for the purpose of preventing a removal to the federal court.[6] His petition must allege that the joinder was fraudulent,[7] and the allegations must be proven.[8] A fraudulent joinder exists where the petitioning defendant has alleged and proven that plaintiff's allegations are unfounded and incapable of proof and were not made with the intent to prove them,[9] or by showing that plaintiff has no desire to prosecute the suit against the resident defendant to a judgment.[10] However, proof of the insolvency of the resident defendant will not make the joinder fraudulent.[11]

If there is no question that under the state law the plaintiff has a joint cause of action, then his motive in joining the defendants is immaterial.[12] Even if the joinder was improper under the state law, a removal will not be granted if the joinder was made in good faith.[13] Good faith means that the plaintiff thought that under the facts of his case he had a joint cause of action.[14]

The principal case follows the general rule and is illustrative of some of the foregoing principles.

S. K.

REWARDS—SHERIFF'S RIGHT TO COLLECT—CONSIDERATION—[Kentucky].—It is undoubted law that an act of a public officer which is required by legal duty cannot be sufficient consideration for a contractual promise to pay a reward for the performance of the act.[1] But this principle is being restricted by technical definitions of duty. The result is that an officer is permitted to enforce a contract of reward, if he can show that he has done an act outside the strict line of his duty. A recent Kentucky case, *Kentucky Bankers' Association et al. v. Cassady et al.*,[2] shows that this trend is recognized in that state. The Pewee Valley State Bank was robbed, and the Kentucky Bankers' Association, of which the Pewee Valley State Bank was a

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6. Dobie, *Federal Jurisdiction and Procedure* (1928) 408; Breymann et al. v. Pa. etc. Ry. Co., 38 F. (2d) 209 (C. C. A. 6, 1930).
7. Thomas v. Great Northern Ry. Co., 147 Fed. 83 (C. C. A. 9, 1906).
8. Plymouth Gold Mining Co. v. Amador & Sacramento Canal Co., 118 U. S. 264 (1885).
9. Warax v. Cincinnati etc. Ry. Co., 72 Fed. 637 (C. C., D. Ky., 1896).
10. Dishon v. Cincinnati, etc., Ry. Co., 133 Fed. 471 (C. C. A. 6, 1904) (resident defendant not served with summons).
11. Deere, Wells & Co. v. Chicago Ry. Co., 85 Fed. 876 (C. C., S. D. Iowa, 1898).
12. Ibid; see Chicago Ry. Co. v. Schwyhart, 227 U. S. 184, 194, 33 S. Ct. 250, 57 L. ed. 473 (1912).
13. See Alabama Southern Ry. Co. v. Thompson, 200 U. S. 206, 218, 26 S. Ct. 161, 50 L. ed. 441 (1905).
14. Comment, 100 Cent. L. J. 99 (1927).

1. Restatement, *Contracts* (1932) sec. 76a; Kick v. Merry, 23 Mo. 72, 66 Am. Dec. 658 (1856); Somerset Bank v. Edmund, 76 Ohio St. 396, 81 N. E. 641, 11 L. R. A. (N. S.) 1170 (1907); Mechem, *Public Offices and Officers* (1890) sec. 885.
2. Kentucky Bankers Association v. Cassady, 94 S. W. (2) 622 (Ky., 1936).

member, offered a reward for the arrest and conviction of the robbers. The plaintiff, a private citizen at the time of the robbery, had been sheriff of Oldham County before the robbery, and was elected to the same office three years after the robbery. He learned that a bank had been robbed in Indiana, and the guilty persons sent to prison. While sheriff for the second time, the plaintiff obtained pictures of these men, and one of them, named Wines, through the pictures was identified by the officers of the Pewee Valley Bank as the robber of their bank. When Wines was about to be paroled from prison in Indiana, the plaintiff, having been notified by the warden of the prison of the date of the release, obtained a Kentucky requisition, went over to Indiana, and arrested Wines. Wines was convicted of the Kentucky felony and was sentenced to the reformatory. The sheriff sued for the reward offered by the defendant, who pleaded that there was want of consideration. The court held that the plaintiff was entitled to the reward offered, on the ground that a public officer with the authority of law to make an arrest may accept an offer of a reward for acts or services performed outside of his bailiwick or not within the scope of his official duties.[3] The court found that the plaintiff had done more than his duty, when he made investigations before his election, when he obtained the requisition, when he made the trip to the state of Indiana, and when he executed the requisition at the gate of the prison. There was no statute, the court declared, imposing a duty on a sheriff to obtain a requisition and to execute it outside the state.

In other courts it has been held that a sheriff may obtain a reward for searching outside his jurisdiction for a fugitive and going in search of the fugitive;[4] for arresting prisoners, who had escaped from an adjoining county, in the sheriff's own county but without process;[5] for arresting a suspected felon without warrant in a county other than the county of the arresting sheriff;[6] for investigating and having criminals arrested, where the sheriff is a "non pay" or "special" sheriff;[7] for following criminals and causing their arrest in the state to which they had fled;[8] for investigating and collecting evidence of a crime committed outside of the sheriff's county.[9]

A Missouri Appellate court has decided in *Davis v. Millsap*[10] that where a sheriff in reliance upon an offer of a reward searches for a criminal who has escaped from his county, and captures him in another county or fol-

3. Mechem, *Public Offices and Officers* (1890) sec. 885; Marsh v. Wells-Fargo & Co. Express, 88 Kan. 538, 129 Pac. 168, 43 L. R. A. (N. S.) 133 (1913); Davis v. Millsap, 159 Mo. App. 167, 140 S. W. 751 (1911).

4. Brown v. Godfrey, 33 Vt. 120 (1860).

5. Davis v. Munson, 43 Vt. 676, 5 Am. Rep. 315 (1870).

6. Marsh v. Wells-Fargo & Co. Express, 88 Kan. 538, 129 Pac. 168, 43 L. R. A. (N. S.) 133 (1913).

7. Elkins v. Board of County Commissioners of Wyandotte County, 91 Kan. 518, 51 L. R. A. (N. S.) 638, 138 Pac. 578 (1914); Smith v. Fenner, 102 Kan. 830, 172 Pac. 514, L. R. A. 1918 E. (1918); Hartley v. Inhabitants of Granville, 216 Mass. 38, 102 N. E. 942, 48 L. R. A. (N. S.) 622 (1913).

8. Chambers v. Ogle, 117 Ark. 242, 174 S. W. 532, (1915).

9. Harris v. More, 70 Cal. 502, 11 Pac. 780 (1886).

10. Davis v. Millsap, 159 Mo. App. 167, 140 S. W. 751, (1911).

lows a fugitive from justice and apprehends him in another state, he is entitled to the reward. This Missouri case was cited in the Kentucky case, *Kentucky Bankers' Association v. Cassady.* It is established in Missouri that rewards offered may be recovered by sheriffs for doing what is just outside the strict limits of their official duties.[11]

By strictly contruing the duties of sheriffs, the courts enable them to recover rewards and extra fees for doing little more than their duties. Thus the acts of a sheriff outside the strict limits of his official duties are sufficient consideration to enforce a contract of reward or a contract for extra compensation.

A. T. S.

TAXATION—FEDERAL EXCISE TAXES—INJUNCTIVE RELIEF—[FEDERAL]*.—Plaintiff, a soap company, seeks to enjoin a Collector of Internal Revenue from collecting the tax imposed on the first domestic processing of coconut oil and palm oil by Section 602½ (a) of the Revenue Act of 1934,[1] on the alleged ground that the section is unconstitutional. *Held:* The allegation and showing of "ultimate financial ruin resulting from the continued payment of the tax" was not sufficient to prevent the application of Section 3224 of the Revised Statutes of the United States[2] which prohibits the maintenance of suits to restrain the collection of taxes. *Huston, etc., v. Iowa Soap Co.*[3]

Historically courts of equity have been reluctant to grant an injunction against the levy, assessment, or collection of a tax, since such action would interfere with governmental activities.[4] Where, however, a well recognized ground for equitable jurisdiction was present, equity did not hesitate to exercise its natural jurisdiction even in tax litigation.

In 1867 Congress passed an act which, in language at least, prohibited suits for the purpose of restraining the assessment or collection of any tax.[6] There followed a period in which decisions of the Supreme Court, interpreting that section, announced the retention of the court's equitable jurisdic-

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11. Smith v. Vernon County, 188 Mo. 501, 87 S. W. 949, 70 L. R. A. 59, 107 Am. St. Rep. 324 (1905); Cornwell v. St. Louis Transit Co., 100 Mo. App. 258, 73 S. W. 305 (1903).

* For a general survey of the question, see: Note, 21 ST. LOUIS LAW REVIEW 140 (1936); Note, 18 ST. LOUIS LAW REVIEW 311 (1933); Miller, Restraining the Collection of Federal Taxes (1923) 71 U. of Pa. L. Rev. 318.

1. 48 Stat. 602½ (a), 26 U. S. C. A. sec. 999 (a).
2. 14 Stat. 475, 26 U. S. C. A. sec. 1543 (1867).
3. 4 U. S. Law Week 85 (C. C. A. 8, 1936).
4. 4 Cooley, *Taxation* (4th ed. 1924) sec. 1640 et seq.; 4 Pomeroy, *Equity Jurisprudence* (3d ed.) sec. 1779; 1 High, *Injunctions* (4th ed. 1905) sec. 485.
5. Dows v. Chicago, 11 Wall. (U. S.) 108, 110, 20 L. ed. 65 (1870); State R. R. Tax Case 92 U. S. 575, 614, 23 L. ed. 663 (1875).
6. Supra, note 2.