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Civil Procedure - Interstate Interpleader Compact

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RECENT LEGISLATION

CIVIL PROCEDURE—INTERSTATE INTERPLEADER COMPACT—Five states have passed the Interstate Interpleader Compact,[1] but Senate bills[2] aimed at obtaining the necessary congressional consent have not been reported out of committee. The compact, designed to eliminate the problem of obtaining jurisdiction over an out-of-state claimant in a state interpleader action, would remedy situations in which the stakeholder may be subject to multiple vexation or possible double liability.[3] The most important section of the compact provides: "Service of process sufficient to acquire personal jurisdiction may be made within a state party to this compact, by a person who institutes an interpleader proceeding or interpleader part of a proceeding in another state, party to this compact."[4]

Other possible solutions, on either a state or federal level, to the problem of attaining jurisdiction over a nonresident claimant in an in personam action have significant limitations. Existing federal interpleader, broad as it is, does not completely solve the problem. Although federal rule 22 (1)[5] may be "the most modern and liberal method of obtaining interpleader to be found,"[6] it does not reach many interpleader situations because of its requirements that the original suit have a $10,000 amount in controversy and a complete diversity of citizenship.[7] The Federal Interpleader Act,[8] which grants original interpleader jurisdiction to the courts, is also a deficient remedy, for in some ways the requirements for an interpleader action under the act are more stringent than under rule 22 (1).[9] In addition, even

1 Me. Rev. Stat. (1954; Supp. 1957) c. 113-A, as amended, Me. Laws 1959, reg. sess., S.B 256; N.H. Rev. Stat. Ann. (1955) c. 54; N.J. Stat. Ann. (1952; Supp. 1959) §2A:41-A; N.Y. Civ. Prac. Act (Cahill-Parsons, 1955; Supp. 1959) §287; Pa. Stat. Ann. (Purdon, 1953; Supp. 1958) tit. 12, §592. For the genesis of the compact, see TWENTIETH N.Y. JUDICIAL COUNCIL REPORT 271 (1954). For a complete discussion of the compact, see Quinn, "Jurisdiction of Adverse Claimants: The New York Interpleader Compact," CURRENT TRENDS IN STATE LEGISLATION 1955-56, p. 707 (1957).

2 S. 2326, 86th Cong., 1st sess. (1959); S. 3423, 85th Cong., 2d sess. (1958).

3 See, e.g., New York Life Ins. Co. v. Dunlevy, 241 U.S. 518 (1916), in which the insurer was subjected to double vexation and liability because of its inability to interplead the nonresident claimant in an earlier action in another state. Such multi-state litigation will probably become more common as more states pass statutes such as Illinois' "long-arm" provision asserting in personam jurisdiction in certain tort and contract actions having but slight contact with the state. See Ill. Rev. Stat. (1959) c. 110, §17. And see Wis. Laws 1959, c. 226, §15 (to be Wis. Stat. Ann. §262.05) for an even further extension of in personam jurisdiction.

4 Art. 3 (a) of S. 2326, 86th Cong., 1st sess. (1959).

5 Rule 22 (1), Fed. Rules Civ. Proc., 28 U.S.C. (1958).

6 3 MOORE, FEDERAL PRACTICE, 2d ed., §22.04 (1948).

7 28 U.S.C. (1958) §1332. Diversity must exist between the party seeking interpleader and all adverse claimants. See, e.g., Isaacs v. Walmac Co., (D.C. R.I. 1954) 15 F.R.D. 341.

8 28 U.S.C. (1958) §§1335, 1397, 2361.

9 For example, a bill of interpleader requires lack of interest on the stakeholder's part. See Chafee, "The Federal Interpleader Act of 1936," 45 YALE L.J. 963 at 978-980 (1936).

the minimal amount in controversy and diversity requirements,[10] though less restrictive than those of rule 22 (1), will serve to exclude many claims from the interpleader procedure. Congress could combine the liberal interpleader action under rule 22 (1) with the minimal diversity, lower amount in controversy, and nationwide service of process of the Interpleader Act,[11] and in this manner encompass a larger number of cases involving the nonresident claimant. But even if such broadened federal interpleader were to be adopted—and there is little possibility of this at present[12]—there remains as a bar to complete protection of the stakeholder minimal jurisdictional requirements and the extra cost and delay normally present in removing to a federal court when the nonresident is not discovered until after suit is begun in the state court. Thus possible extension of federal interpleader would not be as effective as the compact, which has neither the diversity or minimum amount jurisdictional requirements, nor the problem of removal to a federal court. Another alternative at the federal level would be passage of a statute under the authority of the full faith and credit clause of the Constitution,[13] directing that extra-territorial service of process by a state court in an interpleader action be recognized by other states. The constitutionality of such a statute would have to be based on a construction of the full faith and credit clause that would extend "judicial proceedings" to include intermediate writs and processes.[14]

On a state level, the individual states could pass a uniform interpleader act under which the stakeholder in a state court would request the interpleading of a nonresident claimant, with the court either denying the request or certifying it to a court in the claimant's state. The latter court would call the claimant before it and order him to appear in the interpleader action in the other state or face contempt charges in his own state.[15] The uniform act might prove to be unconstitutional. Although an act requiring a witness to appear in a foreign state has been held constitutional,[16]

10 See 28 U.S.C. (1958) §1335. The diversity needed for a bill of interpleader under the act is minimal, requiring only diversity between any of the adverse claimants. See United States v. Sentinel Fire Ins. Co., (5th Cir. 1949) 178 F. (2d) 217; note, 55 MICH. L. REV. 1183 (1957); 3 MOORE, FEDERAL PRACTICE, 2d ed., §22.09 (1948).

11 A similar effect has been achieved by allowing attenuated equities to furnish the grounds for a bill in the nature of interpleader. Fleming v. Phoenix Assurance Co., (5th Cir. 1930) 40 F. (2d) 38, cert. den. 282 U.S. 809 (1930), or by holding double vexation itself is sufficient grounds for a bill in the nature of interpleader without finding a separate equitable ground for relief. See John Hancock Mutual Life Ins. Co. v. Kegan, (D.C. Md. 1938) 22 F. Supp. 326.

12 Congress could remove all the jurisdictional requirements of federal interpleader except diversity, although this course of action is improbable. See note 23 infra.

13 U.S. CONST., Art. IV, §1.

14 See Cook, "The Powers of Congress Under the Full Faith and Credit Clause," 28 YALE L.J. 421 (1919).

15 See note, 26 UNIV. CHI. L. REV. 643 at 648 (1959). Cf. "Uniform Act To Secure Attendance of Witness from Without a State in Criminal Proceedings," 9 U.L.A. (1957). See also 8 WIGMORE, EVIDENCE, 3d ed., §2195 (a) (1940).

16 New York v. O'Neill, 359 U.S. 1 (1959).

a uniform interpleader act would go a step farther by requiring a person not merely to be a *witness* in a criminal proceeding, but to become a *party* to a civil action in a foreign state. And even if constitutional, the enforcement of the act would rest entirely on comity between the states; the desirability of an enforceable[17] contractual arrangement, as offered by the compact, is obvious. Another possible alternative on the state level would be the passage of in rem statutes which, in the light of the continuing influence of *Pennoyer v. Neff*,[18] would be of doubtful constitutionality.[19]

Acceptance of the compact by all the states, coupled with congressional consent, would give complete[20] protection to the stakeholder from the possibility of both multiple liability and multiple vexation, through a binding compact whose only jurisdictional requirement is that the parties be residents of states party to the compact. In addition, the compact affords protection to the nonresident claimant by requiring that service of process on him meet the minimum standards in both the issuing state and the claimant's state[21] and by requiring the stakeholder to have minimum contacts with the state of suit before the process will be issued.[22] As a practical matter the compact would ease the burden on the federal courts[23] by doing away with the necessity for federal interpleader,[24] and would reduce litigation in state courts by preventing more than one suit against the stakeholder. Such progressive cooperation between the states should be encouraged by passage of the permissive statute.[25]

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17 Dyer v. Sims, 341 U.S. 22 (1951). See Zimmerman and Wendell, "The Interstate Compact and Dyer v. Sims," 51 COL. L. REV. 931 (1951).

18 95 U.S. 714 (1878).

19 See Quinn, "Jurisdiction of Adverse Claimants: The New York Interpleader Compact," CURRENT TRENDS IN STATE LEGISLATION 1955-56, p. 707 (1957).

20 That the compact may extend even to foreign claimants, see art. 2 (a) (2), S. 2326, 86th Cong., 1st sess. (1959), defining state as used in the compact to include foreign nations. Cf. art. 8 (2).

21 Art. 3 (a), S. 2326, 86th Cong., 1st sess. (1959).

22 Id., art. 3 (b).

23 That such a need exists is evident in the recent efforts to create more federal judgeships; e.g., S. 890, 86th Cong., 1st sess. (1959). See also 28 U.S.C. (1958) §1332 (c), by which Congress recently narrowed diversity jurisdiction by broadening the definition of the residence of a corporation.

24 If all the states do not adopt the compact, Congress could limit federal interpleader to those states not parties to the compact.

25 In New York v. O'Neill, note 16 supra, at 6, Justice Frankfurter stated: "The constitution did not purport to exhaust imagination and resourcefulness in devising fruitful interstate relationships. It is not to be construed to limit the variety of arrangements which are possible through the voluntary and cooperative actions of individual states with a view to increasing harmony within the federalism created by the constitution."