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Article 9

Justice Courts - Territorial Jurisdiction

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RECENT DECISIONS

Justice Courts — Territorial Jurisdiction — The Justice ordered service by publication against the principal defendant, a resident of the adjoining county, in a garnishment action and, upon its completion, gave plaintiff a default judgment against both defendants. Defendant appealed from a judgment of the Circuit Court quashing a writ of certiorari issued to review the judgment of the Justice. *Held:* The Justice had jurisdiction over the garnishee defendent, and section 304.24, Wisconsin Statutes[1] was construed to permit, under these circumstances, jurisdiction over the principal defendant to be obtained by publication. *State ex rel. Fontaine v. Sullivan,* 22 N.W. (2nd) 535 (Wis. 1946).[2]

The majority opinion was based upon a construction of this statute[3] which authorizes service of the summons in the principal action by publication. The Wisconsin Supreme Court then stated the effect of such an interpretation:

> "It is the evident statutory purpose that claims of a principal debtor against another may be reached by garnishment in justice court in any county of the state where personal service or what amounts to it may be had on such other, and that service upon the principal debtor may be had by publication if he is not found there. The possibility suggested in this paragraph can be dealt with only by the legislature."[4]

There were two dissenting opinions which stressed discrimination, situs of debts, and grounds for service by publication. The difficulty lies in the fact that the publication statute for justice courts,[5] recognizing their territorial limitation of process to the county, authorizes publication where the defendant cannot be found within that county, while in actions in a circuit court publication is not authorized unless

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[1] Wisconsin Statutes, sec. 304.24, "Summons, how served; form of. The officer shall serve such summons on the garnishee personally, and return the same, with the affidavit, to the justice at the same time that he shall make return of the summons or warrant and state in his return the day service was made on the garnishee. If the defendant cannot be found or is not a resident of the state then service may be made upon him by publication as provided in sections 304.12 and 304.14, with like effect . . . The summons to the defendant may be substantially in the following form: . . . You are hereby notified that a summons and garnishee has been issued against you and your property garnisheed to satisfy the demand of . . . ; now unless you shall appear . . . judgment will be rendered against you and your property sold to pay the debt . . ." since amended by Laws of Wis., (1945) Ch. 441, Sec. 159, but it appears that amendments is merely a simplification of the statute and does not change the effect.

[2] Plaintiff, a doctor, and principal defendant, a railroad employee, were residents of Forest County. The garnishee railroad company could be served in both Forest and adjoining Brown County, where judgment was rendered.

[3] Fn. 1, *supra;* State ex rel. Fontaine v. Sullivan, 22 N. W. (2nd) 535, (Wisconsin, 1946).

[4] State ex rel. Fontaine v. Sullivan, *supra.*

[5] Fn. 1, *supra.*

the defendant cannot be found in the state.[6] It is conceded that the state legislature may, within reason, fix the venue of actions[7] and, in case of necessity, provide for substituted service,[8] as long as there is no unreasonable discrimination between litigants or classes of litigants,[9] on the ground that the state may provide for the adjudication of all adversary rights of persons in property within its borders.[10]

Territorial limitation of jurisdiction of Justices of the Peace is based upon public policy requiring an action involving small amounts to be tried in the locality where the defendant resides to protect him from undue expense of litigation.[11] The presumption in most states is that courts of limited jurisdiction have no jurisdiction until it is affirmatively shown.[12] Other states strictly limit jurisdiction to the county in all cases except where the defendant has absconded[13] or cannot be found within the state.[14] The question is one for the legislature to decide, looking both to the requirements of justice and public demand for speedier and less cumbersome tribunals.[15]

ALBERT J. HAUER

Insurance—Voluntary Transfer of Possession as a Bar to Recovery Under Policy Covering Theft and Larceny—Insured, an auto dealer, allowed a prospective purchaser to take a car out for inspection, whereupon the latter converted the car to his own use. There was an insurance policy in effect that covered theft, larceny, robbery or pilferage, but the policy excepted coverage where the insured voluntarily parted with title to or possession of the car, even if induced to do so by fraud, scheme, false pretense or some trick. *Held:* Insured so voluntarily gave up possession of the car that in view of the exception in the policy he is not entitled to the coverage benefits. *Boyd v. Travelers Fire Insurance Co.* 22 N.W. 2nd 700 (Nebraska, 1946).

The main conflict in determining cases of this nature seems to lie in the interpretation of the word possession in the policy. There

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[6] Section 262.12, Wisconsin Statutes.
[7] Clark v. Louisville & N. R. Co., 158 Miss. 287, 130 So. 302, at p. 307, (1930).
[8] 21 R.C.L. 1282, sec. 26.
[9] Fn. 7, *supra.*
[10] Fn. 8, *supra.*
[11] Thomas v. Hector Const. Co., 216 Minn. 207, 12 N.W. (2nd) 769, (1943).
[12] Gilbert v. York, 111 N.Y. 544, 19 N.E. 268, (1888). ACCORD: Collins-Dietz-Morris Co. v. Christ, 179 Okl. 422, 65 P. (2d.) 967, (1936); Schuler-Knox v. Smith, 62 Cal. App. 86, 144 P. (2d.) 47, (1943). CONTRA: Coffee v. Chippewa Falls, 36 Wis. 121, (1874); Baizer v. Lasch, 28 Wis. 268, (1871).
[13] Meyer v. Hibler, 52 Neb. 823, 73 N.W. 289, (1897).
[14] Empire Supply Co. v. McCann, 127 Okl. 195, 260 P. 44, (1927).
[15] For general discussion analyzing character, faults, and giving suggestions for Justice of the Peace Courts see: Wis. L.R. 1939: 414-22, May '39; Oreg. L. R. 21: 380-4, June '42.