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Conflict of Laws

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power limited by the provisions of the code relating to "other relief after judgment."³³ Such provisions have been held to relate to vacation and modification of judgments after term.³⁴

The municipal courts of this state are not courts of general jurisdiction. The question therefore arises whether they, too, have such an inherent power. In *Consumer Packing Co. v. Hahman*,³⁵ the Cuyahoga County Court of Appeals logically applied the provisions of Ohio Revised Code Section 1901.21,³⁶ to hold that the Municipal Court of Cleveland (and therefore, presumably, all municipal courts) has the same rights and responsibilities with reference to the vacation of its judgments within term as are possessed by the court of common pleas.

SAMUEL SONENFIELD

CONFLICT OF LAWS

Federal and State Law

A statement in *Randolph v. American Airlines, Inc.*¹ reiterates the point that federal law governs the rights and liabilities of the parties in a lawsuit involving an interstate shipment of baggage in an airline common carrier. The issue related to limitation of liability.

Personal Property: Estates

In the case of personal property, the right of a surviving spouse to elect whether to take under the law or under the will is determined by the law of the decedent's domicile at the time of his death.² While recognizing this as the ordinary rule, the court in the case of *In re Estate of Gould*³ held that the law of Ohio, the situs of the property, governed, rather than the law of the domicile (Bermuda), when the original probate proceedings were instituted in Ohio and there were no probate proceedings elsewhere. The decision was based upon the interpretation of certain statutory provisions.⁴ It is interesting to note that the election by the surviving spouse was permissible under Ohio law, but that under the law of Bermuda, a spouse had no right to elect.

*Darrow v. Fifth Third Union Trust Company*⁵ is in a similar vein,

³³ OHIO REV. CODE c. 2325.

³⁴ *First National Bank of Dunkirk v. Smith*, 102 Ohio St., 120, 130 N.E. 502 (1921).

³⁵ 142 N.E.2d 675 (Ohio Ct. App. 1957).

³⁶ "In any civil case or proceeding if no special provision is made in sections 1901.01 to 1901.38, inclusive, of the Revised Code, the practice and procedure shall be the same as courts of common pleas."

although a bit more complicated. While domiciled in Ohio, Mr. Darrow created a revocable living trust. The situs of the trust property was Ohio. While still domiciled in Ohio, Mr. Darrow also executed a will. Thereafter, he moved to Florida and was domiciled there at the time of his death. There was no probate in Florida, but there was an original probate in Ohio under the provisions of Ohio Revised Code section 2107.11.⁶ By the terms of Ohio Revised Code section 2129.11, the administrator is to proceed with the Ohio administration under the above circumstances as though the decedent had been domiciled in Ohio at the time of his death. The precise question was whether a widow who elects to take under the statute of descent and distribution rather than under the will may "invade" the trust property, thus obtaining part of the trust property in satisfaction of her election. The court held that the law of Ohio, rather than the law of Florida, governed the determination of this question, and that the law of Ohio permits the widow to invade the trust property if she elects to take under the statutes of descent and distribution.

Since, under Ohio Revised Code section 2129.11, referred to above, the estate is to be administered as though the decedent had been domiciled in Ohio, the law of Ohio governing probate of estates, including the statutes of descent and distribution, will be applicable, said the court. The court also noted that the law appears to be that the validity of an inter vivos trust is determined by the law of the situs of the trust. Although the present case did not relate to validity, the court evidently found an analogy.

Torts

That the *lex loci delicti* governs with reference to the substantive law of torts is recognized in *Flynn v. Little*⁷ and *Ellis v. Garwood*.⁸

¹ 103 Ohio App. 172, 174, 144 N.E.2d 878, 880 (1956).

² RESTATEMENT, CONFLICT OF LAWS § 301, comment *b* (1934).

³ 140 N.E.2d 793 (Ohio Prob. 1956), *aff'd*, 140 N.E.2d 801 (Ohio Ct. App. 1956), upon the reasoning and authorities contained in the opinion of the court below.

⁴ OHIO REV. CODE §§ 2107.11, 2107.39, 2129.07, 2129.11.

⁵ 1 Ohio Op. 2d 104, 139 N.E.2d 112 (Ohio C.P. 1954).

⁶ This section allows probate of the will of a person not domiciled in Ohio but leaving property there, if the will has not previously been admitted to probate at the domicile. Note that the sections under consideration in this case were among those involved in the previous case, *supra* n. 4.

⁷ 141 N.E.2d 182 (Ohio Ct. App. 1957) (duty of guest in automobile to protest negligent driving and sufficiency of protest: sudden emergency).

⁸ 143 N.E.2d 715 (Ohio Ct. App. 1957) (right of action for wrongful death in addition to workmen's compensation).

Substance and Procedure

The familiar proposition that matters of procedure are governed by the law of the forum⁹ is reiterated in *Flynn v. Little*.¹⁰ However, it is to be noted, as held in *Spriggs v. Dredge*,¹¹ that the question whether a tort action survives the death of the tortfeasor is governed by the law of the place of the tort, at least if that law provides that there is no survival.¹² Thus, the matter is considered substantive rather than procedural.

Full Faith and Credit: Alimony

Under the full faith and credit clause,¹³ a valid judgment for alimony is entitled to full faith and credit in a second state to the extent of the amount already due and unpaid, and not subject to reduction.¹⁴ This mandate is recognized in *Tritto v. Tritto*,¹⁵ which, however, is chiefly concerned with another point not germane to this article.

In an important dictum, the court, in *Bain v. Rose*,¹⁶ upheld the proposition that a decree freeing a person from any obligation to pay alimony is likewise entitled to full faith and credit.

Full Faith and Credit: Award of Arbitrators

In an intriguing but troublesome (at least to me) decision, the court in *McClure v. Boyle*¹⁷ refused to give full faith and credit to an award rendered by Pennsylvania arbitrators and entered of record by a prothonotary, although by Pennsylvania law it is stipulated that an award so entered shall have the effect of a judgment. The court was of the opinion that there was no *judgment* in the Pennsylvania proceedings and that the full faith and credit clause extends only to *judicial* proceedings and does not extend to matters not included within the definition of a judicial judgment. To the argument that judgments by confession are

⁹ RESTATEMENT, CONFLICT OF LAWS § 585 (1934).

¹⁰ 141 N.E.2d 182 (Ohio Ct. App. 1957) (requisites for requested instructions).

¹¹ 140 N.E.2d 45 (Ohio Ct. App. 1955).

¹² RESTATEMENT, CONFLICT OF LAWS § 390 (1934). See comment *b* of that section for the situation where the state of the tort has a survival statute and the forum does not.

¹³ U.S. CONST. Art. IV, § 1.

¹⁴ *Barber v. Barber*, 323 U.S. 77 (1944); *Sistare v. Sistare*, 218 U.S. 1 (1910); *Lynde v. Lynde*, 181 U.S. 183 (1901); RESTATEMENT, CONFLICT OF LAWS § 464 (1934).

¹⁵ 138 N.E.2d 453 (Ct. App. 1955).

¹⁶ 103 Ohio App. 297, 145 N.E.2d 319 (1957).

¹⁷ 141 N.E.2d 229 (C.P. 1957).

likewise entered by prothonotaries in Pennsylvania, but nevertheless are regarded as judgments, the court replied that Pennsylvania statutory law specifically calls them judgments.

Full Faith and Credit: Workmen's Compensation

Full faith and credit in workmen's compensation matters has presented some knotty problems and hairline distinctions. *Ellis v. Garwood*¹⁸ is an exceedingly important case in this field. A New York employee within the New York workmen's compensation law was killed in an Ohio collision. His widow received compensation under the New York law, which states that such compensation shall be the exclusive remedy when the employee is injured or killed by the negligence of a fellow-employee. In the case under consideration, a fellow-employee was driving the car. The widow, as administratrix, brought an action for wrongful death against the driver of the car. Such an action is permissible by Ohio law. Relying on *Carroll v. Lanza*,¹⁹ the court of appeals, reversing the trial court, held that the full faith and credit clause does not prevent Ohio from allowing the action.

To understand the significance of the decision, it must be pointed out that in *Magnolia Petroleum Company v. Hunt*,²⁰ the Supreme Court of the United States held that the full faith and credit clause prevented a second state from giving workmen's compensation to an employee who had already received an award under the workmen's compensation law of the first state, whose laws, as interpreted, attempted to prohibit further recovery under the compensation laws of any other state. *Carroll v. Lanza*, which upheld the right to sue a third party in the second state, despite the receipt of compensation in the first state, distinguished the *Magnolia* case upon the ground that in the *Carroll* case there was no award or judgment, the payments starting automatically under the terms of the statute, without benefit of an award. Thus, the *Carroll* decision was reached on the basis that Arkansas, the second state, was not required to give full faith and credit to the statutes of Missouri, the first state, prohibiting remedies other than the Missouri compensation law. It is not entirely clear from the report of *Ellis v. Garwood*, the Ohio case, whether an award had been rendered in New York, but apparently the court was indifferent on that score. If an award was rendered in New York, *Carroll v. Lanza* is distinguishable, and the Ohio case comes closer to *Magnolia*. But it is still distinguishable from *Magnolia* by reason of

¹⁸ 143 N.E.2d 715 (Ohio Ct. App. 1957).

¹⁹ 349 U.S. 408 (1955).

²⁰ 320 U.S. 430 (1943).

the fact that *Magnolia* dealt with a second bite at workmen's compensation, whereas *Carroll* and *Ellis* deal with a tort action in a second state against a third party. Perhaps the Supreme Court of the United States will draw this distinction if the matter is presented to it. Moreover, there are other distinguishing features in *Magnolia* which apparently influenced the Court.

Full Faith and Credit: Custody

The questions of jurisdiction and full faith and credit in cases involving the custody of minor children have given rise to a good deal of confusion and difference of opinion.²¹ The most recent pronouncement by the Supreme Court of Ohio occurs in the important case of *Cunningham v. Cunningham*.²² A California court made a valid custody decree. Thereafter, the mother and child moved to Ohio at the suggestion of the father. The move to Ohio did not violate the decree. Subsequently, the father obtained a modification of the decree from the California court, and in Ohio brought an action to obtain the child in accordance with the modified decree. The Supreme Court of Ohio held that the Ohio courts were not required to give full faith and credit to the modified California decree because the mother and child had previously changed their domicile to Ohio, which fact left the Ohio courts free to determine the action on the basis of the child's welfare. So far as full faith and credit is concerned, the continuing jurisdiction of the California court terminated with the departure of the mother and child to a new domicile.

Another custody case is *Bain v. Rose*.²³ In a valid Illinois proceeding, the court granted custody to the mother. Later, the father brought an action in Ohio, the then domicile of the mother and child, seeking to obtain custody of the child. The mother contended that the court lacked jurisdiction. It was held that the court had jurisdiction and that despite the full faith and credit clause, the Ohio courts have a right to determine custody in accordance with the child's welfare. Inasmuch as the child was domiciled in Ohio, its courts undoubtedly had jurisdiction.²⁴ And apparently the court did not mean to imply that Ohio would re-examine the facts existing at the time of the Illinois action, but meant, rather, that

²¹ See STUMBERG, CONFLICT OF LAWS 324-29 (2d ed. 1951).

²² 166 Ohio St. 203, 141 N.E.2d 172 (1957).

²³ 103 Ohio App. 297, 145 N.E.2d 319 (1957).

²⁴ See RESTATEMENT, CONFLICT OF LAWS § 145 (1934). However, the court seemed to base jurisdiction on the fact that the child was *found* in the county.