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TAXATION-PROCEDURAL DEVICES FOR PREVENTING MULTIPLE TAXATION OF INTANGIBLES BASED ON DOMICILE - ORIGINAL SUIT BY WAY OF INTERPLEADER BEFORE SUPREME COURT

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TAXATION — PROCEDURAL DEVICES FOR PREVENTING MULTIPLE TAXATION OF INTANGIBLES BASED ON DOMICILE — ORIGINAL SUIT BY WAY OF INTERPLEADER BEFORE SUPREME COURT — The famous

Dorrance litigation[1] raised very sharply the problem of avoiding multiple inheritance taxes based upon conflicting claims of domicile.

[1] A brief history of the Dorrance litigation is as follows: On September 21, 1930, Dr. John Dorrance, owner of the Campbell Soup Company, died, supposedly domiciled in New Jersey. During his entire life he had repeatedly declared that his home was in New Jersey, and so stated in his will. Until 1925 he had lived in New Jersey. He had, however, in that year purchased a large estate near Philadelphia, where he spent a great part of his time, and where his wife and daughters lived a good portion of each year. In accordance with the instructions in his will, the executors of Dr. Dorrance filed the will for probate in New Jersey, alleging that decedent had died domiciled in that state. In the meantime Pennsylvania taxing authorities proposed to assess an inheritance tax upon decedent's entire estate (which consisted principally of intangible personal property) upon the theory that Dr. Dorrance had been domiciled in Pennsylvania at the time of his death. Although the evidence was conflicting, the state's contention was upheld in Dorrance's Estate, 309 Pa. 151, 163 A. 303 (1932), noted 81 UNIV. PA. L. REV. 177 (1932). After an unsuccessful attempt to carry the case to the Supreme Court of the United States, in Dorrance v. Pennsylvania, 287 U. S. 660, 53 S. Ct. 122 (1932), in which the Supreme Court denied certiorari because of the absence of a federal question, the Dorrance executors attempted to argue the federal question upon rehearing in the Pennsylvania Supreme Court, but that court refused to hear the argument, since its rules required federal questions to be raised at the first opportunity. The federal question—i.e., whether the imposition of an inheritance tax by Pennsylvania would violate the due process clause of the Fourteenth Amendment because decedent was not domiciled in that state at the time of his death—had been raised in the Pennsylvania lower court, but the question had not been passed upon there, since the lower court decided Dr. Dorrance was not domiciled in Pennsylvania. When the state appealed, the Dorrance executors apparently failed to raise the federal question again. In re Dorrance's Estate, (Pa. 1933) 172 A. 900; cert. den. Dorrance v. Pennsylvania, 288 U. S. 617, 53 S. Ct. 507 (1933).

During the Pennsylvania litigation, the New Jersey tax authorities had not been idle. New Jersey's motion to intervene when the executors sought to appeal from the Pennsylvania decision was denied in Dorrance v. Pennsylvania, 287 U. S. 660, 53 S. Ct. 122 (1932). Thereafter, New Jersey unsuccessfully sought to bring an original suit against Pennsylvania. New Jersey v. Pennsylvania, 287 U. S. 580, 53 S. Ct. 313 (1933). After this, Pennsylvania's original suit against New Jersey was dismissed on motion of plaintiff. Pennsylvania v. New Jersey, 288 U. S. 618, 53 S. Ct. 385 (1933).

Up to this time the executors had been cooperating with the New Jersey taxing authorities as though Dr. Dorrance had died domiciled in New Jersey, but when they could not obtain a review or reversal of the Pennsylvania judgment, they immediately began to resist the imposition of the New Jersey inheritance tax, alleging that Dr. Dorrance was a resident of Pennsylvania at the time of his death, and that the Pennsylvania judgment was binding in New Jersey. The New Jersey courts, however, decided that the Pennsylvania decision was erroneous, and refused to give it effect. In re Dorrance's Estate, 115 N. J. Eq. (Prerog. Ct.) 268, 170 A. 601 (1934) [noted 34 COL. L. REV. 1151 (1934), and 18 MINN. L. REV. 736 (1934)], supplementary opinion, 116 N. J. Eq. 204, 172 A. 503 (1934) [noted 34 COL. L. REV. 1374 (1934)], cert. dismissed in memorandum opinion in Dorrance v. Thayer-Martin, 13 N. J. Misc. (Sup. Ct.) 168, 176 A. 902 (1935), affd. per curiam in Dorrance v. Thayer-Martin, 116 N. J. L. (Err. & App.) 362, 184 A. 743 (1936),

Up to that time it was thought that the right of a state to levy an inheritance tax upon intangible personal property owned by a non-resident decedent had been effectively denied by *Farmers Loan & Trust Co. v. Minnesota*,[2] *Baldwin v. Missouri*,[3] and *First National Bank of Boston v. Maine*.[4] But the *Dorrance* cases resulted in the collection of huge inheritance taxes[5] by Pennsylvania and New Jersey, both states grounding their assessments upon the assertion that Dr. Dorrance was domiciled in the claimant state at the time of his death. Such an incongruous result aroused the attention of tax lawyers and writers,[6] who foresaw that states could indirectly accomplish what the United States Supreme Court had held to be forbidden under the due process clause of the Fourteenth Amendment.[7] It was also foreseen

cert. den. Dorrance v. Martin, 298 U. S. 678, 56 S. Ct. 949 (1936), rehearing denied 298 U. S. 692, 56 S. Ct. 957 (1936). The New Jersey courts added insult to injury by refusing to allow the executors to deduct the Pennsylvania inheritance and personal property taxes from the value of the taxable estate in New Jersey, although the New Jersey statute specifically provided that inheritance taxes levied in other states were so deductible. This paradoxical result was based upon the conclusion that the Pennsylvania taxes were invalid and that the New Jersey statute permitted only deductions of valid inheritance taxes paid in other states.

In addition to the foregoing, after the New Jersy decision had been affirmed by the New Jersey Supreme Court in Dorrance v. Thayer-Martin, 13 N. J. Misc. 168, 176 A. 902 (1935), the executors brought suit in federal court to enjoin the New Jersey officials from collecting an inheritance tax, claiming that such assessment would violate the due process clause of the Fourteenth Amendment because Dr. Dorrance had died a resident of Pennsylvania. The injunction was refused, as being in violation of § 265 of the Judicial Code, 28 U. S. C. (1934), § 379, which forbids federal courts from enjoining any proceedings in state courts (with certain exceptions here immaterial), since the New Jersey proceedings had passed the administrative stage and reached the judicial stage. Dorrance v. Martin, (D. C. N. J. 1935) 12 F. Supp. 746, affd. in Hill v. Martin, 296 U. S. 393, 56 S. Ct. 278 (1935).

[2] 280 U. S. 204, 50 S. Ct. 98 (1930).

[3] 281 U. S. 586, 50 S. Ct. 436 (1930).

[4] 284 U. S. 312, 52 S. Ct. 174 (1932).

[5] The New Jersey tax totaled $14,394,698.88, exclusive of interest. The Pennsylvania tax was $15,620,793.45, in addition to penalties and interest. Pennsylvania also assessed a personal property tax of $1,099,552.52 on the theory that Dr. Dorrance was a Pennsylvania resident for several years before his death.

[6] Ohlander, "Double Inheritance Taxation," 14 TAX MAG. 387 (1936); Chafee, "The Federal Interpleader Act of 1936," 45 YALE L. J. 1161 at 1169 et seq. (1936). And see articles cited in note 1, supra.

[7] U. S. Const., Amend. 14, § 1, provides, " . . . nor shall any State deprive any person of . . . property, without due process of law. . . ." In Farmers Loan & Trust Co. v. Minnesota, 280 U. S. 204, 50 S. Ct. 98 (1930), it was held that Minnesota could not impose an inheritance tax upon Minnesota state and municipal bonds owned by a New York decedent. Baldwin v. Missouri, 281 U. S. 586, 50 S. Ct. 436 (1930), decided that Missouri could not levy an inheritance tax upon bank deposits, United States bonds, and promissory notes, all situated in Missouri banks, but owned by an

that this phenomenon would occur with increasing frequency because of the present-day tendency of Americans to live in different parts of the United States during different seasons of each year.

I.

Several solutions of the problem were suggested, among them the use of the Federal Interpleader Act of 1936[8] to implead the tax officials of the claimant states. This procedure was believed to be the most efficacious, since it would be binding upon all the states concerned, and would decide the domiciliary issue in one suit, without the protracted litigation of the *Dorrance* cases. However, recent decisions by the United States Supreme Court have closed the door upon the use of interpleader by executors and beneficiaries for the purpose of avoiding multiple inheritance taxation, and have apparently limited its application to the single situation in which the decedent's estate is insufficient to pay the federal estate tax and all the conflicting inheritance tax claims. In the first case, *Worcester County Trust Co. v. Riley*,[9] a Massachusetts executor attempted to implead the taxing officials of Massachusetts and California, both of whom were asserting the right to levy an inheritance tax upon the decedent's intangible personal property on the theory that the executor's decedent was at the time of his death domiciled in the state of which the tax official was the representative. The Commissioner of Corporations and Taxation of Massachusetts expressly consented to the suit, but the California tax officers resisted. It was held, by a unanimous decision, that the suit was forbidden by the Eleventh Amendment,[10] since the real party in interest was the state of California, and not the California tax authorities.

The second case[11] was an original suit in the United States Supreme

Illinois decedent, even though some of the notes had been executed by Missouri residents and were secured by mortgages on Missouri lands. In First Nat. Bank of Boston v. Maine, 284 U. S. 312, 52 S. Ct. 174 (1932), it was held that Maine could not assess an inheritance tax upon stock in a Maine corporation when the stock was owned by a Massachusetts decedent, despite the fact that most of the corporation's property was located in Maine. All three decisions were predicated upon the proposition that the situs of the intangible personal property in question was at the domicile of the owner, and that only the domiciliary state could tax.

[8] 49 Stat. L. 1096 (1936), 28 U. S. C. (Supp. 1938), § 41 (26).

[9] 302 U. S. 292, 58 S. Ct. 185 (1937).

[10] U. S. Const., Amend. 11: "The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State." In Hans v. Louisiana, 134 U. S. 1, 10 S. Ct. 504 (1890), it was decided that a state could not be sued in federal court by one of its own citizens without the consent of the state.

[11] Texas v. Florida, (U. S. 1939) 59 S. Ct. 563.

Court, in the nature of a bill of interpleader,[12] brought by the state of Texas against the states of Florida, New York, and Massachusetts, in order to determine the domicile of Edward H. R. Greene, son of the well-known Hetty Greene of Wall Street fame.[13] Greene had spent a portion of his life in each of the four states, and on his death each state asserted the right to levy an inheritance tax, not only upon the realty and tangible personal property situated in the state, but also upon the decedent's intangible personal property, which last made up the bulk of the estate.[14] The Court found that a controversy existed within the meaning of section 2 of Article III[15] of the Federal Constitution, because of the fact that the estate was not large enough to pay the tax claims of all the states after the federal estate tax had been collected.[16] Having thus found a controversy to exist, the Court was required to

[12] Ibid., 59 S. Ct. at 568: "The essential of the bill in the nature of interpleader is that it calls upon the court to exercise its jurisdiction to guard against the risks of loss from the prosecution in independent suits of rival claims where the plaintiff himself claims an interest in the property or fund which is subjected to the risk. The object and ground of the jurisdiction are to guard against the consequent depletion of the fund at the expense of plaintiff's interest in it and to protect him and the other parties to the suit from the jeopardy resulting from the prosecution of numerous demands, to only one of which the fund is subject." Generally, the only material difference between a true bill of interpleader and a bill in the nature of interpleader is that the plaintiff in the latter has an interest in the subject of controversy between the defendants. Klaber v. Maryland Casualty Co., (C. C. A. 8th, 1934) 69 F. (2d) 934, 106 A. L. R. 617 at 626.

[13] Greene's wife and sister were also made party defendants, the latter being the principal beneficiary under decedent's will, but pursuant to a stipulation showing that the wife had released all interest in decedent's estate, the suit was dismissed as to her. Texas v. Florida, 302 U. S. 662, 58 S. Ct. 478 (1938). Interested private parties may be joined or allowed to intervene, even though the Court would not have original jurisdiction in a suit brought by such persons. Oklahoma v. Texas, 258 U. S. 574 at 581, 42 S. Ct. 406 (1922).

[14] One motive for the suit by Texas may have been that Texas tax officials anticipated difficulty in collecting any inheritance taxes assessed, since the only property left by decedent and located in Texas was some realty valued at $2200. The documentary evidences of decedent's intangible property were located in New York. Texas v. Florida, (U. S. 1939) 59 S. Ct. 563 at 569, note 2. On the practical difficulty of collecting an inheritance tax when all of decedent's property is located outside of the domiciliary state, see Matter of Martin's Will, 255 N. Y. 359, 174 N. E. 753 (1931); Colorado v. Harbeck, 232 N. Y. 71, 133 N. E. 357 (1921).

[15] U. S. Const., art. 3, § 2: "The judicial power [of the United States] shall extend . . . to Controversies between two or more States. . . ."

[16] The tax claims were as follows: United States, $17,520,987; Texas, $4,685,057; Florida, $4,663,857; New York, $5,910,301; Massachusetts, $4,947,008; total, $37,727,213. Since decedent's net estate was valued at $36,137,335, the claims exceeded the value of the estate by $1,589,877. In addition, New York demanded $920,827 for unpaid personal income taxes. Texas v. Florida, (U. S. 1939) 59 S. Ct. 563 at 569, note 2.

pass upon the question of domicile, and confirmed the master's report that Greene was domiciled in Massachusetts at the time of his death.

Since the *Worcester County* case was decided on the ground that a suit by a private party against state tax authorities was in violation of the Eleventh Amendment,[17] it would seem that in the *Greene* case, had none of the states involved been willing to bring an original suit, the Greene estate representatives would have been unable to implead the taxing officials of the various claimant states. This would have led to a harsh result if all of the claims were bona fide and based upon fairly substantial evidence, for the states might levy upon all of decedent's property within their respective jurisdictions, thus stripping the estate of all its assets. On the other hand, to permit the use of interpleader by executors or beneficiaries might lead to its abuse, for they would be tempted to implead states whose claims were grounded on flimsy evidence, simply in order to create a federal controversy.[18]

2.

Other procedural devices for raising the issue of domicile in order to avoid multiple inheritance taxation are as follows: (a) raising the federal question in the state court proceedings, or suit in state court for declaratory judgment against the claimant state, (b) suit in federal court to enjoin the non-domiciliary state officials, (c) inducing state officials either to intervene in the court proceedings of another state or to consent to be impleaded in a federal court.

(a) Under the method of raising the federal question in the state court proceedings, the representative of the estate would allege, in the

[17] The Court might easily have reached the opposite conclusion in Worcester County Trust Co. v. Riley, 302 U. S. 292, 58 S. Ct. 185 (1937), despite the apparent bar of the Eleventh Amendment. Assuming that a decedent can have only one domicile for inheritance tax purposes, it is obvious that either the California or Massachusetts taxing officials were in fact exceeding their statutory powers and attempting to enable one of the states to violate the due process clause of the Fourteenth Amendment. Instead of presuming that both sets of officials were acting rightfully, as did the Court, it could have been assumed that both were exceeding their powers until the domiciliary state had been ascertained by the trial court, at which point the suit against the domiciliary state officials would be dismissed and judgment rendered against the officials of the non-domicilary state. Apparently this was the theory of the trial judge, who denied the California officials' motion to dismiss in Worcester County Trust Co. v. Long, (D. C. Mass. 1936) 14 F. Supp. 754, and of the dissenting opinion in Riley v. Worcester County Trust Co., (C. C. A. 1st, 1937) 89 F. (2d) 59. Cf. Ex parte Young, 209 U. S. 123, 28 S. Ct. 441 (1908). See also Chafee, "The Federal Interpleader Act of 1936," 45 YALE L. J. 1161 at 1169 (1936).

[18] In his dissenting opinion in Texas v. Florida, (U. S. 1939) 59 S. Ct. 563 at 577, Justice Frankfurter thought that the suit should be dismissed because the claim of Texas was not based upon substantial evidence.

court proceedings of each state, that decedent was not domiciled in that state at the time of death, and that an inheritance tax based upon an assertion of domicile would take property without due process of law, thus laying a foundation for a review by the United States Supreme Court of each state court decision.[19] There are several disadvantages to this method. It would not be binding on states who were not parties to the suit,[20] and would lead to expensive, protracted litigation, since it presupposes final appeals from the state court decisions to the Supreme Court of the United States. Also, would the Court pass upon the point? In doing so, the Court would have to look at the evidence and decide a question of fact—i.e., whether or not decedent was domiciled in the claimant state. In other instances, where a federal right has been raised in a state court, the Court has held that findings of state courts are not conclusive as to the federal question, has examined the evidence, and has rendered an independent judgment.[21] And the Court has determined the question of domicile in other situations.[22] Assuming that it would do so here, that would not guarantee the desired immunity from multiple inheritance taxation. Suppose the federal question had been properly raised in the Pennsylvania proceedings of the *Dorrance* litigation, so that the Pennsylvania decision could have been appealed to the United States Supreme Court by certiorari; there would have been nothing to prevent the Court from sustaining the Pennsylvania judgment on the ground that it was based upon substantial, although conflicting, evidence. Then assume that the same procedure was followed in the New Jersey courts, thus permitting the New Jersey judgment to be appealed to the United States Supreme Court. The first decision would not be binding upon the New Jersey courts since New Jersey was not a party to it.[23] Concededly it would be influential, but again the Court might say, after

[19] See note 1, supra, on the history of the Dorrance litigation and the attempts there made to raise the federal question.

[20] When the jurisdiction of a court rendering judgment depends on the domicile of decedent, that question is open to re-examination in the courts of another state, despite the full faith and credit clause of § 1, art. 4, of the Federal Constitution. Overby v. Gordon, 177 U. S. 214, 20 S. Ct. 603 (1900); Burbank v. Ernst, 232 U. S. 162, 34 S. Ct. 299 (1914); Baker v. Baker, Eccles & Co., 242 U. S. 394, 37 S. Ct. 170 (1917).

[21] Truax v. Corrigan, 257 U. S. 312, 42 S. Ct. 124 (1921); First Nat. Bank v. City of Hartford, 273 U. S. 548, 47 S. Ct. 462 (1927); Fiske v. Kansas, 274 U. S. 380, 47 S. Ct. 655 (1927); Ancient Egyptian Arabic Order v. Michaux, 279 U. S. 737, 49 S. Ct. 485 (1929); Beidler v. South Carolina Tax Comm., 282 U. S. 1, 51 S. Ct. 54 (1930); Johnson Oil Refining Co. v. Oklahoma, 290 U. S. 158, 54 S. Ct. 152 (1933).

[22] Gilbert v. David, 235 U. S. 561, 35 S. Ct. 164 (1915).

[23] See note 20, supra.

examining the evidence, that the evidence was sufficient to sustain the New Jersey judgment, even though conflicting.[24] The due process clause of the Fourteenth Amendment does not necessarily prevent such a result.[25] By timing the case to a nicety, both appeals from the state courts might reach the Supreme Court at the same time, so that the Court could pass upon both appeals in one decision, which would decrease the possibility of the Court's sustaining the conflicting judgments of the state courts.[26] Raising the federal question in state court proceedings would seem to be effective only when there was no substantial evidence to support the state court's finding of domicile, for the Supreme Court has traditionally been reluctant to reverse a judgment of a state court where there is any basis for the state court's decision on a mixed question of law and fact. This is true even though the Court has declared that it will review the findings of fact made by a state court where a conclusion of law as to a federal right and a finding of fact are so intermingled as to make it necessary to analyze the facts in order to pass upon the federal question.[27] An alternative to raising the federal question in state court proceedings is to bring suit in state court for a declaratory judgment that decedent was not a resident of the state at the time of his death. But even though the state declaratory judgments statutes permit such suits, the judgment would not be res judicata as to the states not parties to the action.[28]

[24] What law would the Court apply in determining where a decedent had died domiciled? In his dissenting opinion in Texas v. Florida, (U. S. 1939) 59 S. Ct. 563 at 579, note 4, Justice Frankfurter lamented the fact that the majority opinion "binds the states upon an issue of state law which this Court could not consider on appeal from the state courts, and on which this Court would be bound to follow state law in all other proceedings instituted in the federal courts." Does this not assume that no federal question would be raised in state or federal courts? If the Court passed upon the federal question, would it not have to apply federal law in determining the domiciliary state? This issue was avoided by the Court in Texas v. Florida, since it adopted the master's finding that "the rule in each of the states defining domicile was substantially that of the common law." 59 S. Ct. at 571. See cases cited in note 21, supra.

[25] The due process clause does not guarantee that court proceedings will be devoid of error. Robert v. New York, 295 U. S. 264, 55 S. Ct. 689 (1935). That the equal protection clause does not assure uniformity of judicial decisions, see Milwaukee Elec. Ry. & Light Co. v. Wisconsin, 252 U. S. 100, 40 S. Ct. 306 (1920).

[26] The Supreme Court has decided several appeals in one opinion when the question of law was the same in each case. Adams Express Co. v. Ohio State Auditor, 166 U. S. 185, 17 S. Ct. 604 (1897). Here the Court would be faced with an additional problem if the evidence were not the same in each state court. The procedure of timing the appeals so that they would reach the Supreme Court at the same time and could be decided in one opinion was suggested by Chafee, "The Federal Interpleader Act of 1936," 45 YALE L. J. 1161 at 1171 (1936).

[27] Fiske v. Kansas, 274 U. S. 380, 47 S. Ct. 655 (1927).

[28] Note 20, supra.

(b) In the injunction method, the ground for a suit in a federal court to enjoin the non-domiciliary state officials would be that defendant officials are exceeding their statutory authority by attempting to assess an inheritance tax based upon a wrongful claim of domicile, and that the imposition of such tax would take decedent's property without due process of law. This procedure was effective in *City Bank Farmers' Trust Co. v. Schnader.*[29] But it should be noted that in *Worcester County Trust Co. v. Riley*[30] the Court distinguished the *Schnader* decision by saying the objection that a suit to enjoin state officials was prohibited by the Eleventh Amendment had not been raised or considered in the *Schnader* case. This suggests the possibility that the Court may overrule the *Schnader* decision if the procedure of that case is sought to be used again.[31] Results are achieved more speedily by federal injunction proceedings than by the method of raising the federal question in state court. However, such proceedings could be just as expensive, since the suit might be carried to the Supreme Court, and it would not be binding upon the claimant states not parties to the action. And because a favorable decision would mean that the defendant tax officials had been exceeding their authority, and that they were not acting as representatives of their state, the injunction would only be binding upon them personally.[32] Conceivably their successors in office might attempt to collect an inheritance tax, claiming that the decedent was a resident of the state at the time of his death, in which case the injunction would not be res judicata as to the successor officials.

(c) The third possibility, voluntary action by a state in intervening or submitting to interpleader, has been used successfully in at least one instance. In *Re Estate of Trowbridge,*[33] Connecticut tax officials intervened in New York probate proceedings, and the New York Court of Appeals decided that the decedent was a resident of Connecticut at the time of his death. The advantages of this procedure are obvious. It decides the question in one suit and is binding upon all the states who are parties to the action. The difficulty lies in inducing the foreign tax officials to intervene, for they may feel that the courts of the other state would be biased in favor of the local officials.

[29] 291 U. S. 24, 54 S. Ct. 259 (1934).

[30] 302 U. S. 292, 58 S. Ct. 185 (1937), discussed at note 9, supra.

[31] In addition, there is the hazard of the Johnson Act, which provides in part as follows: "no district court shall have jurisdiction of any suit to enjoin, suspend, or restrain the assessment, levy, or collection of any tax imposed by or pursuant to the laws of any State where a plain, speedy, and efficient remedy may be had in the courts of such state." 50 Stat. L. 738 (1937), 28 U. S. C. (Supp. 1938), § 41 (1).

[32] Ex parte Young, 209 U. S. 123, 28 S. Ct. 441 (1908).

[33] 266 N. Y. 283, 194 N. E. 756 (1935). Cf. Estate of Cornell, 267 N. Y. 456, 196 N. E. 396 (1935).

A variant of the intervention procedure is to induce the tax officers of the claimant states to consent to be impleaded in federal court. Since a state may waive its immunity to suit under the Eleventh Amendment,[84] a federal court would have jurisdiction of such an action. This device has all the merits of the intervention method described above, and has the additional advantage that the state officials need not fear local bias in a federal court.

In conclusion it would seem that, of the methods for avoiding multiple inheritance taxation based upon conflicting claims of domicile, the procedure of raising the federal question in state court proceedings has the best chance of success, and even it is not a guarantee of the desired immunity in all instances. The devices of intervention and consent to interpleader depend upon the voluntary cooperation of state officials, the refusal of which is a bar to their use. An original suit of interpleader in the Supreme Court can be initiated only by a state and only when the decedent's estate is too small to pay the federal estate tax and all the conflicting inheritance tax claims. Although the due process clause of the Fourteenth Amendment has been construed to forbid the imposition of multiple inheritance taxes based upon conflicting claims of domicile, the procedural steps to be taken in order to avoid such taxation have not yet been perfected. The bugaboo of multiple inheritance taxes probably will remain, in the absence of an amendment to the Federal Constitution permitting states to be interpleaded in federal courts.

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[84] Curran v. Arkansas, 15 How. (56 U. S.) 304 (1853); Clark v. Barnard, 108 U. S. 436, 2 S. Ct. 878 (1883).