339 U.S. 306

MULLANE v. CENTRAL HANOVER BANK & TRUST CO. et al.

No. 378.

Argued and Submitted Feb. 8, 1950.

Decided April 24, 1950.

Proceeding by the Central Hanover Bank and Trust Company, as trustee, etc., for judicial settlement of its accounts as trustee of a common trust fund established under the New York Banking Law, wherein Kenneth J. Mullane was appointed special guardian and attorney for certain persons known or unknown not otherwise appearing. The Court of Appeals of the State of New York, 299 N.Y. 697, 87 N.E.2d 73, answered certified questions and affirmed an order of the Supreme Court, Appellate Division, 275 App.Div. 769, 88 N.Y.S.2d 907, which affirmed a decree of the Surrogate's Court accepting the accounts. The special guardian appealed. The Supreme Court, in an opinion by Mr. Justice Jackson, held that statutory notice by newspaper publication setting forth merely the name and address of the trust company, name and date of establishment of the common trust fund, and a list of all participating estates, trusts or funds was sufficient as to beneficiaries whose interests or whereabouts could not with due diligence be ascertained and as to those whose interests were conjectural or future or did not in the due course of business come to the knowledge of the trustee, but that the notice was insufficient with respect to known present beneficiaries of a known place of residence and did not satisfy the requirements of due process of law.

Judgment reversed.

Mr. Justice Burton dissented.

1. Courts ⇐394(1)

Common trust fund legislation is addressed to a problem appropriate for state action.

2. Banks and banking ⇐315(1)

In New York, a final decree accepting the accounts of the trustee of a common trust fund established under the New York Banking Law wholly terminates and seals every right which beneficiaries would otherwise have against the trust company either as trustee of the common fund or as trustee of any individual trust for improper management of the common trust fund during the period covered by the accounting. Banking Law N.Y., §§ 1 et seq., 100-c.

3. Courts ⇐394(1)

The interest of each state in providing means to close trusts that exist by the grace of its laws and are administered under the supervision of its courts is so insistent and rooted in custom as to establish beyond doubt the right of its courts to determine the interest of all claimants, resident or non-resident, provided its procedure accords full opportunity to hear and be heard. U.S.C.A.Const.Amend. 14.

4. Constitutional law ⇐309(1)

Under provision of the Fourteenth Amendment that no state shall deprive any person of life, liberty or property without "due process of law", quoted words require that deprivation of life, liberty or property by adjudication be preceded by notice and opportunity for hearing appropriate to the nature of the case. U.S.C.A.Const.Amend. 14.

See Words and Phrases, Permanent Edition, for other judicial constructions and definitions of "Due Process of Law".

5. Constitutional law ⇐309(1)

A proceeding on judicial settlement of accounts by the trustee of a common trust fund established under the New York Banking Law may cut off rights of beneficiaries to have the trustee answer for negligent or illegal impairment of their interests, and may subject their interests to diminution by allowance of fees and expenses to one who in their name but without their knowledge may conduct a fruitless or uncompensatory contest, and hence notice and hearing must measure up to the standards of due process of law. Banking Law N.Y., §§ 1 et seq., 100-c; U.S.C.A.Const.Amend. 14.

6. Constitutional law ⇐309(1)

Personal service of written notice within the jurisdiction is adequate notice in any type of proceeding under the requirement of due process of law. U.S.C.A.Const. Amend. 14.

tice and opportunity for hearing appropriate to the nature of the case.

[5] In two ways this proceeding does or may deprive beneficiaries of property. It may cut off their rights to have the trustee answer for negligent or illegal impairments of their interests. Also, their interests are presumably subject to diminution in the proceeding by allowance of fees and expenses to one who, in their names but without their knowledge, may conduct a fruitless or uncompensatory contest. Certainly the proceeding is one in which they may be deprived of property rights and hence notice and hearing must measure up to the standards of due process.

[6] Personal service of written notice within the jurisdiction is the classic form of notice always adequate in any type of proceeding. But the vital interest of the State in bringing any issues as to its fiduciaries to a final settlement can be served only if interests or claims of individuals who are outside of the State can somehow be determined. A construction of the Due Process Clause which

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would place impossible or impractical obstacles in the way could not be justified.

[7] Against this interest of the State we must balance the individual interest sought to be protected by the Fourteenth Amendment. This is defined by our holding that "The fundamental requisite of due process of law is the opportunity to be heard." Grannis v. Ordean, 234 U.S. 385, 394, 34 S.Ct. 779, 783, 58 L.Ed. 1363. This right to be heard has little reality or worth unless one is informed that the matter is pending and can choose for himself whether to appear or default, acquiesce or contest.

The Court has not committed itself to any formula achieving a balance between these interests in a particular proceeding or determining when constructive notice may be utilized or what test it must meet. Personal service has not in all circumstances been regarded as indispensable to the process due to residents, and it has more often been held unnecessary as to nonresidents. We disturb none of the established rules on these subjects. No decision constitutes a controlling or even a very illuminating precedent for the case before us. But a few general principles stand out in the books.

[8] An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections. Milliken v. Meyer, 311 U.S. 457, 61 S.Ct. 339, 85 L.Ed. 278, 132 A.L.R. 1357; Grannis v. Ordean, 234 U.S. 385, 34 S.Ct. 779, 58 L.Ed. 1363; Priest v. Board of Trustees of Town of Las Vegas, 232 U.S. 604, 34 S.Ct. 443, 58 L.Ed. 751; Roller v. Holly, 176 U.S. 398, 20 S.Ct. 410, 44 L.Ed. 520. The notice must be of such nature as reasonably to convey the required information, Grannis v. Ordean, supra, and it must afford a reasonable time for those interested to make their appearance, Roller v. Holly, supra, and cf. Goodrich v. Ferris, 214 U.S. 71, 29 S.Ct. 580, 53 L.Ed. 914. But if with due regard for the practicalities and peculiarities of the case these conditions

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are reasonably met the constitutional requirements are satisfied. "The criterion is not the possibility of conceivable injury, but the just and reasonable character of the requirements, having reference to the subject with which the statute deals." American Land Co. v. Zeiss, 219 U.S. 47, 67, 31 S.Ct. 200, 207, 55 L.Ed. 82, and see Blinn v. Nelson, 222 U.S. 1, 7, 32 S.Ct. 1, 2, 56 L.Ed. 65, Ann.Cas.1913B, 555.

But when notice is a person's due, process which is a mere gesture is not due process. The means employed must be such as one desirous of actually informing the absentee might reasonably adopt to accomplish it. The reasonableness and hence the constitutional validity of any chosen method may be defended on the ground that it is in itself reasonably certain to inform those affected, compare Hess v. Pawloski, 274 U.S. 352, 47 S.Ct. 632, 71 L.Ed. 1091, with Wuchter v. Pizzutti, 276