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Federal Jurisdiction -- Interpleader Act -- Diversity Requirements -- Co-Citizenship of Claimants

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dispense criminal justice the means by which that end is to be achieved are worth considering, as well as the end itself. Procedural due process requires that the rules of evidence be shaped to conform to a sound conception of the protective devices of the Constitution rather than altering the concept to fit the rules. In the event the concept appears outmoded change should be made through the prescribed procedure, constitutional amendment, rather than by legislative or judicial erosion.\textsuperscript{77}

\textsc{Marshall B. Sherrin, Jr.}

\textbf{Federal Jurisdiction—Interpleader Act—Diversity Requirements—Co-Citizenship of Claimants}

The Federal Interpleader Act,\textsuperscript{1} provides that the district courts of the United States shall have original jurisdiction of bills of interpleader and bills in the nature of interpleader\textsuperscript{2} if "(i) Two or more adverse

\textsuperscript{77} However no objection can be made to judicial or legislative prescription of the minima of protection secured by constitutional rights. Chapter 112 N. C. Sess. L. (1949) is to be commended as a step in the right direction. The Legislature might well consider statutory authority for the State to take and use depositions in criminal cases, preserving accused's right to cross-examine deponent when the deposition is taken.

\textsuperscript{1}28 U. S. C. §41 (26) (1936). Chafee, \textit{The Federal Interpleader Act of 1936}, 45 \textit{Yale L. J.} 963, 1161 (1936). There has been a slight change in the wording of the diversity requirement by 28 U. S. C. §1335 (1948). It now reads: "(i) Two or more adverse claimants, of diverse citizenship as defined in 1332 of this title. . . ." The Reviser's Notes to §1335 do not indicate that any change in the requirement was meant to be effected by this change in phraseology and the substituted language does not seem to require a change therein.

\textsuperscript{2}Interpleader was a remedy which developed in the equity courts. It would lie only if—(1) The same debt, duty or thing was claimed by all parties against whom relief was demanded; (2) All adverse titles or claims were dependent upon or derived from a common source; (3) The person seeking the relief did not have or claim any interest in the subject matter; (4) The person seeking the relief was a stakeholder, standing perfectly indifferent between the claimants.

Later, a plaintiff was permitted to bring a bill in the nature of interpleader, though he claimed an interest in the subject-matter, did not admit all of the defendants' claims or the defendants claimed different amounts (and hence strict interpleader would not lie) if there was some basis for equitable jurisdiction other than double liability or vexation. Both bills of interpleader and bills in the nature of interpleader can be obtained under 28 U. S. C. §1332 (1948), as any other civil action and are subject to the limitations therein (i.e. the sum in controversy must exceed $3,000, exclusive of interest and costs; process may be served only within the territorial limits of the state in which the district court is held; there must be diversity between plaintiff stakeholder and defendant claimants; the only proper venue is the judicial district in which all the plaintiffs or all the defendants reside). The Interpleader Act (\textit{supra} note 1) also permits bills of interpleader and bills in the nature of interpleader but the relief is thereby made more accessible by: (1) making the crucial diversity of citizenship that among the adverse claimants; (2) reducing jurisdictional amount to $500; (3) allowing process to run throughout the United States; (4) making the district where one or more of the claimants resides or reside a proper venue; (5) allowing the suit to be entertained though the titles or claims of the adverse claimants do not have a common origin, or are not identical but adverse to and independent of each other. 2 \textsc{Moore's Federal Practice} §§22.02, 22.03 (1938). See Chafee, \textit{Modernising Interpleader}, 30 \textit{Yale L. J.} 804 (1921).
claimants, citizens of different states, are claiming to be entitled to such money or property. . . ." The federal courts have been confronted with a variety of situations in which it has been necessary to determine whether or not jurisdiction exists under this section.

Situation 1. S stakeholder, citizen of State \( W \), is contesting none of the claims involved. He brings interpleader against Claimant 1 of State \( X \) and Claimant 2 of State \( Y \). The federal courts have jurisdiction under the Act.\(^3\) This situation presents no jurisdictional problem because whether diversity between the stakeholder and the claimants or diversity between the claimants be required, it is present.

Situation 2. S stakeholder, citizen of State \( W \), is contesting none of the claims involved. He brings interpleader against Claimant 1 of State \( X \), Claimant 2 of State \( X \), and Claimant 3 of State \( Y \). The federal courts take jurisdiction.\(^4\) In this group of cases the problem of whether co-citizenship among some of the claimants defeats jurisdiction under the Act is encountered. The courts have taken jurisdiction in these cases without difficulty. Here there is an apparent conflict with the requirement of complete diversity between all plaintiffs and all defendants pronounced by Strawbridge \( \text{v. Curtis} \)\(^5\) as a prerequisite to jurisdiction of the federal courts in other controversies between citizens of different states. Since the stakeholder here is of a different citizenship from all the claimants, it might be said that the requirement of that case was satisfied, in fact, though the Interpleader Act as construed in Treinies \( \text{v. Sunshine Mining Co.} \)\(^6\) did not require such diversity.

Situation 3. S stakeholder, citizen of State \( W \), is contesting none of the claims involved. He brings interpleader against Claimant 1 of State \( W \), Claimant 2 of State \( X \), and Claimant 3 of State \( X \). It is held that the requisite diversity of citizenship is present,\(^7\) even though complete diversity of citizenship is absent. In fact some of the claimants are co-citizens, and even if the citizenship of the stakeholder be considered it would be found that he was a co-citizen of one of the claimants.

Situation 4. S stakeholder, citizen of State \( W \), is contesting part of the conflicting claims against him. He brings a bill in the nature of


\(^5\) 3 Cranch 267 (1806).

\(^6\) 308 U.S. 66 (1939).

interpleader against Claimant 1 of State X and Claimant 2 of State Y. The courts take jurisdiction. There is no problem here because there is complete diversity whether or not the stakeholder's citizenship be considered.

Situation 5. S stakeholder, citizen of State W, is contesting part of the conflicting claims against him. He brings a bill in the nature of interpleader against Claimant 1 of State X, Claimant 2 of State X, and Claimant 3 of State Y. The courts will take jurisdiction. The reasoning in Situation 2 supra relative to the co-citizenship of claimants is even more strongly applicable here. For it would be unrealistic to treat the plaintiff stakeholder as a nominal party, whose citizenship is immaterial for purposes of diversity of citizenship, when he is denying a part of the claimed liability throughout the case.

In United States et al. v. Sentinel Fire Ins. Co., stakeholder insurance companies (all of different citizenship from all of the claimants but of what citizenship does not appear in the report of the case) brought a bill in the nature of interpleader under the Federal Interpleader Act against six claimants of Mississippi and one claimant of Illinois. Stakeholders denied liability in part. The question of the jurisdiction of the court was raised. It was held by a majority of a five judge court of appeals that requisite diversity of citizenship was present, fulfilling the Constitutional requirement of a controversy between citizens of different states, because plaintiffs were staying in the case to resist some recovery by part of the claimants and they were of diverse citizenship from all claimants. The court further expressly held that there was sufficient diversity among the claimants, disregarding the citizenship of the plaintiffs. The two dissenting judges postulated that the Interpleader Act required complete diversity as set forth in Strawbridge v. Curtis. Moreover, they contended that all claimants must be realigned according to interest. The effect of following the view of the dissenters would be to establish two basic conflicting interests in each case. All claimants of one interest would have to be of different citizenship from all claimants of the other interest in order to meet diversity requirements for federal interpleader jurisdiction. The authorities are opposed to this.

9 Railway Express Agency v. Jones, 106 F. 2d 341 (7th Cir. 1939).
10 — F. 2d — (5th Cir. 1949).
11 In the following cases jurisdiction was assumed under the Interpleader Act, though those claimants who were co-citizens had conflicting interests: Railway Express Agency v. Jones, 106 F. 2d 341 (7th Cir. 1939); Standard Surety Co. v. Baker, 105 F. 2d 578 (8th Cir. 1939); Roberts v. Metropolitan Life Ins. Co., 94 F. 2d 277 (7th Cir. 1938); Cramer v. Phoenix Mutual Life Ins. Co., 91 F. 2d 141 (8th Cir. 1937); Metropolitan Life Ins. Co. v. Richardson, 27 F. Supp. 791 (W. D. La. 1938). This principle was recognized in American Indemnity Co. v. Hale, 71 F. Supp. 529 (W. D. Mo. 1947) but interpleader was refused on the merits.
The principal case falls within Situation 5 supra where jurisdiction is normally taken. It is apparent that it is easier to justify jurisdiction in a case falling within Situation 5 than in one which comes within Situation 2 or 3 because in Situation 5 the diverse citizenship of the stakeholder may be used to support jurisdiction. In Situations 2 and 3 there is not this strong jurisdictional support because in Situation 2 the stakeholder might be regarded as a nominal party since he is not contesting any of the claims. In Situation 3 the diverse citizenship of the stakeholder is not available at all because the stakeholder is a co-citizen of some of the claimants.

The dissent raises again the question whether the courts should require complete diversity among adverse claimants before taking jurisdiction under the Interpleader Act. The language of the Act itself does not require such interpretation. Subsection (b) seems to contemplate that some of the claimants may be co-citizens, for it provides: "Such a suit may be brought in the district court of the district in which one or more of such claimants resides or reside." Further, the Supreme Court has held that the Act, thus interpreted, is not unconstitutional. Such a result squares with the rule of Strawbridge v. Curtis if looked at in the light of certain observations of Professor Chafee. He suggests that that case involved statutory, not constitutional, interpretation and did not mean that the Constitution did not permit the federal courts to have jurisdiction where there was not complete diversity of citizenship, but merely meant that Congress, by the statute involved, had not so implemented the constitutional grant of power. He further argues that even though the statute being construed in that case was in ipsis verbis with the provision in the Constitution for jurisdiction of the Federal Courts in controversies between citizens of different states, the interpretation of the statute should not be determinative of the interpretation of the provision of the Constitution because a constitutional provision is fundamental and intended to be more lasting than a statute.

Persuasive arguments support a policy of opening wide the doors of the federal courts to interpleader. Claimants cannot be forced to become parties to interpleader in a state court unless personal service of process is obtained upon them within that state because the remedy is not treated as in rem. Where complex, interstate businesses such

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12 Writing for the United States Supreme Court in Treinies v. Sunshine Mining Co., Mr. Justice Reed expressly left open the question involved in the principal case. He wrote: "Diversity requirements for federal equity jurisdiction to avoid a multiplicity of suits from diverse claimants with claims contested by the debtor (are) not involved." 308 U.S. 66, 72 (1939).
13 Railway Express Agency v. Jones, 106 F. 2d 341 (7th Cir. 1939).
as insurance are involved it will be a rare case indeed where all claimants can be personally served with process within one state. Thus, the only way that the stakeholder can be sure that he is protecting himself is to bring suit in the federal courts under the Interpleader Act, thereby making possible service of process anywhere in the United States.\textsuperscript{19} The liberal construction placed by the federal courts upon the diversity requirements of the Act is salutary. It would be tragic indeed if the remedial effect envisaged in reducing the jurisdictional amount, allowing process to run throughout the United States, liberalizing venue provisions, and abolishing the historical requirements that the claims be identical and have a common origin,\textsuperscript{20} should be practically annihilated in a narrow construction of the diversity provisions of the Act.

MAX OLIVER COGBURN.

Future Interests—Rule of Convenience in Class Gifts

In a recent North Carolina case\textsuperscript{1} the following clause of a will was before the court for interpretation:

\begin{quote}
"ITEM V 'I will, devise, and bequeath to my beloved nephews\textsuperscript{2} and any other children who may be borne to Robert and Peg Cole, my house and lot at 301 Fayetteville together with the contents, and the lot west of the home on Fayetteville Road.'"
\end{quote}

At the time of the execution of the will Robert and Peg had three children and at the testator's death, almost three years after the execution, there was a fourth child \textit{en ventre sa mere}. The court was called upon to decide what children of Robert and Peg should be included in the gift. Should the gift go only to those three \textit{in esse} at the testator's death and to the fourth \textit{en ventre sa mere} or should it include also all children born to Robert and Peg after the testator's death? The court held that the roll was not to be called until the possibility of any further issue was extinct by reason of the death of Robert or Peg.

The general rule for the determination of the members of a class where the gift is immediate\textsuperscript{3} is that only those members \textit{in esse} or \textit{en ventre sa mere} at the testator's death may take under the gift and any persons who fit the description of the class but are born after the testator's death are excluded unless the clear intention of the testator is shown to

\begin{footnotes}

\textsuperscript{1} Cole v. Cole, 229 N. C. 757, 51 S. E. 2d 491 (1948).

\textsuperscript{2} Robert and Peg Cole were testator's nephew and niece. The court interpreted the word "Nephews" to mean "grand-nephews."

\textsuperscript{3} A gift is immediate where the conveyor, having present ownership of the subject matter limits the corpus thereof to designated groups, annexing no condition precedent, interposing no period of time before enjoyment and creating no interest prior to that of the takers. \textit{Restatement, Property, Explanatory Note §294} (1940).

\textsuperscript{19} 28 U. S. C. §2361 (1948).

\textsuperscript{20} See note 2 \textit{supra}.
\end{footnotes}