

does the statute authorize a monetary recovery against the United States,<sup>10</sup> again contrary to the English view.<sup>11</sup> Despite the obvious equities existing in favor of the defendant in the principal case, the oversight in not having submitted the claim to the proper accounting official<sup>12</sup> barred the assertion of the set-off. Had the claim been submitted, the court would have been faced with the nice problem of deciding whether the transaction had resulted in a sale to the United States.<sup>13</sup> But it is doubtful if an opposite decision would have been reached; for the Stabilization Corporation, although clearly a governmental agency,<sup>14</sup> is owned by private shareholders, and would probably be regarded as an entity distinct from the government.<sup>15</sup> It seems indeed unfortunate that the *Agricultural Marketing Act*, so evidently aimed to aid the farmer, should be frustrated by the technicalities of legal principle and precedent.

TAXATION—INHERITANCE TAXES—DORRANCE'S ESTATE—CONFLICTING ADJUDICATIONS OF DOMICIL AS A DENIAL OF FULL FAITH AND CREDIT—Dr. John T. Dorrance died in 1930 with residences in both New Jersey and Pennsylvania. Both states assessed inheritance taxes, amounting to about \$17,000,000 each, on his intangible personalty, each claiming that he was domiciled within its borders. An appeal from the Pennsylvania tax was upheld by the Supreme Court of that state.<sup>1</sup> *Certiorari* was denied by the United States Supreme Court on the ground that no federal question was involved;<sup>2</sup> the Pennsylvania tax was accordingly paid. The instant action was an appeal from the New Jersey assessment, alleging that the adjudication by the Pennsylvania court was final as to the question of domicile. *Held*, that the Pennsylvania court was without jurisdiction in this matter since Dr. Dorrance was domiciled in New Jersey, and that therefore full faith and credit need not be given to the decree and the New Jersey tax was

<sup>10</sup> *United States v. Eckford*, 73 U. S. 484 (1867); *United States v. Nipissing Mines Co.*, 206 Fed. 431 (C. C. A. 2d, 1913), *certiorari* denied, 234 U. S. 765, 34 Sup. Ct. 673 (1914). Somewhat curiously, this is not the law when the United States institutes a suit in admiralty. There it is held the defendant may cross-litigate and recover a monetary judgment against the United States. *United States v. Norwegian Barque "Thekla"*, 266 U. S. 328, 45 Sup. Ct. 112 (1924). *Contra*: *Bowker v. United States*, 105 Fed. 398 (D. N. J. 1900), *aff'd*, 186 U. S. 135, 22 Sup. Ct. 802 (1902).

<sup>11</sup> *Appu v. The Queen's Advocate*, 53 L. J. P. C. 72 (1884).

<sup>12</sup> In *United States v. McCarl*, 275 U. S. 1, 48 Sup. Ct. 12 (1927), it was held that the Comptroller General cannot be mandamused to consider claims against the United States Emergency Fleet Corporation, even though it is a government-owned corporation. In the principal case, at 578, the court suggested that the claim should have been submitted to the Federal Farm Board, or to the officers of the Stabilization Corporation. See Schnell and Wettach, *Corporations as Agencies of the Recovery Program* (1934) 12 N. C. L. REV. 77-80.

<sup>13</sup> Because the alleged set-off was for more than \$10,000, the problem would be further complicated by procedural difficulties. Granting the existence of a valid claim against the United States, it has been suggested that the proper procedure would be a stay of proceedings, pending the prosecution of a suit by the defendants in the Court of Claims. (1934) 34 COL. L. REV. 375.

<sup>14</sup> *Board of Trade v. Wallace*, 67 F. (2d) 402, 408 (C. C. A. 7th, 1933).

<sup>15</sup> In Schnell and Wettach, *supra* note 12, at 95, the conclusion is reached that the entity of governmentally controlled private corporations will be disregarded only insofar as necessary to protect the interests of the United States. See *Sloan Shipyards Corp. v. Emergency Fleet Corp.*, 258 U. S. 549, 42 Sup. Ct. 386 (1922); *United States Shipping Board etc. v. Harwood*, 281 U. S. 519, 50 Sup. Ct. 372 (1930). But *cf.* *United States v. Strang*, 254 U. S. 491, 41 Sup. Ct. 165 (1921); *United States Grain Corp. v. Phillips*, 261 U. S. 106, 43 Sup. Ct. 283 (1923); *Emergency Fleet Corp. v. Western Union*, 275 U. S. 415, 48 Sup. Ct. 198 (1928). For a detailed and comprehensive treatment of this angle of the principal case, see (1934) 34 COL. L. REV. 374.

<sup>1</sup> *Dorrance's Estate*, 309 Pa. 151, 163 Atl. 303 (1932).

<sup>2</sup> *Sub nom.* *Dorrance v. Pennsylvania*, 287 U. S. 660, 53 Sup. Ct. 222 (1932).

validly assessed.<sup>3</sup> *In re Dorrance's Estate*, 170 Atl. 601 (N. J. Prerogative Ct. 1934).

Since the rule is settled that full faith and credit need be given only where the judgment offered as binding was pronounced by a court of competent jurisdiction,<sup>4</sup> it was within the province of the New Jersey court to examine the facts upon which jurisdiction in Pennsylvania was assumed. In conjunction with the finding that Dr. Dorrance was not domiciled in Pennsylvania, he was found to be domiciled in New Jersey, so that the New Jersey tax becomes proper on the principle that intangible personalty is taxable at the domicile.<sup>5</sup> While stating practically the same principles of Conflict of Laws and many of the same authorities,<sup>6</sup> but emphasizing different facts,<sup>7</sup> the two courts found the decedent domiciled in their respective states. The New Jersey Court of Appeals and Errors will undoubtedly affirm, and an appeal to the United States Supreme Court is almost certain to follow. A denial of *certiorari* is improbable since there will be the problem of full faith and credit and another very likely argument in double taxation as a deprivation of property without due process under the Fourteenth Amendment. The alternative courses which appear to be open to the Court may be listed as follows: (1) It may hold that the New Jersey court is required to give full faith and credit to the Pennsylvania decree—a result which would be an absolute change in the interpretation hitherto made of that constitutional clause<sup>8</sup> and therefore unlikely. (2) The decision may be that though the question of domicile is solely for the *forum* state to decide, a second assessment would constitute a violation of due process, and is therefore not permissible. Such a decision would encourage a race among states for inheritance taxes, so that the one first collecting would be secure—again an improbable solution. (3) Another possibility is a finding, as in the last suggestion, that the matter of domicile is solely for the *forum* state and that the resulting double taxation is *not* a deprivation without due process. Though the situations where the Court has held against “double taxation” are in some degree distinguishable,<sup>9</sup> the facts are not so radi-

<sup>3</sup> The state also sought to establish an estoppel on the executors since the deceased's will had been probated in New Jersey, allowances for services had been made to them in the New Jersey courts and affidavits had been made that the decedent was domiciled in New Jersey. However, the court refused to consider these arguments and dealt with the main issues—a course of action which is to be highly commended.

<sup>4</sup> *Thormann v. Frame*, 176 U. S. 350, 20 Sup. Ct. 446 (1900); *Tilt v. Kelsey*, 207 U. S. 43, 28 Sup. Ct. 1 (1907); *Burbank v. Ernst*, 232 U. S. 162, 34 Sup. Ct. 299 (1914).

<sup>5</sup> *Farmers Loan & Trust Co. v. Minnesota*, 280 U. S. 204, 50 Sup. Ct. 98 (1930); *First Nat. Bank of Boston v. Maine*, 284 U. S. 312, 52 Sup. Ct. 174 (1932).

<sup>6</sup> *Dickinson v. Inhabitants of Brookline*, 181 Mass. 195, 63 N. E. 331 (1902); *Williamson v. Osenton*, 232 U. S. 619, 34 Sup. Ct. 442 (1914), and various sections in the following works of which the most recent editions are cited: *CONFLICT OF LAWS RESTATEMENT* (Am. L. Inst. 1930) Proposed Final Draft No. 1; *DICEY, CONFLICT OF LAWS* (5th ed. 1932); *STORY, CONFLICT OF LAWS* (8th ed. 1883).

<sup>7</sup> Pennsylvania, for example, emphasizes the relatively greater amount of time spent, the cost of maintenance and greater comforts of the Pennsylvania residence. The New Jersey court stresses the various utterances of the decedent as important evidence of his intention. It also implies that Dr. Dorrance was forced by the social desires of his wife and family to acquire a Pennsylvania home, but that deep in his heart he always meant to come back to the old homestead in New Jersey. On the other hand the Pennsylvania court pictures the doctor as scheming to avoid taxation but really intending to reside in Pennsylvania.

<sup>8</sup> *Supra* note 4. See also *Corwin, The "Full Faith and Credit" Clause* (1933) 81 U. OF PA. L. REV. 371.

<sup>9</sup> *Frick v. Pennsylvania*, 268 U. S. 473, 45 Sup. Ct. 603 (1925) (tangible personalty may be taxed only at *situs*); *Safe Deposit & Trust Co. v. Virginia*, 280 U. S. 83, 50 Sup. Ct. 59 (1929) (intangibles not taxable at domicile of equitable owner, since taxed at domicile of holder of legal title); *Baldwin v. Missouri*, 281 U. S. 586, 50 Sup. Ct. 436 (1930) (bank deposits taxable only at domicile of decedent); *Beidler v. South Carolina Tax Commission*, 282 U. S. 1, 51 Sup. Ct. 54 (1930) (unsecured debts taxable only at domicile of decedent creditor,

cally different as to suggest a departure here from its customary disapproval. A further obstacle is the rule of taxation at domicile only, and an unwavering principle that a man may have but one domicile at any one time.<sup>10</sup> (4) Still another course for the Court to take would be to decide that in a case as here presented, where the denial of full faith and credit is based on a question of domicile, it would review the facts establishing domicile. This is a function which the Supreme Court has successfully avoided in the past.<sup>11</sup> But even if now assumed, it would prove helpful only if there were a finding in favor of domicile in Pennsylvania. Should the finding be of a New Jersey domicile, the double taxation problem would crop up again, as the executors would be without a remedy to recover the tax paid Pennsylvania.<sup>12</sup> Which of these solutions the Court will adopt is very problematical, but the ultimate decision will certainly prove a landmark in the law.<sup>13</sup>

TORTS—LIABILITY OF MANUFACTURER OF DANGEROUS ARTICLES TO PERSONS NOT IN PRIVACY OF CONTRACT—DEFECTS WHICH MAKE A CHATTEL "DANGEROUS"—Plaintiff, an employee of a motortruck owner, sued manufacturer of truck for injuries sustained when allegedly defective door handle gave way, causing the door to open suddenly and plaintiff to be thrown through the door and fall under the truck. *Held* (one justice dissenting), that the alleged defect was not one which made a truck "a thing of danger", and therefore no cause of action was stated. *Cohen v. Brockway Motor Truck, Corp.*, 268 N. Y. Supp. 545 (App. Div. 1934).

In *MacPherson v. Buick Motor Co.*,<sup>1</sup> the New York Court of Appeals held, and the ruling has received wide support from the courts<sup>2</sup> and legal writers,<sup>3</sup> that a manufacturer of a chattel owes the affirmative obligation to employ reasonable

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not at domicile of debtor); *Farmers Loan & Trust Co. v. Minnesota*, *supra* note 5 (public securities not taxable by any state other than domicile); *First Nat. Bank of Boston v. Maine*, *supra* note 5 (state of incorporation could not tax shares of stock left by decedent domiciled in another state).

<sup>10</sup> CONFLICT OF LAWS RESTATEMENT (Am. L. Inst. 1930) Proposed Final Draft No. 1 § 13; GOODRICH, CONFLICT OF LAWS (1927) § 14.

In an excellent comment on the Dorrance decision in Pennsylvania, Note (1932) 81 U. OF PA. L. REV. 177, the suggestion is made in favor of this type of finding, on the grounds that the rare cases, in which two state supreme courts will find the same individual domiciled within their borders, usually involve a case of attempted evasion of a higher tax and should not be given much sympathy, and that the Supreme Court is not absolutely declared against double taxation. The writer, however, fails to dispose of, though he does mention, the two fundamental rules that inheritance taxes on intangibles are assessed only at the domicile, and that a man can have but one domicile at any one time.

<sup>11</sup> *Cf. Baker v. Baker*, *Eccles & Co.*, 242 U. S. 394, 37 Sup. Ct. 152 (1917); *Tilt v. Kelsey*, *supra* note 4.

<sup>12</sup> The decision by the state supreme court would conclude action in the state courts, while the Eleventh Amendment to the United States Constitution forbids action in the federal courts.

<sup>13</sup> Some procedure whereby the states could be joined in an action involving a controversy like the present one might seem a possible remedy. But objections such as overcrowding the Supreme Court dockets and the fact that the controversy is not really between the states to bring it within the original jurisdiction of the Supreme Court seem to be substantial bars. See Note (1932) 81 U. OF PA. L. REV. 177.

<sup>1</sup> 217 N. Y. 382, 111 N. E. 1050 (1916).

<sup>2</sup> *Gouillon v. Ford Motor Co.*, 44 F. (2d) 310 (C. C. A. 6th, 1930); *Marsh Wood Products Co. v. Babcock & Wilcox Co.*, 207 Wis. 209, 240 N. W. 392 (1932).

<sup>3</sup> TORTS RESTATEMENT (Am. L. Inst. 1930) Tentative Draft No. 5 § 265; COMMENTARIES ON TORTS RESTATEMENT (Am. L. Inst. 1930) § 265; BURDICK, TORTS (1926)<sup>1</sup> 544; HARPER, TORTS (1933) 246; Bohlen, *Liability of Manufacturers to Persons Other Than Their Immediate Vendees* (1929) 45 L. Q. REV. 343, 353.