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RECENT MISSOURI DECISIONS and THE RESTATEMENT OF THE CONFLICT OF LAWS

J. COY BOUR*

The Missouri Annotations to the Restatement of the Conflict of Laws were published in 1937.¹ The introduction to these *Annotations* reads in part as follows: "In the preparation of this volume the annotator carried his study of statutes and cases down to the close of Vol. 334 of the Missouri Supreme Court Reports, Vol. 228 of the Missouri Appeal Reports and Vol. 70 (2d) of the South Western Reporter." It seemed desirable, in order to present a complete picture of the local law in the field, to publish a summary of the Missouri decisions which have appeared in subsequent volumes of the reports. This paper is an attempt to present such a summary. The material presented covers the Missouri decisions which have appeared in volumes 71(2d)—111(2d) of the South Western Reporter. Parallel citations of the official reports are given, so far as these had appeared at the date of going to press. The writer has indicated whether the rule enunciated by the *Restatement* accords with the position of the local authorities, but no attempt has been made to present a detailed discussion of the problems appearing in the decisions.

The purpose of state annotations is to increase the usefulness of the *Restatements* prepared by the American Law Institute. The aim of this paper is to make the *Missouri Annotations to the Restatement of the Conflict of Laws* of maximum usefulness to the practitioner, to enable him to get as quickly as possible at the current law of Missouri. But a word of warning must here be entered. The decisions in this field are not grouped under a single heading in any of the books of reference. One must find

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1. For economy of space *THE AMERICAN LAW INSTITUTE'S RESTATEMENT OF THE CONFLICT OF LAWS* (1934), will be referred to merely as *RESTATEMENT*. The *MISSOURI ANNOTATIONS* to this Restatement will be cited as *MO. ANNOT.*

his material by a search in scores of digest headings, and it may well be that some cases have been missed. It is hoped, however, that the profession will find, in this paper and the *Missouri Annotations* combined, an adequate guide to the present state of the local law in this field.

I. DOMICIL

A. *Change of Domicil*

A person who has attained his majority and is not under some legal disability may change his domicil.² The Missouri cases hold that actual residence and the intention to remain either permanently or for an indefinite time, without any fixed or certain purpose to return to the former residence, will constitute a change of domicil.³ The motive with which a change of residence is made is immaterial, but it may be important evidence tending to show the nature of the intent.⁴ Thus a recent case holds that removal for educational purposes may be consistent with either change or continuance of domicil. In *Chomeau v. Roth*,⁵ the contestant in disputing a city election alleged that some 219 votes had been illegally cast by students of Concordia Seminary, a Lutheran theological school. It was shown that the students upon entering the school for the three-year course and a possible post-graduate course did not intend to return to their parents' homes but were subject to call to one of the Lutheran congregations or missions in any part of the world. The contestant appealed from a judgment for the contestee. In affirming the judgment the court said: "As they (two earlier decisions) announce the law, it is entirely possible for a student to gain a residence at the place where he is attending school, although he may have gone there for no other purpose than to attend school; the question of whether a change of residence is effected depending upon the intention with which the removal from the former residence was made. A temporary removal for the sole purpose of attending school, without any intention of abandoning his usual residence, and with the fixed intention of returning thereto when his purpose has been accomplished, will not constitute such a change of residence as to entitle the student to vote at his temporary abode. But conversely, an actual residence, coupled with the

2. See 1 BEALE, CONFLICT OF LAWS (1935) §§ 15.1 *et seq.*; RESTATEMENT § 15.

3. See MO. ANNOT. §§ 15-20.

4. See RESTATEMENT § 22; MO. ANNOT. § 22.

5. 230 Mo. App. 709, 72 S. W. (2d) 997 (1934).

intention to remain either permanently or for an indefinite time, without any fixed or certain purpose to return to the former place of abode, is sufficient to work a change of domicil.”⁶ This decision is in accord with the *Restatement*.⁷

II. JURISDICTION OF COURTS

A. *Jurisdiction over Persons*

Notice and Opportunity to be Heard. Section 75 of the *Restatement* reads as follows: “A state cannot exercise through its courts judicial jurisdiction over a person, although he is subject to the jurisdiction of the state, unless a method of notification is employed which is reasonably calculated to give him knowledge of the attempted exercise of jurisdiction and an opportunity to be heard.” There can be no doubt in this country that this requirement is made obligatory by the due process clause of the Fourteenth Amendment to the Constitution of the United States.⁸ Thus a recent Missouri case holds that in a suit on a judgment of another state the defendant may plead and show as a defense that in the original suit no service was had upon him.⁹

Appearance. Section 82 of the *Restatement* says: “An appearance by a defendant in an action gives the court jurisdiction over him for all purpose of the action if by the law of the state in which the action is brought the appearance has that effect.” The Missouri decisions are in accord with the *Restatement*. Missouri follows the rule that an appearance entered by a defendant solely for the purpose of objecting that the court has no jurisdiction over his person does not subject him to the jurisdiction of the court. On the other hand, an appearance by a defendant for a purpose other than to object that the court has no jurisdiction over him subjects him to the jurisdiction of the court.¹⁰

If lack of jurisdiction over the person of the defendant appears on the face of the record, the objection should be raised by motion and not by answer.¹¹ Thus if the objection is to the sufficiency of the return, it should

6. 230 Mo. App. at p. 718, 72 S. W. (2d) at p. 999.

7. See RESTATEMENT §§ 18, 22; MO. ANNOT. §§ 18, 22.

8. See MO. ANNOT. § 75.

9. Topalian Bros. v. Asadorian, 104 S. W. (2d) 713 (Mo. App. 1937). See notes 111 and 113, *infra*.

10. See MO. ANNOT. § 82.

11. A Missouri statute (MO. REV. STAT. (1929) § 770) makes lack of jurisdiction of either persons or subject matter ground for demurrer if the facts

be raised by motion to quash the return. If the objection is to the substance of the summons, it should be raised by motion to quash the summons.¹² A recent case holds that if the defendant appears specially and moves to quash the summons and the motion is wrongly overruled and he then pleads to the merits, he waives the objection and cannot take advantage of the lack of jurisdiction over him. He cannot preserve the objection by including it in his answer.¹³ On the other hand, when the jurisdictional defect does not appear on the face of the record, but a showing of new facts is necessary to establish it, an answer is the proper remedy.¹⁴ In such a case the defendant may plead to the jurisdiction of the court over his person in the same answer in which he makes his defense on the merits; both defenses must be tried and neither is waived by the other.¹⁵ This statement is supported by a recent decision.¹⁶ The writer has discussed the earlier cases elsewhere.¹⁷

B. Jurisdiction over Foreign Corporations

I. Consent

In Section 91 of the *Restatement* it is stated that where a foreign corporation voluntarily appoints an agent or a public official in a state to accept service of process in actions brought against the corporation in that state, jurisdiction exists because of consent. By way of explanation, comment c of Section 91 says: "If a corporation has appointed an agent or a public official in a state with authority to accept service of process in actions brought against the corporation in that state, the extent of that authority is a question of interpretation of the instrument in which the consent is expressed and of the statute, if any, in pursuance of which the consent was given. The authority may be interpreted to extend to all causes of action, no matter where arising, brought against the corporation in the

showing it appear on the face of the petition. Since ordinarily jurisdiction of the person is not a matter to be alleged in the petition but is acquired by service of process or consent of the defendant, it is unusual for lack of jurisdiction over the person to appear on the face of the petition. Cf. *State ex rel. Utilities P. & L. Corp. v. Ryan*, 337 Mo. 1180, 88 S. W. (2d) 157 (1935).

12. See Mo. ANNOT. § 82.

13. *Klohr v. Edwards*, 94 S. W. (2d) 99 (Mo. App. 1936).

14. See Mo. REV. STAT. (1929) §§ 774, 776.

15. See note 12, *supra*.

16. *Detmer, Bruner & Mason v. New York Cent. R. R.*, 229 Mo. App. 702, 80 S. W. (2d) 222 (1935) (defendant a foreign corporation).

17. See note 12, *supra*; Bour, *Special Appearance—Waiver by Pleading Over* (1928) 40 U. OF MO. BULL. LAW SER. 34.

state, or it may be limited to causes of action arising within the state; it may be revocable at any time, or it may be irrevocable as to causes of action arising within the state prior to an attempt to revoke it." The law of Missouri is in accord with the *Restatement*.¹⁸

In the *Missouri Annotations*, the writer referred to Section 4598 of the Revised Statutes of Missouri. This section was a part of the act relating to the admission of foreign corporations to do business in the state.¹⁹ It required such corporations to appoint an agent in the state to accept service of process in actions brought against the corporation in the state. In 1937 this section was repealed and a new section enacted in lieu thereof.²⁰ Although the new section is identical with the old one in many respects, it contains certain provisions which did not appear in the old section. The statutes now provide that every foreign corporation doing business in Missouri shall maintain a public office in the state "where legal service may be obtained upon it;"²¹ and that the principal officer or agent in Missouri shall make and forward to the Secretary of State a sworn statement, "which statement shall set out the location of its principal office or place in this state for the transaction of business, the name of its principal agent in Missouri and the address where legal service may be obtained upon it by serving such agent, and also set out that if service cannot be had upon such agent on account of absence, death or inability of serving officer to find such agent that service may be had upon the Secretary of State which shall be binding upon the corporation. A non est return of the serving officer shall be taken as prima facie evidence that the principal agent cannot be found. The Secretary of State shall upon the service of such process forward the same by registered mail to the home office of the corporation."²² These provisions do not apply to foreign insurance corporations licensed by the Superintendent of Insurance in this state. It is to be noted that the authority of the agent or state official to accept service of process is not expressly limited to causes of action arising out of busi-

18. See MO. ANNOT. § 91. Numerous articles dealing with jurisdiction over foreign corporations are available. See Culp, *Constitutional Problems Arising from Service of Process on Foreign Corporations* (1935) 19 MINN. L. REV. 375; Farrier, *Jurisdiction Over Foreign Corporations* (1933) 17 MINN. L. REV. 270; Scott, *Jurisdiction Over Nonresident Motorists* (1926) 39 HARV. L. REV. 563; Fead, *Jurisdiction Over Foreign Corporations* (1926) 24 MICH. L. REV. 633; Osborne, *Arising Out of Business in the State* (1923) 7 MINN. L. REV. 380.

19. MO. REV. STAT. (1929) §§ 4596-4598, 4600.

20. MO. LAWS 1937, p. 206.

21. MO. REV. STAT. (1929) §§ 4596-7.

22. See note 20, *supra*.

ness done within the state. No Missouri case involving this point has been found.

The statute (Section 5894)²³ relating to foreign insurance corporations provides that any such corporation, desiring to transact business in this state, shall appoint the Superintendent of Insurance its agent to accept service of process in actions brought against the corporation in the state; and that service of process upon the Superintendent of Insurance shall be valid and binding on the corporation "so long as it shall have any policies or liabilities outstanding in this state, although such company may have withdrawn, been excluded from or ceased to do business in this state." The statute relating to foreign fraternal benefit corporations contains similar provisions.²⁴

Several recent cases involve the exercise of jurisdiction over foreign insurance corporations licensed to do business in Missouri. It seems desirable to refer to the earlier cases cited in the *Missouri Annotations*²⁵ before discussing the more recent cases. In *State ex rel. Pacific Mutual Life Ins. Co. v. Grimm*,²⁶ the plaintiff, a non-resident, brought suit against a California corporation licensed to do business in Missouri, upon a policy of insurance issued and delivered to the insured in Illinois. The summons was served upon the Superintendent of Insurance. In *Gold Issue Mining & Milling Co. v. Pennsylvania Fire Ins. Co.*,²⁷ the suit was by an Arizona corporation against a Pennsylvania corporation licensed to do business in Missouri, upon a fire insurance policy issued and delivered in Colorado. The summons was served upon the Superintendent of Insurance. In both of these cases the defendant had appointed the state official its agent to accept service of process; and in both cases the Supreme Court of Missouri held that the authority of the state official to accept service of process extended to the cause of action which arose out of business done in another state. The decision in the second case was affirmed by the Supreme Court of the United States.²⁸ But these Missouri decisions have been limited by a later decision.

23. MO. REV. STAT. (1929). *Id.* § 5895, authorizes service upon the chief clerk in the absence of the superintendent and deputy superintendent.

24. MO. REV. STAT. (1929) §§ 6006, 6007. See *State ex rel. Modern Woodmen of America v. Wilcox*, *infra* note 30.

25. See MO. ANNOT. § 91.

26. 239 Mo. 135, 143 S. W. 483 (1912).

27. 267 Mo. 524, 184 S. W. 999 (1916).

28. *Pennsylvania Fire Ins. Co. v. Gold Issue Mining & Milling Co.*, 243 U. S. 93 (1917).

In *State ex rel. American Central Life Ins. Co. v. Landwehr*,²⁹ a foreign insurance corporation, licensed to do business in Missouri, issued a life-insurance policy to a resident of Kansas, who applied for and accepted the policy in Kansas and resided there at the time of his death. The beneficiary was a resident of Kansas at the time the policy was issued and at the time the beneficiary brought suit in Missouri. The summons was served upon the Superintendent of Insurance. The Supreme Court of Missouri held that the trial court did not acquire jurisdiction over the corporation. The supreme court said that the decision "necessarily results in overruling the Grimm and Gold Issue Mining & Milling Company Cases, in so far as those cases deal with the question now before us"³⁰

In a recent case, *State ex rel. Liberty Life Ins. Co. v. Masterson*,³¹ the suit was brought by the insured, a resident of Missouri, upon a policy of insurance issued in Kansas, and the summons was served upon the Superintendent of insurance in this state is valid service and gives to the court censed to do business in Missouri at the time of suit. The Kansas City Court of Appeals held that the Missouri court acquired jurisdiction over the defendant, notwithstanding, at the time the policy was issued, the insured was a resident of Kansas and the defendant was not licensed to do business in Missouri. The *Landwehr* case was distinguished on the ground that the plaintiff in that case was a *non-resident* at the time of suit, whereas the plaintiff in the *Masterson* case was a *resident* at the time of suit. The Court said: "We conclude that the courts of Missouri are vested with jurisdiction to hear and determine questions arising on insurance contracts, *contracted in or out of the state of Missouri*, if suit is brought by a *citizen of this state* against an insurance company authorized to do business in this state. We conclude further that in such an instance service of the superintendent of insurance in this state is valid service and gives to the court out of which process was issued jurisdiction, in such a suit, of the insurance company so served."³² (Italics supplied).

29. 318 Mo. 181, 300 S. W. 294 (1927).

30. 318 Mo. at p. 191, 300 S. W. (2d) at p. 298. See *Burg v. Knox*, 334 Mo. 329, 336, 67 S. W. (2d) 96, 99 (1933), where the court said: "This Court en Banc in *State ex rel. v. Landwehr*, . . . overruled its former opinion in the Grimm case on the question of the validity of service of summons on the Insurance Commissioner in an action against a foreign insurance company upon a policy written in another state." Cf. *State ex rel. Modern Woodmen of America v. Wilcox*, 229 Mo. App. 988, 84 S. W. (2d) 678 (1935), involving the statute providing for service of process upon the Superintendent of Insurance in actions against foreign fraternal benefit corporations. See note 24, *supra*.

31. 95 S. W. (2d) 864 (Mo. App. 1936).

32. 95 S. W. (2d) at p. 865. Cf. *Crabtree v. Aetna Life Ins. Co.*, 111 S. W.

In two recent cases, *London Guarantee & Accident Co. v. Woeffle*³³ and *Saunders v. London Assurance Corp.*,³⁴ the Circuit Court of Appeals for the Eighth Circuit reached the same conclusions as to the law of Missouri. In the last mentioned case the court said: "Examination of all of the opinions of the Supreme Court of Missouri construing this section of the statute and dealing with this question will disclose that nowhere has the right of a *citizen of the state* to resort to its own courts in such cases been denied or questioned" (Italics supplied).

One recent case involved the exercise of jurisdiction over a foreign insurance corporation which had once done but had ceased to do business in Missouri.³⁶ In *State ex rel. Federal Reserve Life Ins. Co. v. Wright*,³⁷ the defendant, a foreign insurance corporation, had been licensed to do business in Missouri. The plaintiff brought suit for specific performance of a realty contract after the corporation had ceased to do business and after the expiration of its license, although at the time of suit the defendant still had policies outstanding in Missouri. The summons was served upon the Superintendent of Insurance. The Kansas City Court of Appeals said that in a suit based on a policy of insurance issued by the defendant, summons could doubtless be served upon the state official even though the defendant's license had expired. But the court pointed out that the case under consideration did not involve any policy of insurance and did not grow out of any insurance contract. It was held, therefore, that service on the state official did not confer jurisdiction over the corporation.

2. Doing Business

In the *Restatement of the Conflict of Laws* it is stated that a state cannot exercise jurisdiction over a foreign corporation which has neither consented to the exercise of jurisdiction nor done business within the state, unless the corporation has by entering an appearance or by bringing an action subjected itself to the exercise of jurisdiction.³⁸ This familiar prin-

(2d) 103, 108 (Mo. 1937), where the court said that "section 5894 does not authorize service thereunder on causes of action accruing in and instituted by citizens of another state on policies issued or business transacted in foreign states, State ex rel. Amer. Cent. Life Ins. Co. v. Landwehr" (Italics supplied).

33. 83 F. (2d) 325 (C. C. A. 8th, 1936).

34. 76 F. (2d) 926 (C. C. A. 8th, 1935).

35. 76 F. (2d) at p. 929.

36. See RESTATEMENT § 91, comment c. Cf. RESTATEMENT § 93; Mo. ANNOT. § 93.

37. 88 S. W. (2d) 427 (Mo. App. 1935).

38. See RESTATEMENT §§ 89, 92; Mo. ANNOT. §§ 89, 92.

principle is protected by two provisions of the Federal Constitution.³⁹ In the absence of consent, state statutes providing for suits against and service of process upon foreign corporations can constitutionally apply only to corporations "doing business" within the state.⁴⁰ Courts generally have not attempted to formulate any definition of what constitutes "doing business". Each case has to be considered upon its own facts.⁴¹ The concept of "doing business" for purposes of service of process was considered in two recent Missouri cases. Both cases hold that a foreign railroad corporation maintaining a soliciting agent in Missouri but operating no lines in the state is not "doing business" and hence personal service of summons on the soliciting agent is insufficient to confer jurisdiction over the corporation.⁴² These decisions are in accord with the decisions of the Supreme Court of the United States. Since the question when a foreign corporation is "doing business" in a state is a federal question, the decisions of the Supreme Court of the United States are binding on the states.

3. *Suits Against Foreign Corporations as a Burden on Interstate Commerce.*

The exercise of jurisdiction over foreign corporations is subject not only to the limitations imposed by the due process requirement, but also to the prohibition of undue burdens upon interstate commerce under the commerce clause of the Federal Constitution.⁴³ In *Meek v. New York, Chicago & St. Louis R. R.*,⁴⁴ an action for the death of a switchman under the Federal Safety Appliance Act, the defendant railroad contended that the Missouri court "had no jurisdiction of this cause for the reason that Meek was killed in Indiana; that all of the witnesses in the cause reside

39. AMEND. XIV § 1 (due process clause); ART. IV § 1 (full faith and credit clause).

40. *Riverside and Dan River Cotton Mills v. Mennefee*, 237 U. S. 189 (1915). See *Walter L. Lacy Co. v. National Finance Corp.*, 79 S. W. (2d) 1073 (Mo. App. 1935); *State ex rel. Mills Automatic Merchandising Corp. v. Hogan*, 103 S. W. (2d) 495 (Mo. App. 1937).

41. For a fuller discussion, see *People's Tobacco Co. v. American Tobacco Co.*, 246 U. S. 79 (1918); RESTATEMENT § 167; Isaacs, *An Analysis of Doing Business* (1925) 25 COL. L. REV. 1018; and notes (1929) 29 COL. L. REV. 187; (1927) 36 YALE L. J. 882; (1923) 36 HARV. L. REV. 327.

42. *State ex rel. Nashville, C. & St. Louis Ry. v. Hall*, 337 Mo. 1229, 88 S. W. (2d) 342 (1935); *Detmer, Bruner & Mason v. New York Cent. R. R.*, 229 Mo. App. 702, 80 S. W. (2d) 222 (1935).

43. See RESTATEMENT § 92, comment b; MO. ANNOT. § 92, comment b: *Farrier, Suits Against Foreign Corporations as a Burden on Interstate Commerce* (1933) 17 MINN. L. REV. 381; Note (1936) 34 MICH. L. REV. 979.

44. 337 Mo. 1188, 88 S. W. (2d) 333 (1935), *cert. denied*, 297 U. S. 722 (1935).

in that state, and that the trial of said cause in St. Louis was an undue burden on interstate commerce." In affirming a judgment for the plaintiff, the supreme court said: "It is admitted in this case that defendant was a foreign corporation engaged in interstate transportation, and the record shows its presence in this State transacting therein the business ordinarily connected with the operation of a carrier by railroad. Such a showing gave the Circuit Court of the City of St. Louis jurisdiction to which defendant must submit although thereby interstate commerce might be incidentally burdened."⁴⁵

C. Jurisdiction to Divorce

Only two recent cases involving jurisdiction to divorce have been found.⁴⁶ Both cases are in accord with previous Missouri decisions. Dean James L. Parks has so thoroughly discussed this subject that further elaboration is useless.⁴⁷

III. PROPERTY

A. Immovables

Will of Interest in Real Property. In *Cunningham v. Kinnerk*,⁴⁸ C, a resident of Kentucky, was the beneficiary of a resulting trust of Missouri land. C devised an undivided interest in the trust estate to M. C died in 1909. H, the record owner of the land, died in 1926 and the land was sold by the executor of H. Thereafter M died and her heirs brought suit against the executor of H to establish an equitable interest in the fund derived from the sale of the land. The defendant contended that M acquired no interest in the trust estate because, although C's will was admitted to probate in Kentucky, it was not filed for record in the office of the recorder of deeds in the county in which the land was situated nor probated in Missouri. The defendant based his argument upon Section 552 of the Missouri statutes.⁴⁹ A judgment for the plaintiffs was affirmed on appeal. The

45. 337 Mo. at p. 1192, 88 S. W. (2d) at pp. 333-334.

46. *Coffey v. Coffey*, 71 S. W. (2d) 141 (Mo. App. 1934); *Barrett v. Barrett*, 79 S. W. (2d) 506 (Mo. App. 1935).

47. See RESTATEMENT §§ 110-113; MO. ANNOT. §§ 110-113. See also Parks, *Jurisdiction to Divorce* (1927) 35 U. OF MO. BULL. LAW SER. 3; Parks, *Some Problems in Jurisdiction to Divorce* (1930) 41 U. OF MO. BULL. L. SER. 3; Note (1937) 2 Mo. L. REV. 193.

48. 230 Mo. App. 749, 74 S. W. (2d) 1107 (1934).

49. MO. REV. STAT. (1929).

court said: (1) that C's interest in the resulting trust of land though an undetermined, undivided equitable interest, was nevertheless real property;⁵⁰ (2) that the law of the place where the property is governs the validity and effect of a will of real property;⁵¹ (3) that the force and effect which must be given to the foreign probate of a will in so far as real property in Missouri is concerned depends upon the law of Missouri; and that according to the law of Missouri a foreign will, unrecorded in this state and not proved anew (assuming it to have been executed according to Missouri law as this one was), will have the same force and effect as an unrecorded deed, which is good as between the parties thereto and all others except purchasers for value without notice.⁵² The court found that H had knowledge of the outstanding equitable interest of C. It was held, therefore, that H and her executor were bound by the terms of the will devising C's equitable interest to M; and the fact that the will was neither filed for record nor probated in Missouri was no defense in resisting the plaintiffs' claims. This decision is in accord with the *Restatement*.⁵³

Election of Widow between Dower and Provisions of Will. In *Colvin v. Hutchison*,⁵⁴ T, a resident of Illinois, died without children leaving a will which devised Missouri land in fee to A and gave only a life estate in Illinois lands to his wife. T's will was probated in Illinois and his widow filed in Illinois a renunciation of the will which stated that she elected "to take the dower and legal share in said estate." She did not file a renunciation of the will in Missouri. A, the defendant, contended that the renunciation and election in Illinois had no effect upon the title to the Missouri land, and that it passed under the will to him. The court considered two questions. First, what was the effect upon the widow's rights in the Missouri land of her renunciation and election in Illinois? It was held that a renunciation in Illinois by the widow of a testator domiciled in Illinois, of the provisions of the husband's will in her favor, is effective as to land in Missouri without further renunciation in Missouri. The court points out that there is no Missouri statute providing specifically that a widow, who is a resident of another state and who renounces a will there, must file a renunciation also in Missouri in order to be entitled to rights

50. See RESTATEMENT §§ 208 *et seq.*

51. See RESTATEMENT § 249; MO. ANNOT. § 249; MO. REV. STAT. (1929) §§ 254, 549.

52. See RESTATEMENT § 470, comment *e*; MO. ANNOT. § 470, comment *c*.

53. See notes 50, 51, 52, *supra*.

54. 338 Mo. 576, 92 S. W. (2d) 667 (1936).

which she would have in Missouri land if no will had been made; and that the Missouri statute, even if it may be construed to be applicable to non-residents, does not require more than one filing of a renunciation. This does not mean that the Illinois law controlled in any way the Missouri land, but that the choice having been made in Illinois the widow was bound thereby. It is within the authority of the state of the situs of the land to disregard a renunciation in another state. The second question considered by the court was, what rights in the Missouri land did the widow get? The Illinois law, it seems, gives a widow who renounces her husband's will an absolute interest in land rather than dower, unless dower is expressly claimed, but the Missouri law gives dower instead of an absolute interest, unless an absolute interest is expressly claimed. The court applied the law of Missouri and held that the widow took dower because her declaration filed in Illinois, while sufficient as a renunciation of the will without further renunciation in Missouri, was not sufficient under the Missouri statutes as an election to take an absolute interest instead of dower. This decision is in accord with the *Restatement*.⁵⁵

In *Colvin v. Hutchison*, it seems to have been assumed that the widow was put to her election in both states, that is, that she was not entitled in either state to take both under the will and the law. Whether a widow for whom provision has been made in her husband's will in lieu of dower is required to elect between dower and the provision under the will, is determined by the law of the situs of the land.⁵⁶

IV. CONTRACTS

An eminent authority has said that the question of what law determines the validity of a contract is "the most confused subject in the field of Conflict of Laws. Not only do rules vary in different jurisdictions but decisions in the same court often enunciate inconsistent theories upon the subject."⁵⁷ Several distinct rules have been laid down for determining the nature and validity of a contract: (1) The view accepted by the *Restatement*, that the law of the place of contracting governs the validity of the contract and the nature of the obligation.⁵⁸ (2) The rule that the law

55. See RESTATEMENT § 253, comments *b* and *c*.

56. See note 55, *supra*.

57. GOODRICH, CONFLICT OF LAWS (1927) 228; see 2 BEALE, CONFLICT OF LAWS (1935) § 332.1.

58. See RESTATEMENT §§ 332-347; MO. ANNOT. §§ 332-347.

of the place of performance governs. (3) The rule that the law intended by the parties governs. Each of these views is supported by authority. As was noticed in the *Missouri Annotations*,⁵⁹ the rule commonly laid down by the Missouri courts is that the law of the place of contracting governs the nature and validity of a contract. Most of the cases, however, do not involve square holdings on the point, for usually no different places of making and performance appear.

A. Place of Contracting

The "place of contracting" is the place in which the last act is done which is essential to make the promise or promises binding.⁶⁰ The Supreme Court of Missouri has held that the "place of contracting" is to be determined by the law of the forum.⁶¹ All of the recent cases involve insurance contracts. Insurance contracts present some difficulties due to divergent views on what constitutes the final act necessary to complete the contract of insurance. In general, the Missouri decisions hold that the "place of contracting" is where the policy is delivered.⁶² But there are such divergencies of fact in the cases that one hesitates to make wide generalizations with reference to what constitutes such a delivery.⁶³

B. Creation of Contract

Extent of Obligation: Insurance Contracts. As mentioned before, the view accepted by the *Restatement* is that the law of the "place of contracting" determines what are the obligations of a contract.⁶⁴ Although the recent Missouri decisions are in harmony with the *Restatement*, they do not involve square holdings on the point, for no different places of making and performance appear. Thus it has recently been held, no different

59. *Ibid.*

60. *Limbaugh v. Monarch Life Ins. Co.*, 84 S. W. (2d) 208 (Mo. App. 1935); see 2 BEALE, *CONFLICT OF LAWS* (1935) § 311.1. For statements of place of contracting in a number of situations, see *RESTATEMENT* §§ 311-331; *MO. ANNOT.* §§ 311-331.

61. *Illinois Fuel Co. v. Mobile & O. Ry.*, 319 Mo. 899, 913, 8 S. W. (2d) 834, 838 (1928), *cert. denied*, 278 U. S. 640 (1934), where the Supreme Court of Missouri cited the *Restatement*. *Cf. Bolin v. Sovereign Camp, W. O. W.*, 339 Mo. 618, 98 S. W. (2d) 681 (1936).

62. See notes 65-70, *infra*; *MO. ANNOT.* §§ 317-319; 2 BEALE, *CONFLICT OF LAWS* (1935) 317.1-319.1.

63. See *Patterson, The Delivery of a Life-Insurance Policy* (1919) 33 *HARV. L. REV.* 198.

64. See *RESTATEMENT* § 346; *MO. ANNOT.* § 346; 2 BEALE, *CONFLICT OF LAWS* (1935) §§ 346.1 *et seq.*

place of performance appearing, that the law of the place of contracting governs in determining whether an insurer has the right to amend its by-laws so as to alter a contract of insurance made before the amendment;⁶⁵ in determining the "effective date" of a contract of insurance for the purpose of calculating the date of lapse and beginning of the paid-up extended insurance;⁶⁶ in determining whether additional statutory damages may be given the beneficiary for a vexatious refusal by the insurer to pay;⁶⁷ and in determining the effect of a total disability clause.⁶⁸

Defenses: Insurance Contracts. As usual the recent cases involve no square holdings on the subject. No different place of performance or intention of the parties appearing, the law of the place of contracting has been held to govern in determining the materiality and effect of false statements in an application for insurance;⁶⁹ and in determining the legality of a provision in an insurance policy denying liability of the insurer in case of suicide by the insured.⁷⁰

V. WRONGS

A. Torts

The Missouri decisions are in accord with the American view that the substantive law of the place of the wrong governs liability for torts.⁷¹ If suit is brought in Missouri for an injury suffered in State *X*, the law of *X* determines whether or not there is a cause of action in tort.⁷² Whether the law of *X* involves statute⁷³ or non-statute⁷⁴ law it will be applied as

65. See *Roieson v. Grand Lodge Brotherhood of Railroad Trainmen*, 229 Mo. App. 772, 84 S. W. (2d) 651 (1935). In this case the insurer was an unincorporated association with headquarters in Ohio. The court said, "there is no showing in the record anywhere that the law of Ohio is construed differently from our Missouri law."

66. *Evans v. Equitable Life Assur. Soc.*, 109 S. W. (2d) 380 (Mo. App. 1937).

67. *O'Maley v. Northwestern Mutual Life Ins. Co.*, 95 S. W. (2d) 852 (Mo. App. 1936), *cert. denied*, 299 U. S. 585 (1936).

68. *Ragsdale v. Brotherhood of Railroad Trainmen*, 229 Mo. App. 545, 80 S. W. (2d) 272 (1934) (disregarding the law stipulated for by the parties), noted in (1936) 20 MINN. L. REV. 309.

69. *Limbaugh v. Monarch Life Ins. Co.*, 84 S. W. (2d) 208 (Mo. App. 1935); *O'Maley v. Northwestern Mutual Life Ins. Co.*, 95 S. W. (2d) 852 (Mo. App. 1936), *cert. denied*, 299 U. S. 585 (1936).

70. *Wilhelm v. Security Benefit Ass'n*, 104 S. W. (2d) 1042 (Mo. App. 1937) (*semble*). See RESTATEMENT § 347; MO. ANNOT. § 347.

71. See RESTATEMENT §§ 377 *et seq.*; MO. ANNOT. §§ 377 *et seq.*; 2 BEALE, CONFLICT OF LAWS (1935) §§ 377.1 *et seq.*

72. See MO. ANNOT. §§ 379, 380.

73. See notes, 84-87, *infra*.

74. See note 75, *infra*.

understood and interpreted by the courts of *X*. Thus the liability-creating character of the defendant's conduct in failing to keep a lookout for trespassers upon railroad tracks,⁷⁵ in "kicking" railroad cars across a grade crossing,⁷⁶ in racing on a highway,⁷⁷ in failing to keep to the right side of a highway,⁷⁸ in failing to utilize a last chance,⁷⁹ has recently been held to depend on the law of the place of the wrong. Even if an injury suffered in Missouri, the forum, would involve tort liability, relief for a similar injury suffered in *X*, where the injury occurred, cannot be granted if no right of action was created by the law of *X*.⁸⁰ Conversely, if the law of *X* created a right of action in tort, this right will be recognized and enforced in Missouri,⁸¹ regardless of the internal law of the forum.⁸²

If the law of *X* requires the plaintiff to prove "wilful" or "wanton" conduct on the part of the defendant in order to recover, the courts of Missouri will not hold the defendant liable for less unreasonable conduct, regardless of the Missouri rule in cases where the injury occurred there.⁸³ Thus in *McCarty v. Bishop*,⁸⁴ while the plaintiff was riding as a guest of the defendant in her automobile, an accident occurred in Illinois. Suit was brought in Missouri. The Illinois "guest" statute limited recovery by a guest to cases where the driver was guilty of "wilful and wanton" conduct. The Missouri court applied the Illinois statute as interpreted by the courts of that state. On the other hand, if certain conduct in State *X* is negligent *per se* by the law of *X*, it will be so held by the courts of

75. *Smith v. Terminal R. R. Ass'n of St. Louis*, 337 Mo. 95, 85 S. W. (2d) 425 (1935); *Saba v. Illinois Cent. R. R.*, 337 Mo. 105, 85 S. W. (2d) 429 (1935).

76. *Haton v. Illinois Cent. R. R.*, 335 Mo. 1186, 76 S. W. (2d) 127 (1934).

77. *McCarty v. Bishop*, 102 S. W. (2d) 126 (Mo. App. 1937) (responsibility of a driver of a car to a guest). See note 84, *infra*.

78. *Hall v. Wilkerson*, 84 S. W. (2d) 1063 (Mo. App. 1935) (responsibility of a driver of a car to a guest). See note 84, *infra*.

79. *Cramer v. Parker*, 100 S. W. (2d) 640 (Mo. App. 1937).

80. *Saba v. Illinois Cent. R. R.*, *supra* note 75; see RESTATEMENT § 384 (2); Mo. ANNOT. § 384 (2).

81. See notes 77, 78, 79, *supra*; note 86, *infra*; RESTATEMENT § 384 (1); Mo. ANNOT. § 384 (1).

82. In *Chandler v. St. Louis & S. F. R. R.*, 127 Mo. App. 34, 43, 106 S. W. 553, 556 (1907), the court said: "His cause of action must be measured, not by our own standards, but by that fixed by the rules and principles recognized by the courts of the place where he was injured."

83. *Robertson v. Atchison, T. & S. F. Ry.*, 105 S. W. (2d) 996 (Mo. App. 1937); cases cited in note 75, *supra*.

84. 102 S. W. (2d) 126 (Mo. App. 1937), *Accord*, *Hall v. Wilkerson*, 84 S. W. (2d) 1063 (Mo. App. 1935) (Iowa "guest" statute, limiting recovery by a guest to cases where the driver was guilty of "reckless" conduct, i. e. "a heedless disregard for or indifference to the rights of others"). For a discussion of some of the interesting conflict of laws problems which have arisen in connection with these "guest" statutes, see Note (1937) 36 MICH. L. REV. 268.

Missouri, whatever may be the Missouri rule in such cases. This is true whether the conduct in question is that of the plaintiff⁸⁵ or of the defendant.⁸⁶

The effect of the plaintiff's own conduct upon his recovery also depends upon the law of the place of the wrong.⁸⁷ If the contributory negligence of the plaintiff is a complete defense by the law of State X, the place of the wrong, no action can be sustained in Missouri, though by the law of Missouri an action would lie. On the other hand, if in State X, contributory negligence is a defense only in certain cases but not in the case at bar, it is not a defense in a suit in Missouri. And if the doctrine of comparative negligence prevails in X, it will be enforced in Missouri.⁸⁸

The *Restatement* holds that the law of the place of wrong governs liability for torts. As mentioned before, the Missouri decisions are in harmony with this rule.⁸⁹ It is to be noted, however, that in all of the Missouri cases the person charged with having caused an injury acted in the state in which the injury occurred. Consequently the court was not required to choose between the law of the state of the actor's conduct and that of the state in which the consequences of the actor's conduct manifested themselves.⁹⁰

B. Actions for Wrongful Death⁹¹

A few recent cases involve actions for wrongful death. Missouri follows the rule that the nature and existence of a right of action for wrongful death depends upon the law of the place where the injury resulting

85. *Grimes v. St. Louis-San Francisco Ry.*, 106 S. W. (2d) 462 (Mo. 1937); *Weeks v. Atchison, T. & S. F. Ry.*, 109 S. W. (2d) 374 (Mo. App. 1937); *Hill v. Illinois Terminal Co.*, 100 S. W. (2d) 40 (Mo. App. 1937). See *Harting v. East St. Louis Ry.*, 81 S. W. (2d) 973 (Mo. App. 1935).

86. *Loveless v. Berberich Delivery Co.*, 335 Mo. 650, 73 S. W. (2d) 790 (1934); *Corbett v. Terminal R. Ass'n of St. Louis*, 336 Mo. 972, 82 S. W. (2d) 97 (1935); *Cotton v. Ship-By-Truck Co.*, 337 Mo. 270, 85 S. W. (2d) 80 (1935).

87. *Connole v. East St. Louis & S. Ry.*, 102 S. W. (2d) 581 (Mo. 1937); *Grimes v. St. Louis-San Francisco Ry.*, 106 S. W. (2d) 462 (Mo. 1937); *Harting v. East St. Louis Ry.*, 81 S. W. (2d) 973 (Mo. App. 1935); *Hill v. Illinois Terminal Co.*, 100 S. W. (2d) 40 (Mo. App. 1937); *Weeks v. Atchison, T. & S. F. Ry.*, 109 S. W. (2d) 374 (Mo. App. 1937); see *RESTATEMENT* § 385; *MO. ANNOT.* § 385.

88. *Barnes v. St. Louis-San Francisco Ry.*, 338 Mo. 497, 92 S. W. (2d) 164 (1936).

89. See note 71, *supra*.

90. See *Lorenzen, Tort Liability and the Conflict of Laws* (1931) 47 L. Q. REV. 483; *Cook, Tort Liability and the Conflict of Laws* (1935) 35 COL. L. REV. 202.

91. For a discussion of this subject see *Rose, Foreign Enforcement of Actions For Wrongful Death* (1935) 33 MICH. L. REV. 545.

in death occurs.⁹² If, therefore, no right of action exists by the law of State X, the place of the fatal injury, there can be no recovery in Missouri.⁹³ On the other hand, if a statute of the place of injury gives a right of action for death, an action for the death of the person will be allowed in Missouri.⁹⁴ But if the plaintiff fails to plead the foreign statute there can be no recovery in Missouri.⁹⁵

VI. WORKMEN'S COMPENSATION⁹⁶

The Missouri Workmen's Compensation Act provides:

"This chapter shall apply to all injuries received in this state, regardless of where the contract of employment was made, and also to all injuries received outside of this state under contract of employment made in this state, unless the contract of employment in any case shall otherwise provide."⁹⁷

A. *Compensation under Act of State of Employment*

Even in the absence of an express statutory provision on the subject, the view taken by most courts is that there can be recovery under the act of the state in which the contract of employment was made though the injury occurs in another state.⁹⁸ The Missouri Act provides in specific words that it shall apply in such a case unless the contract of employment shall otherwise provide. In *Bolin v. Swift & Co.*,⁹⁹ the employer was an

92. See Mo. ANNOT. § 391.

93. *Connole v. East St. Louis & S. Ry.*, 102 S. W. (2d) 581 (Mo. 1937); *Smith v. Chicago, R. I. & P. Ry.*, 228 Mo. App. 600, 71 S. W. (2d) 842 (1934), s. c. 104 S. W. (2d) 1050 (1937). See *Rositzky v. Rositzky*, 329 Mo. 662, 46 S. W. (2d) 591 (1932), cited note 95, *infra*.

94. *Fox v. Missouri Pac. Ry.*, 335 Mo. 984, 74 S. W. (2d) 608 (1934); see Mo. ANNOT. § 392. See Mo. REV. STAT. (1929) §§ 705, 706.

95. *Rositzky v. Rositzky*, 329 Mo. 662, 46 S. W. (2d) 591 (1932).

96. Numerous articles dealing with conflict of laws questions arising out of the application of Workmen's Compensation Acts are available: *Dunlap, The Conflict of Laws and Workmen's Compensation* (1935) 23 CAL. L. REV. 381; *Dwan, Workmen's Compensation and the Conflict of Laws* (1927) 11 MINN. L. REV. 329; *Dwan, Workmen's Compensation and the Conflict of Laws* (1935) 20 MINN. L. REV. 19; *Angell, Recovery under Workmen's Compensation Acts for Injury Abroad* (1918) 31 HARV. L. REV. 619. See Note (1934) 90 A. L. R. 119.

97. Mo. REV. STAT. (1929) § 3310, subsection (b).

98. 2 BEALE, CONFLICT OF LAWS (1935) § 398.2. Of course an employee cannot recover for harm sustained in another state under the act of the state in which the contract of employment was made if the statute provides in specific words that it is applicable only when harm occurs within the state. See RESTATEMENT, § 399, comment b.

99. 335 Mo. 732, 73 S. W. (2d) 774 (1934). *Accord*, *Toon v. David G. Evans Coffee Co.*, 103 S. W. (2d) 533 (Mo. App. 1937) (contract of employment made in Missouri; employee killed in Kentucky; Missouri Act applied on basis of express provision).

Illinois corporation with branch plants in St. Joseph, Missouri, and Centerville, Iowa. B was employed by the corporation at St. Joseph, as a traveling salesman in December, 1923. In the latter part of December, 1923, B went to Centerville, which was centrally located in the territory he was to travel over, and continuously lived there until his death in 1932. His territory was partly in Iowa and partly in Missouri. B was fatally injured in Centerville while acting in the course of his employment. His widow claimed compensation under the Missouri Act. The employer and its insurer contended that the Missouri Act did not apply because B was a resident of Iowa and that claimant's rights could only be those provided by the Iowa Compensation Law. It was also contended that the Missouri Act did not apply because it was not in effect at the time the contract of employment was made. The supreme court held that the claimant was entitled to compensation under the Missouri Act. It was pointed out that there is nothing in the act which limits its application to employees who are residents of Missouri. The court emphasized the fact that the employer was a "major employer" in Missouri. As to the contention that the local act did not apply because it was not in effect at the time the contract of employment was made, the court said that when the act was adopted and accepted, both by the employer and the employee, their contract was thus modified and changed, and the act immediately became a part of the contract. It is to be noted that the court used the "major employer" theory as well as the "contract" theory to support the application of express provisions of the Missouri Act.¹⁰⁰ The decision is in accord with the *Restatement*.¹⁰¹

B. Compensation under Act of State of Injury

In *State ex rel. Weaver v. Missouri Workmen's Compensation Comm.*,¹⁰² one Weaver was a resident of Missouri at the time of his death, employed by a New York corporation as a travelling salesman. The contract of employment was made in Illinois. Weaver worked in Missouri and sustained fatal injuries in this state in the course of his employment. He was survived by his widow, also a resident of Missouri, and two minor children. The widow applied to the Missouri Workmen's Compensation

100. The "contract" theory has been severely criticised. See articles cited in note 96, *supra*.

101. See RESTATEMENT § 398; MO. ANNOT. § 398.

102. 339 Mo. 150, 95 S. W. (2d) 641 (1936).

Commission for compensation under the Missouri Act. The Illinois Act¹⁰³ provided that it should apply to any injury received outside the state of Illinois, under contract of employment made within that state. The Missouri Act provided that it should apply to all injuries received in Missouri, regardless of where the contract of employment was made, unless the contract of employment provided otherwise. The contract of employment was silent as to what law should apply. Each act provided that its remedy should be exclusive. The supreme court held that the Missouri Act governed because the interest of the state of Missouri was superior to that of Illinois. The court considered the employee's Missouri domicil, plus the possibility of the widow becoming a public charge, sufficient to uphold recovery under the Missouri Act. In so deciding, the court referred to one case only—*Alaska Packer's Ass'n v. Industrial Accident Comm. of California*.¹⁰⁴ In this case the Supreme Court of the United States said that a conflict arising between the workmen's compensation laws of two states "is to be resolved, not by giving automatic effect to the full faith and credit clause, compelling the courts of each state to subordinate its own statutes to those of the other, but by appraising the governmental interests of each jurisdiction, and turning the scale of decision according to their weight."¹⁰⁵ Although the *Restatement* does not recognize the "superior governmental interest" theory, the decision in the *Weaver* case is in harmony with the rule adopted by the *Restatement*.¹⁰⁶

C. Neither Employment nor Injury in State

*Adams v. Continental Life Ins. Co.*¹⁰⁷ followed the usual rule that no recovery can be had under the Workmen's Compensation Act of a state if neither the injury occurred nor the contract of employment was made in the state. In this case, A, from February 1, 1924, to October, 1931, was in the employ of the insurance company in South Dakota. In 1931, A was transferred to the home office in Missouri, and consented in Missouri to

103. ILL. STAT. ANN. (Smith-Hurd) § 142, c. 48; ILL. REV. STAT. (Cahill, 1933).

104. 294 U. S. 532 (1935).

105. 294 U. S. at 547.

106. See RESTATEMENT §§ 399, 402. The Restatement was published in 1934; the Alaska Packers case was decided in 1935. Cf. *Bradford Electric Light Co. v. Clapper*, 286 U. S. 145 (1932), Note (1932) 46 HARV. L. REV. 291; Joseph H. Weiderhoff v. Neal, 6 F. Supp. 798 (D. C. Mo. 1934); RESTATEMENT § 401; Mo. ANNOT. § 401.

107. 101 S. W. (2d) 75 (Mo. 1936).

take on new duties relating primarily to taxes on the company's investments in 33 states. His salary was included in the Missouri pay roll and the company's compensation policy was amended to eliminate coverage under the South Dakota Compensation Act. In 1932 he was sent back to South Dakota to perform certain services for the employer with instructions to return to Missouri when these services were finished. A was fatally injured in South Dakota. Claim was filed before the Missouri Commission on the ground that deceased was working under a contract entered into in Missouri. Compensation was denied, the commission finding that the evidence was insufficient to show that a contract was made in Missouri when the deceased was called to the home office in 1931. The ruling of the commission was upheld by the supreme court. This decision is in accord with the *Restatement*.¹⁰⁸

D. Effect of Admiralty Jurisdiction

In the *Restatement* it is stated that if the case is one which is within the scope of admiralty jurisdiction, the remedy under a State Workmen's Compensation Act cannot be constitutionally allowed in any state of the United States.¹⁰⁹ The Missouri cases are in accord.¹¹⁰

VII. JUDGMENTS

A. Recognition of a Foreign Judgment

A recent case¹¹¹ holds that in a suit on a judgment of another state the defendant may plead and show that in the original suit no service was had upon him¹¹² and that his appearance entered by an attorney was unauthorized.¹¹³

108. See RESTATEMENT § 400.

109. See RESTATEMENT § 401, comment c.

110. See *McClain v. Kansas City Bridge Co.*, 83 S. W. (2d) 132 (Mo. App. 1935), *appeal dismissed*, 338 Mo. 7, 88 S. W. (2d) 1019 (1935); *State ex rel. Kansas City Bridge Co. v. Missouri Workmen's Compensation Comm.*, 92 S. W. (2d) 624 (Mo. 1936), s. c. 81 S. W. (2d) 986 (Mo. App. 1935).

111. *Topalian Bros. v. Asadorian*, 104 S. W. (2d) 713 (Mo. App. 1937).

112. See RESTATEMENT §§ 77, 429-430; Mo. ANNOT. §§ 77, 429-430; 1 BEALE, CONFLICT OF LAWS (1935) § 74.7; Farrier, *Full Faith and Credit of Adjudication of Jurisdictional Facts* (1935) 2 U. OF CHI. L. REV. 552, 560-62.

113. See RESTATEMENT § 82, comment e; Mo. ANNOT. § 82, comment e; 1 BEALE, CONFLICT OF LAWS (1935) 74.6; Note (1936) 36 COL. L. REV. 148; Note (1934) 88 A. L. R. 12.

B. Res Judicata

In *Renchow v. Bankers Life Co.*,¹¹⁴ the plaintiff, claiming that the defendant had violated its contract of insurance, sued at law to recover assessments he had paid the defendant. The defendant, an Iowa assessment insurance company, pleaded as *res judicata* a judgment of the courts of Iowa in an action where other members of the defendant corporation had brought suits in equity on behalf of themselves and other members similarly situated, to determine the right of the defendant to levy such assessments upon members of the class to which the plaintiff belonged. The plaintiff was not a party to the Iowa suit and did not appear therein. It was held that the decision in the Iowa suit brought by members of a class on behalf of themselves and others similarly situated was binding on the plaintiff as a member of such class and that the courts of Missouri must give full faith and credit to the Iowa judgment and decision. This case is in accord with the *Restatement*.¹¹⁵

VIII. ADMINISTRATION OF ESTATES

A. Administration of Decedents' Estates

*Extraterritorial Effect of Judgments against Administrators.*¹¹⁶ In general, an administrator cannot be sued in either a state or federal court of a state other than the state of his appointment on a claim against the decedent. It is immaterial that the action was begun during the decedent's lifetime and that the court had jurisdiction over the person of the decedent.¹¹⁷ The prevailing view is that even the voluntary appearance of a foreign administrator does not confer jurisdiction upon a court to render a judgment on a claim against the estate.¹¹⁸ In a few cases, however, judgment has been rendered against a foreign administrator on a claim against the estate when the administrator had "waived" his immunity either by bringing an action himself or by failing to set up his immunity as a defense. However, a judgment rendered under such circumstances will not

114. 335 Mo. 668, 73 S. W. (2d) 794 (1934).

115. See RESTATEMENT §§ 185, 186, 450, comment *d*; MO. ANNOT. §§ 185, 186, 450, comment *d*.

116. In the Restatement of this subject, the word "administrator" is used to include an executor, unless specifically stated otherwise.

117. See RESTATEMENT § 512; MO. ANNOT. § 512; 3 BEALE, CONFLICT OF LAWS (1935) 512.1.

118. See RESTATEMENT § 513; 3 BEALE, CONFLICT OF LAWS (1935) §§ 513.1, 514.1.

be recognized as a valid claim against the estate in the state where the administrator was appointed, or in any other state. It was so held in a recent Missouri case where the judgment was rendered in an admiralty suit in a federal court of Louisiana against an administrator appointed in Missouri.¹¹⁹ The court assumed that the Missouri administrator had entered an appearance in the Louisiana action but refused to recognize the judgment as a valid claim against the estate in Missouri, since this would be to allow a foreign court to determine the disposition of property in Missouri. This decision is in accord with the *Restatement*.

There is no privity between representatives that will make a judgment against one binding against the other, even where they are the same individual, subject to the case where the same person is executor in two states.¹²⁰ In *Carpenter v. Strange*,¹²¹ the Supreme Court of the United States held that a judgment against an executor in one state is entitled to full faith and credit in a suit against an executor in another state, if the executor is the same individual. This decision, however, has been limited by a later decision of the Supreme Court.¹²² And in *First National Bank v. Blessing*,¹²³ a Missouri court permitted a creditor of the estate to prove on the original claim against the domiciliary executrix though he had recovered a judgment on the same claim in ancillary proceedings in Colorado against a different representative appointed in that state. After pointing out that the record did not show whether the Colorado representative was appointed administratrix or executrix, the court said: "It is, however, unimportant, so far as the issues of the case are concerned, whether she was appointed administratrix or executrix." This decision is in accord with the *Restatement*.¹²⁴

IX. PROCEDURE

A. *Foreign Law*

A statute requires the Missouri courts to take judicial notice of the public statutes and judicial decisions of a sister state when the law of

119. *In re Estate of Thompson v. Coyle and Co.*, 339 Mo. 410, 97 S. W. (2d) 93 (1936).

120. See RESTATEMENT § 510; MO. ANNOT. § 510.

121. 141 U. S. 87 (1891).

122. *Brown v. Fletcher's Estate*, 210 U. S. 82 (1908), holding that a judgment establishing a claim against an ancillary administrator c. t. a. is not binding on the executor in the domiciliary administration.

123. 98 S. W. (2d) 149 (Mo. App. 1936).

124. See note 120, *supra*.

the other state is pleaded.¹²⁵ This statute does not authorize the courts to take judicial notice of the law of another state unless it is pleaded.¹²⁶ But if a statute of another state is pleaded the courts will take judicial notice, not only of the statute itself, but also of the interpretation placed upon the statute by the courts of the state in which it was enacted.¹²⁷ In *Corbett v. Terminal Railroad Ass'n*,¹²⁸ it was held that the pleading was sufficient to require the court to take judicial notice of the Illinois statute creating the Illinois Commerce Commission and giving it exclusive power to regulate the operation of crossing gates at grade crossings, but that the court could not take judicial notice of the commission's order relating to crossing gates, where such order was not pleaded nor called to the attention of the trial court.

125. MO. REV. STAT. (1929) § 806.

126. See MO. ANNOT. § 621. Cf. *Connole v. Floyd Plant Food Co.*, 96 S. W. (2d) 655 (Mo. App. 1936).

127. *Barnes v. St. Louis-San Francisco Ry.*, 338 Mo. 497, 92 S. W. (2d) 164 (1936).

128. 336 Mo. 972, 82 S. W. (2d) 97 (1935).