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Conflict of Laws

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for the arrest of a violator of the "Sunday closing law." The judge refused to issue it. Relator then sought from the court of appeals a writ of mandamus to compel its issuance. The writ was refused and the Supreme Court affirmed,[46] holding that since no legal right of relator had been affected by the violation of law, he had no beneficial interest which would sustain such an action by him. This case has been discussed at length in a recent decision in a prior issue of this review.[47]

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CONFLICT OF LAWS

Federal Versus State Law

Three Ohio cases decided in 1953 but not reported until 1955 reiterate the principle that federal law takes precedence over state law in matters based upon the Constitution of the United States or the acts of Congress.

In *State ex rel. Cutshaw v. Smith*,[1] the court applied the principle in an extradition proceeding; and in *White Cross Hospital v. Chesapeake & Ohio Ry.*,[2] the principle was applied in connection with the interpretation of a federal bill of lading.

While recognizing the principle as applicable to substantive law, *O'Leary v. Pennsylvania R.R.*[3] notes that in actions brought in state courts under the Federal Employers' Liability Act, the law of the forum state controls with reference to procedural matters. The particular question was whether the trial court in its instructions to the jury might properly go beyond the specific allegations of negligence raised by the pleadings, and the court stated that this was a question of procedure and, consequently, should be decided in accordance with Ohio law. However, the case is weakened by the fact that there appeared to be no conflict between the federal law and the Ohio law.

Although not an Ohio state court case, *United States v. Acri*,[4] which originated in the United States District Court for the Northern District of Ohio, should not be overlooked. The case concerned priority between the lien of an attachment and liens of the United States for taxes. The court pointed out that the relative priority of the lien of the United States for unpaid taxes is always a federal question and that a state's characterization of its liens, while good for all state purposes, does not necessarily bind the Supreme Court of the United States. Thus, the fact that the Ohio courts had characterized an attachment lien as an execution in advance and had

[46] State *ex rel.* Skilton v. Miller, 164 Ohio St. 163, 128 N.E.2d 47 (1955).

[47] 7 WEST. RES. L. REV. 203.

treated it as a perfected lien at the time of the attachment, did not bind the Supreme Court, which held that for federal tax purposes the attachment lien was inchoate.

Domicile and Residence

Although not decided by appellate courts, two cases in this area are worth noting.

In *Case v. Case*,[5] the court was asked to prescribe the proper method for serving notice of the probate of a will on a young gentleman named Richard, aged twenty, who, at the time, was stationed in Alaska in the Air Force. Richard's home was in Wyoming, Ohio. Ohio Revised Code section 2101.26(B) provides for such service by leaving the notice "at the usual place of residence." The court held that service might properly be made upon Richard by leaving the notice or a copy of it at his Wyoming home. Since Richard was located temporarily in Alaska, and since his permanent residence and domicile were in Hamilton County, his "usual place of residence" was in that county, the court decided. But the court also stated that the legislature did not intend the quoted phrase to be synonymous with the word "domicile," but intended it to mean the place where a person has his fixed permanent home and to which, upon leaving for any temporary purpose, he intends to return. Yet, by definition, that place would be his domicile. In this respect, as Yul Brynner sang in "The King and I," "It's a puzzlement."

The other case in the area is *Spahr v. Powers*,[6] which involves what is now Ohio Revised Code section 3503.05. That section provides, in effect, that if a person attends an institution of learning located in a county other than the county in which he had his voting residence immediately preceding his attendance at the institution, his voting residence shall be deemed to be at the place where it was located immediately preceding such attendance. Interpreting this statute, the court held that the years during which the particular students attended Antioch College in Yellow Springs, Ohio, should not be counted toward the time required for the establishment of a voting residence, even though the students remained in Yellow Springs after graduation. The students came from outside Ohio. As reported, the case is simple enough. However, the intriguing thought

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[1] 70 Ohio L. Abs. 243, 127 N.E.2d 633 (Ohio App. 1953).
[2] 69 Ohio L. Abs. 345, 125 N.E.2d 363 (Ohio App. 1953).
[3] 70 Ohio L. Abs. 133, 127 N.E.2d 877 (Ohio App. 1953).
[4] 348 U.S. 211 (1955).
[5] 55 Ohio Op. 317, 70 Ohio L. Abs. 2, 124 N.E.2d 856 (Ohio Prob. Ct. 1955).
[6] 57 Ohio Op. 50, 71 Ohio L. Abs. 121, 129 N.E.2d 97 (Ohio Com. Pl. 1954).

is whether the statute prevents a student from ever obtaining a voting residence where the institution is located, even if he abandons his prior home, has reached his majority (or is an emancipated minor), and intends, while still in college, to settle in the college town.[7]

Res Judicata and Full Faith and Credit

In *Cleveland Trust Co. v. Kolar*,[8] the bank obtained a judgment against Kolar in Ohio on a cognovit note, and subsequently brought an action in Florida on the Ohio judgment. Kolar answered, in substance, that the judgment was improperly entered, was null and void, and was of no force and effect. The bank moved for judgment on the pleadings and for summary judgment. The Florida court granted the motions and entered judgment in favor of the bank. Later, there was a hearing in Ohio on Kolar's petition to vacate the Ohio judgment. Her petition was based, among other things, upon allegations that the judgment was taken for more than the amount due and that the claim was barred by the statute of limitations. The bank contended that Kolar's answer in the Florida action raised affirmative defenses similar to those set forth in her petition to vacate and that consequently all her rights with respect thereto were res judicata. The court correctly held that the matters were not res judicata. The Florida court merely entered judgment in recognition of its duty under the full faith and credit clause of the Constitution of the United States.[9] The Florida judgment in no wise determined or affected any defenses which Kolar had to the original Ohio judgment.[10]

Substance and Procedure

There is nothing novel or startling in the proposition that matters of substantive tort law are governed by the place of the occurrence and that matters of procedure are governed by the law of the forum.[11] But the unusual application of these doctrines justifies the inclusion of *Griffin v. Gar Wood Industries, Inc.*,[12] in this article. Griffin, a citizen of Kansas, was injured in Kansas through the alleged negligence of a Kansas corporation, doing business in Ohio. Under the Kansas workmen's compensation law, the plaintiff obtained an award, which his employer's insurance company paid. The allegedly negligent corporation was not Griffin's employer.

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[7] See STUMBERG, CONFLICT OF LAWS 29 n. 37 (2d ed. 1951).

[8] 71 Ohio L. Abs. 26, 125 N.E.2d 196 (Ohio App. 1955).

[9] U.S. CONST. Art. IV, § 1.

[10] The court then decided that Kolar's defenses were no good anyhow, and entered judgment for the bank.

[11] See RESTATEMENT, CONFLICT OF LAWS, §§ 378, 585 (1934).

[12] 97 Ohio App. 129, 123 N.E.2d 751 (1954).

The Kansas workmen's compensation law permits the injured party to recover from the actual tortfeasor even though he has obtained an award, and stipulates that if he does not bring such an action within a year, his cause of action be automatically assigned to the employer, who may enforce it in his own name or in the name of the workman. Although the year had passed, Griffin brought an action in Ohio against the Kansas corporation as the actual tortfeasor. The defendant moved for judgment on the pleadings, contending that the plaintiff was not the real party in interest. The trial court sustained the motion, and the court of appeals affirmed. The court held that Kansas substantive law governed. Thus, by reason of the Kansas law, the plaintiff's failure to bring an action within a year operated as an assignment to his employer of his cause of action against the defendant. However, held the court, the enforcement of the right is governed by the adjective or procedural law of Ohio. Ohio Revised Code section 2307.05 requires that actions be prosecuted in the name of the real party in interest.[13] By the operation of the Kansas statute, the plaintiff's interest was assigned to his employer. Consequently, the plaintiff was not the real party in interest and was not entitled to maintain the action.

Title to Personal Property: In General

Merely as a reminder of an established rule, I include the case of *J. T. Fish & Co. v. States Coal Co.*[14] The question was whether or not title to a coal mining machine passed by reason of a certain transaction. The parties negotiated the purchase in West Virginia, and, although the location of the machine is not given, it seems logical to assume that it was likewise in West Virginia. The court held that since the sale was consummated in West Virginia, the laws of that state must be applied.

Motor Vehicles: Title and Liens

The troublesome question of conflicting claims to an automobile wrongfully brought to Ohio from another state, the claimants both being innocent parties, is with us again in *Ohio Casualty Ins. Co. v. Guterman.*[15] It may be recalled that the pertinent part of Ohio Revised Code section 4505.04 provides that no court shall recognize the right, title, etc., of any person in or to a motor vehicle unless evidenced by a certificate of title duly issued in accordance with the provisions of the applicable Ohio statutes. In the *Guterman* case, Brady Motors owned a car in Illinois and held an Illinois certificate of title. The car was stolen, and the plaintiff

[13] The exceptions are not involved in the present case.

[14] 70 Ohio L. Abs. 585, 129 N.E.2d 657 (Ohio App. 1954).

[15] 97 Ohio App. 237, 125 N.E.2d 350 (1954).

insurance company paid the loss and took an assignment of Brady Motors' title. Thereafter, in Louisiana, the defendant bought the car in good faith from a person who was not the thief and who did not purchase directly from the thief. The defendant brought the car to Ohio and obtained an Ohio certificate of title. In a replevin action by the plaintiff insurance company a judgment for the plaintiff was affirmed. The court said that at common law a person does not derive title or right of possession through a thief as against the rightful owner and that the statute does not change the common law rule under the circumstances of this case. The purpose of the statute, viz., to protect ownership against fraud, would be frustrated, thought the court, if the innocent purchaser for value were to prevail; and Ohio might become a dumping ground for stolen cars. Moreover, the Ohio certificate of title law has no extraterritorial effect and must be limited to those persons in Ohio who are obligated to secure a certificate of title under Ohio law; and an out-of-state certificate of title may be recognized by Ohio courts. The rights of the plaintiff should prevail over the rights of the defendant, who bases his right of ownership and immediate possession on a prior theft. The court distinguishes the important case of *Kelley Kar Co. v. Finkler*,[16] upon the ground that in that case the plaintiff did not produce a valid certificate of title from any state. It is to be hoped that eventually the perplexing problems in this area will be submitted to and solved by the Supreme Court of Ohio.

Jurisdiction to Determine Custody

In *Swope v. Swope*,[17] the Supreme Court of Ohio decided that in an action for divorce and custody of minor children, a court may not determine an issue of custody of the minors where the service of summons on the defendant is merely by publication, and neither the defendant nor the children are within the jurisdiction of the court. Because of marital differences, the defendant wife left the home, which was in Ohio, taking the children with her, and later she and the children moved to West Virginia, where they remained. In the husband's Ohio action for divorce and custody, the wife was served by publication. The case should be considered with *May v. Anderson*,[18] holding that under similar circumstances, Ohio is not required to give full faith and credit to the custody decree of another state.

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[16] 155 Ohio St. 541, 99 N.E.2d 665 (1951). See Andrews, *Survey of Ohio Law — 1954, Conflict of Laws*, 6 WEST. RES. L. REV. 227, 229 (1955).

[17] 163 Ohio St. 59, 125 N.E.2d 336 (1955).

[18] 345 U.S. 528 (1953). For an abstract of that case see Andrews, *Survey of Ohio Law — 1953, Conflict of Laws*, 5 WEST. RES. L. REV. 247, 249 (1954).