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Conflict of Laws

Fletcher R. Andrews

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lished that a defendant extradited from another state to answer criminal charges is immune from service of process in a civil action before conviction and before he has had an opportunity to return to his home.⁴⁸ The old Ancinnah Superior Court had held that the immunity did not apply in the absence of extradition proceedings.⁴⁹ The court of appeals in the *Lorok* case followed what is believed to be the majority rule in holding that the immunity exists even while one is voluntarily answering a criminal warrant. It also held that while it is generally true that a general appearance may not be mingled with a motion to quash service of summons, since the plaintiff had abused process in attempting to serve the accused during criminal proceedings, the special appearance need not be deemed to have been waived by the defendant's filing of a motion to dismiss for want of jurisdiction of the subject matter.

Immunity From Service of Process While Attending Civil Case Voluntarily

Likewise, the court of appeals had occasion to pass upon the question whether one appearing voluntarily and without having been subpoenaed as a witness in a *civil* case was immune from service of process. It held, in *Rhoads v. Dennis*,⁵⁰ that the witness is immune. The plaintiff's contention was that the statute⁵¹ granting immunity to one who attends in response to a subpoena is exclusive, and that if the witness appeared voluntarily he did not come within the statute. The court properly held, in line with well-established authority, that if the witness' sole purpose in entering the court's jurisdiction is attendance at judicial proceedings, he is immune from service of process. The statute does not derogate from the common law immunity.

SAMUEL SONENFIELD

CONFLICT OF LAWS

Federal Versus State Law

As every lawyer knows, the laws of the United States made pursuant to the Constitution of the United States are the supreme law of the land.¹ As a result of our dual system of government, conflicts arise from time to time between federal and state law, and, under the constitutional provision re-

⁴⁸ *Compton, Ault & Co. v. Wilder*, 40 Ohio St. 130 (1883).

⁴⁹ *Goldman v. Krumholz*, 1 Ohio L. Abs. 791 (1923).

⁵⁰ 115 N.E.2d 708 (Ohio App. 1951).

⁵¹ OHIO REV. CODE § 2317.29 (OHIO GEN. CODE § 11519).

ferred to, the federal law is paramount. A recent example occurs in *Securities, Inc. v Louisville & Nashville R.R.*,² in which a garnishee of a bankrupt was faced with conflicting orders by a United States district court and a municipal court. It was correctly determined that the order of the federal court took precedence.

Domicile

Many laymen have an idea that by waving a wand and expressing an intent, they can fix their domicile in a certain place even though, in fact, it is elsewhere. An example of this misconception arose in *Redrow v. Redrow*,³ a case of county rather than state domicile. The plaintiff brought an action for divorce and contended that Clermont County had always been his domicile, despite the fact that he and his family had moved to Hamilton County. The court of appeals, reversing the trial court, held that the move to Hamilton County constituted a change of domicile, and pointed out that actions speak louder than words and that the plaintiff's testimony that he regarded Clermont County as his home and intended to return there, was not borne out by the facts. The court pointed out also that a vague, floating intention to return sometime to one's previous home is not sufficient for the retention of the old domicile as against the new location, where the person apparently intends to live indefinitely.

*Halaby v. University of Cincinnati*⁴ presents an interesting problem in statutory interpretation. Ohio Revised Code Section 3349.22 (Ohio General Code Section 4003-20) permits free instruction in municipal universities to citizens of the municipal corporation in which the particular university is located.⁵ Action was brought against the University of Cincinnati on behalf of a minor by his father as next friend, the contention being that the minor was entitled to the free instruction prescribed by the statute. The father and son were domiciled in Cincinnati but were not citizens of the United States, although the father had declared his intention to become a citizen. The court very properly determined that the statutory phrase "citizens of municipal corporations" referred to bona fide residence or domicile and not to United States citizenship.

Decree Relating to Foreign Land: Full Faith and Credit.

*Beebe v. Brownlee*⁶ recognizes the rule that the decree of a foreign court (here Florida) cannot of itself effect a transfer of title to local real estate.⁷

¹ U.S. CONST. Art VI § 2.

² 94 Ohio App. 323, 115 N.E.2d 9 (1953).

³ 94 Ohio App. 38, 114 N.E.2d 293 (1952).

⁴ 65 Ohio L. Abs. 577 (Hamilton Com. Pl. 1953)

⁵ The statute makes exceptions which are not pertinent here.

⁶ 100 Fla. 100, 132 So. 2d 100 (1955).

⁷ 100 Fla. 100, 132 So. 2d 100 (1955).

However, the court recognizes the equally well-established rule that a court having jurisdiction of a person may order him to convey land located in another state. Thus, a Florida court having ordered the defendant to convey Ohio land to the plaintiff, the Ohio court likewise ordered her to do so, citing *Brunley v. Stevenson*.⁸

Adoption

In two companion cases,⁹ it was held that where there is insufficient proof of adoption under the law of the state where the adoption was attempted, Ohio will not regard the child as adopted. It was indicated that the adoption would be recognized in Ohio if valid by the law of the adopting state.¹⁰

Custody: Full Faith and Credit

In the survey of Ohio Law for 1952, I referred to the case of *Anderson v. May*, dealing with the effect in Ohio of a Wisconsin custody decree.¹¹ The case was subsequently taken to the Supreme Court of the United States, where, by a divided Court, the judgment was reversed.¹² The parties were domiciled in Wisconsin. Marital trouble having developed, they separated, and, by agreement, the wife, accompanied by the children, went to Ohio to think things over. Eventually, she decided not to return and so informed her husband. Admittedly she gained an Ohio domicile. The husband brought an action in Wisconsin for divorce and custody of the children. The wife was served in Ohio and did not appear, nor were the children in Wisconsin. The Wisconsin court granted the divorce and awarded custody of the children to the father. The mother refusing to surrender them,

⁸ 63 Ohio L. Abs. 381, 109 N.E.2d 528 (App. 1952). In effect, though not technically, the court incorporates the opinion of the common pleas court, for which see 63 Ohio L. Abs. 377, 110 N.E.2d 64 (Franklin Com. Pl. 1951).

⁹ See RESTATEMENT, CONFLICT OF LAWS §§ 223, 240 (1934)

¹⁰ 24 Ohio St. 474 (1873). The *Burnley v. Stevenson* case held that under the full faith and credit clause of the United States Constitution (U.S. CONST. ART. IV, § 1), the decree of the sister state court must be regarded as conclusive of all the rights and equities adjudicated and settled therein. The court of appeals in the *Beebe* case, in addition to citing the *Burnley* case, agreed with the position of the common pleas court respecting full faith and credit. The latter court said that the decree of the Florida court was binding on the parties and could be, and was, the subject of an action (in Ohio) to compel not only compliance with the contract but an observance of the determination of the rights of the litigants by a court in a sister state.

¹¹ *Belden v. Armstrong*, 93 Ohio App. 307, 113 N.E.2d 693 (1951); *Belden v. Armstrong*, 93 Ohio App. 358, 113 N.E.2d 697 (1951).

¹² See RESTATEMENT, CONFLICT OF LAWS § 143 (1934)

¹³ 4 WEST RES. L. REV. 210 (1953).

¹⁴ *May v. Anderson*, 345 U.S. 528 73 Sup. Ct. 840 (1953).

the father brought a habeas corpus action in Ohio. In an opinion by Mr. Justice Burton, the Supreme Court held that Ohio was not required to give full faith and credit to the Wisconsin custody decree, even though technically the children might be domiciled in Wisconsin. The court stressed the point that the mother was not domiciled, resident, or present in Wisconsin, and that there was no jurisdiction in personam over her or the children.¹³

Chattel Mortgage

Following the general rule and the Restatement,¹⁴ the case of *In re Swesey*¹⁵ holds that a Michigan chattel mortgage, valid by the law of that state, will be upheld in Ohio as between the mortgagee's assignee and the trustee in bankruptcy of the mortgagor. The Ohio Certificate of Title Law¹⁶ does not extend to out-of-state transactions valid where made.¹⁷

In another chattel mortgage case,¹⁸ there was a valid chattel mortgage in Michigan of automobiles located there. The mortgage was properly recorded in Michigan. Contrary to the terms of the mortgage, the mortgagor sent the cars into Ohio. In a sale which took place in Michigan, the defendant bought the cars from the mortgagor, and later took possession of them in Ohio. He did not know about the mortgage. The mortgagee corporation brought an action of conversion, and the court held in its favor, pointing out that the defendant had taken possession prior to the issuance of a certificate of title in Ohio, and holding that the defendant was bound by the Michigan chattel mortgage law.¹⁹

Res Judicate as to Jurisdiction

In *re Lorok*²⁰ is an important case holding that under the particular circumstances a determination by a Juvenile Court that it had jurisdiction of

¹³ No attempt is made here to discuss the concurring opinion of Mr. Justice Frankfurter or the dissenting opinions.

¹⁴ RESTATEMENT, CONFLICT OF LAWS § 265 (1934)

¹⁵ 112 F. Supp. 773 (N.D. Ohio 1953)

¹⁶ OHIO REV. CODE §§ 4505.01-4505.99 (OHIO GEN. CODE §§ 6290-2 through 6290-17)

¹⁷ It should be noted that this case does not involve a resale in Ohio by the mortgagor.

¹⁸ *Associates Discount Corp. v. Main Street Motors, Inc.*, 65 Ohio L. Abs. 216, 113 N.E.2d 734 (App. 1952), *app. dis'm* 157 Ohio St. 488, 105 N.E.2d 878 (1952)

¹⁹ The court distinguished *Kelley Kar Co. v. Finkler*, 155 Ohio St. 541, 99 N.E.2d 665 (1951), in which the sale to the innocent purchaser for value was in Ohio, and the purchaser received a clean certificate of title from the seller.

²⁰ 93 Ohio App. 251, 114 N.E.2d 65 (1952)

²¹ The court quoted at length from RESTATEMENT, JUDGMENTS § 10 (1942). This section is the same as RESTATEMENT, CONFLICT OF LAWS § 451 (2) (1948 Supp.)