

sufficiently authenticated by the photographer or an eyewitness of the events recorded.<sup>12</sup> But motion pictures supply additional opportunities for the exercise of judicial discretion. A court may exclude motion pictures on the grounds that their projection would be inconvenient,<sup>13</sup> or that they would provide merely a spectacular repetition of matters already in evidence.<sup>14</sup> The court may also require expert testimony to the effect that the films will be projected at the exact speed at which they were taken.<sup>15</sup>

The cases suggest a question of procedure: Should a lower court view motion pictures before passing on their admissibility? The instant case implies, logically, that when the party offering the evidence discloses facts which make the films inadmissible, the court can exercise its discretion without looking at the pictures. However, it would seem desirable that a court inspect proffered films before admitting or rejecting them when counsel fails to reveal disqualifying information. Irrevocable harm might be done if the court, in reliance on information furnished by the attorney offering the films, should permit the jury to see inadmissible pictures. An instruction to disregard could hardly eradicate from the minds of the jurors the vivid impression created by moving, pictorial representations.

T. B.

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FEDERAL JURISDICTION — INTERPLEADER — DIVERSITY OF CITIZENSHIP — [United States].—To determine conflicting rights to stock and dividends, a Washington corporation interpleaded citizens of Washington and of Idaho in a federal district court in Washington. The property involved was deposited with the court. For jurisdiction the Federal Interpleader Act<sup>1</sup> requires “\* \* \* two or more adverse claimants, citizens of different states \* \* \*.” The question of jurisdiction was first raised by the Supreme Court on its own initiative. *Held*, that the real controversy was between the ad-

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*Ins. Co. v. Stossel* (1938) 131 Fla. 127, 179 So. 163; *State for Use of Chima v. United Rys. & Elec. Co.* (1932) 162 Md. 404, 159 Atl. 916, 83 A. L. R. 1307; *Rogers v. Detroit* (1939) 289 Mich. 86, 286 N. W. 167; *Commonwealth v. Roller* (1930) 100 Pa. Super. 125.

11. *Morris v. E. I. DuPont de Nemours & Co.* (Mo. 1940) Unreported; *Pandolfo v. United States* (C. C. A. 7, 1922) 286 Fed. 8.

12. *Heiman v. Market St. Ry.* (1937) 21 Cal. App. (2d) 311, 69 P. (2d) 178; *De Camp v. United States* (App. D. C. 1926) 10 F. (2d) 984; *Gulf Life Ins. Co. v. Stossel* (1938) 131 Fla. 127, 179 So. 163; *Rogers v. Detroit* (1939) 289 Mich. 86, 286 N. W. 167; *Commonwealth v. Roller* (1930) 100 Pa. Super. 125.

13. *State for Use of Chima v. United Rys. & Elec. Co.* (1932) 162 Md. 404, 159 Atl. 916, 83 A. L. R. 1307; *Boyarsky v. Zimmerman Corp.* (1934) 240 App. Div. 361, 270 N. Y. S. 134.

14. *Boyarsky v. Zimmerman Corp.* (1934) 240 App. Div. 361, 270 N. Y. S. 134. See *De Camp v. United States* (App. D. C. 1926) 10 F. (2d) 984.

15. See *State for Use of Chima v. United Rys. & Elec. Co.* (1932) 162 Md. 404, 159 Atl. 916, 83 A. L. R. 1307; *Commonwealth v. Roller* (1930) 100 Pa. Super. 125.

1. Act of January 20, 1936, 49 Stat. 1096, (1939 Supp.) 28 U. S. C. A. sec. 41(26).

verse claimants, who were of diverse citizenship and therefore the district court had jurisdiction.<sup>2</sup>

The rule was early established in *Strawbridge v. Curtiss*<sup>3</sup> that for diversity jurisdiction to exist under the general statute<sup>4</sup> the citizenship of all parties on one side must be adverse to all on the other side. Some exceptions, however, exist.<sup>5</sup> The rule of that case was based upon the particular statute and did not mean that Congress might not constitutionally extend jurisdiction in other situations. The instant case, *Treinies v. Sunshine Mining Co.*, is the first in which the Supreme Court has construed the diversity clause of the Interpleader Act. By this decision the term "claimants" is in effect interpreted as "respondents," and jurisdiction exists when they are themselves citizens of different states although the interpleader is a resident of the same state as one of the claimants. Using symbolic form for comparison with other type situations, and with letters representing different states in which the parties may reside, the *Treinies* case may be symbolized: A<sub>1</sub> vs A<sub>2</sub> and B. When the same situation has been presented in lower federal courts, the result has been the same.<sup>6</sup> This result seems desirable since an interpleader can seldom secure relief in state courts because of inability to secure service of process upon absent non-residents;<sup>7</sup> nor, without the interpretation adopted by the *Treinies* case, would the problem of process limitations be remedied by the Act.

The instant case, however, leaves unanswered other interpleader problems. If a situation be represented as A vs. B<sub>1</sub> and B<sub>2</sub>, does the *Treinies* case mean that federal courts are without jurisdiction? There are lower court cases taking jurisdiction based on the diversity of citizenship existing between interpleader and claimants.<sup>8</sup> These cases could not have been rested

2. *Treinies v. Sunshine Mining Co.* (1939) 60 S. Ct. 44.

3. (U. S. 1806) 3 Cranch 267.

4. Judicial Code, sec. 24, (1927) 28 U. S. C. A. sec. 41(1).

5. *E. g.*, suits by representative parties and ancillary proceedings. See Dobie, *Federal Procedure* (1928) secs. 64, 84.

6. *Cramer v. Phoenix Mut. Life Ins. Co.* (C. C. A. 8, 1937) 91 F. (2d) 141 (construing 1926 Interpleader Act, 44 Stat. 416, 28 U. S. C. A. sec. 41 (26), in which language as to citizenship is the same as the 1936 Act); *New York Life Ins. Co. v. Cross* (D. C. S. D. N. Y. 1934) 7 F. Supp. 130 (1926 Act); *Mutual Life Insurance Co. v. Lott* (D. C. S. D. Cal. 1921) 275 Fed. 365 (1917 Interpleader Act—modified by the 1926 Act); *Ackerman v. Tobin* (C. C. A. 8, 1927) 22 F. (2d) 541 (1926 Act); *Allen v. Hudson* (C. C. A. 8, 1929) 35 F. (2d) 330 (1926 Act); non-statutory case, *Von Herberg v. Seattle* (C. C. A. 9, 1928) 27 F. (2d) 457. Cf. *Eagle Star & British Dominions v. Tadlock* (D. C. S. D. Cal. 1936) 14 F. Supp. 933, reversed by *Security Trust & Savings Bank v. Walsh* (C. C. A. 9, 1937) 91 F. (2d) 481.

7. *New York Life Ins. Co. v. Dunlevy* (1916) 241 U. S. 518, holding interpleader to be a proceeding in personam.

8. *Mallors v. Equitable Life Assur. Soc.* (C. C. A. 7, 1936) 87 F. (2d) 233; *Penn Mut. Life Ins. Co. v. Meguire* (D. C. W. D. Ky. 1936) 13 F. Supp. 967; *Turman Oil Co. v. Lathrop* (D. C. N. D. Okla. 1934) 8 F. Supp. 870; *Security Trust & Savings Bank v. Walsh* (C. C. A. 9, 1937) 91 F. (2d) 481. See also *Dee v. Kansas City Life Ins. Co.* (C. C. A. 7, 1936) 86 F. (2d) 813; *National Fire Ins. Co. v. Sanders* (C. C. A. 5, 1930) 38 F. (2d) 212; *Calloway v. Miles* (C. C. A. 6, 1929) 30 F. (2d) 14; *Mutual Life Ins. Co. v. Bondurant* (C. C. A. 6, 1928) 27 F. (2d) 464; *Klauer v. Maryland Casualty Co.* (C. C. A. 8, 1934) 69 F. (2d) 934.

on the Act which provides for diversity of citizenship between adverse claimants. But lower courts have said that the common law right of interpleader still exists and was only supplemented by the Act.<sup>9</sup> If this be true, it would seem that the jurisdictional amount would be in excess of \$3000, as provided under the general statute,<sup>10</sup> rather than \$500 under the Interpleader Act. The courts have not as yet determined this point. Under this interpretation federal courts would have jurisdiction both in situation  $A_1$  vs.  $A_2$  and  $B$ , as a matter of interpretation of the Act, and in situation  $A$  vs.  $B_1$  and  $B_2$ , as a matter of common law jurisdiction. If the aim be to give the interpleader a remedy in the federal courts when relief is impossible in the state courts,<sup>11</sup> this result also seems sound. The Court in the *Treinies* case recognized the problem in this situation, but declined to determine whether decisions of lower federal courts were inconsistent with its decision.<sup>12</sup> Another decision of the Supreme Court will be necessary to solve this problem.

Another possibility may be symbolized as  $A$  vs.  $B_1$ ,  $B_2$ , and  $C$ , involving diversity between  $B_1$  and  $B_2$  on the one hand and  $C$  on the other, but not as between  $B_1$  and  $B_2$  themselves. If the Act means that *all* claimants must be of diverse citizenship, then in this situation an interpleader is without relief in a state court because of limitations of process, and also outside federal jurisdiction. But if the Act properly means that only *two* claimants must be of diverse citizenship, then relief may still be secured in the federal courts. This view has been taken in a number of lower court decisions.<sup>13</sup>

In review of the apparent need for liberal construction of interpleader statutes, it is hoped that in time the law may be definitely settled that federal jurisdiction will extend to all three types of situations herein set out.<sup>14</sup>

W. A. D.

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9. See, for example, *Mallors v. Equitable Life Assur. Soc.* (C. C. A. 7, 1936) 87 F. (2d) 233, 235.

10. Judicial Code, sec. 24, (1927) 28 U. S. C. A. sec. 41 (1).

11. See Chafee, *The Federal Interpleader Act of 1936* (1936) 45 Yale L. J. 963, 975.

12. The Court in a judge's note in the *Treinies* case said: "We do not determine whether the ruling here is inconsistent with the conclusion in those cases where jurisdiction was rested on diversity of citizenship between the applicant and cocitizens who are claimants." 60 S. Ct. 44, 48.

13. *Lowther v. New York Life Ins. Co.* (C. C. A. 3, 1922) 278 Fed. 405; *Ackerman v. Tobin* (C. C. A. 8, 1927) 22 F. (2d) 541; *Cramer v. Phoenix Mut. Life Ins. Co.* (C. C. A. 8, 1937) 91 F. (2d) 141; *Railway Express Agency v. Jones* (C. C. A. 7, 1939) 106 F. (2d) 341; *Ross v. International Life Ins. Co.* (C. C. A. 6, 1928) 24 F. (2d) 345; *Fidelity & Deposit Co. v. Reid* (D. C. E. D. Pa. 1926) 16 F. (2d) 502; *Globe & Rutgers Fire Ins. Co. v. Brown* (D. C. W. D. La. 1931) 52 F. (2d) 164. The point was left open in *Mutual Life Ins. Co. v. Lott* (D. C. S. D. Cal. 1921) 275 Fed. 365; non-statutory, *Turman Oil Co. v. Lathrop* (D. C. N. D. Okla. 1934) 8 F. Supp. 870.

14. For discussion of the problems presented herein, see Chafee, *Interpleader in the United States Court* (1932) 41 Yale L. J. 1134, 1141-1143, 1165-1169; Chafee, *The Federal Interpleader Act of 1936* (1936) 45 Yale L. J. 963, 973-976.