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Injunctions -- Restraining Residents of Forum from Suing in Foreign Courts to Evade Local Laws

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would give to the plaintiff. To these the *Bouchard* case would seem to add another factor, that of public interest in the enforcement of zoning ordinances. Judged by these criteria, the instant case seems to have been properly decided. Defendant, relying upon the variation permitted by the zoning board of appeals, erected the structure in defiance of the ordinance and despite the protests and legal actions of plaintiffs. It should not be fatal that they did not in addition seek a restraining order pending the outcome of that litigation. Although it was estimated that it would cost the defendants around \$350,000, of which \$130,000 would go into rebuilding, to make the building conform, and that the resulting benefit to the plaintiffs from the setbacks would be an average increase in light of 2.14%, this balancing of conveniences perhaps ought not to prevail against the other factors. Nor should the interests of bondholders, though their security is thus impaired.

There is, however, one objection to the result reached, and that is the possibility of inducing extortion. What happens after the granting of such a mandatory injunction? Is the building made to conform to the ordinance, or is the plaintiff bought off by a larger payment of money than would be granted by a court as damages? If the latter seems likely, the plaintiff should be deprived of his argument of public interest, and also of the inadequacy of the remedy at law. There are, however, two possible precautions: either by provision in the decree that once an injunction issues no compromise would be allowed, or by restricting the enforcement of ordinances by injunction to suits brought by the zoning officials.⁶

HERBERT H. TAYLOR, JR.

Injunctions—Restraining Residents of Forum from Suing in Foreign Courts to Evade Local Laws.

A contract of employment was executed by residents of Illinois. During the course of employment the employee was killed in Missouri. His administratrix filed a claim with the Missouri Workmen's Compensation Commission. In a suit brought by the employer in a Federal District Court for Missouri to enjoin the Commission from entertaining jurisdiction and to restrain the claimant from prosecuting her proceeding, *held*, decree for plaintiff, injunction allowed.¹

⁶This was the view of the District Court. Compare note 3, *supra*. In North Carolina, under statutory authority, a city may enjoin the violation of its zoning ordinance. N. C. CODE ANN. (Michie, 1931) §2776 (y); *Elizabeth City v. Aydlett*, 200 N. C. 58, 156 S. E. 163 (1930). But in the absence of statute, equity will not at the suit of a municipality, enforce municipal ordinances by injunction unless the act sought to be restrained is a nuisance. *Ventnor City v. Fulmer*, 92 N. J. Eq. 478, 113 Atl. 488 (1921), *aff'd* in 93 N. J. Eq. 660, 117 Atl. 925 (1922); *Elizabeth City v. Aydlett*, 198 N. C. 585, 152 S. E. 681 (1930).

¹*Joseph H. Weiderhoff, Inc. v. Neal*, 6 F. Supp. 798 (W. D. Mo. 1934).

In the early days it was thought that a writ of injunction could not lie beyond the borders of the court's territorial jurisdiction.² However, since the injunction is directed, not to the foreign tribunal where the suit is pending, but solely to the party before the court who is bringing the foreign action,³ the doctrine has become firmly established, both in England⁴ and in this country,⁵ that courts of chancery may restrain suits in foreign tribunals.⁶ This jurisdiction is derived from the authority which is vested in courts of equity over persons within the limits of their jurisdiction and amenable to their process, to restrain them from doing acts which will work wrong and injury to others.⁷

Perhaps the most frequent ground for the granting of injunctions against foreign proceedings is to prevent a resident of a state from prosecuting an action against another resident of the same state in a foreign jurisdiction for the purpose of avoiding the laws of his own state.⁸

² Lord Clarendon, in *Lowe v. Baker*, 1 Ch. Cas. 67 (1665).

³ *Dehon v. Foster*, 4 Allen 545 (Mass. 1862); *Portarlington v. Soulbey*, 3 Myl. & K. 104, (Ch. 1834); 2 STORY, EQUITY JURISPRUDENCE (4th ed. 1846) §899, n. 1.

⁴ *Harrison v. Gurney*, 2 Jac. & W. 563 (Ch. 1821); *Carron Iron Co. v. Maclaren*, 5 H. L. C. 415, (House of Lords, 1855); *Ellerman Lines v. Read*, [1928] 2 K. B. 144.

⁵ *Cole v. Cunningham*, 133 U. S. 107, 10 Sup. Ct. 269, 33 L. ed. 538 (1890); *Ex Parte Crandall*, 53 F. (2d) 696 (C. C. A. 7th, 1931); *Oates v. Morningside College*, 252 N. W. 783 (Iowa, 1934); *Dehon v. Foster*, 4 Allen 545 (Mass., 1862); *Dinsmore v. Neresheimer*, 32 Hun. 204 (N. Y. 1884). A few of the earlier state courts hesitated to enjoin proceedings in the courts of sister states for reasons of comity and a feeling that the other courts were equally capable of rendering justice. *Carroll v. Farmers & Mechanic's Bank*, Harr, 197 (Mich. 1840); *Mead v. Merritt*, 2 Paige 402 (N. Y. 1831); *Burgess v. Smith*, 2 Barb. Ch. 276 (N. Y. 1847). But the prevailing principle has been that the courts of sister states, in relation to this doctrine, stand upon the same ground as courts strictly foreign. *Bank v. Rutland & B. R. Co.*, 2 Wms. 470 (Vt. 1856).

⁶ The theory and development of this principle are discussed at length in: 2 STORY, EQUITY JURISPRUDENCE (4th ed. 1846) §§899, 900; KERR, INJUNCTIONS (2d Am. ed. 1880) c. XIX, p. 433; 1 SPELLING, EXTRAORDINARY RELIEF (1893) §§49, 50; 5 POMEROY, EQUITY JURISPRUDENCE (4th ed. 1919) §2091.

⁷ *Oates v. Morningside College*, 252 N. W. 783 (Iowa, 1934); *Dehon v. Foster*, 4 Allen 545 (Mass. 1862); *Portarlington v. Soulbey*, 3 Myl. & K. 104, (Ch. 1834).

⁸ *Cole v. Cunningham*, 133 U. S. 107, 10 Sup. Ct. 269, 33 L. ed. 538 (1890); *Weaver v. Alabama Great Southern Ry. Co.*, 200 Ala. 432, 76 So. 364 (1917); *Sandage v. Studabaker Bros. Mfg. Co.*, 142 Ind. 148, 41 N. E. 380 (1895); *Oates v. Morningside College*, 252 N. W. 783 (Iowa, 1934). This question has been discussed in: Annotation (1930) 69 A. L. R. 591; Notes (1922) 22 Col. L. REV. 360, (1920) 5 IOWA L. BUL. 271, (1929) 8 ORE. L. REV. 298, (1930) 9 TEX. L. REV. 91. For collection of cases see: 5 POMEROY, EQUITY JURISPRUDENCE (4th ed. 1919) §2091, n. 156.

Within the meaning of this rule corporations organized under the laws of a state are its citizens and may sue to restrain proceedings brought against them outside the state on cause of action arising within the state. *Reed's Adm'x v. Illinois Cent. R. Co.*, 182 Ky. 455, 206 S. W. 794 (1918).

The Federal Employer's Liability Act does not take away the right of one state to enjoin one of its citizens from prosecuting an action against a fellow citizen in courts of another state, to prevent hardship, oppression or fraud. *Reed's Adm'x v. Illinois Cent. R. Co.*, 182 Ky. 455, 206 S. W. 794 (1918); *Chicago, M. &*

It makes no difference whether the law sought to be evaded is one of legislative enactment or of judicial decision.⁹

Thus, equity will restrain a creditor from suing abroad to evade the exemption laws of his own state or from gaining a preference over other creditors therein by suing in a jurisdiction where the exemption laws are more liberal,¹⁰ especially where the creditor is attempting to reach exempt wages, earned in the state of residence,¹¹ or property only temporarily removed to another state,¹² and where statute prohibits the sending of claims against debtors out of the state for collection, in order to evade the exemption law.¹³

When there has been a general assignment for creditors, one will not be allowed to obtain a preference by suing in another state.¹⁴ An injunction may be granted to restrain domestic creditors of an insolvent debtor, against whom proceedings have been, or are about to be instituted, from maintaining actions or proceedings in other states for the purpose of securing preferences or advantages by attachment and of evading the local insolvency laws.¹⁵ Injunction has been allowed where a debtor not subject to arrest in his own state was arrested in another jurisdiction.¹⁶ An injunction is proper where a receiver has been appointed and a resident creditor sues elsewhere for the purpose of collecting moneys or other assets to which, in the domiciliary state, the receiver is entitled.¹⁷

The courts of one state may enjoin residents thereof from suing in another state for damages which they would deny.¹⁸ Similarly, an injunction has been granted where the amount of recovery was limited by a contract which was binding only in the injured party's own state.¹⁹

St. P. Ry. Co. v. McGinley, 175 Wis. 565, 185 N. W. 218 (1921); Chicago, M. & St. P. Ry. Co. v. Wolf, 199 Wis. 278, 226 N. W. 297 (1929).

⁹ Weaver v. Alabama Great Southern Ry. Co., 200 Ala. 432, 76 So. 364 (1917); O'Haire v. Burns, 45 Colo. 432, 101 Pac. 755 (1909); Dinsmore v. Neresheimer, 32 Hun. 204 (N. Y. 1884).

¹⁰ Allen v. Buchanan, 97 Ala. 399, 11 So. 77 (1892); Wierse v. Thomas, 145 N. C. 261, 59 S. E. 58 (1907); Moton v. Hull, 77 Tex. 80, 13 S. W. 849 (1890).

¹¹ Hager v. Adams, 70 Iowa 746, 30 N. W. 36 (1886); Snook v. Snetzer, 25 Ohio St. 516 (1874); Moton v. Hull, 77 Tex. 80, 13 S. W. 849 (1890).

¹² Mumper v. Wilson, 72 Iowa 163, 33 N. W. 449 (1887); Stewart v. Thompson, 97 Ky. 575, 31 S. W. 133 (1895).

¹³ Wilson v. Joseph, 107 Ind. 490, 8 N. E. 616 (1886).

¹⁴ Hawkins v. Ireland, 64 Minn. 339, 67 N. W. 73 (1896); Kendall v. McClure Coke Co., 182 Pa. 1, 27 Atl. 823 (1897).

¹⁵ Cole v. Cunningham, 133 U. S. 107, 10 Sup. Ct. 269, 33 L. ed. 538 (1890); Cunningham v. Butler, 142 Mass. 47, 6 N. E. 72 (1886); Hazen v. Lyndonville Nat. Bank, 70 Vt. 543, 41 Atl. 1046 (1898).

¹⁶ Miller v. Gittings, 85 Md. 601, 37 Atl. 372 (1897).

¹⁷ Davis v. Butters Lumber Co., 132 N. C. 233, 43 S. E. 650 (1903); Vermont R. R. v. Vermont Cent. R. R., 46 Vt. 792 (1873).

¹⁸ Bradford Electric Light Co., Inc. v. Clapper, 286 U. S. 145, 52 Sup. Ct. 571, 76 L. ed. 1026 (1932).

¹⁹ Dinsmore v. Neresheimer, 32 Hun. 204 (N. Y. 1884).

Residents will be enjoined from fraudulently bringing divorce proceedings abroad where they result in the evasion of the domiciliary divorce laws or in the embarrassment of the state court.²⁰

Creditors of an estate will not be allowed to evade the distribution of the property of the estate through a local administration by resorting to a foreign administration.²¹ An injunction will also issue against a legatee who proceeds in a foreign tribunal to enforce payment of money by an executor to the prejudice of other legatees.²² A state will prevent its residents from suing elsewhere to avoid a decision of the domestic court differing from the rule upon the same subject in the foreign tribunal.²³ Also an injunction will issue to restrain a foreign suit which violates an earlier injunction.²⁴ An injured party will not be permitted to sue outside his own state where he is seeking to avoid its contributory negligence statute,²⁵ or its insurance laws.²⁶

A mere difference in the adjective laws of the two states, however, is not sufficient to warrant injunctive relief.²⁷ Thus, differences in the rules of evidence do not constitute a sufficient basis for such relief.²⁸ Injunction is refused where the only grounds are differences in such matters as the number of jurors required to return a verdict,²⁹ or the finality of the jury's verdict.³⁰ But injunction has been allowed where the intent is to avoid the bar of the domiciliary statute of limitations.³¹ It is not enough that the other state would arrive at a different judgment or more favorable decision.³² Thus, injunction was denied where plaintiff in the foreign suit obtained an attachment upon facts

²⁰ *Kempson v. Kempson*, 63 N. J. Eq. 783, 52 Atl. 360 (1902); *Knapp v. Knapp*, 173 Atl. 343 (N. J. Eq. 1934); *Greenberg v. Greenberg*, 218 App. Div. 104, 218 N. Y. S. 87 (1926); *Johnson v. Johnson*, 146 Misc. 93, 261 N. Y. S. 523 (1933).

²¹ *In re Williams Estate*, 130 Iowa 553, 107 N. W. 608 (1906); *Oates v. Morningside College*, 252 N. W. 783 (Iowa, 1934).

²² *Hutton v. Hutton*, 40 N. J. Eq. 461, 2 Atl. 280 (1885).

²³ *Dinsmore v. Neresheimer*, 32 Hun. 204 (N. Y. 1884).

²⁴ *New York C. & St. L. R. R. v. Perdive*, 187 N. E. 349 (Ind. App. 1933) (Local administratrix was enjoined from prosecuting a foreign suit. She brought a second action in a foreign tribunal, and the local court enjoined the taking of depositions for the second trial).

²⁵ *Weaver v. Alabama Great Southern Ry. Co.*, 200 Ala. 432, 76 So. 364 (1917).

²⁶ *Davis v. Natchez Hotel Co.*, 128 So. 871 (1930).

²⁷ *Lancaster v. Dunn*, 153 La. 15, 95 So. 385 (1922); *Delaware, L. & W. R. Co. v. Ashelman*, 300 Pa. 291, 150 Atl. 475 (1930), annotated in (1930) 69 A. L. R. 591; *American Express Co. v. Fox*, 135 Tenn. 489, 187 S. W. 1117 (1916).

²⁸ *Edgell v. Clark*, 19 App. Div. 199, 45 N. Y. S. 979 (1897).

²⁹ *Illinois Life Ins. Co. v. Prentiss*, 277 Ill. 383, 115 N. E. 554 (1917); *Mis-souri, K. & T. R. Co. v. Ball*, 126 Kan. 745, 271 Pac. 313 (1928); *Chicago, M. & St. Paul Ry. v. McGinley*, 175 Wis. 565, 185 N. W. 218 (1921).

³⁰ *Lancaster v. Dunn*, 153 La. 15, 95 So. 385 (1922).

³¹ *Culp v. Butler*, 69 Ind. App. 608, 122 N. E. 684 (1919). *Contra*: *Thorndike v. Thompson*, 142 Ill. 450, 32 N. E. 510 (1892).

³² *McDaniel v. Alford*, 148 Ga. 609, 97 S. E. 673 (1918); *Reed's Adm'x v. Illinois Cent. R. Co.*, 182 Ky. 455, 206 S. W. 794 (1918); *Carson v. Dunham*, 149 Mass. 52, 20 N. E. 312 (1889).

that would not have warranted it in his domicile.³³ The inconvenience of witnesses, the increased difficulty and expense of defending suit in a foreign jurisdiction are not considered as warranting injunctions.³⁴ Courts also disregard the inability of the foreign jury to view the premises where the accident occurred.³⁵ Nor is unprofessional and unethical conduct of an attorney for the plaintiff in the foreign suit a sufficient ground for granting an injunction.³⁶

The injunctive relief which the court in the principal case granted against the plaintiff in the foreign proceeding is consistent with these settled rules. In the Missouri action the claimant sought to avoid both an Illinois statute and an Illinois contract by which claimant's remedy was limited. The Federal District Court went too far, however, when it ordered the Workmen's Compensation Commission not to entertain the suit. The attempted distinction between an administrative tribunal and a court may have served to circumvent the federal statute,³⁷ but it did not give the Federal Court direct supervisory power over the Commission.³⁸

JOHN R. JENKINS, JR.

Insolvency—Rights of Assignee of Secured Depositor of Insolvent Bank.

A county's deposit in a state bank was secured by state bonds, and by indemnity bonds written by plaintiff insurer. The bank became insolvent; then on the insistence of the plaintiff the county sold the state bonds and credited the proceeds on its deposit; the county, neverthe-

³³ *Grover v. Woodward*, 92 N. J. Eq. 227, 112 Atl. 412 (1920).

³⁴ *McWhorter v. Williams*, 155 So. 309 (Ala. 1934); *Illinois Life Ins. Co. v. Prentiss*, 277 Ill. 383, 115 N. E. 554 (1917); *Missouri, K. & T. R. Co. v. Ball*, 126 Kan. 745, 271 Pac. 313 (1928); *American Express Co. v. Fox*, 135 Tenn. 489, 187 S. W. 1117 (1916). *Contra*: *Cleveland, C., C. & St. L. Ry. Co. v. Shelly*, 96 Ind. App. 273, 70 N. E. 328 (1930); *Kern v. Cleveland, C., C. & St. L. Ry. Co.*, 204 Ind. 595, 185 N. E. 446 (1933); *Wabash Ry. Co. v. Peterson*, 187 Iowa 1331, 175 N. W. 523 (1919); *Bankers' Life Co. v. Loring*, 250 N. W. 8 (Iowa, 1933); *Northern Pac. Ry. Co. v. Richey & Gilbert Co.*, 132 Wash. 526, 232 Pac. 355 (1925). The rule applies with equal strictness where witnesses are unable to attend the distant trial and it is necessary to take depositions instead of oral testimony. *Missouri-Kansas-Texas R. Co. v. Ball*, 126 Kan. 745, 271 Pac. 313 (1928); *Chicago, M. & St. P. Ry. Co. v. McGinley*, 175 Wis. 565, 185 N. W. 218 (1921).

³⁵ *Missouri-Kansas-Texas R. Co. v. Ball*, 126 Kan. 745, 271 Pac. 313 (1928); *Chicago, M. & St. P. Ry. Co. v. McGinley*, 175 Wis. 565, 185 N. W. 218 (1921).

³⁶ *Reed's Adm'x v. Illinois Cent. Ry. Co.*, 182 Ky. 455, 206 S. W. 794 (1918); *Chicago, M. & St. P. Ry. Co. v. McGinley*, 175 Wis. 565, 185 N. W. 218 (1921); *Chicago, M. & St. P. Ry. Co. v. Wolf*, 199 Wis. 278, 226 N. W. 297 (1929).

³⁷ 36 STAT. 1162 (1911), 28 U. S. C. A. §379 (1928): "The writ of injunction shall not be granted by any court of the United States to stay proceedings in any court of a State, except in cases where such injunction may be authorized by any law relating to proceedings in bankruptcy." See Durfee and Sloss, *Federal Injunctions Against Proceedings in State Courts: The Life History of a Statute* (1932) 30 MICH. L. REV. 1145, 1154; Note (1932) 10 N. C. L. REV. 209.

³⁸ Notes (1925) 25 COL. L. REV. 371, 372.