

BROTHERHOOD OF LOCOMOTIVE FIREMEN &
ENGINEMEN ET AL. v. PINKSTON.

CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE
SIXTH CIRCUIT.

No. 32. Argued October 16, 17, 1934.—Decided November 5, 1934.

1. In a suit in equity brought by a widow for the purpose of preserving and protecting her right to future participation in a fund from which she is entitled to receive a pension of so much per month during her lifetime as long as she shall remain unmarried, the amount in controversy, determining the federal court's jurisdiction, is the present value of her interest, calculable from the amount of the monthly payment and her life expectancy. P. 99.
 2. The fact that the further payments will cease if the pensioner remarry does not render them contingent or speculative. *Thompson v Thompson*, 226 U. S. 551. P. 100.
 3. The evidence discloses that the pensioner's "expectancy of remarriage" and its effect upon the value of her interest in the fund were subject to actuarial measurement in this case. P. 101.
- 69 F. (2d) 600, affirmed.

CERTIORARI, 292 U. S. 621, to review the reversal of a decree dismissing the bill, for lack of jurisdiction, in a suit by a widow on behalf of herself and of other beneficiaries similarly situated, for an accounting and other equitable relief in respect of a fund established by a labor association for the pensioning of widows of their deceased members.

Mr. Thomas Stevenson for petitioners.

Future payments depend entirely upon the volition of the beneficiary. The probability of remarriage can not even be conjectured. It is impossible to estimate the present value of such contingent payments.

The court below carefully excluded from consideration either the accumulated Pension Fund or the combined claims of all matured certificate holders. Jurisdiction

rested solely upon the respondent's right under the certificate which she holds. *Eberhard v. Northwestern Mutual Life Ins. Co.*, 241 Fed. 353; *Lyon Bonding & Surety Co. v. Karatz*, 262 U. S. 77.

In *Thompson v. Thompson*, 226 U. S. 551, jurisdiction depended entirely upon whether the monthly payments for maintenance of the wife and child provided for under the order of the court were contingent. That case is an exception from a well established rule.

If, as conclusively shown in *Dunbar v. Dunbar*, 190 U. S. 340, it is impossible to value future payments, subject to the contingency of remarriage, for the purposes of a discharge under the Bankruptcy Act, how can this be done for the purpose of acquiring federal jurisdiction, in the face of the strict rule of construction and counter presumption governing that subject?

The doctrine of the *Dunbar* case has frequently been followed: *Shanley v. Herold*, 141 Fed. 423; *Herold v. Shanley*, 146 Fed. 20; *In re Westmoreland*, 4 F. (2d) 602.

In the *Thompson* case no condition was stated in the court order which would of its own force defeat the future payments. The payments were as "fixed" as humanly possible. An independent authority must act to effect any change.

The ruling below is at variance with the decisions of other federal courts and also state courts of last resort, in denying federal jurisdiction in analogous cases, namely, those based upon insurance policies and allegations of total and permanent disability. *LaVecchia v. Connecticut Mutual Life Ins. Co.*, 1 F. Supp. 588; *Wyll v. Pacific Mutual Life Ins. Co.*, 3 F. Supp. 483; *Kithcart v. Metropolitan Life Ins. Co.*, 1 F. Supp. 719; *Reliance Life Ins. Co. v. Capital Nat. Bank*, 38 Ga. App. 349; *Guardian Life Ins. Co. v. Johnson*, 186 Ark. 1019; *Fields v. Equitable Life Ins. Co.*, 199 N. C. 454.

Mr. W. L. Bryan, with whom Mr. James R. Garfield was on the brief, for respondent.

In support of the ruling below, they cited: *Thompson v. Thompson*, 226 U. S. 551; *Western & Atlantic R. Co. v. Railroad Commission*, 261 U. S. 264; *Berryman v. Board of Trustees*, 222 U. S. 334; *Mutual Life Ins. Co. v. Rose*, 294 Fed. 122; *Wright v. Mutual Life Ins. Co.*, 19 F. (2d) 117; *New York Life Ins. Co. v. Swift*, 38 F. (2d) 175; *Smith v. Whitney*, 116 U. S. 167; *Bitterman v. Louisville & N. R. Co.*, 207 U. S. 205; *Hunt v. N. Y. Cotton Exchange*, 205 U. S. 322; and *Wisconsin Electric Co. v. Dunmore Co.*, 35 F. (2d) 555.

Respondent asks that a trust be declared in and of the Widows Pension Fund and that such fund, now admittedly insolvent, be administered under order of the court. The fund so referred to approximates \$300,000.00 in value. This also is a proper basis for determining the question of jurisdiction. *Handley v. Stutz*, 137 U. S. 366; *Jones v. Mutual Fidelity Co.*, 123 Fed. 506; *Putnam v. Timothy Dry Goods Co.*, 79 Fed. 454; *Kelly v. Graphite Co.*, 34 F. (2d) 791; *Conway v. Bank & Trust Co.*, 185 Fed. 950; *Hotel Co. v. Wade*, 97 U. S. 20; *Towle v. American Building Loan Investment Society*, 60 Fed. 131; *King v. Kansas City Police Relief Assn.*, 60 F. (2d) 547; *Local No. 7 v. Bowen*, 278 Fed. 271.

Opinion of the Court by MR. JUSTICE SUTHERLAND, announced by the CHIEF JUSTICE.

The Brotherhood of Locomotive Firemen and Engineers is an unincorporated voluntary association with headquarters in Ohio. It has a department known as the Widows' Pension Department, created in order to provide a monthly income for the widows or widowed mothers of deceased members. The widow of a member, upon his death, is to receive a pension of \$35 per month during her lifetime. In the event of her remarriage, the

pension is to cease. The respondent, widow of a deceased member, became entitled to this pension. Thereafter, the association, following an investigation of the financial condition of the department and upon an actuarial report, determined to abolish the department and distribute the assets after making a lump-sum settlement not to exceed \$1,500 with each widow then on the pension roll. Widows refusing to settle were to have their names erased from the roll, and be provisionally relegated to another fund. Payment of monthly instalments on pensions was discontinued, beginning September 1st, 1931.

Complainant thereupon brought suit in a federal district court, on behalf of herself and other beneficiaries similarly situated, for an accounting, determination of priorities, and a proper liquidation and administration of the funds of the department. The federal jurisdiction was invoked on the ground of diversity of citizenship. The district court, after a hearing, dismissed the bill on the ground that the requisite amount to confer jurisdiction (over \$3,000) was not involved. The court of appeals reversed, 69 F. (2d) 600, upon the authority of *Thompson v. Thompson*, 226 U. S. 551. Whether that court rightly held that the jurisdictional amount was involved is the only question for consideration.

The entire fund is nearly \$300,000. The bill proceeds on the theory that this constitutes a trust fund, and seeks its administration under judicial orders. Respondent urges that the jurisdiction may well be tested by the value of the whole fund. But we put that question aside, since we are of opinion that the value of respondent's own interest in the fund exceeds the jurisdictional amount.

This, it will be seen, is not an action at law to recover overdue instalments, but a suit in equity to preserve and protect a right to future participation in the fund. If

the value of that right exceeds \$3,000, the district court has jurisdiction.

In the *Thompson* case, a decree had been entered by the Supreme Court of the District of Columbia in favor of a wife against her husband, for support and maintenance at the rate of \$75 a month, together with \$500 for counsel fees. The decree was reversed by the Court of Appeals of the District. On an appeal to this court, our jurisdiction was challenged upon the ground that a sum in excess of \$5,000 was not involved, as the statute at that time required. While the instalments already accrued amounted to much less than that, it was held that the expectancy of life of the parties was clearly sufficient to make up the balance, and jurisdiction was upheld. Mr. Justice Pitney, who delivered the opinion, said (p. 560)—“The future payments are not in any proper sense contingent or speculative, although they are subject to be increased, decreased or even cut off, as just indicated.”

The situation there and that here fairly cannot be distinguished. The life expectancy of respondent, as shown by the mortality tables, is enough to bring the value of the future pension instalments, as of the date of the suit, to a sum much in excess of \$3,000; and as to that no point is made. The jurisdictional defect said to exist is that the payments are to cease in the event of respondent's remarriage; and this condition, petitioners say, makes future payments depend entirely upon the volition of the widow, and whether they may accrue is, therefore, a matter of pure speculation. Indeed, the happening of the event does not depend (if that would matter) upon the widow's volition alone, but equally upon the willingness of another to marry her. Continuance of payments during the life of the respondent is fixed by contract quite as definitely as continuance of payments for maintenance in the *Thompson* case was fixed by decree, and subject to substantially like conditions subsequent. In the *Thomp-*

son case the payments were subject to be cut off entirely, not only by death but, the court said, "in the event of a change in the circumstances of the parties." The same is true here. In no respect are we able to see any difference in principle between the two cases. The occurrence of the specified event which would put an end to the obligation is no more uncertain in the one case than in the other.

Moreover, the evidence discloses that the expectancy of remarriage and its effect upon the value of the pension are capable of actuarial determination. The law of averages applies in respect of that event, as it does in respect of death and of other events. Mr. Pipe, an actuary called as a witness by petitioners, testified that the value of respondent's right to receive \$35 a month so long as she remained unmarried was, in round figures, \$6,000 as of August 1, 1931. A report made to the Brotherhood, filed June 2, 1932, by its Committee on Constitution, which seems to have been made after careful study, contains the statement:

"The 'present value' can be determined if we know the average ages of widows corresponding to the ages at the death of members, and we know the proportion of widows who remarry. This information is available from the records of Pension Funds. For example, if we know that the average age of the widows of members who die at age 40, is 36, then the value of the benefit in event of death at 40, is the present value of a pension of \$420 per annum on the life of a woman aged 36, taking into account the chances of remarriage. The benefit has a definite 'lump sum' value on the death of the member, . . ."

Counsel upon both sides have cited and discussed decisions of this and other courts bearing upon the general subject. We have examined these decisions, but find it unnecessary to review or distinguish them. We agree with the court below that the question of jurisdiction here

under consideration is the same in substance as that involved in the *Thompson* case; and, that being so, the decree of the court below must be

Affirmed.

ROWLEY, TREASURER OF CONVERSE COUNTY,
WYOMING, ET AL. v. CHICAGO & NORTHWEST-
ERN RAILWAY CO.

CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE
TENTH CIRCUIT.

No. 9. Argued October 10, 1934.—Decided November 5, 1934.

1. The Court is reluctant to place constructions upon state statutes of doubtful meaning, or to decide other questions of state law as to which there may be substantial controversy, in advance of decision by the state courts of last resort. P. 104.
2. The ascertainment of the value of a railway system is not a matter of arithmetical calculation and is not governed by any fixed and definite rule. Facts of great variety and number, estimates that are exact and those that are approximations, forecasts based on probabilities and contingencies have bearing and properly may be taken into account to guide judgment in determining what is the money equivalent—the actual value—of the property. P. 109.
3. An apportionment of system value of a railroad for taxation in one of several States traversed by its lines can not be adjudged arbitrary merely because the mileage basis was used, although the average value per mile in that State was much less than for the system as a whole, where the mileage ratio was applied not singly but combined with others, such as the ratios of the traffic units, use of rolling stock and average of gross and net operating revenue in that State to the system totals; where the computation was tested by other criteria, such as the relations between cost of reproduction less depreciation of the local property and system value and between operating net revenues derived from that property and those earned by the system; and where there is nothing to show that the assessment was excessive. P. 110.