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Immunity from Process

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hearing requested by the petitioner.¹⁰ Then, too, the parolee might absent himself as far as possible from the jurisdiction upon receipt of a notice informing him that his parole was about to be revoked.¹¹ The added requirement of notice and hearing to the administrative procedure of the parole authorities might deter the commission from granting many paroles that it otherwise would grant. A parole board would naturally hesitate to grant paroles in marginal cases in view of the extra work involved as well as the added responsibility which would fall on the board if they restored to a prisoner a status approximating full citizenship by the granting of a parole.¹² In the opinion of this writer the decision of the Ohio Supreme Court is sound. A contrary result might well have resulted in defeating the primary purpose of the parole laws — to aid in the rehabilitation of the convicted person.

JACK L. RENNER

IMMUNITY FROM PROCESS

A Cleveland attorney who was also statutory agent of the defendant corporation, was served with a summons in Akron while accompanying the president of the corporation to a deposition to which the president had been subpoenaed. The attorney filed a motion to quash on behalf of the corporation, on the ground that as a non-resident, present in a foreign county as an attorney engaged in legal work on behalf of his client, he was immune from service. The Ohio Supreme Court reversed the lower courts and denied the motion to quash.¹

Two issues confronted the court: (1) is a statutory agent immune from service of process in a foreign county because he also happens to be an attorney, and (2) is a non-resident attorney, engaged in legal work on behalf of his client, immune from civil process?

The Supreme Court held that there is no immunity from service of process granted to a statutory agent of a corporation merely because he is an attorney engaged in legal work. The court further held that the Ohio statute which grants immunity from arrest, clearly does *not* extend that immunity to service of process.²

It is a general rule that one who is attending court as a party, counsel or witness in a foreign county is privileged from service of civil process while going to, attending and returning from court.³ The rule is based on the necessity for uninterrupted administration of the judicial process.⁴

¹⁰ State *ex rel.* McQueen v. Horton, 31 Ala. App. 71, 14 So.2d 557 (1934).

¹¹ Commonwealth *ex rel.* Meredith v. Hall, 277 Ky. 612, 126 S.W.2d 1056 (1939).

¹² Owen v. Smith, 89 Neb. 596, 131 N.W. 914 (1911).

The federal courts have constantly sustained the privilege,⁵ and the weight of authority is in accord.⁶

Statutory and constitutional provisions which provide immunity from arrest present the problem of the interpretation of "arrest," viz., whether these provisions also extend immunity from civil process. There is a diversity of judicial opinion here.⁷ But the scope of the Ohio "arrest" statute is made clear by the explanatory provisions of Revised Code § 2331.13.⁸

The court could have reached its decision by merely declaring that a statutory agent, (otherwise subject to service) who is also an attorney, is not immune from service of process while in a foreign jurisdiction. In going further, the court overruled a long standing decision that had been made with the same statutory provisions on the books. In that case, the court said, "We are unanimously of the opinion that the general assembly neither intended nor attempted to comprehend within the purview of these enactments . . . cases [which] impede or embarrass the free and complete administration of justice in the courts."⁹

Perhaps the most apparent and compelling reason for the Court's going beyond the bounds of necessity was the need to clarify an apparent conflict between the statutes and previous judicial decisions. In addition, there may have been a desire to bring Ohio into line with the better reasoned decisions on the interpretation of "arrest" in the immunity from arrest statutes.¹⁰

¹ *Zumsteg v. American Food Club*, 166 Ohio St. 439, 143 N.E. 2d 701 (1957).

² OHIO REV. CODE § 2331.11: "The following persons are privileged from arrest: . . . (d) Attorneys, clerks of courts, sheriffs, coroners, constables, criers, suitors, jurors, and witnesses while going to, attending or returning from court.

OHIO REV. CODE § 2331.13: "Sections 2331.11 to 2331.14 inclusive of the Revised Code, do not extend to cases of treason, felony, or breach of peace, *nor do they privilege any person specified in such sections from being served with a summons or notice to appear. . .*" (emphasis added).

³ *Hale v. Wharton*, 73 Fed. 739 (W.D. Mo. 1896); *Brooks v. State*, 26 Del. (3 Boyce) 1, 79 Atl. 790 (1911); 42 AM. JUR., *Process* § 146 (1938).

⁴ *Brooks v. State*, 26 Del. (3 Boyce) 1, 79 Atl. 790 (1911).

⁵ *Stewart v. Ramsay*, 242 U.S. 128 (1916); *Schwartz v. Thomas*, 222 F. 2d 307 (D.C. Cir. 1955); *Kollenborn v. Murphy*, 118 F. Supp. 848 (N.D. Tex. 1954).

⁶ *Russel v. Landau*, 127 Cal. App. 2d 100, 274 P. 2d 681 (1954); *Crusco v. Strunk Steel Co.*, 365 Pa. 326, 74 A. 2d 142 (1950); *Commonwealth v. Dulles*, 181 Pa. Super. 498, 124 A. 2d 128 (1956); *Fishbein v. Thornton*, 247 S.W. 2d 404 (Tex. Civ. App. 1952).

⁷ *Hastings v. Hofstadter*, 258 N.Y. 425, 180 N.E. 106 (1932); see *Annot.*, 45 A.L.R. 2d 1100 (1956); *Annot.*, 94 A.L.R. 1470 (1935); *Annot.*, 79 A.L.R. 1214 (1932); *Annot.*, 71 A.L.R. 1399 (1931).

⁸ For text of statute see footnote 2, *supra*.

⁹ *Andrews v. Lembeck*, 46 Ohio St. 38, 43, 18 N.E. 483, 485 (1888).

¹⁰ See 94 A.L.R. 1470 (1935).

The possible results of the decision are varied. With the instant statutory interpretation in mind, it seems logical that the special appearance, if the non-resident were present, would be unavailing. Even if the court sustained the motion to quash, there would be no bar to serving him with process in a new action while he was still within the jurisdiction.

The result of the case is that substantial justice will still be accorded the several parties involved in the trial of a lawsuit. Since witnesses are still immune from service of process by statute,¹¹ it will not be more difficult to bring them into a foreign jurisdiction. The others, i.e., suitors, attorneys should not be able to escape the necessity of defending in a legitimate controversy on mere technicalities. While arrest might subject the court to serious interruption, service of summons in a civil action could have no such effect. "The proper administration of justice is protected amply by the immunity from restraint of process by the statutory privilege granted by Section 2331.11 Revised Code."¹²

ALAN ZUCKERMAN

¹¹ OHIO REV. CODE § 2317.29. "A witness shall not be liable to be sued, in a county in which he does not reside, by being served with a summons in such county while going to, returning, or attending in obedience to a subpoena."

¹² *Zumsteg v. American Food Club*, 166 Ohio St. 439, 445, 143 N.E. 2d 701, 705 (1957).