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EXECUTORS AND ADMINISTRATORS - DOUBLE DOMICILE - INHERITANCE TAXATION OF INTANGIBLES

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EXECUTORS AND ADMINISTRATORS — DOUBLE DOMICILE — INHERITANCE TAXATION OF INTANGIBLES — Plaintiff was appointed executor by a Georgia court which found that decedent had been domiciled in Georgia. Defendant was appointed administrator by a New York court which found that decedent was domiciled in New York. Plaintiff and defendant were interpleaded in the Delaware court by a Delaware corporation to determine who was entitled to shares of stock owned by decedent in the Delaware corporation. Plaintiff claimed that the Delaware court was required to give full faith and credit to the Georgia finding that decedent was domiciled in Georgia. The Supreme Court of Delaware found that decedent was domiciled in New York and ordered delivery of the stock certificates to the New York administration.[1] On certiorari, *held*, the Delaware judgment was not a denial of full faith and credit since Delaware was free to decide the question of domicile anew as to the New York administrator, who was not a party to the Georgia judgment. *Riley v. New York Trust Co.*, 315 U. S. 343, 62 S. Ct. 608 (1942).

It is an accepted rule that proceedings in one state do not bind the whole world as to the question of domicile.[2] Such proceedings are conclusive only as

[1] New York Trust Co. v. Riley, (Del. 1940) 16 A. (2d) 772.

[2] Thormann v. Frame, 176 U. S. 350, 20 S. Ct. 446 (1900). An in rem proceeding is not necessarily based on domicile and therefore is not binding on that question. Baker v. Baker, Eccles & Co., 242 U. S. 394, 37 S. Ct. 152 (1917). Under the Fourteenth Amendment, a state cannot determine the question of domicile as against a person who was not a party to the proceeding. If determination of domicile is a fact necessary to the jurisdiction of the court, the judgment is not binding as to the jurisdiction of the court on one who has not litigated the question before the court. Hall v. Wilder Mfg. Co., 316 Mo. 812, 293 S. W. 760 (1927). In general as to the binding effect of a determination of domicile, see 121 A. L. R. 1200 (1939).

to the property within the jurisdiction of the court and as to parties to the proceedings or their privies.[3] In the principal case, the decision that an administrator appointed in a second state is not a party to the original proceedings was based largely on the grounds that every state has an interest in the administration of estates of decedents domiciled within the state and that the state cannot be barred from collecting death taxes on estates of decedents domiciled within the state by a determination of a court in another state that the decedent was domiciled there.[4] Although it was formerly held that intangibles could be taxed by the state of domicile of the decedent owner only,[5] the recent rulings hold that there is no right to be free from conflicting decisions of state courts as to domicile or from multiple taxation based on such decisions.[6] The principal case reiterates the Court's attitude on the question of double domicile.[7] Since the state of Georgia is not a party to the proceedings in the principal case,[8] it is not bound by the judgment and is still free to levy a death tax based on the finding of the Georgia court that the decedent was domiciled within the state. However, the Georgia executor is bound by the Delaware judgment and cannot contest the claim of the New York administrator to the intangible assets of the estate.[9] Therefore, unless there is other property in Georgia, the practical result may be to make the collection of any tax by the state of Georgia very difficult.[10] In view of the fact that the decedent may in fact have had his place of abode in more than one state during the course of a year and that each of those states may have extended protection or other benefits to the decedent with respect to the intangibles, each state extending such benefit should have the power to tax.[11] On the other hand, taxation by several states on the full amount of the property

[3] Thormann v. Frame, 176 U. S. 350, 20 S. Ct. 446 (1900); Overby v. Gordon, 177 U. S. 214, 20 S. Ct. 603 (1900).

[4] See especially Chief Justice Stone's concurring opinion, 315 U. S. 343 at 355.

[5] Farmers Loan & Trust Co. v. Minnesota, 280 U. S. 204, 50 S. Ct. 98 (1930); First National Bank of Boston v. Maine, 284 U. S. 312, 52 S. Ct. 174 (1932); Nevin v. Martin, (D. C. N. J. 1938) 22 F. Supp. 836, aff'd. 307 U. S. 615, 59 S. Ct. 1046 (1939). For a possible exception to the rule see Curry v. McCanless, 307 U. S. 357, 59 S. Ct. 900 (1939); Graves v. Elliott, 307 U. S. 383, 59 S. Ct. 913 (1939).

[6] Worcester County Trust Co. v. Riley, 302 U. S. 292, 58 S. Ct. 185 (1937); Texas v. Florida, 306 U. S. 398, 59 S. Ct. 563, 830 (1939); Nevin v. Martin, (D. C. N. J. 1938) 22 F. Supp. 836.

[7] The Court says, ". . . conflicting decisions on domicile . . . [are] an inevitable consequence of existing federal system, which endows its citizens with freedom to choose the state or states within which they desire to carry on business, enjoy their leisure, or establish their residences." 315 U. S. at 350.

[8] Executors and administrators represent the deceased, and although the Court speaks of them as representing the interests of the state, it is the general interest of a state in the administration of decedents' estates of which it is speaking and not representation for the purpose of binding the state by the judgment.

[9] The domiciliary representative as indicated by the present action has title to the intangibles. See 21 AM. JUR. 854 (1939).

[10] See Colorado v. Harbeck, 232 N. Y. 71, 133 N. E. 357 (1921).

[11] Merrill, "Jurisdiction to Tax—Another Word," 44 YALE L. J. 582 (1935); Farage, "Multiple Domicils and Multiple Inheritance Taxes—A Possible Solution," 9 GEO. WASH. L. REV. 375 (1941).

appears to be equally unjust.[12] However, it seems unlikely that the Court will change either its view that the state of domicile has jurisdiction for the purpose of levying death taxes on intangibles or its position, as indicated by the principal case, that there is no constitutional provision violated when several courts find that the decedent was domiciled within their respective jurisdictions.

Robert Walsh

[12] Merrill, "Jurisdiction to Tax—Another Word," 44 YALE L. J. 582 (1935). The writer suggests that the benefit-burden theory restricting the right to tax to the jurisdiction which is in a position to extend protection or benefit to the thing taxed could be applied to inheritance taxation of intangibles, and if each state is limited to taxing only that proportion of the property to which it has extended benefits, the result seems to be fair both to the states and to the estate. Farage, "Multiple Domicils and Multiple Inheritance Taxes—A Possible Solution," 9 GEO. WASH. L. REV. 375 (1941), suggests proportioning the amount of the tax in accordance with the proportion of decedent's tangible property which was within the taxing state, or an equal division among the claiming states, or a combination of the two. See also Union Refrigerator Transit Co. v. Kentucky, 199 U. S. 194, 26 S. Ct. 36 (1905), where the Court says that a tax on tangible property by a state not in a position to extend benefits is a violation of due process, and Curry v. McCanless, 307 U. S. 357, 59 S. Ct. 900 (1939), in which the Court held that each state extending protection to the relationship or interest coming from intangibles may tax them.