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ADVERSE CLAIMS BY NONRESIDENTS—THE SEARCH FOR JURISDICTION

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IT IS sound law—as it is good sense—that a debtor can discharge his debt only by paying it to his creditor or on his order, and a bailee may relieve himself of liability only by delivery of the goods to the person who has exclusive right to receive them. Sometimes, however, more than one person claims; sometimes it is difficult to determine which of two such claimants can conclusively give acquittance. ". . . [T]he chance of double payment is a common risk of life." [1]

The state of New York long has had the law of interpleader, the purpose of which was to permit the stakeholder to compel the adverse claimants to litigate their rights, thus to relieve the stakeholder of this danger of double liability.

In the rapidly moving economic and political changes which occurred prior to the second World War, this law of interpleader was inadequate to meet the problem, especially in a great international market place such as New York City where numerous individuals and corporations domiciled abroad were accustomed to maintain bank accounts, carry on commercial import and export transactions, and lodge securities for safekeeping. In these new conditions, the adverse claimants were not within the jurisdiction of the state of New York or the United States. Therefore new and better protection for American institutions was required, and this was sought to be supplied by two laws, both passed in the year 1939. These laws were known respectively as Section 51-a and Article 28-A of the New York Civil Practice Act. The former related to adverse claims to debts payable by a citizen or corporation doing business in New York state and

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[1] Coler v. Corn Exchange Bank, 250 N.Y. 136, 145, 164 N.E. 882, 886 (1928).

the latter referred to adverse claims to specific personal property held within the state.

Thirteen years later, the New York Court of Appeals stated the reason for the enactment of one of these companion statutes as follows:

> The enactment of section 51-a of the Civil Practice Act was prompted by the existence of unsettled political conditions in Europe and the Orient at a time when business enterprises owned by political refugees were taken over by foreign liquidators appointed by their governments. In the confusion which followed there were instances where both refugees and liquidators made claim against New York businessmen, banks or insurance companies for the same debt. In those circumstances such New York debtors could not safely pay either claimant without a judicial determination of the question as to which claimant was entitled to be paid.[2]

The urge to change came by the presentation of a typical case to the Law Reform Committee of the Bar Association of the City of New York early in 1939 with the statement by attorneys that new laws were needed to meet the new situation. In brief, the case was as follows:[3] A partnership in Czechoslovakia, engaged in the sale of hops, had long supplied hops to an American firm. These were sold on credit, purchase price becoming due after the hops had been received. At the time of the invasion of Czechoslovakia by Germany, the American buyer owed the Czechoslovakian partnership about $35,000. The partnership members fled to France from where they advised the buyer that it should pay the amount due to them there. The American buyer also received a demand on what appeared to be official government paper stating that the liquidation of the company had been decreed and that a "Kommisaar" was in charge; the purchase price should be paid to him.

When the Law Reform Committee of the Bar Association of the city of New York was asked to suggest legislation which could meet this problem, it responded by proposing

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[2] Solicitor for Affairs of His Majesty's Treasury v. Bankers Trust Co., 304 N.Y. 282, 291, 107 N.E.2d 448, 452 (1952).

[3] Stern v. S. S. Steiner, Inc., 101 N.Y.L.J. 1810, col. 4 (Sup. Ct. April 20, 1939) (decided prior to passage of § 51-a). For case decided after passage of § 51-a, see note 15 *infra*.

two bills which became the laws above cited. An examination of the relevant law and decisions as they existed in 1939 indicated that, to offer relief, at least eight problems had to be met. These were as follows:

1. The existence of an adverse claim is not a defense to an action. This had been settled in a famous decision by Judge Cardozo in the year 1930 where an adverse claim arose out of the nationalization by the then newly formed Soviet Government of Russia of various corporations which had accounts in banks in New York. The Government of Russia was then unrecognized and had no legal capacity to sue in the United States. Representatives of certain of the Russian corporations which, by Soviet decree, had been nationalized, sued to collect the bank accounts in these corporate names. Judge Cardozo said:

> The subject is an ordinary deposit in a bank to be sued for, if at all, in an action founded on the debt. In actions of that order, a refusal to pay when due is not sustained without more by the presence of an adverse claim. The defendant, if unable to interplead, must respond to the challenge, and defend as best it can.
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> The argument is pressed that the danger of double liability supplies the basis for an equitable defense, if not for any other. The danger is not imminent . . . . But in actions at law, the danger, whatever it may be, is no defense at all, whether equitable or legal. . . . The defendant does not and cannot interplead the Soviet Republic. That being so, it must wage the battle for itself. Negligible is the risk that by any judgment in its domicile it will be compelled to pay again. Whatever risk it runs abroad, is one that it assumed as part of the business of a bank.[4]

The sanguine assurances of the judge that the risk of double liability was not great, were unfortunately illusory, for in 1933, just three years later, the United States recognized Russia and signed the Litvinov Agreement with Russia and thereafter the United States became the plaintiff, the adverse claimant, suing as assignee of the confiscator Russia to secure the very property held in the names of Russian

[4] Petrogradsky M.K. Bank v. National City Bank, 253 N.Y. 23, 39-40, 170 N.E. 479, 485 (1930).

corporations, the property which some of them had already collected.

The New York Court of Appeals held that the United States could not sue on these claims since confiscation was against the policies of the state of New York,[5] that the confiscation decrees could not, therefore, be enforced by comity and they had no extraterritorial effect. However, the United States Supreme Court overruled this opinion.[6]

The United States thus collected some nine million dollars which were placed in the United States Treasury. Much of this was received without suit; in other cases, some was collected under conditions in which the danger of double liability did not exist or, at least, was negligible. Some of the suits however, particularly those against some of the American banks, were on the same cause of action for which they had previously been sued by Russian corporations. However, most financial institutions in this unfortunate position were able to counterclaim for Russian obligations payable to them or defend on other grounds and thus escape double payment.[7]

The funds collected remained in the Treasury until, following passage of Public Law 285 which became effective August 9, 1955, claims were received against the fund on behalf of persons who had been damaged in Russia by confiscation of their property there at the time of the revolution.

2. Further examination of the problem indicated the existence of a serious obstacle to interpleader in the legal concept that a debt is not a "res." Unless the adverse claimants to a debt are subject personally to process of the court, no form of interpleader whatever could be used, since the

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[5] United States v. Pink, 284 N.Y. 555, 32 N.E.2d 552 (1940).

[6] United States v. Pink, 315 U.S. 203 (1942).

[7] Cases in which the United States Government sued as assignee of the Russian claims include among others: Guaranty Trust Co. v. United States, 304 U.S. 126 (1938); United States v. National City Bank, 83 F.2d 236 (2d Cir.), *cert. denied*, 299 U.S. 563 (1936); United States v. New York Trust Co., 75 F. Supp. 583 (S.D.N.Y. 1946); Moscow Fire Ins. Co. v. Bank of New York and Trust Co., 280 N.Y. 286, 20 N.E.2d 758 (1939), *aff'd by an equally divided Court sub nom.*, United States v. Moscow Fire Ins. Co., 309 U.S. 624 (1940) (per curiam).

adverse claimants abroad could not be served with process which would give the court jurisdiction over them.[8]

3. Payment by the stakeholder, that is, the debtor, of the money owed, into a court or calling it a "fund" could not make it a "res" which would support in rem jurisdiction and service by publication.[9]

4. A further difficulty existed in the concept of interpleader as of the time. The right was a purely statutory one and, as such, the statute had to be construed very strictly. Perhaps, therefore, interpleader as then written, regardless of whether or not there was a "res" involved, or even if the claims were to real estate within the United States, was purely an action in personam. This did not seem an insuperable difficulty, for if the court could acquire jurisdiction in any event by service of publication where the action involved tangible property, then obviously all that would be needed for this purpose was redrafting of the statute to indicate clearly the intention of the legislature. But certainly until the law was clarified, it might be dangerous to rest a case on the existing statute.

The somewhat cryptic language of a leading case in New York, cryptic because it was not wholly consistent with other statements in the case, made clarification necessary. The Court of Appeals had said:

> There is no authority so far as we are aware holding that an action of interpleader is one *in rem,* but exactly the opposite view has been entertained.[10]

5. One matter which could not be changed by state legislation is the immunity of a sovereign against the process of a state court or even that of a federal court, if the foreign sovereign cares to rely on its sovereign rights. It is well

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[8] Cases prior to 1939: New York Life Ins. Co. v. Dunlevy, 241 U.S. 518 (1916); Hanna v. Stedman, 230 N.Y. 326, 130 N.E. 566 (1921). Cases subsequent to 1939: Solicitor for Affairs of His Majesty's Treasury v. Bankers Trust Co., 304 N.Y. 282, 107 N.E.2d 448 (1952); *cf.* Pennoyer v. Neff, 95 U.S. 714 (1877).

[9] See note 8 *supra.*

[10] Hanna v. Stedman, *supra* note 8, at 335, 130 N.E. at 569.

established in our law and in the law of other countries that a sovereign may not be sued without its consent. The various instances in which foreign sovereigns have voluntarily remitted their sovereignty and the United States as a domestic sovereign has consented to be sued, did not cover this situation.[11]

6. Stay laws are unconstitutional and, therefore, cannot give relief. Stay laws have been tried in situations involving adverse claims and in other situations where, to enforce a right, seemed inequitable, after every major war of the United States and after every major depression. The latest one in New York was passed by the legislature of the state of New York in 1926. This provided as to actions on insurance contracts payable in Russian roubles and for any other payment in the United States expressed in Russian roubles that:

". . . upon application . . . shall be stayed by order of the court in which the same is pending until the expiration of thirty days next following the recognition de jure of a government of Russia by the government of the United States. . . ." [12]

This the Court of Appeals also declared unconstitutional less than a year after its passage. So, the hope that matters could be held in abeyance until the rights of the parties could be made more clear or that the United States had taken a definite position in the matter officially, was an attractive thought but offered no practical help.

7. Even if the adverse claim was, as many were, to security deposits in the United States held by various banks and brokerage houses, the interpleader law was defective for two reasons: (a) it might still be held to authorize an action solely in personam and, (b) even if not, was a bond a "res"? If a debt is not a "res," is the mere evidence of a debt a "res"?

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[11] For a discussion of the right of sovereigns as litigants, see Reeves, *Leviathan Bound—Sovereign Immunity in a Modern World,* 43 VA. L. REV. 529 (1957).

[12] Section 169-a of the Civil Practice Act of the State of New York related to actions on insurance policies; Section 169-b related to the stay of certain other actions. Added by Laws of N.Y. 1926, c. 232, declared unconstitutional in Sliosberg v. New York Life Ins. Co., 244 N.Y. 482, 155 N.E. 749 (1927) (unanimous decision).

Fortunately, here, too, legislatures, following the general change of concept of the law relating to methods of doing business, had indicated in other laws that securities of all kinds were or could be considered "tangible personal property capable of manual delivery" and, therefore, individually or collectively a "res." But this needed to be clarified.

8. As a last deterrent, interpleader contemplated assistance and protection only to the person who had no claim to the property himself or admitted the full amount of the debt and was willing to pay or deliver this to the court and be relieved from liability. Suppose the claim were for a greater amount than the debtor admitted or that he claimed some rights against it in one way or another, perhaps for services rendered or, if it were securities, that he held a lien on them (lien, counterclaim, offset or general defense). Were these available to the beset stakeholder?

Time marched on. The refugees who had fled into France promptly began suit and moved for summary judgment. The American buyer set up a defense of adverse claims and the court, following the opinion of Judge Cardozo, struck out the defense and entered judgment.[13] The amount of claims multiplied; banks, brokerage houses, business men, insurance companies, were met with them. War clouds gathered and it appeared that a European war might be imminent, if not inevitable.

With this background, the Bar Association offered to the legislature its bills.

Section 51-a, to protect a stakeholder against adverse claims to a debt, was made to operate somewhat differently from interpleader. In this new section, the non-resident is not made a party to the action; in fact, no effort is made to bring him into the action but instead he is given notice of the pendency of a suit begun by the other adverse claimants and is advised of his right to intervene or, if he prefers, to begin a new action and that this right to begin a new action or to intervene in the pending action against the debtor

[13] Stern v. S. S. Steiner, Inc., 101 N.Y.L.J. 1810, col. 4 (Sup. Ct. April 20, 1939).

is limited to one year and ten days from the date of the order. Since notice must be mailed within ten days after the entry of the order and is presumed to have been made on that tenth day, this is really a one-year statute of limitations from the time the notice is given. If the foreign adverse claimant fails to take appropriate action within that time to enforce his rights, his cause of action is barred, as is any other action barred by limitation. The stakeholder then has the right to request the court that the action be stayed until the year shall have run. Thus, by order of the court, the adverse claimant is invited to intervene or start a separate action and this notice or advice forces him to proceed or abandon his action because it commences a short statute of limitation.[14]

How then did this avoid the difficulties of interpleader? It did not indicate that an adverse claim was a defense; it did not attempt to enlarge jurisdiction, by publication, over a debt; it did not attempt to extend the jurisdiction of the court. Also, the United States Supreme Court had held that a statute of limitations was effective against a sovereign government. That Court had said:

> We decide only that in the absence of such action (treaties and other such agreements) the limitation statutes of the forum run against a foreign government seeking a remedy afforded by the forum, as they run against private litigants.[15]

It was not a stay law because it was for a reasonable time, one year; it was on the definite happening of an event and the continuance of the action would be wholly controlled

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[14] The first case which came to the Appellate Division was the case of Klein v. Freund, 258 App. Div. 783, 15 N.Y.S.2d 724 (1st Dep't 1939) (mem. opinion). This was not the first case but a very early case in which relief under § 51-a had been granted. The facts of the *Klein* case were almost identical with the *Stern* case, note 13 *supra,* which induced the drafting of § 51-a but was itself decided on summary judgment prior to the date of the passage of that act. In the *Klein* case, as in the *Stern* case, an American company owed money to a Czechoslovakian company and the officers of the Czechoslovakian company fled to Paris. There they assigned their claim against the American company to an American citizen who immediately brought suit.

[15] Guaranty Trust Co. v. United States, 304 U.S. 126 (1938). As to § 51-a itself, see Federal Motorship Corp. v. Johnson & Higgins, 192 Misc. 401, 77 N.Y.S.2d 52 (Sup. Ct. 1948), *aff'd mem.*, 274 App. Div. 1034, 85 N.Y.S.2d 915 (1st Dep't), *appeal dismissed,* 299 N.Y. 673, 87 N.E.2d 63 (1949).

by the court. Furthermore, the stakeholder could defend in whole or in part against any of the claims which were made.[16]

The law which protected the stakeholder also was of great advantage to the refugees, for, if the stakeholder was protected by a decision of the court and after the one year could not be sued by anyone who, under the authority of the invading Germans, had taken over the business, the refugees could secure their property. This was the disposition of many bank accounts, security accounts, insurance policies and general commercial debts collected under judgment of the courts, particularly during the years 1939 and 1940.

But all problems had not been solved. Two others remained and it may be stated that there is no complete authoritative answer to either even at this time. What interest, if any, should the stakeholder pay and for how long a time? Clearly, at the end of any such proceeding, the court will usually find that one of the claimants was entitled to be paid and his right was properly exercised when he made due demand. This is the most usual situation, for the case where the stakeholder does not owe anything to either claimant is rare.

Under interpleader, no interest ran after payment into court, but this, after all, is a mere gesture and the successful claimant is still deprived of the use of his funds till final adjudication. Any lapse of time between the original time of demand and refusal and commencement of suit is, of course, the plaintiff's own fault and perhaps here the plaintiff has no equity to collect. But should penalty interest be charged against a bank, insurance company and the like, or should some lesser amount and for what period of time?

Courts have struggled with this problem and there is no rule which can be called conclusive. But, in general, courts have properly been sympathetic to a stakeholder who has nothing to gain, but twice the value of the debt to lose, if he cannot get protection and have frequently held that if the

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[16] Solicitor for Affairs of His Majesty's Treasury v. Bankers Trust Co., 304 N.Y. 282, 107 N.E.2d 448 (1952). While the bill was pending in the legislature, the constitutional problems which it would engender were considered in Note, 39 COLUM. L. REV. 1061 (1939).

refusal to pay were justified in the first place, interest may not be collected.

One court, using a somewhat different statute but one with the same import, has found that if a debtor uses the legal facilities available, such as interpleader or its substitute, then no interest should be charged, at least up to the time when it could have safely made payment into court. But if he does not, a penalty interest should be charged.

To this decision there was a dissent to the effect that if the court finds it is the type of case in which there is reason for the stakeholder to hesitate, even though interpleader be not invoked, no interest should be charged. The question of interest, however, became more acute in regard to security accounts to be considered *infra*.[17]

Here one may point out the one further difficulty, which a debtor invoking Section 51-a for his protection may meet, is that the statute of limitations may not be recognized by comity as a bar in other jurisdictions. Our Court of Appeals has held that notice under Section 51-a is not a process of the court [18] and have expressed doubts that it would be recognized as a bar to an action in all jurisdictions abroad.[19] Viewed in its various aspects, Section 51-a may be either substantive or procedural. No foreign court has yet had occasion to pass upon it.

The statute, Article 28-A of the New York Civil Practice Act, although lengthy, need not detain us long, for the committee which wrote it admitted quite freely that it was purely a compilation and did not contain any new principle. Here they were dealing with a tangible, and by legislative definition, this can be made a "res." It merely remained by definition and the establishment of procedure to bring in the adverse claimant as a party to the action to determine rights to property under the court's jurisdiction. Of course, the question as to jurisdiction over a sovereign government still remained, but this subsequently was resolved by permitting

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[17] Bank of China v. Wells Fargo Bank & Union Trust Co., 209 F.2d 467 (9th Cir. 1953).

[18] Solicitor for the Affairs of His Majesty's Treasury v. Bankers Trust Co., note 16 *supra*.

[19] Federal Motorship Corp. v. Johnson & Higgins, 299 N.Y. 673, 87 N.E.2d 63 (1949).

Section 51-a to be used in such an instance, even though the action involved a "res." [20]

The law remained without change until after the war. During this time, two circumstances occurred which made amendment necessary. The first was a decision in the Supreme Court, New York County, that persons claiming to be the successor officers in a corporation were not adverse claimants to those displaced who continued to claim their right to act for the corporation.

> . . . They [the stakeholders] show, to be sure, conflicting assertions as to what individuals are authorized to act on behalf of defendant's depositor and make demands on its behalf, but that presents no more than a question of agency such as defendant is called upon to decide every time a check of a corporate depositor is presented to it. The fact that the question of agency here may be complex rather than simple, and may involve the determination and application of foreign law, does not convert the case into one of two claimants.[21]

It will be observed, of course, that from a standpoint of doing business, this is a claim which could create a double liability and is, in fact, the very type of claim against which protection is sought. To be sure, all sides may agree that the debt is due to a particular corporation but one can't pay a debt directly to a corporation. It exists as an entity only in contemplation of law. One must pay the debt to an agent authorized to receive it for the corporation. The question is which of two agents can give acquittance for the corporation. An amendment was accordingly made to the Civil Practice Act.[22]

It was also found, particularly in the case of banks, that the persons to whom the banks owed a debt, for all bank accounts are debts,[23] have not been heard of for many years; also authorized signers for corporations were missing. Some other person claiming to be successor, perhaps with a purported power of attorney or court order for liquidation, or

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[20] N.Y. CIV. PRAC. ACT § 287-f.

[21] Koninklijke Lederfabrieck v. Chase Nat'l Bank, 177 Misc. 186, 191, 30 N.Y.S.2d 518, 524-25 (Sup. Ct.), *aff'd mem.*, 263 App. Div. 815, 32 N.Y.S.2d 131 (1st Dep't 1941).

[22] N.Y. CIV. PRAC. ACT § 287-g.

[23] Baldwin's Bank v. Smith, 215 N.Y. 76, 109 N.E. 138 (1915).

representative of an estate, or the like, would make claim on the account and there was no other person actively claiming. This, too, would not be a case of adverse claimants. The possibility, however, existed that, like some financial Enoch Arden, these lost depositors or officers of corporate depositor would return from the dead or more likely from some concentration camp. The American debtors, after making every effort to get in touch with their creditor, were also entitled to protection here.

The question too was settled, but not until after the war, that Section 51-a was available in the federal court, for although federal interpleader is broader by its very nature than state interpleader, it cannot extend the jurisdiction of the court over international boundaries.[24]

The authority in the federal courts to use Section 51-a (federal interpleader was considered adequate to determine adverse claims to a "res") may be said to rest on three separate cases, the first of which is contained in a pure obiter dictum:

> To the extent that there is danger of double liability, the defendant may adequately protect itself by proceeding pursuant to § 51-a of the New York Civil Practice Act . . . .[25]

In the next case, relief under Section 51-a was granted but as this was not a final order, the suing claimant endeavored to secure a writ of mandamus to compel denial of the relief already granted and, in the argument in the United States Court of Appeals, the case above mentioned was cited. The court refused to grant mandamus, letting the decision of the lower court stand. However, this was indefinite.[26]

In the third case, the court wrote an opinion granting relief under Section 51-a, saying:

> A Court must be alert to see that an innocent depositary of funds is not subjected to the possibility of double jeopardy and that no decree will be entered until all persons who have made claim to

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[24] Federal jurisdiction has been extended by treaties in other places in the world such as the international settlements in China but, of course, only by treaty. These have now been abrogated.

[25] Zwack v. Kraus Bros. & Co., 93 F. Supp. 963, 966 (S.D.N.Y. 1950).

[26] Republic of China v. National City Bank, 194 F.2d 170 (2d Cir. 1952).

the funds, or who claim to speak for the corporate plaintiff, have been given an opportunity to appear and protect their rights.[27]

There is no authoritative opinion from any higher federal court.

Article 28-A was similarly amended to define adverse claims to include claims by two groups, each of whom purported to have the exclusive right to act for a particular corporation, and also to define the person who, by the records of the bailee, was the person who had the right to receive the goods.

One additional problem arose in regard to adverse claims against securities and that was the possibility of liability for damage for loss of market value if one of the claimants demanded delivery or sale of the securities and the market thereafter declined. An effort here was made to meet this situation by permitting any interested person to move for an order requiring the sale of the specific personal property. If the order was granted, then the court could direct that the fund be paid either into the court or to a person designated by a court or retained by the person who held the specific personal property and that, if the court then found that any of the respective claimants were entitled to interest on that money, this should be awarded at a rate no greater than the lowest discount rate of the Federal Reserve Bank of New York in effect from time to time. Thus, a compromise was made as to the rights of the claimants and the rights of the innocent holder. The holder would be relieved of liability for fluctuations in market value and, should the court decide interest should be paid, would not be charged more than the rate from time to time of the Federal Reserve Bank which was a rough measure of the value of the money to the person retaining it for the time being and would give some return on the money to the ultimately successful claimant.

So the question of adverse claims and the procedures for the protection of innocent stakeholders remained until the year 1954 when the Judicial Council sponsored a bill for revision of the old interpleader statutes, which had remained

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[27] Kuerschner & Rauchwarenfabrik v. New York Trust Co., 126 F. Supp. 684, 689 (S.D.N.Y. 1954).

untouched by the laws above discussed. These revisions were based upon an article written by one Louis R. Frumer, Professor of Law at Syracuse Law School.[28]

This proposed bill, which became law in 1954, in effect, did five things:

1. It repealed Article 28-A (adverse claims to specific personal property).

2. It retained Section 51-a (adverse claims to a debt) for two purposes: (a) for anyone who cared to use it as protection against double liability for a debt; (b) where the adverse claimant against either a debt or a "res" was a sovereign government.

3. By legislation it purported to permit jurisdiction to be obtained by publication over an adverse claimant who claimed a debt only and, thus, in effect, by legislation made a debt a "res."

> Upon compliance with order of the Court such sum of money shall be deemed to be property within the State for the purpose of this subdivision and subdivision 4 of § 232 [service by publication] . . . .[29]

The question still remains unanswered—can the legislature make a debt a "res"? The last court pronouncement on the matter was in 1952 in a case in which the court held that a debt was not a "res," but there is no decision yet as to whether the legislature by fiat could make it so. However, a trial judge previously had said:

> Section 51-a was enacted because interpleader, as applied to a mere debt, has been declared to be *in personam,* and hence not capable of supporting service of process outside the State . . . a declaration which I venture to think very well might be re-examined in the light of repeated adjudications that a debt has a situs at the home of the debtor.[30]

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[28] Frumer, *On Revising the New York Interpleader Statutes,* 25 N.Y.U.L. REV. 737 (1950).

[29] N.Y. CIV. PRAC. ACT § 286.

[30] Koninklijke Lederfabrieck v. Chase Nat'l Bank, 177 Misc. 186, 189, 30 N.Y.S.2d 518, 523 (Sup. Ct.), *aff'd mem.,* 263 App. Div. 815, 32 N.Y.S.2d 131 (1st Dep't 1941).

4. It changed the interest provisions in relation to a fund obtained from the sale of income-producing securities from interest "from time to time," meaning, of course, the interest rate in effect during period or periods of time while the stakeholder may have held the fund, to a single rate for the whole period without regard to any change in rate during that period; that if the court shall find that the successful claimant should have interest, the one rate shall be "the lowest discount rate of the Federal Reserve Bank of New York in effect at the time of the discharge [of the stakeholder]. . . ." [31]

This, of course, introduced an element of chance and uncertainty which the former rule did not have. It is quite conceivable that the Federal Reserve Bank rate that may happen to be in force on the date of the discharge of the stakeholder from liability may be widely different from the rate prevailing during most of the time that stakeholder held the funds, particularly if the funds were held for several years. Taking it for granted that the Federal Reserve Bank rate in effect during a certain period is a reasonably good indication of the value of money during that period, it would seem much more fair to both the stakeholder and the successful claimant to apply the rate or rates existing over the period that the money was held, rather than the rate that happened by chance to be in effect on the day that the stakeholder paid over the money at the end of the proceedings.

5. The last and really great change which was made, however, one which may be considered a great innovation, was the Interpleader Compact. This was designed to permit the state of New York to enter into any agreement with any other states or with foreign countries in order that adverse claimants residing outside of the jurisdiction of the courts of New York could be subject to personal jurisdiction by New York courts. As yet no such agreements have been made with any other state or any foreign country.

We may, at this point, sum up, for there is no answer at once both complete throughout the world and sure to the

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[31] N.Y. Civ. Prac. Act § 285(7).

question—how may a business man be protected against double claims to a debt where the claimant adverse to the plaintiff in an action begun in the United States is outside of the jurisdiction? Within the limits of New York state, a New York debtor may now be said to have the means to secure reasonable protection. But today numerous New York business entities have offices or branches outside the state and in foreign countries, in fact, all over the world and these offices or branches and the property there under their control may make them vulnerable to suit in these foreign jurisdictions.

Suppose then an adverse claimant fails to appear in an action in New York state and, following a judgment there, the debtor pays a debt under order of the court to the other claimant. The adverse claimant then perhaps sues in a foreign jurisdiction where the debtor has a branch or office. The defense of the American business man is the decision of the American court after the proceedings under Section 51-a were concluded.

The question which arises is to what extent will a foreign court recognize the type of protection here afforded? Section 51-a is a statute of limitations but it is really more than that. It is a system operating under the court's jurisdiction. It is a remedy ending in adjudication. Taken as a whole, is it procedural or is it substantive?

Our Court of Appeals has indicated there is a question that this procedure would be recognized as conclusive in a foreign jurisdiction, particularly in those states which do not enforce by "borrowing" the statute of limitations of other states where the debt was payable and where suit actually was instituted to collect it. The question, however, has never arisen in a foreign jurisdiction, so no authoritative answer can be made whether, by "borrowing" or comity, the adverse claimant's rights are cut off in another jurisdiction, perhaps the place of his own domicile, if he can there obtain jurisdiction of the person who he had previously claimed was his debtor in the Section 51-a proceeding.

As to adverse claims to specific personal property within New York, we may say that probably the amendments of 1939, now incorporated in the revision of the Interpleader Law of 1954, give substantial protection throughout the world

to adverse claims to personal property situated within this jurisdiction. This, it is respectfully suggested, would be modified only if courts outside the United States should find that the subject matter of the action was not under their laws a "res" and that, therefore, the United States courts did not, in fact, have jurisdiction over the subject matter and, thus, could not render a judgment good as against the world to the particular item in controversy.

With the amendments of 1954, we have the further question—can the legislature make a debt a "res"? Certainly the courts, both federal and state, have held that it is not. They have gone so far as to hold that it cannot even be made a "res" by the debtor himself by calling it a "fund" or paying it into court.[32]

Perhaps the time has come, however, when debts will support jurisdiction (particularly the type of debt which is not ambulatory, the bank account) where due demand can be made only in a particular place or the insurance policy payable at the home office or elsewhere in accordance with the terms of the policy.

Lastly, there is the Interpleader Compact, so new and untried, that its fate cannot be assessed.

The state of New York has been a pioneer in procedural reform and a new idea should not be condemned merely because it has never before been tried. It is part of the duty of lawyers to be concerned with the protection of their client's legitimate business both within and without the United States. The encouragement of legitimate business and the common protection of those engaged in it is part of the functions of law. New situations will require new remedies. The highest courts of our state and nation will make the final pronouncement as to the validity of new laws created to meet new problems.

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[32] Solicitor for Affairs of His Majesty's Treasury v. Bankers Trust Co., 304 N.Y. 282, 107 N.E.2d 448 (1952). The case of Feuchtwanger v. Central Hanover Bank, 288 N.Y. 342, 43 N.E.2d 434 (1942), has frequently been cited as holding that a bank account is a "res." An analysis of the facts of the case, however, will indicate that the court made no such decision in this action. There, two packages of money consisting of bills identified by their serial numbers had wrongfully been broken open and credited to an account. Here the court found that by this wrong, a trusteeship was established in lieu of the packages which should have been available. This was the "res."

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