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Final Determination of Domicil in the United States

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court's reaffirmance of its previous position, allows the burden of finding the ultimate owner and the risk of his insolvency to remain on the stockholder of record. For a discussion of the problems involved see I. H. Cohen, *Impleader: Enforcement of Defendants' Rights Against Third Parties* (1933) 33 COLUMBIA LAW REV. 1147, 1176 *et seq.*

TAXATION—ADJUDICATION OF DOMICILE—DOUBLE INHERITANCE TAXATION.—For some years the decedent maintained residences in both Pennsylvania and New Jersey. On his death both states levied inheritance taxes on the value of his intangible personalty, each proceeding on the premise that it was the state of domicile. On appeal from the New Jersey levy, the executors offered as conclusive of the decedent's domicile in Pennsylvania, a final Pennsylvania judgment[1] upholding the tax by that state. The United States Supreme Court had refused to review that judgment because of improper presentation of the federal question in the court below.[2] *Held*, affirmed. Domicile is a jurisdictional fact and the full faith and credit clause neither forbids inquiry into the jurisdiction of the foreign court nor requires recognition of judgments given in the absence of jurisdiction. The Pennsylvania adjudication of domicile is erroneous. *In re Dorrance's Estate*, 170 Atl. 601 (N. J. Prerogative Ct. 1934).

The restriction of the power to levy inheritance taxes on intangibles to the state of domicile[3] was imposed to avoid double taxation. Achievement of this end seems to require final determination of the question of domicile by the Supreme Court of the United States. Injury to a private citizen does not raise a controversy between states[4] which would bring a suit by one state to enjoin a tax levy by the other within the original jurisdiction of the Court. Such a suit, essayed by New Jersey in the instant controversy, was dismissed.[5] Traditionally, the question of domicile is decided according to the law of the forum,[6] and considering it a question of state law, difficulties in obtaining a review are encountered.[7] But federal principles are applicable to discover whether a levy falls within the constitutional ban on extra-jurisdictional taxation. Thus, the Court reconsiders a state tribunal's characterization of personalty as tangible or intangible, where the constitutionality of taxation is dependent on the determination.[8] Similarly, state court findings that intangibles have acquired a business *situs* rendering them taxable[9] or that corporations are so engaged in business within the state as to be subject to a privilege tax,[10] are not final. By analogy, inconsistent findings of domicile might raise a reviewable issue.[11] But ascertainment of intent, upon which domicile

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[1] *In re* Dorrance's Estate, 309 Pa. 151, 163 Atl. 303 (1932), discussed in (1932) 81 U. OF PA. L. REV. 177.

[2] 287 U. S. 660 (1932); 288 U. S. 617 (1933).

[3] First National Bank of Boston v. Maine, 284 U. S. 312 (1931); Farmer's Loan & Trust Co. v. Minnesota, 280 U. S. 204 (1930).

[4] Louisiana v. Texas, 176 U. S. 1 (1899).

[5] New Jersey v. Pennsylvania, 287 U. S. 580 (1932).

[6] RESTATEMENT, CONFLICT OF LAWS (1930) § 11. But see F. W. Harper, *Final Determination of Domicile in the United States* (1934) 9 Ind. L. J. 586, 588.

[7] Enterprise Irrigation Dist. v. Farmers' Mutual Canal Co., 243 U. S. 157 (1917). But *cf.* Ancient Egyptian Order v. Michaux, 279 U. S. 737 (1928).

[8] Blodgett v. Silberman, 277 U. S. 1 (1927).

[9] Beidler v. South Carolina Tax Commission, 282 U. S. 1 (1930).

[10] Provident Savings Ass'n v. Kentucky, 234 U. S. 103 (1915).

[11] See Dahnke-Walker Milling Co. v. Bondurant, 257 U. S. 282, 299 (1921).

turns,[12] is a delicate process.[13] It consists of the weighing of manifestations of intent in actions[14] and recitals[15] and, frequently left to the jury, is peculiarly subject to contradictory inferences from identical facts. To a review of this evidential matter, the overburdened Supreme Court might well prefer a federal district court injunction at an earlier stage[16] as a remedy against double taxation. Review, in any event, apparently awaits a proper raising of due process in the state court.[17] In the instant case, constitutional discussion included only full faith and credit. Where the evidence furnishes some support for the finding, the Supreme Court will not review the facts to determine justification for a court's disregard of a sister state's judgment because of lack of jurisdiction.[18] But the state court is not the final arbiter of the principles to be applied in determining whether the assumption of jurisdiction was erroneous.[19] This rule minimizes the danger inherent in control of the question of domicile by the *lex fori*[20] and the possibility of a statutory declaration that partial residence is conclusive proof of domicile.[21]

TAXATION—TRUST SETTLED IN CONTEMPLATION OF DEATH—INCREASE IN VALUE BEFORE DEATH OF SETTLOR AS INCOME OF GRANTEE.—Upon the decedent's death, a trust settled by him a year previously, was declared to be a gift in contemplation of death and its value was included in computing the estate tax. In 1928 the trustee sold the *corpus* and, as a transferee in trust taking otherwise than "by bequest or devise"[1] paid under protest an income tax measured by the difference between the cost to the settlor and the selling price. The trustee, insisting that the value at the grantor's death was the proper lower basis, sued to recover the excess paid. On motion to dismiss the complaint, *held,* granted. The imposition of the estate tax did not convert the conveyance *inter vivos* into a testamentary transfer so as to preclude the increase in value before the settlor's death from being "income" of the grantee within the meaning of the Sixteenth Amendment. Nor does the use of that increase in measuring taxes both on the estate of the grantor and on the grantee constitute a denial of due process. *Speer v. Duggan,* 5 F. Supp. 722 (S. D. N. Y. 1933).

Any doubt that a transfer of property by way of trust may come within the provision of an estate tax on gifts in contemplation of death seems now fully removed.[2] But what is income within the Sixteenth Amendment presents a trouble-

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[12] RESTATEMENT, CONFLICT OF LAWS (1930) § 20; GOODRICH, CONFLICT OF LAWS (1927) § 24.

[13] See Grim v. Lehigh Valley Coal Co., 171 App. Div. 493, 496, 157 N. Y. Supp. 585, 587 (2d Dept. 1916).

[14] Dickinson v. Brookline, 181 Mass. 195, 63 N. E. 331 (1902).

[15] *In re* Lyon's Estate, 116 Misc. 540, 191 N. Y. Supp. 260 (Surr. Ct. 1921).

[16] *Cf.* City Bank Farmers' Trust Co. v. Schnader, 291 U. S. 24 (1934).

[17] *Cf.* Dorrance v. Pennsylvania, 287 U. S. 660 (1932).

[18] Thomson v. Whitman, 85 U. S. 457 (1873); Burbank v. Ernst, 232 U. S. 162 (1914).

[19] Atherton v. Atherton, 181 U. S. 155 (1901); E. M. Dodd, Jr., *The Power of the Supreme Court to Review State Decisions in Conflict of Laws* (1926), 39 HARV. L. REV. 533.

[20] RESTATEMENT, CONFLICT OF LAWS (1930) § 11.

[21] *E.g.* COLO. ANN. STAT. (Mills, 1930) § 6205.

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[1] Revenue Act of 1928, 45 STAT. 819(3), 26 U. S. C. A. § 2113(a)(3) (1928); U. S. Treas. Reg. 74, art. 594 (1929).

[2] Helvering v. New York Trust Co., 54 Sup. Ct. 806 (1934).