute conferring power to issue process against non-residents although the judges consider that no territorial jurisdiction exists. Our courts, under the Fourteenth Amendment, are free to disregard legislation which violates the judicially established principles of territorial jurisdiction. Possibly the privileges and immunities clause (Art. IV, sec. 2) has a similar result. Thus our second question is less likely to receive an affirmative answer in this country than in the British Empire. (b) On the other hand, if an affirmative answer be given to the second question, the full faith and credit clause (Art. IV, sec. 1) makes more probable an affirmative answer to the third question. A state court cannot refuse to recognize the valid judgment of another state for purposes of retaliation or for more arbitrary reasons, although such refusal of recognition is entirely possible between independent sovereignties. (c) The diversity of citi-

Warde, The Practice of Interpleader by Sheriffs and High Bailiffs (2d ed. 1904) 60: “Since Re Busfield, leave would probably not be given.”

Piggott, Service out of the Jurisdiction (1892) 144-147: “It is exceedingly difficult to reconcile [Credite Gerundae, Ltd. v. Van Weede, supra note 7] with the fundamental principles already established. . . . The authorities therefore are reduced to Lord Eldon’s judgments in 1814: and it is with great submission suggested that the Lord Chancellor’s arguments are not in accordance with modern learning on the subject of jurisdiction. They were given at a time when the Chancery practice was a very vague and uncertain condition.” This book contains the best discussion of the English cases yet discovered; it concludes that nothing more than a notice to the non-resident may properly be issued, and that there is no statutory authority for more.


4 Supra note 4.

See on this clause, Burdick, The Law of the American Constitution (1922) ch. 24.

Cf. Hilton v. Guyot (1895) 159 U. S. 113, 16 Sup. Ct. 139, which refused to give effect to a French judgment because a similar judgment in our courts would not be recognized in France. See 20 L. R. A. 668, note; 32 L. R. A. 236, note.
zenship clause (Art. III, sec. 2) makes interpleader against the citizen of another state easier than against the citizen of another nation. Where the two claimants are citizens and residents of two wholly independent sovereignties, no court exists which can possess personal jurisdiction over both claimants. But if the two claimants reside respectively in two states of the United States, a United States court may conceivably be given by Congress personal jurisdiction over all residents of the United States and so be able to bring both claimants within reach of its process and decree.

This third factor of Federal jurisdiction will be discussed under a later heading, and only the first two concern us for the moment. With respect to the due process and full faith and credit clauses, it will be observed, as Thomas Reed Powell acutely points out, that although the Constitution gives the courts powers which they might not otherwise possess, the questions which the judges decide are not constitutional but involve only Conflict of Laws. In other words, the Constitution does not create any new principle of territorial jurisdiction. It is important in the solution of our problem, first, because it enables our courts, state as well as Federal, to set up their own views of the sound principles of territorial jurisdiction in disregard of legislation which would restrict an English court; and secondly, because it makes these questions of jurisdiction to some extent Federal questions. It thus tends to prevent the multiplication of conflicting judicial opinions on the validity of an interpleader decree against non-residents by giving one court, the Supreme Court of the United States, the final say in the matter, thus producing a unification of the law much more complete than is possible in the British Empire.

In our problem of interstate interpleader, the court in which relief is sought has by hypothesis no personal jurisdiction over the non-resident claimant, and consequently, its decree will, in the absence of jurisdiction in rem, have no more effect upon him than words written on a piece of paper by a private citizen. Therefore, so far as the state

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8 Such a power might conceivably be given to a world court, but goes much further than the compulsory adjudication of disputes between nations.


10 Some unification is, of course, possible through the Judicial Committee of the Privy Council. Its power is, however, much less complete than that of our Supreme Court. It cannot review Scotch or English decisions; it cannot disregard Colonial legislation of extra-territorial scope unless enforcement elsewhere is involved; it may sanction a refusal to recognize the decree of another colony for purposes of retaliation; appeals from Colonial Courts are only permissive and a considerable sum of money must usually be involved.

11 Griffith, C. J., Permanent Bldg. & Inv. Assoc. v. Hudson (1896, Sup. Ct.) 7 Queensland L. J. 23, 24; 1 Beale, Cases on the Conflict of Laws (1900) 324, 325: "Writs in New South Wales run as far as the border of New South Wales, and no further. . . . The document served on him was only a piece of paper, to which, in my opinion, he was in no way bound to pay attention, and which had no effect in this colony, although in New South Wales it had ample effect but only because the Legislature there had said so." For similar statements in interpleader cases
courts at least are concerned, our problem turns upon the question whether interpleader can properly be regarded as a proceeding in rem; that is, first, whether the state in which interpleader is sought has territorial jurisdiction over the subject-matter of the controversy, and secondly, whether the particular court has power to adjudicate the rights in that subject-matter of persons who are not within the reach of its process.

It sometimes happens that the court in which interpleader is brought has undoubted jurisdiction in rem in both these senses. Thus, in Free-land v. Wilson, an administrator in State X interpleaded two non-residents, each of whom claimed a distributive share in the property of a decedent in course of administration in X. Here there was a definite fund within the state to confer territorial jurisdiction and the claimants could not properly enforce their claim to this fund in any other state. Furthermore, it is well settled that a court administering a decedent's estate has power to bar claims which are not duly presented. Consequently, the court could give complete relief to the administrator regardless of its lack of personal jurisdiction over the claimant.

Let us suppose, however, that the res, although physically situated in X, is not under administration. If the res is land there is territorial jurisdiction. But since equity acts in personam, a statute will be necessary to enable the court to determine the rights of the claimants without personal jurisdiction over them. Statutes enabling equity to remove clouds on title imposed by the claims of non-residents are frequent, but it is doubtful whether interpleader can be considered a proceeding to remove cloud on title, since the applicant asserts no interest which he wishes protected. However, a broader statute conferring jurisdiction in rem where the interpleader concerns domestic land, would be a


* Forbes v. Campbell, supra note 20, where various persons in Scotland claimed to be next-of-kin of a Bombay decedent. There was no Bombay administration, but the Bombay Registrar allowed a banking-house to file a bond and transmit the funds to Scotland. The banking-house there raised multiplepoinding (interpleader) against the conflicting claimants, and asked that before the fund was paid to the winning claimant he should give a bond of indemnity to protect the bank against any liability it might incur on its Bombay bond. The court refused to impose this burden of security *ad aeternitatem*, and said that the bank should have taken out administration in Bombay. It will be noted that here there was no Scotch jurisdiction in rem over the decedent's estate, so that the decree could not bar all possible claimants.  

*See* the Appendix of Statutes in Huston, *The Enforcement of Decrees in Equity* (1915); U. S. Judicial Code, Act of March 3, 1911 (36 Stat. at L. 1087, 1102).  

INTERSTATE INTERPLEADER

simple matter. Now suppose that the res is a chattel physically situated in X. If it was brought there without the consent of the non-resident claimant, it is doubtful whether his rights in the chattel can be cut off unless he personally appears. If, however, the chattel is in X by his consent, that State has territorial jurisdiction, and a statute may give the court jurisdiction in rem which will make it possible to bind non-residents by interpleader as well as by other equitable proceedings.

The foregoing reasoning makes interstate interpleader possible in several situations where it is extremely useful. The bailee of a chattel is frequently subject to double vexation especially if he is a carrier or a warehouseman. In such situations the technical difficulties of privity, which formerly prevented interpleader, have now been removed by the Uniform Bills of Lading Act and the Uniform Warehouse Receipts Act. It would seem that a bailee may be given relief under these statutes against a non-resident claimant in a state where the legislative provisions for substituted service on non-residents are sufficiently broad to apply to interpleader. (Whether the non-resident may then be barred against the home claimant as well as against the applicant will be considered later.)

Even where territorial jurisdiction exists because of the presence of the chattel, it should not be exercised in a manner unfair to the non-resident claimant. Thus, the order for substituted service should specify that he be informed of the interpleader proceeding by a notice

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44 In Re Benfield and Stevens (1897, Master in Chambers) 17 Ont. Pr. 339, 341, Street, J., in refusing interpleader as to royalties of an Ontario mine payable in the United States where the chief claimants to the royalties resided, construed the applicant's interest as a mere license, but said that if he had a lease of the mine at a rent, jurisdiction might belong to the courts where the land was situated out of which the rent was payable, to determine who should receive it.


46 Some of the English, Irish and Canadian cases which allowed interpleader may perhaps be supported on the ground that the res was tangible personal property within the jurisdiction, e. g., Credits Gerundeuse, Ltd. v. Van Weede, supra note 7; Galabrun v. Bruce, Symes & Williams, supra note 10; Buffalo & Lake Huron Ry. v. Hemmingway, supra note 11. The decisions and text-writers criticizing these cases adversely do not, however, point to this fact as sufficient justification for binding the non-resident claimant.

47 Many of the statutes referred to in note 42 apply to personal as well as real property, e. g. U. S. Judicial Code, sec. 57, Act of March 3, 1911 (36 Stat. at L. 1087, 1102). Jurisdiction to compel specific performance of a contract to sell a ship was granted against a German in Hart v. Herwig (1873) L. R. 8 Ch. App. 860. Sec. 20.

48 Sec. 17; see Chafee, Modernizing Interpleader (1921) 30 YALE LAW JOURNAL, 840, note 13.
which actually reaches him, and not by publication in newspapers which he may never read. And the court should, in its discretion, dismiss the suit unless brought at a place where the non-resident may fairly be asked to come. For example, the warehouseman may properly require the claimant to assert his rights where the warehouse is situated. The shipper or consignee ought not to be obliged to defend his title in any state along the route which the carrier arbitrarily selects as his forum despite the existence of jurisdiction; and interpleader should be denied unless the court be near the destination or the place of original shipment or the point of stoppage in transitu. It must also be remembered that if a negotiable warehouse receipt or bill-of-lading has been issued and the appropriate Uniform Act is in force in all the states concerned, the document of title now represents the goods, so that only the situs of the document has jurisdiction in rem and interpleader must be brought there in order to bind the non-resident who does not personally appear. He may fairly be required to keep himself informed of the location of the document and be prepared to assert his rights there.

Since no cases of interstate interpleader as to chattels have been found in the United States it is not possible to test the validity of the foregoing discussion by any authorities.

The most serious difficulties of interstate interpleader, however, arise when the res is not land or a chattel but a debt. Certain kinds of debts are represented by documents which may often be regarded as chattels, and might perhaps be made the subject of interpleader in the state where they are physically situated according to the principles already discussed with respect to chattels. This view might be helpful in the case of promissory notes, bills of exchange, and corporate bonds. However, the only case discovered where interstate interpleader was sought as to negotiable instruments denied relief, on the ground that the proceeding was not in rem. Cleveland National Bank v. Burroughs (1917) 10 Oh. App. 61.

60 See Chafee, op. cit. supra note 45, at p. 1143, note; Wylie v. Speyer, and Embiricos v. Anglo-Austrian Bank, supra note 45; Crichton v. Wingfield (1922) 258 U. S. 66, 42 Sup. Ct. 229. However, the only case discovered where interstate interpleader was sought as to negotiable instruments denied relief, on the ground that the proceeding was not in rem. Cleveland National Bank v. Burroughs (1917) 10 Oh. App. 61.

61 Scott, Cases on Trusts (1919) 165, note, gift of savings bank book; Warren, Cases on Wills and Administration (1917) 839, note, gift mortis causa of such a book.
oblige the bank to bring proceedings in the state of the alleged donee, possibly at the other end of the country. This would be not only inconvenient to the bank but unfair to the administrator. He would have to assert his claim in a forum depending on the accidental *situs* of the book whereas the natural place for litigation is the location of the bank which remains fixed. Of course the donee would argue that it is equally hard on him to appear at a distance, but it seems much more reasonable that he should expect to contest his claim in the state where the deposit was made. No cases of interstate interpleader by savings banks have been reported, but they have often been brought in Rhode Island by savings banks doing business there, and the claimants are usually willing to appear. Since the bank’s state is not only the domicile of the debtor but the only place provided by contract for the payment of the debt, we have an argument for asserting a jurisdiction *in rem* which does not exist for ordinary debts, and this argument is strengthened by the decision in *Blackstone v. Miller*,

And even if the state where the bank is situated does not have power to grant interpleader, it would be so highly undesirable for the state where the book is to possess jurisdiction *in rem*, that a holding to that effect is very unlikely. Certainly the *lex fori* could not by its own operation regard the book as embodying the deposit; the law of the *situs* of the bank, where the contract of deposit was made, would govern, and that law would probably not lay down such an inconvenient rule.

A life insurance policy gives rise to a similar argument. A few cases regard it as completely embodying the obligation of the insurance company, so that the state where the policy is situated has jurisdiction to determine the rights of non-residents therein. Only one interpleader case, however, turns on this factor, and several interpleader and other cases do not recognize that the presence of the policy confers

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1. (1903) 188 U. S. 189, 23 Sup. Ct. 277; infra note 63.
2. *Perry v. Young* (1913) 133 Tenn. 522, 182 S. W. 577; *Morgan v. Mut. Ben. Life Ins. Co.* (1907) 189 N. Y. 447, 82 N. E. 438; but see N. Y. cases in note 55; *Ely v. Hartford Life Ins. Co.* (1908) 128 Ky. 799, 110 S. W. 265. In these cases there was personal jurisdiction over the debtor and one claimant. See the doubts expressed in *McBride v. Garland* (1918) 89 N. J. Eq. 514, 516, 104 Atl. 435, 436; *Evans v. Scribners’ Sons*, supra note 43. That the *situs* of the policy was not at the forum was one reason for refusal to recognize a decree adjudicating rights in the insurance without jurisdiction over one claimant, in *Gleason v. North Western Mutual Life Ins. Co.* (1911) 203 N. Y. 507, 97 N. E. 35.

In the following cases in which an interpleader decree was held not binding for want of personal jurisdiction over a claimant, the decree was granted at the *situs* of the policy: *New York Life Ins. Co. v. Dunlevy* (1916) 241 U. S. 518, 36 Sup. Ct. 613; *Gary v. North Western Mutual Aid Assoc.* (1893) 87 Iowa, 25, 50 N. W. 27, 53 N. W. 1086; *Cross v. Armstrong*, supra note 40; *Washington Life Ins. Co. v. Gooding* (1898) 19 Tex. Civ. App. 490, 49 S. W. 123.

In the following cases, a claimant was not allowed to have his right to insurance
jurisdiction in rem. The Federal Interpleader Act, subsequently discussed, allows interpleader to be brought in the state where a beneficiary resides and makes no mention of the location of the policy. Consequently, the insurance cases must be discussed on the theory that the res is a debt and not a chattel.

If a debtor brings interpleader in his own state where one claimant also resides, the vital question in dispute is whether the non-resident claimant is the creditor. The forum has not personal jurisdiction over both debtor and creditor as long as this question remains undecided. Is it then possible for that forum to determine the ownership of the debt without personal jurisdiction over both claimants? Two main arguments may be advanced on behalf of the power of the debtor's state to bind the non-resident claimant. (1) Personal jurisdiction over the debtor confers jurisdiction in rem over the debt. (2) Even if such jurisdiction does not arise from the presence or residence of the debtor within the state, the payment by the applicant of the amount of the debt into court creates a fund over which it has jurisdiction in rem, so that the claim of the non-resident against the applicant may be finally adjudicated.

If these arguments can be sustained, one object of interpleader will be accomplished, viz. the protection of the applicant from double vexation. Will it also be possible to attain the further result of protecting the winning claimant from additional litigation by the loser, so as to close the entire controversy by this one proceeding? Distinguish two types of cases. First, the contest between the claimants may involve not only the title to the res but also an alleged tort; e.g. C₂, the non-resident, asserts that C₁ has obtained the assignment of the insurance policy from him by fraud. A court with jurisdiction in rem over the obligation can settle the title to the policy, but cannot adjudicate the personal question of fraud without actual service on C₁. He cannot reclaim the policy from C₁, but is free to sue him in deceit for its value in this or another state. Consequently, the interstate interpleader can not close the controversy. Secondly, the contest may involve nothing but a question of title, as when the policy is claimed by the estate of the insured and the estate of the beneficiary who predeceased the insured. Here no tort or other personal dispute is left open. It may be suggested that the award of the money to C₁ might in itself create a con-

determined against an absent claimant although the policy and the company were at the forum: *Mahr v. Norwich Union F. Ins. Co.* (1891) 127 N. Y. 453, 28 N. E. 391; *Schoenholtz v. N. Y. Life Ins. Co.* (1921, 1st Dept.) 197 App. Div. 91, 188 N. Y. Supp. 556; affirmed without adjudication on jurisdiction (1922) 234 N. Y. 24, 136 N. E. 227. The New York cases are conflicting (see *supra* note 53) and are probably affected by *Hanna v. Stedman* (1921) 230 N. Y. 326, 130 N. E. 566. See also *Fancher, J., dissenting, Perry v. Young, supra* note 53, at p. 541, 182 S. W. at p. 582.

constructive trust on behalf of C₂ (in the opinion of another court); but this is unsound, for such a right would have to be created by the law of the place of the award, and that law pronounces the award rightful. So C₂ may be barred from afterwards suing both the company and C₁. However, it may be unwise to exercise the jurisdiction so as to bar C₂ completely, and it is significant that in England when interpleader is brought against two resident claimants (so that territorial jurisdiction is clear), a claimant who fails to come in is barred against the applicant but the order does not "affect the rights of the claimants as between themselves." Having thus demarcated the limits of jurisdiction in rem, let us consider the two main arguments for the existence of such jurisdiction.

(1) The first argument, that personal jurisdiction over the debtor confers jurisdiction in rem over the debt, is a storm-center of controversy. Forcible reasons have been urged for and against this doctrine. It must suffice here to present the following extracts from authors who contend that this doctrine should be applied in the determination of the conflicting rights of citizens of different states to the proceeds of a life insurance policy.

C. A. Huston, in his Enforcement of Decrees in Equity, points to this situation as an illustration of his thesis that legislation is desirable to enable decrees to operate in rem:

"The party seeking interpleader against two or more actual or prospective claimants of the fund or other res which he holds needs to be freed from danger of suit not merely within the jurisdiction where he holds the res, but also wherever claimants asserting legal title to the res may harass him with suits . . . .

"Since, then, here as elsewhere a statute which authorizes a court of equity to deal with absent defendants is, although a necessary element in the relief, not by itself sufficient, recourse must be had to a statute enabling the court to give a real effect to its decree. Here, again, the interstate character of a great part of our business relations, a matter of which insurance is of course a notable instance, makes legislation to enable the settlement of title, not merely to real property but to funds of money, in a single suit a highly necessary reform. It should be possible for the innocent holder of such a fund to be able to pay it into court, and then by published notice summon all parties interested to participate in an adjudication as to the title to the fund, which should be conclusive upon all claimants wherever they are resident. The same doctrine should be extended, and is in practice extended, to the cases of creditors' suits, in which, under the doctrine of rewarding the dili-

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*Order LVII, Rule 10; see Merlin, Interpleader (1907) 44. When claimants appear they will be prevented from suing either the applicant or each other. Horner v. Lehman (1917) 130 Md. 275, 100 Atl. 285.

"For the jurisdiction, Minor, Conflict of Laws (1901) sec. 121; Notes (1916) 16 Col. L. Rev. 414; see also (1916) 16 Col. L. Rev. 519; contra: Beale, op. cit. supra note 25.

* (1915) 63, 65. The footnotes and discussion of Gary v. N. W. Masonic Aid Assoc., supra note 55, and Cross v. Armstrong, supra note 40, are omitted.
A note in the Columbia Law Review says:

"If we may assume that a chose in action connotes a right to sue at law for a recovery against the obligor, then it may well be said that the situs of the chose in action will be wherever that right exists; and since the obligor generally may be sued wherever he is found, it will follow that the situs is with his person. There should be no more difficulty with the conception of a man in one state owning a chose in action the situs of which is in another state than with the conception of his owning land or chattels similarly situated. Nor does the possession in one state of a promissory note, stock certificate, or other evidence of an obligation, the situs of which is in another state, present any greater inconsistency than the case of a deed or bill of sale in one state as evidence of title to property situated in another. In short, the logical rule would seem to be that a chose in action is property whose situs is with the person of the debtor or obligor. Where the obligor is a corporation doing business in several states and having in such states duly accredited agents upon whom process may be served, it is well settled that suit may be brought against it in any state where it is so represented...

If the situs of a chose in action be deemed to be with the creditor, it is difficult to see how any adjudication could ever be obtained upon a state of facts such as are presented in that case where the parties claiming are residents of different states. The same inconvenience would also arise if there were but one person claiming adversely to the plaintiff and that person resided in a state where the insurance company had no duly accredited agent."

In support of this general position that interpleader by the debtor should be allowed as a proceeding in rem, several groups of cases have been mentioned as analogous.

(a) Wartime confiscation of debts. A sovereign in the exercise of his war power has frequently ordered debts owed to enemy aliens by persons within his territory, to be paid to his government, e.g. to the Alien Property Custodian. This action seems analogous to interpleader if it goes beyond sequestration of the debt until the international controversy is settled, and involves a permanent seizure of property of the debtor equivalent to the amount of the debt. The sovereign's
physical and legislative power to make such a seizure remains undoubted, but apart from the discouragement to international commerce in peace and the injustice to the civilian creditor, the seizure is unjust to the debtor unless at the same time his obligation to the enemy creditor be extinguished so that the creditor cannot force him in the courts of another country to make a second payment. Of course, such an extinguishment can be assured by a treaty between the confiscating sovereign and the enemy nation, but unless it is so assured the debt seems not to be discharged, and there is a decision by Lord Ellenborough to that effect. Consequently, the act of seizure would probably not be recognized as an adjudication in rem, and at all events is too oppressive to serve as a precedent for litigation between fellow citizens.

(b) Taxation. The United States Supreme Court held in Blackstone v. Miller\(^a\) that a deposit in a New York Bank belonging to an Illinois decedent was subject to the New York inheritance tax. One of the reasons stated by Justice Holmes was,\(^b\) "What gives the debt validity? Nothing but the fact that the law of the place where the debtor is will make him pay." In so far as the case rests on this ground of jurisdiction over the debtor, it has been severely attacked and is opposed by many state decisions\(^c\) as well as by State Tax on Foreign-held Bonds.\(^d\) On the ability theory of taxation, it can hardly be contended that the more the debtor owes, the more he is able to contribute toward the support of the community. On the protection theory, the creditor receives no services from the debtor's domicile because of the mere existence of the debt. Service is received from the state where the debt was contracted and the state where it is collected by legal process, but both of these events may occur outside the domicile and should give rise to taxation, if at all, only when and where they occur. Blackstone v. Miller\(^e\) must be rested on the other reason given by Justice Holmes,\(^f\) that money in the bank is practically equivalent to actual coin in the pocket. This reason might afford an analogy for interpleader by a savings bank in the state where it is located, but not for interpleader by a life insurance company since insurance is not equivalent to coin in the pocket. Furthermore, even the broader reason of Holmes would not justify taxation of the debt in every state where

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\(^b\) Supra note 52.

\(^c\) Supra note 52, at p. 205, 23 Sup. Ct. at p. 278.

\(^d\) Beale, Jurisdiction to Tax (1919) 32 Harv. L. Rev. 587, 603-606, citing opposed cases at p. 605, note 90.

\(^e\) (1872, U. S.) 15 Wall. 300.

\(^f\) Supra note 52. Accord: Matter of Houdayer (1896) 150 N. Y. 37, 44 N. E. 718; but there are several decisions contra, Beale, op. cit. supra note 65, at p. 607, note 101.
the debtor corporation does business, whereas an insurance company frequently desires interpleader away from its state of incorporation and in a court where it can reach one of the claimants by personal service. Finally, tax cases are unsatisfactory precedents for private litigation. The various states levy taxes wherever they can impose disagreeable consequences for non-payment without regard to strict judge-made principles of jurisdiction. They act on the method of the Irishman at Donnybrook Fair who hit a head wherever he saw it, and the courts hesitate to restrict the raising of revenue whenever they can avoid doing so. A judge in issuing a decree may well hesitate to assume the stringent power of a tax collector.

(c) **Creditors' Bills.** If the estate of an insolvent debtor in state X is under administration in a court of X, creditors, including non-residents, may be notified to come in before a certain day or else be forever barred. Huston, in the passage quoted, particularly relies on such cases. They are, however, not parallel to interpleader, because they involve a true *res* in the jurisdiction, i.e. the property of the insolvent. Non-residents who fail to come in may be barred just as in the administration of a decedent’s estate. The distinction from interpleader is, that such creditors are barred with respect to the actual fund in X, but not with respect to the debt. It is true that after a discharge in insolvency in the state courts of X such non-resident creditors may not share in the estate now under distribution; but the right against the debtor still exists, and his discharge in X is no defence if they sue him in another state or even in X. On the other hand, an interpleader decree will not be adequately effective unless it bars actions against the stakeholder in another state.

(d) **Suits by a Claimant to Life Insurance.** When two citizens of different states dispute over the ownership of an insurance policy, one of them sometimes sues the insurance company in his own state where it does business, and joins the non-resident claimant who is not personally served and fails to appear. This situation is exactly the same in substance as if the insurance company had brought interpleader. Indeed, New Hampshire and Connecticut allow interpleader proceedings

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* Even a temporary bank deposit is not taxable at the *situs* of the bank, Matter of Leopold (1901, Surro. Ct.) 35 N. Y. Misc. 369, 71 N. Y. Supp. 1032; see Beale, op. cit. supra note 65, at p. 668. Deposits in a branch bank in one state would *à fortiori* not be taxable in another state where there was a branch.

* Supra note 59, citing Kerr v. Blodgett (1871) 48 N. Y. 62, 66; Samples v. Bank (1873, C. C. 5th) i Woods, 523; Hallet v. Hallett (1829, N. Y.) 2 Paige Ch. 15, 22; Williamson v. Wilson (1826, Md.) i Bland, 418, 440; Smith v. Bank of New England (1897) 69 N. H. 254; Dicey, Conflict of Laws (2d ed. 1908) 310. Dicey deals chiefly with decedents' estates, which are undoubtedly *res* within the jurisdiction, but also cites In re Maudslay Sons & Field [1900] i Ch. 602.

to be started by one of the claimants. Consequently, the few cases which allow this type of proceeding against the non-resident claimant to life insurance would furnish good authority for interpleader by the insurance company, if it were not for the fact that they are opposed by other decisions which deny relief. Furthermore some such cases may be distinguished on special grounds, for instance, that the insurance company has with the authorization of all the claimants, under the terms of the policy, appropriated a specific fund within the jurisdiction to the payment of this particular policy, so that the fund and not the company is now the debtor. In so far as the cases which grant relief in these proceedings by a claimant can not be distinguished, they must be regarded as unsound according to the reasoning of the cases which deny interpleader against a non-resident. In other words, this type of case must stand or fall with the interpleader cases.

A attempt has been made to justify relief to the claimant on the ground that he seeks the removal of a cloud on his chose in action, but the assumption that there is a chose in action within the jurisdiction begs the question. If in fact the non-resident claimant is entitled to the obliga-

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Webster v. Hall (1880) 60 N. H. 7; Brown v. Clark (1908) 80 Conn. 419, 48 Atl. 1001, statutory. This is also possible in the corresponding Scotch proceeding “multiple pouding.” Contra: Sprague v. West (1879) 127 Mass. 471; 2 Ames, Cases on Equity Jurisdiction (1904) 3, note.

Morgan v. Mut. Ben. Life Ins. Co. (1907) 189 N. Y. 447, 82 N. E. 438, but see N. Y. cases in note 74; Perry v. Young, supra note 53. Perry v. Young is approved in (1916) 16 Col. L. Rev. 414, and ibid. 519; but see note 75a, infra. Moreover some such cases may be distinguished on special grounds, for instance, that the insurance company has with the authorization of all the claimants, under the terms of the policy, appropriated a specific fund within the jurisdiction to the payment of this particular policy, so that the fund and not the company is now the debtor. In so far as the cases which grant relief in these proceedings by a claimant can not be distinguished, they must be regarded as unsound according to the reasoning of the cases which deny interpleader against a non-resident. In other words, this type of case must stand or fall with the interpleader cases. An attempt has been made to justify relief to the claimant on the ground that he seeks the removal of a cloud on his chose in action, but the assumption that there is a chose in action within the jurisdiction begs the question. If in fact the non-resident claimant is entitled to the obliga-
tion of the insurance company, the chose in action is outside the forum, unless it be said that it exists wherever the debtor is, and this is the very question at issue. Surely the conception of a chose in action existing in every state where a large life insurance company does business is absolutely different from land or a chattel which possesses a definite situs at any given moment.

(e) Foreign Garnishment. If P, the alleged creditor of D, garnishes G, who owes a debt to D, in any state where personal service over G can be obtained, whether or not this is G's domicile, and the court orders G to pay the debt to P, such payment is a bar to suit by D against G in any other state in the United States. The Supreme Court of the United States has repeatedly held that the judgment of the state of garnishment must be given full faith and credit in another state although the order was made without personal jurisdiction over the principal debtor, D. On this point, there is no longer possible any conflict of authority so that the garnishment cases constitute the strongest analogy for interstate interpleader, unless they can be distinguished. Some of the reasoning of these cases would justify interpleader in the absence of one or both claimants. Thus Justice McKenna says, "The right of a creditor and the obligation of a debtor are correlative but different things. Whatever of substance there is [in the situs of a debt] must be with the debtor. He and he only has something in his hands. That something is the res, and gives character to the action as one in the nature of a proceeding in rem." And Justice Peckham makes a similar separation of the debtor's obligation from the creditor's right: "Power over the person of the garnishee confers jurisdiction on the courts of the state where the writ issues. Blackstone v. Miller . . . . The obligation of the debtor to pay his debt clings to and accompanies


him wherever he goes . . . . It is nothing but the obligation to pay which is garnished or attached."

This attempt to divide a debt into two independent parts recalls the story of the two men who bought a cow, one owning the front portion and the other the rear, until the front owner, wearying of supplying food while the other got all the milk, decided to kill his half, "and Bill's half died too, it did." Any judicial action upon the debtor's obligation must necessarily affect the creditor's right, and therefore he is a necessary party to the suit. In disregarding this principle the garnishment cases take a position which is somewhat supported by long usage and has some practical advantages (and practical disadvantages as well87), but which ought not to be extended by analogy to controversies which involve something different from the discharge of the debt in favor of the creditor of the garnishee's creditor. Even in garnishment proceedings such an extension is refused. If the court where garnishment is sought determines that the garnishee's debt was owed to the principal debtor and not to a non-resident claimant, C2, who does not appear, this adjudication of the ownership of the debt does not bind C2, who may sue the garnishee in another state and force him to pay a second time.88

The court may dismiss the garnishment proceedings on the ground that the garnishee is not indebted at all; this adjudication of the non-existence of the debt does not bind the principal debtor, who may sue the garnishee and recover, even in the same state.89 Such results may follow from the procedural nature of garnishment, but seem inconsistent with the theory that jurisdiction over the debtor really gave jurisdiction in rem over the debt, for then the court could determine the existence or ownership of the debt as well as discharge it. The bad results, if such sweeping power to destroy the rights of absent non-residents could be invoked by a debtor, are illustrated by Fidelity & Deposit Co. v. Nelson Co.,89 in which the sureties on a bond sued to enjoin an action at law by the obligee, and served him by publication. The bill was, of course, dismissed, but would have been warranted if the presence of the debtor really gave jurisdiction in rem, and any debtor could go into a local court, especially if declaratory judgments were allowed,40 and obtain a decision that he had a good defense to the claim of a non-resident. If a non-resident claimant may be bound by

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87 Beale, op. cit. supra note 77, at p. 121.
89 Ruff v. Ruff (1877) 85 Pa. 333; 2 Shinn, op. cit. sec. 725.
40 For an example of a declaratory judgment of non-liability of the plaintiff, see Guaranty Trust Co. v. Hannay [1915, C. A.] 2 K. B. 536. Even where declaratory judgments are not permitted, the debtor might ask for cancellation of an instrument within the jurisdiction on quia timet grounds, or seek injunction of an action at law as in the District of Columbia case, supra note 83.
interpleader, where there is also a resident claimant, it is only a small step farther to bind the non-resident when he is the only claimant against the debtor-plaintiff. In short, the garnishment cases should not establish a general principle of jurisdiction in rem, but merely represent an isolated rule.

This survey of the analogous cases shows that the wartime confiscation, taxation, and creditors' bills decisions do not support interstate interpleader, that the insurance cases are divided and the garnishment cases confined to their special field. As for the interpleader cases themselves, consideration of their attitude toward the broad in rem theory may best be deferred until we take up those authorities directly.

(2) Even if the presence of the debtor within a state does not per se give its courts power to bind the non-resident claimant, it has been contended that when the applicant pays the amount of the debt into court, a fund is thereby created within the state, so that the proceeding is thenceforth in rem. In support of this view are occasional statements in ordinary interpleader cases, that the second stage is in rem with each claimant a plaintiff against the res. Such expressions, however, mean at most that there is no formal plaintiff and defendant in the second stage or that its scope is limited to the award of the res. If this stage were in rem in the fullest sense, like a prize condemnation, the title of the winning claimant to an interpleaded chattel would be established not only against the loser but against persons generally, although they were not parties to the original bill. On the contrary, such an outsider may intervene in the second stage and assert his claim to the chattel, or may doubtless sue the winning claimant for it after the interpleader decree is entered.

The truth is, that if the original debt in the interstate cases be not a res in the debtor's state, but a two-ended affair, the debtor can not by his own action of payment into court, unshared by the non-resident potential creditor, transform the debt into a fund within the state.

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88 See Walsh v. Rhall (1892, C. P.) 6 Kulp (Luzerne Cty., Pa., Legal Reg. Rept.) 483, which denied interpleader against a N. Y. claimant on the ground that the res had not been paid into court.
85 On the various meanings attached to the phrase in rem, see Hohfeld, Fundamental Legal Conceptions (1923) 65 ff; also in (1917) 28 Yale Law Journal, 710.
86 Rutherford v. Union Land & Cattle Co. (1923, Nev.) 213 Pac. 1044, and cases cited; Gregory v. Great West Lumber Co. (1915, Sask. Sup. Ct.) 22 Dom. L. 70; Evans v. Evans (1912) 50 Can. S. C. Rep. 262. See also Maclean, Interpleader (1901) 77, citing Knight v. Yarborough (1846, Miss.) 7 Smed. & Marsh, 179, in which the bank notes paid into court depreciated during the suit, and the applicant was directed to make good the deficiency in current specie.
INTERSTATE INTERPLEADER

There is money within the court's control, but that money is not the debt unless the creditor consents or can be personally ordered by the court to accept the substituted situation and release the debtor. Until then the debt continues despite the payment into court, and consequently can be enforced by the absent claimant, if subsequently he is found entitled to do so. The payment of the amount of the debt into court does not make interpleader a proceeding in rem, but is merely a condition precedent to relief from double vexation, with which the applicant must comply, so that he may withdraw disinterested from the controversy and the winning claimant may surely and forthwith enjoy the fruits of victory.  

III

The authorities in the United States on the power of a state court to bind a non-resident by interpleader involve the same three questions as the British and Imperial cases already discussed, but these questions will now be considered in reverse order, since the third question, the extra-territorial effect of the decree, has received the most attention in our cases.

Does a State Interpleader Decree Bar Suit in Another State?

In the absence of jurisdiction in rem over the debt, interpleader by the debtor without personal service upon the non-resident claimant would not seem to be such a judgment as to be entitled to full faith and credit in another state. The United States Supreme Court, which has the last word on this question, has so decided in New York Life Ins. Co. v. Dunlevy. Although the facts involve certain additional elements which prevent the case from being one of interstate interpleader pure and simple, essentially the same problem is raised. C₁, a resident of Pennsylvania, took out an endowment policy in A, a New York insurance company doing business in Pennsylvania, and assigned it to his daughter, C₂. After the policy had matured for the sum of about

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8 Hiscock, C. J., in Hanna v. Stedman, supra note 55, at p. 334, 130 N. E. at p. 568: "The requirement that the plaintiff in such an action shall so bring into court the moneys which are in dispute is a requirement imposed by a court of equity as a condition of relieving the debtor from further obligation for costs or otherwise while the conflicting claimants litigate . . . ."

Blair, P. J., in Murphy v. Barron (1921) 286 Mo. 390, 408, 228 S. W. 492, 497: "The reason . . . . is that the court may take control of the fund before discharging the plaintiff who files the bill, and to prevent abuse of the proceedings."


9 See p. 688, supra.

9 Supra note 55. The record and briefs in the Supreme Court will be found in the Harvard Law School Library.
$2,500, B, a Pennsylvania creditor of C₂, who was now a resident of California, acquired a valid judgment against her for about $500, and began an action at law in Pennsylvania against A and C₁ to garnish a corresponding portion of the insurance money, obtaining constructive service on C₂ in California. The policy was in Pennsylvania. C₁ appeared, denied the validity of the assignment, and claimed the full amount due on the policy. C₂ then began an action in California to recover the insurance money, and the California court made personal service on both A and C₁. While this California suit was pending, A filed an interpleader motion in the Pennsylvania garnishment action. The motion was granted, notice was given to C₂ in California, and A paid the whole insurance money into court. All parties except C₂ having appeared, the validity of the assignment was tried, and the insurance money was awarded and paid over to C₁. This Pennsylvania decision was set up by A as a defense in the California suit, which had been removed to the United States District Court. The decision of that court, disregarding the Pennsylvania proceedings and ordering A to pay the insurance money over again to C₂, was affirmed by the Circuit Court of Appeals in the Ninth Circuit, and by the United States Supreme Court.

When an interstate interpleader case again comes before the Supreme Court, an attempt may conceivably be made to distinguish the Dunlevy case on various grounds. (a) The interpleader was not at the domicile of the debtor. This, however, seems immaterial in view of the decisions allowing jurisdiction of the debt for purposes of garnishment wherever the debtor can be found, and it is clear that if interstate interpleader is to be of any real value to life insurance companies, it must be permitted outside the state of incorporation, wherever the company can reach at least one claimant. The Federal Interpleader Act attaches no importance to the place of incorporation. (b) An unusual feature of this case was that the rights of all the parties could have been adequately settled in the California court which possessed complete personal jurisdiction. This fact might have led the Pennsylvania court to refuse to exercise jurisdiction in rem but could not deprive it of that jurisdiction.

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Footnotes:

9 The decision of Van Fleet, J., is printed in the record in the Supreme Court, at p. 122.
9 (1914) 214 Fed. 1. Dietrich, J., dissented on the ground that the garnishment proceeding gave the Pennsylvania court jurisdiction over the debt to the extent of B's claim, so that the insurance company should be protected to the extent of $500; this view is contra to the cases holding that the ownership of the garnishee's obligation may not be adjudicated in garnishment proceedings, supra note 81.

9 Harris v. Balk, supra note 77; see also Brown v. Equitable Life Ass. Soc. (1902) 187 U. S. 308, 23 Sup. Ct. 123, holding that a pending action by one administrator at the company's domicile was no bar to another action by another administrator at the domicile of the creditor, where the company was merely doing business.

9 See infra note 128.
jurisdiction if it was otherwise present. (c) It might be urged that the real explanation of the Dunlevy case is that it started as a garnishment proceeding and was consequently nothing more than an application of the well settled principle already set forth, that the court of garnishment has no jurisdiction to determine the ownership of the debt. While this contention derives some support from the extent to which the arguments of counsel were confined to the garnishment aspects of the case, it must be rejected as unsound because the original Pennsylvania proceeding was just as clearly transformed into an interpleader action by A's motion as if the insurance company had filed an interpleader bill in equity. The opinion of the Supreme Court is expressly devoted to the scope of interpleader. (d) The decision of the Circuit Court of Appeals held the Pennsylvania proceedings invalid on the ground that the constructive service on C did not conform to the Pennsylvania statute and Learned Hand, J., has suggested that the Dunlevy case may turn wholly upon the condition of the Pennsylvania law, but the Supreme Court assumed without any question that the notice to C was made with due formalities and rested entirely upon general grounds of jurisdiction as will appear from the language of Mr. Justice McReynolds:

"Although herself outside the limits of the State, such disposition of the property [discharge in garnishment proceedings] 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. And unless in contemplation of law she was before the court and required to respond to that issue, its orders and judgments in respect thereto were not binding on her. Pennoyer v. Neff, 95 U. S. 714."

While this decision accords with the view that jurisdiction over the debtor does not confer jurisdiction in rem over the debt, it must be remembered that reasoning exactly contrary to that view was used by Mr. Justice McKenna and Mr. Justice Peckham to support the power of the court where the debtor was, to bind the non-resident creditor in the garnishment cases. The difficulty of reconciling the Dunlevy

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4 Supra note 81.

5 No interpleader case was cited in either brief before the Supreme Court; none was cited by the opinions of the two lower courts; the only interpleader case mentioned by Mr. Justice McReynolds was Cross v. Armstrong, supra note 89.


7 Supra note 55. The broad interpretation of the Dunlevy case has been taken in Flemer v. Farson (1918) 248 U. S. 299, 293, 39 Sup. Ct. 97, 98; Hanna v. Stedman, supra note 55, and other state cases; and by the editor of the note in L. R. A. 1917B, 393.

8 Notes 78 and 79, supra; see also Mr. Justice Holmes, Blackstone v. Miller, supra note 64. Garnishment cases were relied on in Ely v. Hartford Life Ins. Co., infra note 102, a minority case.
case with that reasoning is very great, and it is therefore probable that the doctrine of the garnishment cases must be limited to the precise situation there before the Supreme Court, and that the theory therein enunciated that the *situs* of a debtor's obligation circulates with the debtor can no longer be regarded as accepted by the court.

The *Dunlevy* case determines that the courts of state Y are not forced by the full faith and credit clause to give effect to an interstate interpleader decree of state X rendered without personal jurisdiction over a claimant who is suing in Y. On the other hand the full faith and credit clause would not in any way prevent the courts of Y from recognizing the interpleader if they chose to do so. There have been many cases in which state courts have been asked to give such recognition, but with the exception of one case in Kentucky, they have uniformly refused to do so. In most of these cases, the subsequent suit was allowed against the applicant, but in *Cross v. Armstrong* it was allowed against the winning claimant. The reasoning of some of these opinions goes deeper into the problem of interstate interpleader than the *Dunlevy* case. The courts squarely take the position that interpleader of a debt is not *in rem*. A suit by one person against an insurance company is clearly a proceeding *in personam*. If two persons bring separate suits against the company on the same policy, each suit is *in personam*. Interpleader is nothing but a device to unite these two

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It may be objected that since the *Dunlevy* case holds that an interpleader decree in X is not binding on C in Y because of the want of personal service, a judgment in a court in Y that the interpleader does bind C would be equally invalid, under *Pennoyer v. Neff* (1878) 95 U. S. 714. The answer is that the Y court did have jurisdiction over C, and so could bind him. The Y decision that the X decree was entitled to recognition might be unsound, in view of the reasoning of the *Dunlevy* case, but it would be rendered with due process of law. Consequently, the courts of another state, Z, would have to give full faith and credit to the Y judgment even though they considered the X decree invalid. A similar question was raised by an absentee divorce, in *Bidwell v. Bidwell* (1905) 139 N. C. 402, 52 S. E. 55; see the comment in 2 L. R. A. (N. S.) 325, note.

After each citation, the name of the state where the interpleader decree was granted is given; it will be noticed that several lower courts gave interpleader though the highest court in the same state had refused recognition to a similar decree elsewhere. The state cases denying recognition are: *Gary v. North Western Mutual Aid Assoc.*, supra note 55, Illinois; *Expressmen's Mut. Ben. Assoc. v. Hurlock* (1900) 91 Md. 985, 46 Atl. 957, New York; *Ward v. Bankers' Life Co.* (1916) 99 Neb. 812, 157 N. W. 1017, Iowa; *Hinton v. Penn Mut. Life Ins. Co.* (1900) 126 N. C. 18, 55 S. E. 182, Ohio; *Cross v. Armstrong*, supra note 89, Pennsylvania; *Washington Life Ins. Co. v. Gooding* (1898) 19 Tex. Civ. App. 490, 49 S. W. 123, Missouri; see dicta in *Coe v. Garvey* (1906) 130 Ill. App. 221, 224; *Hanna v. Stedman*, supra note 55.

*Contra*: *Ely v. Hartford Life Ins. Co.* (1908) 128 Ky. 799, 110 S. W. 265, Ohio. One ground of recognition was the presence of the policy in the Ohio court; on this see *supra* notes 53, 55.

*Supra* note 89.
suits in one litigation, which continues to be *in personam* and does not change its character when the money is paid into court. It is an attempt to adjudicate mere personal rights to a money demand. The ablest discussion is by Spear, J., in *Cross v. Armstrong*, who says in part:

"Why was the Philadelphia action, in its nature, not a proceeding between parties claiming right to money due under the policy, rather than a proceeding to determine the *status* of such money? If it was the former, then the efficacy of the judgment depended upon having the parties before the court, so that their conflicting claims could be adjudicated; . . . It was not the *status* of any particular money that was to be determined, for any money which was a legal tender would have effectually satisfied the claim of the party receiving it; nor was there any claim primarily by even the widow, much less the administrator, to any money *in specie* . . . . We do not understand that an action *in personam*, simply because a debtor brings money, the right to recover which is in contention, and gives to the custody of the court a sum sufficient to discharge his debt, changes into an action *in rem* . . . .

". . . Does the mere fact that the company (the debtor) being sued, voluntarily delivers money to the clerk of the court rather than keeps it in its own safe, or to its credit in the bank, or loaned upon call, change the action from one *in personam* to one *in rem*? We think not."

**Does a State Interpleader Decree Bar Suit in the Same State?**

It is conceivable that an interpleader decree against a non-resident may not be such a judgment as to be entitled to full faith and credit in another state and nevertheless be valid in the courts of the state where it was rendered. The Connecticut divorce in *Haddock v. Haddock* left the parties married in New York but single in Connecticut. A non-resident who has been forever enjoined in X from asserting his

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104 Fowler, J., *Expersman’s Mut. Ben. Assoc. v. Hurlock*, supra note 102, at p. 594, 46 Atl. at p. 950. "There were several claimants for the money due on the policies—but this fact certainly would not change the character of the suit from one *in personam* to one *in rem.*"

105 See supra note 89.


107 *Supra* note 89, at pp. 625 ff, 10 N. E. at p. 165.

108 (1906) 201 U. S. 562, 26 Sup. Ct. 525. This case is the only exception discovered under our Constitution to the principle: "If a judgment is conclusive in the State where it was pronounced, it is equally conclusive everywhere." *Christmas v. Russell* (1866, U. S.) 5 Wall. 290, 302, by Clifford, J., quoting 2 Story, Constitution (2d ed. 1858) sec. 1313. Thus a state insolvency discharge not only has no extra-territorial effect against a non-resident creditor, *Ogden v. Saunders*, *supra* note 71; *Fetch v. Bugbee* (1859) 48 Me. 9; but it does not even bar him from suing the debtor in the state which rendered the discharge, *Phoenix National Bank v. Batcheller*, supra note 71. See Holmes, J., dissenting in *Haddock v. Haddock*, supra at pp. 628, 632: "I am unable to reconcile with the requirements of the Constitution, Article 4, section 1, the notion of a judgment being valid and binding in the State where it is rendered, and yet depending for recognition to the same extent in other States of the Union upon the comity of those States."
claim against the applicant may perhaps have to obey the injunction in X although he is still free to sue him elsewhere. Such limited protection would be of very little use if the applicant is a life insurance company which may easily be sued in any of the numerous states where it does business; but it would be valuable to a savings bank which can only be reached personally in X, its state of incorporation, and does not ordinarily possess elsewhere much property liable to attachment.

It will be remembered that Lord Eldon and Baron Pollock merely stated that they would enjoin subsequent suits in England and did not seek any extra-territorial effect for their orders.

The Fourteenth Amendment, however, may render such decrees against a non-resident invalid even within the jurisdiction. It may seem strange to suggest that any judicial action sanctioned by Lord Eldon would not be due process of law. Nevertheless, he went very far in other equitable proceedings to bind non-residents by his decrees, and in at least one such type of proceeding, representative suits, his position has been rejected by our courts as too extreme. The extra-territorial cases seem to have settled that interpleader is an action in personam. Consequently, an interpleader decree without personal service falls squarely within Pennoyer v. Neff and seems wholly invalid even in the courts of the state where it was rendered.

This reasoning is supported by several state cases which refuse to grant interpleader against non-residents. These decisions, however, only show that a state may refuse to interplead a non-resident, but do not tell what would happen if interpleader was granted and he subse-

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109 See the extracts from their opinions, pp. 688, 691, supra.
110 Dutton v. Morrison (1810, Ch.) 17 Ves. 193, proceedings against partnership with non-resident partner; Addis v. New River Co. (1805, Ch.) 11 Ves. 499, 444, representative suit.
111 Am. Steel & Wire Co. v. Wire Drawers' Union (1898, C. C. N. D. Ohio) 90 Fed. 598, 605.
112 Supra note 101; see Scott, Fundamentals of Procedure in Actions at Law (1922) 34 ff, and other references in supra note 40. Cf. the English situation where there is no Constitution, supra note 28.
quently sought to sue the applicant in X despite the injunction. The only final determination of our question would be a decision of the Supreme Court of the United States holding that the injunction was, or was not, issued with due process of law. Until such a decision occurs, the nearest approach to an answer is furnished by *Hanna v. Stedman* in New York. The proceeds of a life insurance policy issued by a New York fraternal association were claimed by the estate of the insured and the estate of the beneficiary, his wife, who predeceased him. Most of the claimants were residents of Maryland. The society filed a bill of interpleader in New York. The husband's representative appeared but not the wife's representative who was served by publication. The money was awarded to the husband's estate. Then the wife's representative sued the society in the Maryland courts which refused to recognize the New York interpleader decree and gave judgment for the plaintiff. Several years later, the wife's representative sued the society on this judgment in New York. The Appellate Division decided that the Maryland judgment was not entitled to full faith and credit because the controversy had been made *res adjudicata* in New York by the interpleader decree. This was reversed by the Court of Appeals. Hiscock, C. J., stated that interpleader was not a proceeding *in rem*, so that the New York decree had been issued without jurisdiction on the Maryland claimant and could not prevent the Maryland judgment from being effective in New York. This decision does not necessarily mean that the New York decree would have been void in New York in the absence of the Maryland judgment, but the reasoning goes very far in that direction. Therefore, it seems impossible for a debtor to protect himself from subsequent suit by a non-resident claimant either outside or within the state.

Another obstacle to an interstate interpleader suit is that the non-resident claimant may have already begun an action at law against the applicant in a different jurisdiction from the state court in which interpleader is sought. If such an action at law has been started in a United States court in the same state, which has jurisdiction for diversity of citizenship, the state court will refuse to enjoin the pending federal action, and this makes interpleader impossible. Conversely, if interpleader is sought in the United States court, e.g. when the three parties are citizens of different states, relief will be denied if it would necessitate enjoining a pending action in the local state court.

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245 *Schuyler v. Pelissier* (1838, N. Y.) 3 Edw. Ch. 191; *Smith v. Reed* (1908) 74 N. J. Eq. 776, 70 Atl. 961.
This obstacle would be fatal in both cases even if personal service could be made on the non-resident claimants. In the same way, one state court would perhaps refuse to ward off, by interpleader, a pending action at law in the state courts of another state, even when the difficulty about personal jurisdiction was obviated.

Will Notice of Interpleader to a Non-Resident Claimant be Issued?

Even if a stakeholder cannot obtain protection against a non-resident claimant who fails to appear, he may wish to file a bill of interpleader and have the non-resident notified, with the hope that he may be willing to come into the state and assert his claim in the interpleader proceedings. As already shown, a reasonable non-resident would have considerable cause for responding to the notice. The best modern English and Irish authorities have felt it unobjectionable for a court to entertain the bill for this purpose, and there seems no constitutional objection in this country. No satisfactory decisions on the point have, however, been found. Of course this notice would impose no obligation upon the non-resident, and if he refuses to come in the suit must be dismissed and the applicant remains without any protection whatever from the double vexation.

IV

Although the denial of interstate interpleader in the state courts seems necessitated by sound principles of territorial jurisdiction, the situation revealed by the preceding discussion undoubtedly causes great hardship. In many of the cases cited, the stakeholder was obliged to make two payments when it was clear that there was only one liability. Many other examples of unjust double recovery could be mentioned, such as Mutual Life Ins. Co. v. McGrew, and similar injustice has

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117 Barry v. Equitable Life Ass. Soc., supra note 113. Even if there is personal service on the claimant who has sued in another state, it is doubtful if the injunction would be valid, since the only ground for it is avoidance of multiplicity. There is no fraud, interference with a local receivership, oppression, or evasion of local exemption laws. On the general topic of injunctions against foreign proceedings, see Found, The Progress of the Law—Equity, 1918-1919 (1920) 33 Harv. L. Rev. 420, 425; Notes (1919) 33 Harv. L. Rev. 92; (1923) 37 Harv. L. Rev. 157; (1923) 33 Yale Law Journal, 95; 1 Ames, Equity (1901) 26, note; 1 Cook, Cases on Equity (1923) 323, note; 1 A. L. R. 148, note.

118 Supra p. 689.

119 In the following cases notice was given to the non-resident, who came into the interpleader. Whitridge v. Barry (1874) 42 Md. 140; Fitch v. Brower (1886) 42 N. J. Eq. 300, 11 Atl. 330; see Leonard v. Jamison (1833, N. Y.) 2 Edw. Ch. 136. See also note 102, first sentence, last clause.

120 (1903) 188 U. S. 291, 23 Sup. Ct. 372. A resident of the Hawaiian Republic took out a life insurance policy payable to his wife, whom he subsequently divorced. His administrator recovered from the insurance company in Hawaii. Carter v. Mutual Life Ins. Co. (1895) 10 Hawaii, 117. The wife recovered from the company in her new domicile, California, which held that payment "to the wrong party" was no defense. McGrew v. Mutual Life Ins. Co. (1901) 132 Calif. 85, 64 Pac. 103. Since the annexation of Hawaii did not occur till after the trial, the U. S.
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resulted from strict construction of the Federal Interpleader Act hereafter discussed. If \( C_1 \) resides in \( X \) and \( C_2 \) in \( Y \), the insurance company or other stakeholder cannot have interpleader in \( X \) for want of jurisdiction over \( C_2 \) or in \( Y \) for want of jurisdiction over \( C_1 \). He must face two suits at law in the two states with the probability that each jury will decide in favor of the local claimant and reject the defendant’s argument that he may be liable to the absent and unrepresented claimant. If interpleader in the state courts is impossible, some other way out of this situation ought to be found. The law should not remain satisfied when its own technicalities compel an honest debtor to pay twice over.

We have already seen that the same objections which prevent interstate interpleader apply to one proposed alternative, a suit by one claimant to establish his right to insurance money without personal service on the non-resident claimant.\(^{122}\)

A second alternative was allowed in *Whan v. Hope Natural Gas Co.*\(^{122}\) The stakeholder, a corporation doing business in Pennsylvania and West Virginia, was garnished in Pennsylvania by a creditor of the obligee, and was afterwards sued in West Virginia by an alleged assignee of the obligee, who obtained a judgment against the corporation. The West Virginia court granted a stay of execution on the ground that the Pennsylvania proceeding could settle everything since garnishment gave the Pennsylvania court jurisdiction *in rem* over the obligation. The opinion obviously considers that the West Virginia claimant who was notified of the Pennsylvania proceedings would be bound by them, although not personally served therein. This view seems directly opposed to the *Dunlevy* case and to the decisions holding that a garnishment proceeding cannot adjudicate the ownership of the garnished debt.\(^{123}\) Furthermore, the stay in the West Virginia Supreme Court held that the California trial court was not bound to give full faith and credit to the Hawaiian judgment, even if Hawaii had power to bind the non-resident wife. Only some sort of “international interpleader” could remedy this situation.


\(^{122}\) *Supra* note 75a.

\(^{123}\) *Supra* note 81.

\(^{124}\) (1917) 81 W. Va. 338, 94 S. E. 355. See the reasons for denial of W. Va. interpleader because of the pending garnishment proceedings, at p. 344, 94 S. E. at p. 367; accord, *Delta Ins. & Realty Co. v. Fourth National Bank* (1921) 127 Miss. 152, 97 So. 817; contra: *Livingstone v. Bank of Montreal* (1893) 50 Ill. App. 562. A stay of proceedings on one court was also suggested in *Schuyler v. Pellissier*, *supra* note 115. The questionable view of *Whan v. Hope Natural Gas Co.* that garnishment proceedings can adjudicate the ownership of the debt is also taken in *Kildare v. Armstrong*, *supra* note 89, *seem*. On the need of protection for a corporation which is garnished in two states on the same debt, see 67 L. R. A. 220, note.

\(^{125}\) *Supra* notes 81, 91.
suit relieved the applicant from double vexation, at the expense of a corresponding injustice to the local claimant, who was thereby forced to abide by the decision in a foreign suit in which he was not properly made a party. This solution is, therefore, unsatisfactory.

A third alternative is the requirement of a bond of indemnity from the domestic claimant. This would adopt a portion of Lord Eldon's solution of our problem. If the non-resident claimant does not come in, the court, after finding that the domestic claimant makes a good *ex parte* case, would award the *res* to him, on condition that he give a bond to defend any suit brought by the non-resident against the stakeholder either in or out of this forum, and to pay any judgment imposed on the stakeholder in such suit. Although this plan affords the stakeholder some protection from double payment and perhaps from double vexation, it is open to several objections. First, it is doubtful whether the home claimant may be subjected to the expense of a bond which would not be imposed on him in an action at law brought by him against the stakeholder. After the non-resident fails to respond to the notice, does not the interpleader suit fail altogether? Is there anything left of it but a purely legal controversy between the home claimant and the applicant; or does the latter's fear of double vexation suffice to allow equity to retain jurisdiction and require the bond? Secondly, multiplicity of suits may not be avoided, for there may be (a) the original interpleader, (b) the later suit by the non-resident against the stakeholder, who may have much difficulty in getting the home claimant to intervene and perform his obligation, and (c) a possible suit on the bond. Thirdly, the bond may deteriorate before the Statute of Limitations has barred the non-resident claimant, so that the applicant will be subjected to double liability after all. We need a better method, which will settle the whole three-cornered controversy once and for all.

A fourth alternative, interpleader in the United States courts, presents greater possibilities of success. Such courts are not limited, under the terms of the Constitution, by the boundary lines of a state. Their powers are determined by Congress, which might permit them, for purposes of interpleader, to exercise personal jurisdiction over claimants found in any part of the United States. The only limitation on the power of Congress is found in the Constitutional requirement that the controversy must be "between citizens of different States" (Art. III, sec. 2).

Suppose that the applicant and the two claimants reside in three different states. Under the existing general provisions of statutes regulating United States courts, interpleader would be as impossible there as in the state courts, because a United States court cannot acquire personal jurisdiction by service outside the state wherein its district lies. Congress could easily remedy this first obstacle by allowing

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process in interpleader to run throughout the United States. A
related difficulty at the present time concerns the production of evidence.
After September, 1925, a United States court cannot compel the appear-
ance of a witness living more than one hundred miles from the
court. Such a restriction might very well operate to the injury of
the distant claimant who, though obliged to appear himself, could not
force his witnesses to come with him. It may be doubted whether
depositions taken where the distant witness resides would be an ade-
quate substitute for his testimony in open court. In opposition to this
proposed legislative extension of power over parties and witnesses, it
may be urged that it would be just as much of a hardship on C, in Cali-
ifornia to compel him to appear in the United States Court in Pennsyl-
vania as to force his appearance in the Pennsylvania state court. The
theoretical objection to an interpleader decree like that in the Dunlevy
case is removed but the practical objection is equally great. Our
answer must be that in a situation like this, the Pennsylvania Federal
Court would have to balance the hardship on the California claimant
against the hardship of the stakeholder if he is subjected to double
vexation and the possibility of double recovery; and grant or deny
relief accordingly. Sometimes the Pennsylvania Federal Court could
tell the stakeholder to transfer his interpleader to the United States
Court in California, if the distance would bear less hardly on the
Pennsylvania claimant than on the California claimant. In other
words, these difficulties should go to the exercise of the undoubted
jurisdiction in personam.

Secondly, consider the more difficult situation where one of the
claimants is a citizen of the same state as the applicant. Under the
existing general Federal legislation, the requisite diversity of citizenship
does not exist when citizens of the same state are on different sides
of the controversy. Does the suggested interpleader suit violate this
rule? If we regard the second stage of the interpleader as the real
controversy, and the first stage as merely incidental, then it is suffi-
cient if the claimants are citizens of different states. The citizenship
of the applicant would be immaterial. On the other hand, it is hard

might have authorized civil process from any circuit court to have run into any
state of the Union. It has not done so." An interpleader bill was dismissed for
this reason in Herndon v. Ridgway (1855, U. S.) 17 How. 424. See Hills v. Aetna
Life Ins. Co., supra note 113. Of course, if the requisite diversity of citizenship
exists, the district of the applicant would be a proper venue under Judicial Code,
sec. 51, but the plaintiff's district would still be without jurisdiction over a defend-
ant who never came within that state, so as to be served. Rose, Jurisdiction and
Procedure of the Federal Courts (2d ed. 1922) sec. 270.

U. S. Rev. Stats. 1878, sec. 876, imposes the limit stated. This has been
amended to allow subpoenas for witnesses to run into any other district, but the
permission of the court is necessary and cause must be shown if the 100 mile limit
is exceeded; this amendment is effective for only three years from its date. Act of
Sept. 19, 1922 (42 Stat. at L. 848).
to regard the first stage as negligible when we remember that most of the knock-down and drag-out fights in interpleader suits occur in the first stage. For example, all the cases on interpleader in Ames' case-book are contests in this stage between the applicant and at least one of the claimants on the question whether interpleader ought to be granted. If the objecting claimant is a citizen of the same state as the applicant, the first stage is then clearly not a controversy between citizens of different states. There are several cases where it was sought to remove an interpleader suit from a state court to a United States court, which would have had personal jurisdiction over all the parties, in which the removal was refused when the applicant was a co-citizen of one claimant, on the ground that the requisite diversity of citizenship did not exist.\textsuperscript{236} It is said that the three parties to the interpleader must be citizens of three different states. It may be possible to distinguish these cases on the ground that such thorough-going diversity of citizenship was required by the then existing Federal legislation on the powers of United States courts, but not by the Constitution. Just as Congress could remove the first obstacle to Federal interstate interpleader by extending the personal jurisdiction of a United States court, so it might conceivably remove this second obstacle by allowing interpleader when the claimants are citizens of different states regardless of the fact that one of them is a co-citizen of the applicant. The difficult question, however, is whether the legislation on this second point would be constitutional. Is the present requirement that co-citizens must not be on opposite sides of a suit in the Federal court merely the result of Congressional legislation judicially construed,\textsuperscript{237} or is Congress prevented from permitting such a suit by the words of the Constitution, "The judicial power shall extend to all cases . . . . between citizens of different States"?

This very question is raised by the Federal Insurance Interpleader Act of 1917,\textsuperscript{238} which was enacted soon after the \textit{Dunlevy} case and pos-

\textsuperscript{236} \textit{Leonard v. Jamison} (1833, N. Y.) 2 Edw. Ch. 136, 137: "There is something to be settled between him and the defendants before the latter can litigate together." \textit{Republic Fire Ins. Co. v. Keogh} (1881, N. Y. Sup. Ct.) 23 Hun, 644; see \textit{George v. Pilcher} (1877, Va.) 28 Gratt. 299. In \textit{Mut. Life Ins. Co. v. Allen} (1883) 134 Mass. 389, where the claimants were Mass. citizens and the applicant a N. Y. corporation, removal was refused.

\textsuperscript{237} \textit{Strawbridge v. Curtiss} (1806, U. S.) 3 Cranch, 267, the earliest case, turned entirely on the words of the Act of Congress, without mention of the Constitution; but see cases in note 131.

\textsuperscript{238} Act of Feb. 22, 1917 (39 Stat. at L. 929); U. S. Comp. Stats. 1918, sec. 991a. See "The Federal Interpleader Act: Paper read before the Association of Life Insurance Counsel, May 12th, 1920, by Joseph S. Conwell, of Counsel, Penn Mutual Life Insurance Company, Philadelphia, Pennsylvania." 18 pp. This pamphlet says that the Act was introduced by Representative J. H. Moore, subsequently mayor of Philadelphia, and was made obscure by changes in committee. Mr. Conwell devotes much attention to the question, whether an insurance company bringing interpleader under this statute would violate the anti-removal statutes of
The Act endeavors to secure interstate interpleader for the class of stakeholders who need it most, insurance companies. It gives the United States District Courts jurisdiction of bills of interpleader by insurance companies if the adverse claimants are citizens of different states. Nothing in the statute requires that the company shall not be a co-citizen of one of the claimants. The bill must be filed in the district where a "beneficiary" resides, which probably includes an assignee.

Although the provisions of the statute are not so liberal as could be wished, it has already been the means of relief from double vexation in many cases. As yet, the question whether a company may constitutionally take advantage of the statute when it is incorporated in the same state as the residence of one claimant has not been decided by the courts, although one case has expressed doubt on this point. An extension of this legislation to allow interstate interpleader in the United States courts by other classes of stakeholders such as savings banks would be very desirable.


The subsequent decision of Terral v. Burke Construction Co. (1922) 257 U. S. 529, 42 Sup. Ct. 188, seems to have dealt the death-blow to such laws.


The two interesting procedural questions were raised in this case. (1) Could the defendant in the Federal law suit have sought interpleader by an equitable plea under Judicial Code, sec. 274 b (Act of March 3, 1915 [38 Stat. at L. 956]). The Circuit Court of Appeals thought not, but an affirmative answer has since been given in Liberty Oil Co. v. Condon National Bank (1922) 260 U. S. 235, 43 Sup. Ct. 118. See (1923) 36 HARV. L. REV. 474. (2) If such an equitable plea be allowed, should interpleader by original bill be refused? The Circuit Court of Appeals thought so (247 Fed. at 260), but in other jurisdictions the introduction of statutory interpleader at law is no bar to interpleader in equity (a Ames, Cases on Equity Jurisdiction [1904] 50, note). It cannot be said that the remedy at law is


192 Mutual Life Ins. Co. v. Lott, supra note 130; see also Penn Mut. Life Ins. Co. v. Henderson, supra note 130, at p. 878.

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against various citizens of New York and injunctions of the pending state and Federal actions at law. This relief was granted. The court disposed of the co-citizenship between the applicant and the new claimants on the ground that the interpleader was ancillary to the pending action at law over which the Federal court had undoubted jurisdiction. (It will be observed that there was no difficulty of personal jurisdiction over the non-resident claimant in this case since it had already appeared in the court as plaintiff in the original action at law.) Considerable doubt has been expressed whether this case is correct in holding that interpleader is ancillary.\textsuperscript{124} If the decision is sound, it leads to the peculiar result in the existing state of the law, that the stakeholder may secure interstate interpleader in the United States courts against a co-citizen and a non-resident claimant when the applicant has been made a defendant in a pending Federal suit brought by this non-resident; but he may not have interpleader anywhere (a) when he has been sued in the local state court by the co-citizen claimant, or (b) when he files an original bill of interpleader in equity against the same claimants before any action at law has been brought. In the last two situations the need for relief would be just as great as in \textit{Sherman National Bank v. Shubert Theatrical Co.},\textsuperscript{135} but the requisite diversity of citizenship would be held not to exist under the present Federal legislation; and there is doubt whether an Act of Congress permitting Federal interpleader in the last two situations would be constitutional.

The only other relief conceivable in the United States court in such a situation would be a bill by the resident claimant to remove a cloud on title to his chose in action under Section 57 of the Judicial Code which permits service on non-residents; but this suit, as we have seen, would not lie because there is no \textit{res} within the jurisdiction.\textsuperscript{196} For similar reasons, Section 57 could not be extended to permit a bill of interpleader by the debtor. Consequently, it is to be hoped that Congress will see fit to enact legislation which will (a) extend the insurance interpleader statute to cover all stake holders, giving the United

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\textsuperscript{124} See (1917) 30 Harv. L. Rev. 521; but the decision is approved in (1917) 17 Col. L. Rev. 560. In accord is \textit{Stone v. Bishop} (1878, C. C. D. Mass.) Fed. Cas. No. 13,482. The decision in \textit{Liberty Oil Co. v. Condon National Bank}, supra note 133, possibly settles the question, since the defendant was allowed to bring in a co-citizen by his equitable plea; but the possible want of diversity of citizenship was not discussed by the Supreme Court.

\textsuperscript{135} Supra note 133.

\textsuperscript{196} Supra notes 75a, 76; but see Learned Hand, J., 238 Fed. at 228.
States District Court similar personal jurisdiction over claimants who reside outside the District, and (b) allow such interpleader, either by equitable plea or by original bill, although the applicant is a co-citizen with one claimant; and that this second feature of the proposed legislation will be held constitutional under the diversity of citizenship clause.

A third obstacle to federal interpleader, the inability of a United States court to enjoin a pending action at law against the applicant in a state court, can easily be removed by an Act of Congress permitting such an injunction in interpleader, just as Congress already allows state suits to be enjoined in bankruptcy proceedings.128

Such Federal legislation allowing interpleader in the United States courts seems the most hopeful solution of our problem.

Pending the adoption of such Federal legislation, or if the constitutional objections prove insuperable when the applicant and one claimant are co-citizens, a fourth method still remains. It is analogous to the method used in France in foreign garnishments, which is approved by Mr. Beale as avoiding the unfairness of our plan of allowing the garnishing creditor to establish and collect a doubtful claim against the principal debtor in the latter's absence. The garnishing creditor sues the garnishee, who is enjoined from paying the principal debtor. The garnishing creditor then brings a second suit against the principal debtor in a court with personal jurisdiction over that debtor. If he establishes the debt in that suit, he returns to the court of garnishment and enforces his judgment by compelling the garnishee to pay the garnished debt into court in discharge of that debt and in payment pro tanto of the principal debt. A similar plan of suits in two states is available as a substitute for interstate interpleader, and was utilized in Hills v. Aetna Life Insurance Co.140 A Connecticut insurance company issued policies with the wife of the insured, a New Jersey woman, as beneficiary. The insurance money was also claimed by a Connecticut bank as assignee. The wife sued in New Jersey. The company could not interplead in New Jersey because the bank could not be

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127 Supra note 116. The obstacle thus set up to interpleader by Judicial Code, sec. 255, Act of March 3, 1911 (32 Stat. at L. 1162), has been held to apply in proceedings under the Federal Interpleader Act, Lowther v. New York Life Ins. Co., supra note 130. This case seems wrong, for Congress in authorizing interpleader naturally permitted such an essential incident as the protection of the stakeholder from pending suits at law. Cf. Sherman National Bank v. Shubert Theatrical Co., supra note 132, where there was no express authorization of the interpleader by Congress and yet pending state suits were enjoined (238 Fed. at 230).

128 See Notes (1933) 36 Harv. L. Rev. 461.

139 The Exercise of Jurisdiction In Rem to Compel Payment of a Debt (1913) 27 Harv. L. Rev. 107, 123, citing Todesco v. Dumont (1890, Trib. Cir. Seine) 18 Clunet, 559, translated i Beale Cases on Conflict of Laws (1900) 388.

140 (1916, N. J. C. C.) 39 N. J. L. J. 132, Speer, J.
served there, or in Connecticut, because the wife could not be compelled to appear. Federal interpleader was pronounced impossible for jurisdictional reasons. The bank, though made a party to the New Jersey suit and notified, refused to come in. After negotiations for settlement between the wife and the bank, a friendly suit between them was instituted in Connecticut, to which the insurance company was not to be made a party, and it was agreed that the New Jersey action should meanwhile be stayed. The Connecticut court decided in favor of the wife, and ordered the transfer of the policies to her. She returned to New Jersey and collected the policies in her suit there against the company, which was fully protected against the bank’s claim by the Connecticut decision inasmuch as the agreement between the claimants made that decision the final determination of the contest between them.

Of course, this solution was made possible in the particular case by the wife’s willingness to sue in Connecticut. If she had refused, would it not be practicable to reach the same result through an order from the New Jersey courts, telling her to sue in Connecticut? The proceeding that I suggest would operate as follows: The company files a bill against the wife in New Jersey, setting forth the double vexation from her claim and that of the non-resident bank, which however is not made a party. The court decides that the hardship on the company outweighs the wife’s objections to appearance in Connecticut, and orders her to sue the bank there, while the company pays the insurance into the New Jersey court to await the outcome of the Connecticut suit. This closes the first stage of this bi-state interpleader. The second stage takes place in a Connecticut court. The wife sues the bank, which is enjoined from bringing any action against the insurance company in view of the payment into the New Jersey court. Connecticut now has personal jurisdiction over both claimants, and closes the second stage by a declaratory judgment in favor of one claimant, who takes the res out of the New Jersey court. The whole proceeding is just like ordinary interpleader, except that each stage is in a different state. Inasmuch as each court made personal service on the person who was defendant in the precise contest in that court, the joint effect of the judgments of both courts binds all the parties everywhere.

If the New Jersey court considered that the wife ought not to be forced to sue in Connecticut, the company could institute a similar proceeding in Connecticut against the bank, to have it ordered to sue the wife in New Jersey. Of course, it is possible that each state might

14 This suit was before the Federal Insurance Interpleader Act of 1917.
15 Borchard, The Declaratory Judgment—A Needed Procedural Reform (1918) 28 Yale Law Journal, 105, shows the advantages of such judgments, now permitted by statute in many states. Even where such a judgment is not obtainable, the second stage could sometimes be a proceeding for actual relief, and not merely for a declaration. The Conn. judgment in Hills v. Aetna Life Ins. Co., supra note 140, was not declaratory.
refuse to send its local claimant into a foreign court. All hope of equitable relief would then be ended, but there would be enough chance that one court or the other would make such an order for the sake of avoiding double vexation, that it would be well worth while for an insurance company or other stake-holder to try the remedy just outlined before falling back on the unsatisfactory last resort of defending two actions at law, in each of which the plaintiff has a sympathetic jury and the stake-holder has to oppose him without aid from the real adversary.

The proposed remedy of bi-state interpleader would probably necessitate concurrent legislation by the two states concerned, and would certainly be facilitated by such legislation even if not absolutely necessary. Thus, Connecticut might provide that its courts should recognize the orders of the courts of any other state in such proceedings, on condition that the other state extended similar recognition to the Connecticut orders. This form of interstate agreement through "reciprocal legislation," frequently employed in automobile regulation, would be less satisfactory than interstate treaties on interpleader under the Constitutional provision (Art. I, sec. 10), which permits such compacts with the consent of Congress. This little-used clause has sprung into recent prominence through the Colorado River Compact, and other interstate waterways such as New York Harbor and the Columbia River are controlled under similar agreements. Mr. Wigmore suggests that it would make possible the participation of the United States in world legislation on Negotiable Instruments and other commercial subjects and on Conflict of Laws. Such treaties might remove interstate clashes on divorce, inheritance taxes, and otherwise lower the barriers which state lines raise to prevent our nation from being a complete economic unit. They are the best remedy for the causes of business friction mentioned at the beginning of this article. The present restrictions on interstate interpleader are among the least of such evils, but their removal would benefit many and injure nobody, so that this topic offers a good starting-point for interstate agreements on Conflict of Laws. We are barely beginning to realize the possibility of conscious cooperation among the states.

143 See Lindsay, Reciprocal Legislation (1910) 25 Pol. Sci. Quart. 435.