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Conflict of Laws

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Of the 258 opinions considered by the editorial board, 64 have been given textual treatment below. Brief summaries of 28 others appear at the end of the appropriate section. An additional 12 have been treated in footnotes.

Fields in which no cases believed worthy of note were found are: Administrative Law, Agency, Bills & Notes, Corporations, Equity, Partnerships, Public Utilities, and Social Security.

For a survey of statutory law enacted during 1953, see *Washington Legislation*—1953, 28 WASH. L. REV. 167 (1953).

CONFLICT OF LAWS

Jurisdiction—Order Affecting Possession of Foreign Land. In *Alaska Airlines, Inc. v. Molitor*,[1] the Supreme Court held that a trial court in Washington lacked "jurisdiction" to order a litigant personally before the court to give up possession of land in Alaska. The litigation was commenced by a vendor of an interest in land against the vendee for breach of contract. Prior to trial the plaintiff-vendor moved for an order directing the defendant-vendee to surrender all right, title and possession of the premises described in the agreement. The trial judge indicated he would issue the order. The defendant then applied to the Supreme Court for a writ of prohibition which was granted.

The court indicated that the order of the trial court would require the defendant to do an affirmative act outside the state affecting real property located outside the state and hence was not within the jurisdiction of the court.

Generally, a trial court will not issue such an order under circumstances similar to those found in this case. Refusal is usually based upon principles of sovereignty (a state has a sovereign or inherent right to decide exclusively controversies affecting land located within its borders[2]), or upon pragmatic reasons (a state in which property is

[1] 143 Wash. Dec. 606, 263 P.2d 276 (1953).

[2] The significance of the situs of real property is demonstrated in the prevailing rule that actions in law (including the action of trespass) involving property are "local" and not "transitory"; hence, the venue must be laid in the county in wihch the property is located. This distinction between "local" and "transitory" actions (which is often criticized) is usually traced in this country to Chief Justice Marshall's opinion in Livingston v. Jefferson, 1 Brock. 203, Fed. Case No. 8411 (1811). Even Marshall indicated that he could not discern a reason other than a technical one for the distinction. See Taylor v. Sommers Bros. Match Co., 35 Idaho 30, 204 Pac. 472 (1922). A court of equity cannot make a decree operating directly on land in another state. Carpenter v. Strange, 141 U.S. 87 (1891). Nor need any decree attempting to do so be given full faith and credit. Fail v. Fall, 70 Neb. 694, 113 N.W. 174 (1907), affirmed in Fall v. Eastin, 215 U.S. 1 (1909).

located is in a better position to administer and to see that there is compliance with any such order, and possibly to protect the interests or claims of third parties[3]). Venue statutes are sometimes held to be controlling, or at least indicative of a general policy in the forum-state not to hear controversies involving realty except in the county, and by analogy, also in the state, in which the property is located.[4]

Considering all of the information contained in the pleadings and affidavits in this case, an order to vacate possession seemingly would have been improper.[5] However, it is submitted that the proper basis, or at least a better basis, for disapproving such orders involve principles analagous to comity rather than any theory of lack of jurisdiction. In other words based upon every consideration of policy, expediency and property, the court will *abstain from exercising its jurisdiction* in controversies of this character under these circumstances.[6]

Compare the following:

(1) A, the owner of Blackacre located in state Z, contractually agrees to transfer title to B on a certain date. The date arrives, but A refuses to transfer title. B hales A into court in state Y, seeking specific performance of the contract. While there is a long-standing rule that a court cannot try or quiet "title" to property located in another state,[7] a court in Y can and undoubtedly will issue an order *in personam* requiring A to make a conveyance. The Washington court has indicated that a trial court in this state would have the power to issue such an order because the *act required* (the conveyance of title)

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[3] *See* Gunter v. Arlington Mills, 271 Mass. 314, 171 N.E. 486 (1930); GOODRICH, CONFLICT OF LAWS § 77 (1949); BEALE, CONFLICT OF LAWS, § 94.2 (1935).

[4] The Washington court in the Molitor case referred to RCW 4.12.010 which provides that actions involving possession or title of land or any specific article of personal property must be commenced in the county in which the property is located. The court has held that the provisions in the statute are jurisdictional and cannot be waived. Miles v. Chinto Mining Co., 21 Wn.2d 902, 153 P.2d 856 (1944). Query? Does not the statute refer only to actions at law as distinguished from suits in equity operating *in personam?* Jurisdiction and venue are not always clearly distinguished by courts and legislatures. See Stevens, *Venue Statutes: Diagnosis and Proposed Cure,* 49 MICH. L. REV. 307, 316-323 (1951).

[5] Statements were in conflict as to whether the defendant still had possession of the land in Alaska, and if so, whether he held possession under the agreement with the plaintiff or by virtue of a new lease from the city of Anchorage which owned the fee.

[6] For a good discussion of this position, see Gunter v. Arlington Mills, 271 Mass. 314, 171 N.E. 486 (1930). See also RESTATEMENT, CONFLICTS § 94 (1934) and Comment that follows; GOODRICH, CONFLICT OF LAW § 77 (1949).

[7] Carpenter v. Strange, 141 U.S. 87 (1891); Snow v. Kennedy 36 Ariz. 475, 286 Pac. 930 (1930). But see Remer v. Mackey, 35 Fed. 86 (N.D. Ill. 1888) and 54 Fed. 432 (N.D. Ill. 1892) where it was held that a court having personal jurisdiction of the parties may decree the removal of a cloud on lands situated in another state. By issuing such a decree, the court said it was not being asked to pass upon the title to the land.

could be performed within the state.[8]

(2) Same as above, except that the agreement is not to transfer title but to turn over possession. Could not a court in Y properly order A to allow B to take possession peaceably (admittedly, an order requiring negative acts), or if A has possession through an agent, require A to issue an order, which act can be done in Y, to his agent in Z to vacate the property so B can take possession? Would the court be trying a question of "possession" in the legal or real property sense anymore than it is trying a question of "title" in the first hypothetical?

Courts have on occasion required defendants to do affirmative acts outside of the state.[9] In a case quite similar to the instant case, the California supreme court held that a trial court could properly order a corporate board of directors to direct agents in control of corporate property in Arizona to allow the plaintiff to enter, inspect and examine the Arizona property.[10]

Admittedly, adoption of the principle of "refusal to exercise jurisdiction" rather than a total "lack of jurisdiction" might have made it impossible for the supreme court to issue the writ of prohibition in the *Molitor* case. The exercise of jurisdiction by the trial judge would, at most, have been only an abuse of discretion, for which the writ will not lie.[11]

However, the writ possibly could have been issued on another ground. The sanction which the court intended to impose for failure to obey its order involved the striking of the defendant's pleadings and the entering of a default judgment for the plaintiff. The power of a court to strike pleadings or issue a default judgment for disobedience of an order should apply only to orders affecting the case procedurally, and should not be applicable to orders which affect the substantive rights of the parties or the subject matter of the litigation.[12]

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[8] Donaldson v. Greenwood, 40 Wn.2d 238, 242 P.2d 1038 (1952).

[9] This is especially true when the affirmative order is to abate a nuisance which is affecting citizens or property in the forum. See the Salton Sea Cases, 172 Fed. 792 at 812 (C.A. 9th 1909); BEALE, CONFLICT OF LAWS § 97.14 (1935).

[10] Hobbs v. Tom Reed Gold Min. Co., 164 Cal. 497, 129 Pac. 781 (1913); the court stated at 129 Pac. at 783: "[The court] will not refuse any relief because it cannot give the full relief that plaintiff asks, or because it cannot act directly upon the premises to which the relief relates." The West Virginia Supreme Court stated in dictum that a trial court in that state had the power to appoint a receiver to take possession of personal property in Ohio, even though it lacked power to order the receiver to personally go to Ohio to take possession. The court indicated that the trial court, which had jurisdiction of the defendant, could legitimately do all within its power to compel the defendant to put the receiver in possession of the property. Straughan v. Hallwood 30 W.Va. 274, 4 S.E. 394 (1887).

[11] *In re* Jones, 39 Wn.2d 956, 239 P.2d 856 (1942). See also RCW 7.16.300.

[12] See RULE OF PLEADING, PRACTICE AND PROCEDURE 37, 34A Wn.2d 101 (involving

It is arguable that the issuance of such an order would not have been merely an abuse of power or discretion, but would have been in excess of the judge's power and, hence, beyond his jurisdiction. If so, this would have been a proper basis for issuing a writ of prohibition.[13]

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CONSTITUTIONAL LAW

Enrolled Bill Rule. In two recent decisions, *Derby Club v. Beckett*[1] and *Roehl v. Public Utility District*,[2] four members of the Supreme Court have written opinions which challenge the validity of the enrolled bill rule. In the *Derby Club* case, the 1951 act which purported to license the operation of bottle clubs[3] was attacked on the ground that it was enacted in violation of Art. II, § 38 of the state constitution.[4] The defendants demurred, but relied on the enrolled bill rule in their argument on appeal. The majority of the court held the statute unconstitutional on other grounds, but two concurring opinions were filed, representing the views of four judges, in which the position was taken that the court should abandon the enrolled bill rule. In the *Roehl* case, the statute giving the Public Utility District authority to acquire substantially all of the electric utility properties of Puget Sound Power & Light[5] was alleged to be invalid, also under Article II, § 38. In support of their contention, the plaintiffs introduced certified copies of several House bills and the legislative journal. Having the enrolled bill rule thus directly raised in issue, the majority wrote an extensive opinion adhering to the long line of Washington authority upholding the enrolled bill rule. The same judges that spoke against the enrolled bill rule in the *Derby Club* case expressed their dissent in this case.[6]

discovery). RCW 4.56.120 (6) authorizes the court to grant a nonsuit when a defendant fails to comply with an order of the court (presumably an order affecting pre-trial or trial pleading or procedure), but there is no comparable statutory authority authorizing a default judgment when a defendant refuses to obey an order. However, Rule 37(d) does permit a court to grant a default judgment for the defendant's failure to comply with an order involving discovery.

[13] While the court did not decide the case on the propriety of the sanction which the trial judge intended to impose, it did question the propriety of such an order which would change the "status quo" between the parties prior to a trial on the merits.

[1] 41 Wn.2d 869, 252 P.2d 259 (1953).

[2] 143 Wash. Dec. 198, 261 P.2d 92 (1953).

[3] RCW 66.24.480.

[4] "No amendment to any bill shall be allowed which shall change the scope and object of the bill." WASH. CONST. ART. II, § 38.

[5] RCW 80.40.054.

[6] One of the judges who joined in the opinions against the enrolled bill rule in the previous case voted with the majority in this case, so the decision was six to three. However, in his concurring opinion, he stated that he still was not in favor of the rule.