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Foreign Decree Against Suing, Res Judicata [Allen v. Chicago Great Western R.R. Co., 239 Ill. App 38]

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ber of instances, proof by the plaintiff of negligence on the part of the defendant, is impossible, either because defendant was not negligent at all, or because plaintiff was unable at the time to secure the necessary evidence; or lastly, because the injury arose from a mere accident. Hence, it has been suggested that the state compel compulsory compensation or payment in all cases where automobiles have caused injury or death, even in cases where no negligence is provable against the operator of the vehicle, but of course exempting from liability where the injured person has been guilty of contributory negligence or wanton carelessness.¹⁵ The argument is that under similar facts the principle of workmen's compensation laws arose between employer and employee; and various phases of their constitutionality have been passed upon, thus strongly intrenching the idea as a legal institution.¹⁶ The objection to this proposal is analogous to that advanced against the permission by common carriers to insure goods against negligent destruction, that automobile owners will be all the more careless.¹⁷ It would seem, however, that this objection is without serious weight; it has not worked such results generally in workmen's compensation, or in operation of railways; furthermore, the deterring effect of criminal penalties would likewise seem to offset it. Higher premium rates charged to policy holders, owners of automobiles, in case of repeated infliction of injuries, would also have a deterring effect against carelessness.¹⁸

On the whole, it may be said that while the Massachusetts statutes, thus sustained by the two advisory opinions under discussion, represent a commendable step forward in solving the problem of pecuniary relief to pedestrians or users of public highways through negligent operation of automobiles, they do not go far enough, and it is likely that the future will see the introduction of the compulsory compensation principle, where defendant has not been tortiously negligent.

E. F. ALBERTSWORTH.

CONFLICT OF LAWS—FOREIGN DECREE AGAINST SUING—RES JUDICATA.—[Illinois] The question of how far the decree of one court is conclusive in the court of another state between the same parties or those in privity with them is a comparatively recent one, all the aspects of which cannot yet be regarded as definitely established.

15. *Marx* "Compulsory Automobile Insurance" *Columbia L. Rev.* 25:164, *Amer. Bar Assn. Journ.* 11:731.

16. I have collected the various decisions construing workmen's compensation statutes as constitutional in my Syllabus, "The Law of Industrial Injuries" (1925 Northwestern Univ. Press) pp. 5-6; see also *Chamberlain* "Automobiles and Vicarious Liability" *Amer. Bar Assn. Journ.* 10:788.

17. *Supra* note 15. See also *Ives* "Compulsory Liability Insurance" *Amer. Bar Assn. Journ.* 10:697, replying to *Marx* "The Curse of the Personal Injury Suit" *Amer. Bar Assn. Journ.* 10:493.

18. *Chamberlain* "Compulsory Insurance of Automobiles" *Amer. Bar Assn. Journ.* 12:49.

A recent decision¹ of the Appellate court for the First district raises one aspect of this problem. In that case one Adeline Allen, a citizen of Iowa, there began an action at law for personal injuries against the Chicago, Great Western R. R. Co. While this action was pending, she began another action for the same tort in the Superior Court of Cook County. Thereupon the railroad company procured an injunction from the Iowa court restraining Allen from prosecuting the Illinois action. The railroad company then filed a motion in the Illinois court for a continuance, setting up the Iowa decree. The motion was overruled and the case tried, resulting in a verdict for Allen. *Held* by the Appellate Court, that the trial judge erred in denying the motion for a continuance based on the Iowa injunction.

There are obviously two different questions suggested here; one, when will a court issue an injunction affecting the maintenance of an action in another state;² second, what effect will be given to such an injunction in the second state?

So far as the issuance of decrees against the maintenance of actions in other states is concerned, there are numerous cases in which courts have issued injunctions of this kind. One common case is that of receivership proceedings or proceedings under a state bankruptcy statute. Courts in which such proceedings are pending have frequently issued injunctions either against certain particular creditors or blanket injunctions against all creditors, forbidding them from beginning or from continuing garnishment or attachment proceedings in another state directed against the debtor whose estate was in process of being administered.³

Aside from these cases there are also other instances in which injunctions have been granted against beginning or continuing actions in the courts of another state.⁴

The cases are even more numerous in which courts have refused to enjoin the bringing of actions in a foreign court, but these refusals have been rested, not on the ground of a lack of jurisdiction, but upon the ground that the right of a person to litigate his cause of action before any competent tribunal should not be interfered with, except in cases where the peculiar facts justified the issuance of the injunction.⁵ There is of course no conflict between these two groups of cases, the question of jurisdiction is one thing, and the exercise of judicial discretion in granting or refusing the injunction is a different one.

1. *Allen v. Chicago Great Western R. R. Co.* (1925) 239 Ill. App. 38.

2. Compare ILL. LAW REV. 20:594.

3. *Sercomb v. Catlin* (1889) 128 Ill. 556; *Dehon v. Foster* (1862) 4 All. (Mass.) 545; *Chafee v. Quidnick Co.* (1881) 13 R. I. 442; *Cole v. Cunningham* (1889) 133 U. S. 107.

4. *Allen v. Buchanan* (1893) 97 Ala. 399; *Hagar v. Adams* (1886) 70 Iowa 746.

5. *Folkes v. R. R.* (1918) 202 Ala. 376; *Ill. Life Ins. Co. v. Prentiss* (1917) 277 Ill. 387; *Jones v. Hughes* (1912) 156 Ia. 684; *Guggenheim v. Wahl* (1911) 203 N. Y. 390.

Assuming that such a decree is issued by a court of competent jurisdiction, to what extent will it be recognized and enforced by courts of another state in an action between the same parties or their privies?⁶

So far as the bankruptcy and receivership cases go, certain distinctions must be rather carefully noticed. In a large part of the cases in which the question has arisen in the second state as to what value should be given to the proceedings in the first state, the contention of the assignee in bankruptcy or the receiver has been that as a result of the proceedings in the first state he was vested with the title to the property in the second state. This title he was attempting to assert as against an attaching creditor either of the first state or of the second state or of some third state. The various courts have settled the question in different ways, according as the conveyance was or was not voluntary or as the creditor was or was of the same state as the receiver or assignee.⁷ In such cases the fundamental conflict of law question involved is that of Property, not of *res judicata* or jurisdiction of the courts, and consequently decisions in such cases that the courts do or do not recognize the title of the receiver or assignee, have no bearing upon the subject under discussion here. In several of the cases, however, in which the rights of the assignee or receiver have been sustained as against the creditor the courts have rested their decision, at least in part upon the ground that an injunction had been issued which they would recognize and enforce as against creditors subject to the jurisdiction of the court which issued it, and to that extent they are in point and tend to sustain the decision of the Appellate court in the present case.⁸

Aside from the cases last referred to the decisions recognizing and enforcing foreign equitable decrees enjoining litigation are very few. In *Dobson v. Pearce*⁹ the New York Court gave effect to a Connecticut decree enjoining the collection of a New York judg-

6. It is interesting, parenthetically, to notice the development of the law relating to the enforcement of foreign decrees for the payment of a fixed sum. In *Carpenter v. Thorton* (1819) 3 B. & Ald. 52, the court of King's Bench refused to allow an action at law to be brought upon a decree of the vice chancellor for the payment of a sum certain, on the ground that such a decree created no legal obligation. Less than ten years later, in *Henley v. Soper* (1828) 8 B. & C. 16, the same court allowed an action upon a decree of a Newfoundland court of equity for the payment of a fixed sum. That an action at law can be brought upon a decree of a foreign court for the payment of a fixed amount is now definitely established: *Post v. Neafie* (1805) 3 Caines (N. Y.) 22; *Warren v. McCarthy* (1860) 25 Ill. 83; *Pennington v. Gibson* (1853) 16 How. (57 U. S.) 65. In *Barber v. Barber* (1858) 21 How. (62 U. S.) 582, a bill in equity was allowed for the same purpose. See also *Wagener v. Wagener* (1904) 26 R. I. 27.

7. See, for example, the following Illinois decisions: *Rhawn v. Pearce* (1884) 110 Ill. 350; *Townsend v. Coxe* (1894) 151 Ill. 62; *J. Walter Thompson Co. v. Whitehead* (1900) 185 Ill. 454; *Ill. Savings Bank v. Northern Bank* (1920) 292 Ill. 11.

8. *Bagby v. R. R.* (1878) 86 Pa. 291; *Gilman v. Ketcham* (1893) 84 Wis. 60. Compare *Schindelholz v. Cullum* (1893) 55 Fed. 885.

9. (1854) 12 N. Y. 156.

ment obtained by fraud. In *Fisher v. Pacific Mutual Life Ins. Co.*¹⁰ a plea in abatement to an action brought in Mississippi upon an insurance policy was sustained upon proof of an injunction issued by a Tennessee court enjoining the plaintiff from suing upon the policy outside of Tennessee.

It may be objected that in these two last mentioned cases the decree of the court was final whereas in the present case the decree was still subject to be modified by the court. An interlocutory decree will not be enforced in another state¹¹ and does not come within the full faith and credit clause of the Constitution.¹² But the fact that a decree is made expressly subject to the control of the court that issued it and may be modified on proper showing does not render it any the less a final decree so long as it stands.¹³

It is believed that *Dobson v. Pearce*¹⁴ and *Fisher v. Insurance Co.*¹⁵ and the language of the court in *Gilman v. Ketcham*¹⁶ sustain the conclusion of the Appellate court in the case at hand and that they are in accord with one another and with an established principle of the common law rules of conflict of laws. This general principle is that once a right has been created by a law competent to do so, that right will be recognized and enforced by other jurisdictions unless so to do would violate some definitely established and fundamental policy of the law of the second state.¹⁷ The mere fact that the right would not have come into being in the second state on the given facts does not in itself show any such fundamental policy against the right as to prevent its enforcement once it has been established that it was duly created. In the present case, the Iowa court by its decree created the duty on the part of the plaintiff in the Illinois action to refrain from the further prosecution of it. That duty once being properly established will be enforced by Illinois unless it is opposed to some fundamental policy of the state and there was no showing of any such policy.

One other question is suggested by the case though not discussed by the court. If the foregoing propositions are correct the conflict of law rule of Illinois is that it will recognize and enforce the duty created by the law of Iowa to refrain from prosecuting the Illinois action. This is perhaps also a duty imposed upon the Illinois courts by the full faith and credit clause. But the exact method by which the obligation so created shall be enforced is one that the Illinois law will settle for itself. Conceivably Allen might have been allowed to go ahead with the action at law and the railroad

10. (1916) 112 Miss. 30.

11. *Baugh v. Baugh* (1816) 4 Bibb. (Ky.) 556.

12. *Board of Public Works v. Columbia* (1873) 17 Wall. (84 U. S.) 521.

13. *Sistare v. Sistare* (1909) 218 U. S. 1.

14. Ante note 9.

15. Ante note 10.

16. Ante note 8.

17. How far even this qualification will hold in the light of the full faith and credit clause in cases where the right created in the first state takes the shape of a judgment of a court of competent jurisdiction cannot be considered at this time.

company have been given a cross action for damages suffered by Allen's violation of the duty to refrain from suing; conceivably the railroad company might have made the Iowa decree the basis of a proceeding in equity in Illinois to enjoin the action at law. Such methods of enforcing the Iowa-created duty would of course be clumsy; the obvious and easy way of enforcing it was the one that the court adopted. But the suggestions will serve to illustrate the difference between the proposition that Illinois will recognize and give legal protection to a duly created foreign right, and the proposition that the method of enforcing that right and the collateral consequences that flow from its admitted existence need not necessarily be the same as they would be in the state where the right was created.¹⁸

HARRY A. BIGELOW.

WHEN IS A FREEHOLD INVOLVED WITHIN THE MEANING OF THE ILLINOIS PRACTICE ACT?—[Illinois] The disposition of the Supreme Court of Illinois, to confine the number of cases which may be taken to that court as a matter of right, to the smallest possible number¹ (a disposition which arises out of necessity itself born of the ever-increasing volume of appellate business), is again manifested in *Worsley v. Welch*,² where the court held a table of heirship in the Probate court not to involve a freehold, because such a table was evidence merely, and not conclusive. In that, it would seem, the court is but following its earlier decisions, particularly such as held that a bill to declare an absolute deed a mortgage,³ a bill to redeem from a foreclosure sale,⁴ a bill to foreclose^{5a} and a proceeding in forcible entry and detainer⁵ do not involve a freehold.

It is interesting to note that the court has held also, that a freehold is not involved in a proceeding by a remainderman to obtain the proceeds of a judicial sale of property which was given to a minor determinable on the death of the minor under certain circumstances, because, the court said, the conversion of the real estate into personalty destroyed the freehold⁶ and for like reason, that a proceeding between partners for an accounting, does not in-

18. See *Dunlap v. Byers* (1896) 110 Mich. 109; *Burnley v. Stevenson* (1873) 24 O. St. 474; *Mallett v. Scheerer* (1916) 164 Wis. 415; *Fall v. Eastin* (1909) 215 U. S. 1. Compare the language of Allen J. in *Dobson v. Pearce* (1854) 12 N. Y. 156, 167.

1. ILL. LAW REV. VIII 176; XIV 223; XV 44; XVII 235; XVII 543; XIX 670.

2. (1925) 317 Ill. 90.

3. ILL. LAW REV. XVII 235, 236; not even where as incident to the relief a deed to a third party having notice is set aside: *Hajicek v. Goldsby* 309 Ill. 373, 374; *Hess v. Bartinauer* 311 Ill. 191, 192; *Powers v. Walrath* 311 Ill. 593.

4. ILL. LAW REV. XVII 543.

4a. *First National Bank v. Huber* 309 Ill. 362.

5. ILL. LAW REV. XIV 223; *Corwine v. Wigginton* 290 Ill. 322.

6. *Stafford v. Phelps* 290 Ill. 559; *Wolford v. Young* 300 Ill. 322; (any equitable conversion seems to have that effect) *Mills v. Sawyer* 302 Ill. 510.