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# Equity

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When a court of this state, acting as a court of a responding state, finds a duty of support, it may order the defendant to furnish support or reimbursement for support.<sup>47</sup>

At first glance it would appear that this statute authorizes reimbursement, but other parts of the Act<sup>48</sup> and the comments of the drafting committee<sup>49</sup> clearly indicate that the Act is procedural only, and is not intended to change the substantive law of support. Thus the above-quoted section should be read as if it says:

In a two-state proceeding under the Act, the Ohio court can order the defendant to pay future support and reimbursement for past support, to the same extent that the court could do so if the action was between Ohio residents and not under the Uniform Act.

Thus reimbursement is authorized in a Uniform Act case only if it would be proper as alimony or in a direct suit between the parties, both of whom are in Ohio. The Ohio Supreme Court has not directly passed on the question of whether a wife can sue her husband for reimbursement for her own support, but such an action has been allowed in the lower courts. In a recent case the same court of appeals stated as dictum that an abandoned wife may bring an action for money only against the estate of her deceased husband for the support which he failed to furnish in his lifetime.<sup>50</sup>

The above criticism is not meant to be captious, as the point is rendered vital by a recent change in the Act. The 1955 legislature amended the Ohio version of the Uniform Act, and in the process omitted the above-quoted section 20.<sup>51</sup> When this problem comes up again, the court will be unable to ground its decision on the statute, and will have to look to the general body of Ohio law on the substantive duty of support.

HUGH ALAN ROSS

## EQUITY

*Longo v Walter*<sup>1</sup> involved a land contract which provided that the wife of the vendor would release her dower rights. However, because she had not signed the contract, she was not subject to a specific performance action. The vendor sought to defeat a specific performance

<sup>47</sup> OHIO REV. CODE § 3115.10.

<sup>48</sup> OHIO REV. CODE § 3115.01 (F) defines duty of support as any substantive duty imposed or imposable under the law of Ohio.

<sup>49</sup> The comments of the National Conference of Commissioners on Uniform State Laws may be found at 9A UNIFORM LAWS ANN. 96 (1956 Supp.).

<sup>50</sup> *Delaney v. Delaney*, 133 N.E.2d 915, 916 (Ohio App. 1956).

<sup>51</sup> 126 Ohio Laws 560 (House Bill No. 71).

action against himself on the ground that, under the facts, he could not have brought such action and that the remedies must be mutual. The court, without qualification, repudiated the ancient logical fallacy of mutuality of remedies saying that if the vendor "had or controlled a partial title, it was the option of the buyer to say whether he desired the title which it was in the power of the seller to convey, with an equitable abatement from the purchase price."<sup>2</sup>

In the case of *In re Estate of Schoenleben*<sup>3</sup> a testatrix' real estate was transferred by certificate to the devisees under her will. Later, the executor, pursuant to power granted by the will, sold the property without first having the certificate of transfer cancelled or set aside. The existence of the certificate was held to constitute such cloud on the title as to warrant the refusal of acceptance of the title by the purchaser.

In *Hotze, Kuntzler & Co., v. Erskine*<sup>4</sup> a court of appeals had under consideration the sufficiency of a written memorandum as satisfying the Statute of Frauds, Ohio Revised Code section 1335.05, in a specific performance action. The court stated that "there can be no reformation or change of the terms of a memorandum, for if the parties failed to write into it what they intended, then the court can not do so."<sup>5</sup> Carefully read, this statement is correct. The key, supported by the facts, is that the parties failed to say what they intended to say. There was no allegation of fraud, or similar wrongdoing. The court then held that the memorandum did not refer to a contract as it was stated to be a memorandum approved by the parties "with the understanding that complete contract will be drawn up acceptable to all concerned."<sup>6</sup> Also, the description of the subject matter was inadequate in that it gave the seller the right to live in the present residence "with one acre of ground" as long as he lives, without specifying the acre of ground involved.

In *State v. Jaffrin*<sup>7</sup> defendant was charged with contempt of court by accepting one hundred dollars as payment for having a traffic ticket "fixed." It was held that such act was an "indirect contempt," as it was an interference with the judicial process of such a character as to bring the court in which the traffic prosecution was pending into disrepute by acts committed without the knowledge of the court. Consequently, the court was without power to try such alleged contempt until written charges had been filed and a reasonable time given to answer.

<sup>2</sup> 99 Ohio App. 299, 133 N.E.2d 396 (1954)

<sup>3</sup> *Id.* at 301, 133 N.E.2d at 398.

<sup>4</sup> 99 Ohio App. 212, 132 N.E.2d 245 (1955).

<sup>5</sup> 99 Ohio App. 17, 130 N.E.2d 720 (1954).

<sup>6</sup> *Id.* at 19, 130 N.E.2d at 722.

<sup>7</sup> *Id.* at 20, 130 N.E.2d at 723.

<sup>8</sup> 136 N.E.2d 436 (Ohio App. 1956).