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Constitutional Law--Multiple Inheritance Taxation--Determination of Domicile by Supreme Court (Texas v. Florida, et al., 306 U.S. 398 (1939))

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fication of an abridgement of a contract.[18] Congress has always determined the *policy,* which must not be confused with the judicial right to determine *power.*[19]

The wording of the bonds, while perfectly legal at the time they were written, show that the makers intended to prevent loss if Congress altered the value of gold. The Court, in the instant case, has seen through the subterfuge and extended its ruling in the Gold Clause cases to cover optional bonds and thus defeating the obvious attempt to nullify the Gold Clause Acts. The Court points to the Senate report on the Resolution which shows the intention of Congress to prevent such a result.[20] The Courts, having previously recognized the Congressional power in relation to the United States monetary policy,[21] were consistent in affirming the decision of the lower courts. Gold coin is no longer recognized as legal tender and the obligation of the contract to pay money is governed by that which the law shall recognize as money.[22] The Joint Resolution and subsequent legislation stated what was to be recognized as legal tender for all domestic obligations. The bonds and mortgages in the instant case were found to be domestic obligations that came within the law.[23]

R. M. P.

CONSTITUTIONAL LAW—MULTIPLE INHERITANCE TAXATION—DETERMINATION OF DOMICILE BY SUPREME COURT.—This action, in the nature of a bill of interpleader, was brought in the Supreme Court by the State of Texas against the states of Florida, New York and Massachusetts, to determine the domicile of the decedent, Edward H. R. Green, who died leaving an estate which included intangibles aggregating more than $35,000,000. The court's jurisdiction was based on allegations that each state claimed to be deceased's domicile for taxing purposes, and that the total sum of the claims of each state and the Federal Government would far exceed the total value of the estate, thereby jeopardizing plaintiff's attempt to collect its taxes. The court appointed a special master,[1] who found that decedent, at

[18] Wollf Packing Co. v. Court of Industrial Relations, 262 U. S. 522, 43 Sup. Ct. 630 (1923).

[19] Chicago, B. & O. R. R. v. McGuire, 219 U. S. 549, 31 Sup. Ct. 259 (1911).

[20] SEN. REP. No. 99, 73d Cong., 1st Sess. (1933) ("Additional and immediate legislation is necessary to remove the disturbing effect of this uncertainty and to insure the success of the policy by closing possible legal loopholes and removing inconsistencies").

[21] Legal Tender Cases, 12 Wall. 457 (U. S. 1871).

[22] Faw v. Marstitler, 2 Cranch 1, 29, 32 (U. S. 1804).

[23] See notes 6, 7, *supra.*

[1] 301 U. S. 671, 57 Sup. Ct. 935 (1936).

time of his death, was domiciled in Massachusetts. On appeal from the Special Master's report, *held,* one judge dissenting, report confirmed. A justiciable case is presented as there was a real risk that the state lawfully entitled to the tax would be unable to collect it if the other states also collected their taxes, and as it was a controversy among states, it was within the equity jurisdiction of the court to prevent the threatened loss. The evidence supported the finding of domicile in Massachusetts.[2] *Texas* v. *Florida, et al.,* 306 U. S. 398, 59 Sup. Ct. 563 (1939).

Original jurisdiction over interstate controversies was granted to the Supreme Court by the Constitution [3] and made exclusive by the Judiciary Articles.[4] As with suits between individuals, the court has jurisdiction only if an actual "case" or "controversy" exists.[5] Although the present Federal Interpleader Act [6] does not specifically mention suits to which states are parties, the original jurisdiction of the Supreme Court includes interpleader actions wherever such relief is found to be justified according to the accepted doctrines of equity jurisprudence.[7] Although plaintiff need not await actual institution of independent suits, it must be shown, however, that conflicting

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[2] Mr. Justice Frankfurter dissents, stating that the court should not set a precedent in assuming jurisdiction in disputes over domicile, especially as the "single-state domicile" doctrine is outmoded, and as there is no real threat of loss to Texas.

[3] U. S. CONST. Art. III, § 2.

[4] 1 STAT. 80 (1787), 28 U. S. C. § 341 (1934).

[5] Louisiana v. Texas, 176 U. S. 1, 20 Sup. Ct. 251 (1899); Kansas v. Colorado, 185 U. S. 125, 22 Sup. Ct. 552 (1902); Oklahoma v. Texas, 258 U. S. 574, 42 Sup. Ct. 406 (1922); United States v. West Virginia, 295 U. S. 463, 470, 55 Sup. Ct. 789 (1934).

[6] 49 STAT. 1096 (1936), 28 U. S. C. A. § 41(26) (Supp. 1938). Following its passage in 1936 it was thought that this new interpleader act might serve as the solution to the problem of multiple inheritance taxation, for it would afford a means by which an executor could interplead the tax officials of contending states and thereby obtain a determination of domicile binding on all the involved states. However, in Worchester County Trust Co. v. Riley, 302 U. S. 292, 58 Sup. Ct. 185 (1937), the court held that such an action by an executor against a state taxing official is in reality an action by an individual against the state and, therefore, forbidden by the 11th Amendment. For a more complete discussion see Chafee, *The Federal Interpleader Act of 1936* (1936) 45 YALE L. J. 1161.

[7] See Robinson v. Campbell, 3 Wheat. 212, 222 (U. S. 1818); Pennsylvania v. Wheeling & Belmont Bridge Co., 18 How. 460, 462 (U. S. 1855); Irvine v. Marshall, 20 How. 558, 564 (U. S. 1857); Payne v. Hook, 7 Wall. 425, 430 (U. S. 1868). Originally courts of equity entertained only strict bills of interpleader wherein the plaintiff was merely a disinterested stakeholder, but later equity extended its jurisdiction to permit bills in the nature of interpleader in which the plaintiff claims an interest in the property or funds, and the court is asked to guard against the consequent depletion of the funds at the expense of plaintiff's interest therein, and to protect him and other parties from the prosecution of numerous demands to only one of which the fund is subject. See Pacific National Bank v. Mixter, 124 U. S. 721, 8 Sup. Ct. 718 (1887); Providence Sav. Life Assurance Soc. v. Loeb, 115 Fed. 357 (C. C. D. La. 1901); 2 STORY, EQUITY JURISPRUDENCE (14th ed. 1918) § 1140; MACLENNAN, THE LAW OF INTERPLEADER (1901) 338–343.

claims are asserted, and that there is an actual risk of substantial losses.

In the instant case, the majority of the court found that there was a real and substantial risk that losses might result from the independent prosecution of rival, but mutually exclusive claims,[8] and as the action was prosecuted between states which were the rival claimants, it spelled out a justiciable "case" or "controversy" and came within the original jurisdiction of the Supreme Court.[9] The majority of the court bases this reasoning on the assumption that the highest courts of all four states would have found the decedent to have been domiciled in their state, and, therefore, all would have taxed the estate. But if only one state did not levy any tax, the estate would be large enough to meet the taxes imposed by the three other states and the Federal Government. As pointed out by Mr. Justice Frankfurter in his dissenting opinion, the probabilities of the high courts of all four states finding domicile—even if possibly influenced by financial benefits to their own states—seem very remote both from adjudicated experience[10] and the special circumstances of this case.[11]

Another ground upon which the court could have found a justiciable case[12] would have been on the theory that if the right of a state of domicile to tax the transfer of decedent's intangibles is a sovereign right, then the taxation by a non-domiciliary state would be an infringement on that sovereignty,[13] resulting in damage comparable to that in a boundary dispute when one state exercises police power over territory rightfully belonging to another, and therefore within the original jurisdiction of the court. This reasoning is, however, based on the old rule of a person having only a single domicile for taxing purpose, and it is at least debatable whether that doctrine still is the rule. Mr. Justice Frankfurter in his dissent raises strong doubts as to the applicability of the old common law rule of "one man—one home" in our modern business systems,[14] and recent de-

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[8] The Special Master found that decedent's intangibles at the time of his death had a value of $35,831,303, while the aggregate of the taxes which would be due to the United States and due to each state, if its contentions were sustained, amounted to $37,727,213, exceeding the total net estate by the sum of $1,589,877.

[9] See Nashville C. & St. L. Ry. v. Wallace, 288 U. S. 249, 261, 53 Sup. Ct. 345, 351 (1932).

[10] Matter of Trowbridge, 266 N. Y. 283, 194 N. E. 756 (1935) (in which New York courts held that Connecticut was entitled to tax decedent's estate as the true state of domicile).

[11] The master states that Texas and Florida had little to support their claims of domicile, while New York denies in its brief, without contradiction, that its procedure for tax levy and collection had been set in operation.

[12] See (1937) 46 YALE L. J. 1235, 1238.

[13] Following the principle of *mobilia sequunter personam* doctrine stated in Farmers Loan & Trust Co. v. Minnesota, 280 U. S. 204, 50 Sup. Ct. 98 (1929), and Baldwin v. Missouri, 281 U. S. 586, 50 Sup. Ct. 436 (1929).

[14] Texas v. Florida, 306 U. S. 398, 428, 59 Sup. Ct. 563, 578 (1939).

cisions [15] make it seem probable that our courts are attempting to turn away from that doctrine.

Consideration of policy may be advanced both for and against the acceptance of jurisdiction by the Supreme Court in this case. This court seems an inappropriate forum to litigate such a matter as domicile, and the Supreme Court's jurisdiction should be exercised only when absolutely necessary and when the case is in itself absolutely justiciable.[16] However, under our system of jurisprudence the Supreme Court must apparently be the final arbiter if two state courts reach conflicting decisions, and the court can and will protect itself against feigned controversies. In the principal case, Mr. Justice Stone in writing the court's opinion is careful to point out the exceptional circumstances of this case and the fact that the court was taking jurisdiction only because of the possibility that the total taxes might exceed the value of the estate. However, in view of the straining of the court to find a justiciable case in this action, it is extremely probable that even in cases presenting different circumstances, the court would attempt to acquire jurisdiction so as to determine the domicile—unless, as Mr. Justice Frankfurter suggests, it abandons entirely the single-state domicile doctrine.

A. A.

CONSTITUTIONAL LAW—NATIONAL FIREARMS ACT—THE RIGHT TO BEAR ARMS.—Defendants were indicted for transporting in interstate commerce, a certain firearm subject to registration and taxation under the National Firearms Act,[1] without having complied with the provisions of the Act.[2] On appeal by the United States from a judgment sustaining the demurrer, *held,* reversed. The Act in question is not unconstitutional since it does not interfere with the right of the people to keep and bear arms as guaranteed by the Second Amendment [3] nor does it usurp the police power reserved to the states.[4] *United States* v. *Miller,* 307 U. S. 174, 59 Sup. Ct. 817 (1939).

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[15] Curry v. McCanless, 307 U. S. 350, 59 Sup. Ct. 900 (1939); Graves *et al.* v. Elliott *et al.,* 302 U. S. 357, 59 Sup. Ct. 913 (1939); see (1939) 14 ST. JOHN'S L. REV. 195.

[16] Louisiana v. Texas, 176 U. S. 1, 15, 20 Sup. Ct. 251 (1900).

[1] 48 STAT. 1236, 26 U. S. C. §§ 1132–1132q (1934) ("An Act to provide for the taxation of manufacturers, importers and dealers in certain firearms and machine guns, to tax the sale or other disposal of such weapons, and to restrict importation and regulate interstate commerce thereof").

[2] *Id.* at 1239, 26 U. S. C. § 1132j (1934) ("It shall be unlawful for any person who is required to register * * * or has not in his possession a stamp-affixed order * * * to ship, carry or deliver any firearm in interstate commerce").

[3] U. S. CONST. Amend. II ("* * * the right of the people to keep and bear arms shall not be infringed").

[4] Sonzinsky v. United States, 300 U. S. 506, 57 Sup. Ct. 554 (1937).