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Conflict of Laws

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whether any personal jurisdiction was ever obtained over defendant; apparently it was not, but a valid attachment was obtained prior to judgment upon certain real estate of defendant. The judgment, after 5 years, became dormant and the lien thereof upon defendant's real estate (if any there ever was) became lost.³⁹ No sale on execution could be had under the lien of the judgment.

The court held, however, that this did not "affect the power of sale under the valid attachment acquired by the very rendition of the judgment," and that the attaching creditor was entitled to an order of sale of the defendant's interest in the attached real estate.

The ruling is undoubtedly correct. This writer submits, however, that there is in the court's opinion some ambiguous and potentially dangerous *dictum*, in that it seems to treat the whole proceeding as one *in rem*. Certainly a court, in acting upon the property of an absent defendant is exercising a type of *in rem* jurisdiction. It is difficult to see how a personal action can, by virtue of attachment or otherwise, be turned into an *in rem* action.

SAMUEL SONENFIELD

CONFLICT OF LAWS

Domicile: Person in Military Service

In *Draper v. Draper*¹ the court recognizes that it is possible for a person in the military service to obtain a domicile of choice, and upholds the trial court in its conclusion that the plaintiff did obtain such a domicile in Ohio under the circumstances of this case.² Plaintiff, whose former domicile was Michigan, was assigned to a base near Columbus, Ohio, and lived away from the base in his own quarters.³

Workmen's Compensation: Tort Action: Full Faith and Credit

In the *Survey of Ohio Law* for 1957,⁴ I discussed at some length the case of *Ellis v. Garwood*,⁵ which involved the New York workmen's compensation law. Two New York employees of a New York corporation were in Ohio on business, and, through the negligent driving of one of them, the other was killed. His widow received compensation under the New York workmen's compensation law and subsequently brought an action for wrongful death in Ohio against the fellow employee.

39. OHIO REV. CODE § 2329.07.

By the New York law, the compensation obtained under the workmen's compensation act was the exclusive remedy, and no suit against a negligent fellow employee was permitted. Under the Ohio law, such a suit was permitted.

The court of appeals held that the full faith and credit clause of the United States Constitution⁶ did not prohibit the wrongful death action in Ohio⁷ and that the law of Ohio, the place of the wrong, determines whether there is a cause of action for the wrong.

During 1958, the Supreme Court of Ohio affirmed the judgment of the court of appeals⁸ upon the ground that the *lex loci delicti* governs. The court did not refer to the full faith and credit clause.⁹

Validity of Marriage: First Cousins

With certain exceptions not here relevant, a marriage is valid everywhere if the requirements of the marriage law of the state where the contract of marriage takes place are complied with.¹⁰ In *Mazzolini v. Mazzolini*,¹¹ two first cousins, Edward and Josephine, married in Massachusetts. Edward's domicile was Ohio; Josephine's, Massachusetts. After the ceremony they came to Ohio to live. The marital venture proving unsuccessful, Edward brought an action in Ohio for annulment of the marriage upon the ground that it was void *ab initio*.

By the Ohio statute dealing with ceremonial marriages, a marriage between first cousins is not permitted.¹² By the law of Massachusetts a marriage between first cousins is not unlawful. However, a Massachusetts statute, referred to in the court's opinion, provides that no marriage shall be contracted in Massachusetts by a party residing and intending to

1. 107 Ohio App. 32, 151 N.E.2d 379 (1958).

2. The suit was for a divorce.

3. See RESTATEMENT, CONFLICT OF LAWS § 21, comment *c* (1934).

4. 9 WEST. RES. L. REV. 251, 273 (1958).

5. 153 N.E.2d 715 (Ohio Ct. App. 1957).

6. U.S. CONST. art IV, § 1.

7. The court relied on *Carroll v. Lanza*, 349 U.S. 408 (1955).

8. *Ellis v. Garwood*, 168 Ohio St. 241, 152 N.E.2d 100 (1958). See also WORKMEN'S COMPENSATION, section *infra*.

9. See generally Ford, *The Liability of Nonemployer Tortfeasors Under State Workmen's Compensation Statutes: A Choice-of-Law Problem*, 68 YALE L. J. 54 (1958).

10. RESTATEMENT, CONFLICT OF LAWS § 121 (1934).

11. 168 Ohio St. 357, 155 N.E.2d 206 (1958). See also DOMESTIC RELATIONS section, *infra*.

12. OHIO REV. CODE § 3101.01.

continue to reside in another jurisdiction if such marriage would be void if contracted in such other jurisdiction, and that every marriage contracted in Massachusetts in violation of the above shall be null and void.

Recognizing the general rule that the *lex loci contractus* governs the validity of the marriage, the court pointed out that under the Massachusetts law the marriage would be void in Massachusetts if such a marriage would have been void if contracted in Ohio. From the choice-of-law point of view, that is all there is to the case.

The majority of the court then decided that under the law of Ohio marriages of first cousins are not void, even though prohibited. Consequently, the marriage was valid under the Massachusetts statutes and therefore valid in Ohio.¹³

Appointment of Guardian: Jurisdiction: Full Faith and Credit

*In re Fore v. Tob*¹⁴ is an extremely important case and was something of a *cause célèbre*, at least in the Cleveland area. I know of no better way to present it than to quote the two paragraphs of the syllabus.

1. Where there is no existing award of custody of an orphaned minor resident of Ohio by a foreign court, the Probate Court of the county of such residence has jurisdiction, under Section 2111.02, Revised Code, to appoint a guardian of the minor, irrespective of the fact that the domicile of such minor may be in another state.

2. A decree of guardianship of a minor resident of Ohio by a court in the state where the child has a technical domicile, which decree is made without personal service on either the child or the person with whom such child is living, is not entitled, under Section 1, Article IV of the Constitution of the United States, to such faith and credit as will nullify the prior appointment of a guardian of such minor by the Probate Court of the county of his residence.

The court interprets the word "resident" in Ohio Revised Code section 2111.02 as meaning a place of dwelling within the state rather than as being synonymous with "domicile."

In view of the court's decision, the guardian appointed by the "foreign" court (Louisiana), presumably the technical domicile of the child, failed in her attempt to force the Ohio guardian to turn the child over to her custody.

13. The three dissenting judges thought that first-cousin marriages are void under Ohio statutory law.

14. 168 Ohio St. 363, 155 N.E.2d 194 (1958). The report of the case in the court of appeals is in 79 Ohio L. Abs. 15, 151 N.E.2d 777 (1958). The Supreme Court reversed the two-to-one judgment of the court of appeals.