SCHOOL OF LAW
CASE WESTERN RESERVE UNIVERSITY

Case Western Reserve Law Review

Volume 6 | Issue 3 Article 9

1955

Conflict of Laws

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> An action shall be deemed to be commenced within the meaning of sections 2305.03 to 2305.22, inclusive, . . . as to each defendant, at the date of the summons which is served on him or on a co-defendant who is . . . united in interest with him,[59]

would help them out of the dilemma. The court pointed out, however, that no heir at law was united in interest with executrix or the legatee,[60] and that none of the three originally named heirs at law had ever been served at all, so that there was no need to determine whether service on one of them would have satisfied the statute as to the other two or as to those not even named. Furthermore, the statute only applies to defendants, and its plain provisions cannot be avoided by making defendants into plaintiffs, after the limitation had expired.

Questions not raised at all are whether Ohio Revised Code Section 2305.17, being one of the general provisions dealing with statutes of limitations, can have any effect upon a special statutory proceeding such as a will contest and whether it will apply when the obligatory co-defendants are not even named in the action.

SAMUEL SONENFIELD

CONFLICT OF LAWS

Domicile: Citizenship

In the "Survey of Ohio Law — 1953," I referred to the case of *Halaby v. University of Cincinnati.*[1] The Supreme Court of Ohio has now affirmed the judgment of the court of common pleas.[2] The case concerns Ohio Revised Code Section 3349.22. That section relates to municipalities in which municipal universties are located, and provides, with exceptions, that "citizens" of such municipalities, shall not be charged for instruction. The plaintiff claimed that by reason of the above statute he was entitled to attend the University of Cincinnati without charge. The plaintiff and his parents were not citizens of the United States, although they were domiciled in Cincinnati. The court held that the absence of United States citizenship does not disqualify a person from receiving free instruction under the statute. Domicile is enough to satisfy the statutory requirement that the person be a citizen. United States citizenship is not necessary.[3]

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[59] OHIO REV. CODE § 2305.17.

[60] *Accord,* Case v. Smith, 142 Ohio St. 95, 50 N.E.2d 142 (1943).

Full Faith and Credit: Divorce and Alimony: Jurisdiction

In *Armstrong v. Armstrong*,[4] the court recognized that under *Williams v. North Carolina*,[5] Ohio is required to give full faith and credit to a Florida divorce decree if the plaintiff was domiciled in Florida, and the defendant wife, domiciled separately in Ohio, was served only by publication and did not appear.

However, the Florida court included in its decree a denial of alimony to the defendant wife. The Supreme Court of Ohio held that the portion of the Florida decree denying alimony is not entitled to full faith and credit and does not operate extraterritorially. Such a decree is *in personam*, and personal service or appearance is therefore necessary.

Interstate Support of Dependents

Pennsylvania ex rel. *Mercer County Board of Assistance v. Mong*[6] is an important case relating to the Uniform Dependant's Act.[7] The purpose of the Act is to enforce the duty of support when the obligor is in one state and the obligee in another. In the principal case a father, living in Pennsylvania, sought to compel his son, domiciled in Ohio, to contribute to his support, and, to that end, the machinery authorized by the Uniform Act was put in motion through the court of Pennsylvania, which certified the proceedings to the proper court in Ohio. The Act gives the obligee a right of election as to which state's laws shall govern the duty of support by the alleged obligor.[8] The father selected the law of Pennsylvania, which imposed upon the son the duty of support. However, Ohio Revised Code Section 2901.42, not a part of the Uniform Act, relieves the son from supporting a parent who abandoned the son when the latter was under 16. In the present case the father had thus abandoned the son. The court held that Ohio law governs the liability of the son and that the statute relieving him

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[1] 65 Ohio L. Abs. 577 (Hamilton Com. Pl. 1953), 5 WEST. RES. L. REV. 248 (1954).

[2] Halaby v. Board of Directors of Universtiy of Cincinnati, 162 Ohio St. 290, 123 N.E.2d 3 (1954).

[3] The plaintiff's parents had formally declared their intention of becoming citizens of the United States, but this factor does not appear to have influenced the court's decision.

[4] 162 Ohio St. 406, 123 N.E.2d 267 (1954).

[5] 317 U.S. 287 (1942).

[6] 160 Ohio St. 455, 117 N.E.2d 32 (1954).

[7] OHIO REV. CODE §§ 3115.01-3115.15. The Act became effective in 1951. The supreme court cited the Pennsylvania Act as Act No. 50 (1951) of the General Assembly of Pennsylvania.

[8] OHIO REV. CODE § 3115.03.

from liability prevails. Judge Middleton, writing the opinion, said: "Subjecting him to the making of support payments compulsory under the law of another state, as to which payments the law of Ohio specifically exempts all Ohio citizens similarly situated, is violative of his right of equal protection."[9]

Motor Vehicles: Title and Liens

Under Ohio's certificate of title law,[10] the buyer of an automobile in Ohio who receives a certificate of title showing no liens, and who is an innocent purchaser for value, will be preferred against a conditional vendor or chattel mortgagee whose transaction took place previously in another state, even though the lienholder recorded his lien in the other state.[11] Apparently it is immaterial whether the removal to Ohio was with or without the knowledge or consent of the lienholder. To paraphrase Mr. Shakespeare, "The certificate's the thing." The statute as interpreted changes the common law majority rule in a case where the removal to the second state is without the lienholder's consent.[12]

Two cases appearing during 1954 follow the *Kelley Kar* case.[13]

Austin v. River[14] represents a somewhat puzzling development of the problem of proving ownership of a motor vehicle. In a suit for damages to the plaintiff's tractor arising from a collision in Ohio, the court intimated that since matters of proof are governed by the *lex fori,* the Ohio certificate of title statute[15] applies with reference to proof of ownership even though the plaintiff was a citizen of North Carolina and apparently bought the car there. It is difficult to believe that the court intended to require proof of ownership under the Ohio certificate of title law in the case of a nonresident who bought his car outside of Ohio. And the negation of that intent is indicated by the fact that in the final analysis the court said that title must be determined by North Carolina law and depends upon compliance with

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[9] 160 Ohio St. 455, 458, 117 N.E.2d 32, 33 (1954). Chief Justice Weygandt concurred specially. Three judges dissented upon the ground that no constitutional question was properly before the court.

[10] OHIO REV. CODE §§ 4505.01-4505.99.

[11] Kelley Kar Co. v. Finkler, 155 Ohio St. 541, 99 N.E.2d 665 (1951). The report of this case was published before the first annual issue of the *Survey of Ohio Law.*

[12] STUMBERG, CONFLICT OF LAWS 393 (2d ed. 1951). Ohio was in accord: *e.g.,* Kanaga v. Taylor, 7 Ohio St. 134 (1857).

[13] Herb Graves & Son, Inc. v. George Cooper & Son Motor Sales, Inc., 67 Ohio L. Abs. 255, 119 N.E.2d 447 (App. 1951); Commercial Credit Corp v. Reising, 96 Ohio App. 445, 122 N.E.2d 301 (1953), *app. dis'm.,* 161 Ohio St. 570, 120 N.E.2d 307 (1954).

[14] 95 Ohio App. 400, 120 N.E.2d 133 (1953).

[15] OHIO REV. CODE § 4505.04. This is part of the certificate of title law.