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American Law Institute's Restatement of the Law of Conflict of Laws with Annotations to the Missouri Authorities (Sections 93-115), The

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THE AMERICAN LAW INSTITUTE'S RESTATEMENT OF THE LAW OF CONFLICT OF LAWS WITH ANNOTATIONS TO THE MISSOURI AUTHORITIES

(Sections 93-115)

By

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TITLE III. JURISDICTION OVER CORPORATION

Section 93. Jurisdiction over a Domestic Corporation.

A state can exercise through its courts jurisdiction over a domestic corporation.

Comments.

a. At common law jurisdiction of a court of a state over a domestic corporation, that is, a corporation organized under the law of the state, is acquired by service of process upon its principal officer.

b. If a statute authorizes a different method of service upon domestic corporations, a judgment rendered after such service is valid and will be recognized in other states as valid, if the method is one resaonably calculated to give the corporation knowledge of the action and an opportunity to be heard (see Section 80).

Illustrations:

1. A statute of state X provides that if an officer or agent of a domestic corporation cannot be found within the state, service of process may be made upon the corporation by publication in a newspaper, or by handing a summons to an officer or principal agent of the corporation outside the state, or by handing a summons to a public official whose duty it is made to mail it to an officer of the corporation. These methods of service are sufficient to confer upon a court of X jurisdiction over the domestic corporation.

2. A statute of state X provides for service of process upon a domestic corporation by filing a summons in the Registry of Deeds, no one being charged with a duty to forward it to any officer or agent of the corporation. This method of service is not sufficient to confer upon a court of X jurisdiction over the domestic corporation.

3. A statute of state X provides for service upon a domestic corporation by service upon any officer, agent, or employee of the corporation. Process is served upon a day laborer in the employ of the corporation. This method of service is not sufficient to confer upon a court of X jurisdiction over the domestic corporation.

Annotation:

Except as stated below, the law of Missouri is in accord with this section. Service of process upon domestic corporations in suits in courts of record is provided for by R. S. 1929, Sec. 735. If service of process is made upon a domestic corporation in accordance with Sec. 735, by handing a summons to an officer or principal agent *within the state*, the court has jurisdiction to render a personal judgment against the corporation. *St. Charles Sav. Bank v. Thompson & Gray Quarry Co.*, 210 S. W. 868 (Mo. 1919) (service upon president); *Taussig v. St. Louis, etc. R. Co.*, 186 Mo. 269. 85 S. W. 378 (1905) (service upon secretary in charge of office); *State ex rel. Quincy, O. & K. C. R. Co. v. Myers*, 126 Mo. App. 544, 104 S. W. 1146 (1907) (service upon telegraph operator); *Pipkin v. Nat. Loan & Inv. Ass'n.*, 80 Mo. App. 1 (1899) (service upon president); *Story v. American Cent. Ins. Co.*, 61 Mo. App. 534 (1895) (service upon agent in charge of office); *Schaeffer v. Phoenix Brewery Co.*, 4 Mo. App. 115 (1877) (service upon president and secretary in action by president). See, *Youree v. Home Town Mutual Ins. Co.*, 180 Mo. 153, 79 S. W. 175 (1903) (service upon president in suit to appoint receiver). *State ex rel. Quincy, O & K. C. R. Co. v. Myers, supra*, contains *dicta* in accord with *Illustration 3.*

In *Hoffman v. Missouri ex rel. Foraker*, 309 Mo. 625, 274 S. W. 362 (1925), aff. 274 U. S. 21, 47 S. Ct. 485, 71 L. Ed. 905 (1927), the plaintiff, a non-resident, brought suit under the Federal Employer's Liability Act on a cause of action arising out of foreign interstate business. The defendant, a Missouri corporation, was engaged in intrastate, as well as interstate, business in Missouri. Held, that the prosecution of the action was not a violation of the commerce clause of the Federal Constitution. As to the application of the commerce clause in suits against foreign corporations, see Section 98.

The Missouri statute (R. S. 1929, Sec. 735) provides that if an officer or agent of a corporation cannot be found within the state, service of process may be made by handing a summons to an officer or agent *outside the state. Illustration 1, supra*, states that this method of service is sufficient. No Missouri cases have been found in which this problem was squarely presented. In *McMenamy Inv. & Real Estate Co. v. Stillwell Catering Co.*, 175 Mo. App. 668, 158 S. W. 427 (1913), an attachment suit, no officer or agent of defendant could be found in the state. An alias summons was served upon the president in California. Judgment by default was entered against the defendant, after its motion to quash the service was overruled. The Court of Appeals affirmed the judgment, Allen, J., dissenting on several grounds. The Supreme Court adopted the dissenting opinion and reversed the decision. 267 Mo. 340, 184 S. W. 467 (1915). In discussing R. S. 1929, Sec. 735 (R. S. 1909, Sec. 1766), Allen, J., said that "it was evidently intended to permit a judgment *in personam* to be rendered against a domestic corporation upon service beyond the limits of this State; but in so far as it purports to authorize the rendition of a personal judgment upon extraterritorial service, it is utterly void." (175 Mo. App. l. c. 685), citing *Moss v. Fitch*, 212 Mo. 484, 111. S. W. 475 (1908), *Wilson v. St. Louis & S. F. R. Co.*, 108 Mo. 588, 18 S. W. 286 (1891), and *Priest v. Capitan*, 236 Mo. 446, 139 S. W. 204 (1911). However, the decision in this case is not contra to the view stated in *Illustration 1*, for it may be explained upon other grounds, to-wit: (1) that the summons was not directed to the California sheriff, or (2) that the action was not *in personam*; that R. S. 1929, Sec. 735 (R. S. 1909, Sec 1766) has no reference to attachment suits, and that R. S. 1929, Sec. 748 (R. S. 1909, Sec. 1778), relating to attachment suits, applies only when the defendant is a foreign corporation. The cases cited by Allen, J. are not in point but the opinions contain *dicta* in accord with the statement quoted above. For a discussion of these cases, see annotations to Sec. 85. The Restatement makes a distinction between (1) the question whether a domestic corporation is subject to the

jurisdiction of the state, and (2) the question of reasonable notice. It takes the position that a domestic corporation is subject to the jurisdiction of the state, and that service upon an officer or principal agent outside the state is reasonable notice, whereas the Missouri courts have said by way of *dicta* that a personal judgment cannot be based upon extra-territorial service in any case.

In *Baxter v. Continental Casualty Co.*, 48 F. (2d) 467 (C. C. A. 8th 1931) it was held that the Missouri statute authorizing service on domestic corporations by personal service on officer thereof in another state is void as to such service. The court also held that service by publication on a domestic corporation, under R. S. Mo., Sec. 738, does not warrant entry of a judgment *in personam*. The Federal court relied upon the Missouri decisions cited above.

R. S. 1929, Sec. 6072, provides for service of process upon town mutual insurance companies. This statute was applied in the following cases. *Thomasson v. Mercantile Town Mut. Ins. Co.*, 114 Mo. App. 109, 89 S.W. 1135 (1905), 217 Mo. 485, 116 S. W. 1092 (1909); *Wicecarver v. Mercantile Town Mut. Ins. Co.*, 137 Mo. App. 247, 117 S. W. 698 (1909); *Lohoefener v. Mercantile Town Mut. Ins. Co.*, 136 Mo. App. 540, 118 S. W. 515 (1909).

The act relating to the regulation of motor carrier transportation applies to any corporation operating motor vehicles for hire. (R. S. 1929, Sec. 5264). Section 5280 of this act provides that "service may be made upon such carrier. . . . . by serving process upon the secretary of the public service commission." This statute is not in accord with *Illustration 2, supra*. See *Consolidated*, etc., Co. v. Muegge, 278 U. S. 559, 49 S. Ct. 17, 73 L. Ed. 505 (1928); *Wuchter v. Pizzutti*, 276 U. S. 13, 48 S. Ct. 259, 72 L. Ed. 446 (1928). No doubt the provisions of R. S. 1929, Sec. 735, apply to such corporations.

R. S. 1929, Sec. 2196 provides for service of process upon domestic corporations and joint stock companies (other than railroad corporations) in suits in justice courts. In so far as this statute provides for service upon "any" agent or employee, it is not in accord with *Illustration 3, supra*. See *State ex rel. Quincy O & K. C. R. Co. v. Meyers*, 126 Mo. App. 544, 104 S. W. 1146 (1907). It seems that R. S. 1929, Sec 735, also applies to justice courts and must be taken in conjunction with Sec. 2196. *Burrell Collins Brokerage Co. v. N. Y. Central R. Co.*, 219 S. W. 105 (Mo. App. 1920); *Powell v. St. Louis I. M. & S. R. Co.*, 178 S. W. 212 (Mo. App. 1915.) There are special provisions relating to service of process issued from justice courts in suits against railroads for killing stock. R. S. 1929, Sec. 2200.

As to the effect of an appearance by a corporation, see Annotation to Sec. 88.

As to whether a sheriff's return of process is conclusive in an action against a domestic corporation, see *Annotation* to Sec.

Section 94. Jurisdiction over a Foreign Corporation.

A state can exercise jurisdiction through its courts over a foreign corporation under the circumstances under which an individual would subject himself to the jurisdiction of the state, as stated in Sections 88, 89 and 90.

Comment:

a. A foreign corporation is a corporation organized under the law of another state.

The principles governing the effect of an appearance by a defendant in an action (Section 88), the bringing of an action by a plaintiff (Section 89), and the doing an act or causing an event within the state (Section 90), are applicable to corporations.

Annotation:

As to the effect of an appearance by a foreign corporation, see *Annotation* to Section 88. As to the effect of the bringing of an action by a plaintiff, see *Annotation* to Section 89. No Missouri cases have been found involving the application of the principles stated in Section 90.

Section 95. No Jurisdiction without Consent or Doing Business.

Except as stated in Section 94, a state cannot exercise through its courts jurisdiction over a foreign corporation, if the corporation has neither consented to the exercise of jurisdiction by the courts of the state nor done business within the state.

Comments:

a. A state does not have jurisdiction over a foreign corporation which has neither consented to the exercise of jurisdiction nor done business within the state, although an officer or agent of the corporation is casually within the state, or resides within the state, or has come into the state to attend to an affair of the corporation, even the affair on which the action is based, and though the cause of action arose within the state, unless it has by entering an appearance or by bringing an action or by causing an act to be done within the state subjected itself to the exercise of jurisdiction in accordance with the principles stated in Section 94.

Illustrations:

1. A brings an action in state X against B, a corporation organized under the laws of state Y, which has never engaged in business in X. Process is served in X upon C, the president of the B corporation, who happens to be temporarily in X on his own private business. The court has no jurisdiction to render a judgment against B.

2. A brings an action in state X against B, a corporation organized under the laws of state Y, which has never engaged in business in X. Process is served in X upon C, the president of the B corporation, who resides in X. The court has no jurisdiction to render a judgment against B.

3. A brings an action in state X against B, a corporation organized under the laws of state Y, which has never engaged in business in X. Process is served in X upon C, the president of the B corporation, who has come to X to purchase machinery on behalf of B. The court has no jurisdiction to render a judgment against B.

4. A brings an action in state X against B, a corporation organized under the laws of state Y, which has never engaged in business in X. Process is served in X upon C, the president of the B corporation, who has come to X to attempt to make a settlement with A of his claim against B. The court has no jurisdiction to render a judgment against B.

b. The question when a foreign corporation is doing business in a state is considered in Section 179.

Annotation:

The law of Missouri is in accord with this section. *Latimer v. Union Pac. R. Co.*, 43 Mo. 105 (1868); *Bauch v. Weber Flour Mills Co.*, 210 Mo. App. 666, 238 S. W. 581 (1922); *Nathan v. Planters Cotton Oil Co.*, 187 Mo. App. 560, 174 S. W. 126 (1915); *Painter v. Colorado Springs, etc., R. Co.*, 127 Mo. App. 248, 104 S. W. 1139 (1907); *Zelnicker Supply Co. v.*

Mississippi Cotton Oil Co., 103 Mo. App. 94, 77 S. W. 321, (1903). See *Hall v. Wilder Mfg. Co.*, 316 Mo. 812, 293 S. W. 760 (1927); *Hussey Tie Co. v. Knickerbocker Ins. Co.*, 20 F. (2d) 892 (C. C. A. 8th, 1927).

As to whether a sheriff's return of process is conclusive in an action against a foreign corporation, see Annotation to Section 82.

Section 96. Consent.

A state can exercise through its courts jurisdiction over a foreign corporation in so far as the corporation has consented to the exercise of jurisdiction, whether or not the corporation is doing business within the state, and whether or not the cause of action arose out of business done within the state.

Comments:

a. By the word "consent" here as in other parts of the Restatement of this Subject, is meant a real consent, not a fictitious one. The consent may be by acts as well as by words, but the acts must in that case be in reality the expression of consent to an offer known to the consenting party.

b. As in the case of an individual (Section 87), a foreign corporation may by its consent expressed by words or conduct subject itself to the jurisdiction of the courts of a state.

Annotation:

Cases where the corporation has shown consent by appearance are cited under Section 88. See Section 94.

The statutes provide for expressing consent by appointing an agent on whom process may be served. See references following Section 97.

Section 97. Appointment of Agent or Official.

A state can exercise through its courts jurisdiction over a foreign corporation which has appointed an agent or designated a public official in the state with authority to accept service of process in actions brought against the corporation in that state, as to all causes of action to which the authority of the agent or official to accept service extends.

Comments:

a. The jurisdiction here exercised is based upon consent. The corporation is bound by its consent whether it is doing business in the state at the time the action is brought, or has ceased to do business in the state, or has never done business in the state.

b. A State of the United States, unless restrained by some constitutional provision, such as that relating to interstate commerce, may forbid a foreign corporation to do business within the State, or may forbid it to do business unless and until it has appointed an agent or designated a public official with authority to accept service of process in actions brought against the corporation in the State no matter where arising; and if the corporation does appoint an agent or designate a public official so authorized to accept service of process, it has thereby consented to the exercise of jurisdiction over it so far as the authority of the agent or official to accept service extends.

c. If a corporation has appointed an agent or designated 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 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.

Annotation:

The law of Missouri is consistent with this section.

General Provisions: The statutes relating to the admission of foreign corporations to do business in this state provide that before such a corporation shall be permitted to do business in this state, it shall maintain a public office or place in the state, where legal service may be obtained upon it. Such a corporation must file a statement setting out the location of such office or place and also set out that if service cannot be had upon an agent that service may be had upon the secretary of state. These provisions do not apply to insurance corporations, nor to drummers or travelling salesmen soliciting business in this State for foreign corporations. (R. S. 1929, Secs. 4596-98, 4600). If a foreign corporation does file such a statement, and service cannot be had upon an agent, service upon the secretary of state is sufficient to confer jurisdiction over the corporation. The statute, it will be noted, does not state whether such consent to the exercise of jurisdiction is revocable at any time or not, and no Missouri decisions have been found on this point. The language of the statute is very broad and is not limited to causes of action arising out of business done within the State. No Missouri decisions have been found on this point. But see *Denver & R. G. W. R. Co v. Terte*, 52 S. Ct. 152 (U. S. 1932) (point as to jurisdiction over Santa Fe Ry. Co.), where it is not clear whether the railroad appointed an agent to accept service in Missouri.

Insurance Corporations: The statute relating to the admission of foreign insurance corporations to do business in the State provides that the corporation shall appoint the superintendent of insurance to receive service of process. (R. S. 1929, Secs. 5894-95). The statute provides that service of process as aforesaid shall be valid and binding "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 a like provision. (R. S. 1929, Secs 6006-7). As to actions for taxes against foreign insurance corporations, see R. S. 1929, Sec. 5987.

In the following cases, the claims arose out of business done within the state, and service upon the superintendent of insurance was upheld: *State ex rel. Standard Fire Ins. Co. v. Gantt*, 274 Mo. 490, 203 S. W. 964 (1918); *Meyer v. Phoenix Ins. Co.*, 184 Mo. 481, 83 S. W. 479 (1904); *Stone v. Traveller's Ins. Co.*, 78 Mo. 655 (1883); *Curfman v. Fidelity & Deposit Co.*, 167 Mo. App. 507, 152 S. W. 126 (1912); *Cox v. American Ins. Co.*, 137 Mo. App. 40, 119 S. W. 476 (1909). Most of these cases deal with venue rather than state jurisdiction in the Conflict of Laws sense, and state jurisdiction was conceded. No attempt has been made to cite all the venue cases. In *Lincoln Safe Deposit Co. v. Continental Life Ins. Co.*, 213 Mo. App. 561, 249 S. W. 677 (1923), an action was brought upon a Nebraska judgment. The record of the Nebraska action showed service was had on the defendant, a foreign corporation, by serving a state official, the defendant having consented to such service. Held, that the judgment was entitled to full faith and credit.

In several cases the statute relating to foreign insurance corporations (R. S. 1929, Secs. 5894-95) was interpreted to extend to all causes of action, no matter where arising. *Lewis v. N. Y. Life Ins. Co.*, 201 S. W. 851 (Mo.) (1918); *Gold Issue Mining & Milling Co. v.*

Penn. Fire Ins. Co., 267 Mo. 524, 184 S. W. 999 (1916); *State ex rel. Pac. Mutual Life Ins. Co. v. Grimm*, 239 Mo. 135, 143 S. W. 483 (1912). The Supreme Court of the United States affirmed this ruling, and held the Missouri court's construction had a rational basis in the statute and could not be deemed to deprive the corporation of due process of law. *Penn. Fire Ins. Co. v. Gold Issue Mining & Milling Co.*, 243 U. S. 93, 37 S. Ct. 344, 61 L. Ed. 610 (1917). However, in a subsequent decision the Supreme Court of Missouri, in banc, overoverruled it's previous decisions and the statute was construed to include service only in suits arising out of business done within the State. *State ex rel. American Cent. Life Ins. Co. v. Landwehr*, 318 Mo. 181, 300 S. W. 294 (1927). This case is not inconsistent with the Restatement. Because a statute may be interpreted to extent to all causes of action, no matter where arising, without violating the due process clause, it does not follow that the courts of a particular state must adopt such a broad construction.

As to service of process upon foreign insurance companies not authorized to do business in Missouri, see annotation to Sec. 98. In *State ex rel. Standard Fire Ins. Co. v. Gantt*, 274 Mo. 490, 507, 203 S. W. 964 (1918), the court said "it is true that this court has repeatedly ruled that when a foreign insurance company has designated an agent by power of attorney pursuant to statute (Sec. 6013, R. S. 1879; Sec. 7042, R. S. 1909), service of process must be had upon such designated agent, and thereafter no valid service can be had upon any other agent. *Baile v. Insurance Co.*, 68 Mo. 617 *Middough v. Railroad*, 51 Mo. 520; *Stone v. Travelers Insurance Co.*, 78 Mo. 655; *State ex rel. Pac. Mutual Life Ins. Co. v. Grimm*, 239 Mo. l. c. 161; *Gold Issue M. & M. Co. v. Insurance Co.*, 267 Mo. l. c. 575. Accord; *Thompson v. Nat. Life Ins. Co.*, 28 F. (2d) 877, 1020 (D. C. W. D. Mo. 1928) (applying Missouri statute).

Blue Sky Law: The provisions of the Blue Sky Law are similar to the provisions relating to foreign insurance corporations. (R. S. 1929, Sec. 7735). No Missouri cases have been found involving the application of this statute.

Motor Bus Corporations: The statute provides that non-resident applicants for permits to operate motor carriers within the State, including corporations, must appoint some person or the secretary of state as agent for the applicant on whom service of process may be had. (R. S. 1929, Secs. 5271-72). This statute does not state whether such power of attorney is revocable at any time or not. The language of the statute is not limited to causes of action arising within the state. No Missouri decisions have been found on these points.

Section 98. Doing Business.

A state can exercise through its courts jurisdiction over a foreign corporation doing business within the state at the time of service of process, as to causes of action arising out of the business done within the state.

Comments:

a. The jurisdiction here exercised is based not upon consent but upon the fact that the corporation by doing business within the state subjects itself to the jurisdiction of the state as to causes of action arising out of the business done within the state. The question when a foreign corporation is doing business in a state is considered in Section 179.

b. Although a State cannot under the Constitution of the United States forbid a foreign corporation to engage in interstate commerce within the State, a foreign corporation by doing business within the State, although the business is confined to interstate commerce, subjects itself to the jurisdiction of the State as to causes of action arising out of the business done in the State.

It is a violation of the Constitution of the United States to require a foreign corporation as a condition of engaging only in interstate commerce

within the State to consent to the jurisdiction of the State as to causes of action not arising out of the business done within the State, or to subject the corporation without its consent to such jurisdiction.

c. A foreign corporation by doing even intrastate business within a State does not in the absence of consent subject itself to the jurisdiction of the State as to causes of action not arising out of the business done within the State, so that the State can exercise through its courts jurisdiction over it by serving a public official.

Special Note: It has not yet been settled by the Supreme Court of the United States whether when a corporation does intrastate business in a State it subjects itself to the jurisdiction of the State as to causes of action not arising out of the business done within the State, so that the State can exercise through its courts jurisdiction over it by serving an agent of the corporation.

Annotation:

Except as stated below, the law of Missouri is in accord with this section. Under statutes formerly in force in Missouri it was essential to the acquisition of jurisdiction by summons that a foreign corporation have its chief office or place of business in the state. *Baile v. Equitable Fire Ins. Co.*, 68 Mo. 617 (1878); *Middough v. St. Joseph, etc., R. Co.*, 51 Mo. 520 (1873); *Robb v. C. & A. R. Co.*, 47 Mo. 540 (1871); *City of St. Louis v. Wiggins Ferry Co.*, 40 Mo. 580 (1867); *Farnsworth v. Terre-Haute, etc., R. Co.*, 29 Mo. 75 (1859); *Hill v. Wheeler, etc. Mfg. Co.*, 4 Mo. App. 595 (1877). However, subsequent statutes dispensed with this strict requirement and established a rule in accord with this section.

Missouri Statutes: R. S. 1929, Sec. 728, provides for service of process upon foreign corporations and joint stock companies doing business in the state, except as otherwise provided by law, by delivering a summons to any officer or agent in charge or any office or place of business, or if the corporation have no office or place of business, then by delivering a summons to any officer, agent or employee in any county, etc. Service of process upon foreign corporations (other than railroad corporations) in suits in justice courts is provided for by R. S. 1929, Sec. 2196. See also, R. S. 1929, Sec. 2200

The statutes relating to the admission of foreign corporations to do business in the state, provide that such a corporation shall maintain an office or place in the state, where legal service may be obtained upon the corporation. R. S. 1929, Secs. 4596-98, 4600. As to the effect of appointing a state officer to receive service of process, under the provisions of these statutes, see Annotation to Section 97.

R. S. 1929, Sec. 5897, provides for service of process upon foreign insurance corporations not authorized to do business in Missouri. The constitutionality of this statute was upheld in *Commercial Mut. Accident Co. v. Davis*, 213 U. S. 245, 29 S. Ct. 445, 53 L. Ed. 782 (1909). See also *Hussey Tie Co. v. Knickerbocker Ins. Co.*, 20 F (2d) 892 (C. C. A. 8th, 1927).

R. S. 1929, Sec. 744, provides for service of process upon associations composed of foreign corporations, joint-stock companies and individuals. This statute is unconstitutional in so far as it attempts to make the judgment a personal obligation of the members not served. See Annotation to Section 92. The question of whether a corporation can be a member of an incorporated association is not a question of Conflict of Laws.

R. S. 1929, Secs. 4689-90, provide that a foreign corporation being a lessee or licensee of a railroad in this state may be sued in the same manner as a domestic railroad corporation. As to jurisdiction over domestic corporations, see Annotations to Sec. 93. R. S. 1929, Sec. 742, provides that "all railroad corporations that own or operate roads terminating opposite to any point in this State, and which have offices or places of business in this state, shall be sued in the same manner as railroad corporations chartered by this state." This statute was

evidently enacted at a time when it was essential to the acquisition of jurisdiction by summons that a foreign corporation have its chief office or place of business in the state. As stated above, subsequent statutes have dispensed with this requirement. If a railroad corporation is actually "doing business" in the State, it is immaterial whether its lines terminate opposite a point in the state, or whether it has an office in the state or not. It would seem, therefore, that this statute is obsolete, and that service upon a foreign railroad corporation doing business within the state may be had under the provisions of R. S. 1929, Sec. 728. In connection with Sec. 742, see: *Mc Nichol v. U. S. Mercantile Reporting Co.*, 74 Mo. 457 (1881); *Robb v. C. & A. R. Co.*, 47 Mo. 540 (1871).

Comment a: The language of R. S. 1929, Secs. 728, 2196, is not limited to service on corporations authorized to do business in the state. In the following cases the corporation was doing business within the state, the claim arose out of business done within the state, and service on an agent was upheld. *Stegall v. American Pigment & Chemical Co.*, 150 Mo. App. 251, 130 S. W. 144 (1910); 237 Mo. 329, 141 S. W. 585 (1911), 263 Mo. 719, 173 S. W. 674; *Mc Nichol v. U. S. Mercantile Reporting Co.*, 74 Mo. 457 (1881). See *Union Bank Note Co. v. Ajax Portland Cement Co.*, 155 Mo. App. 349, 137 S. W. 18 (1911); *Fraternal Bankers of America v. Wire*, 150 Mo. App. 89, 129 S. W. 765 (1910). In *State ex rel. Texas Portland Cement Co. v. Sale*, 232 Mo. 166, 132 S. W. 1119 (1910), service upon an agent was upheld, but it does not appear whether the cause of action arose out of business done within the state or not. As to the effect of removing the case to the Federal court see *Annotation* to Section 88. In *Bannister v. Weber Gas & Gasoline Engine Co.*, 82 Mo. App. 528 (1899), a personal judgment rendered in Texas against a Missouri corporation was enforced when suit was brought upon the judgment in Missouri. The evidence showed that defendant was doing business in Texas at the time service was made on its agent.

The Missouri statutes provide for service of process on "any" officer, agent or employe. (Secs. 728, 2196, supra). As to whether service on "any" agent is sufficient, see *State ex rel. Quincy, O. & K. C. R. Co. v. Meyers*, 126 Mo. App. 544, 104 S. W. 1146 (1907) (a domestic corporation case).

In *Commercial Mut. Accident Co. v. Davis*, 213 U. S. 245, 29 S. Ct. 445, 53 L. Ed. 782, applying R. S. 1929, Sec. 5897, where case was removed to the Federal court, service upon an agent was upheld.

Comment b: No Missouri decisions have been found on the point raised in the first paragraph of this comment. In support of this paragraph see, *International Harvester Co. v. Kentucky*, 234 U. S. 589, 34 S. Ct. 947, 58 L. Ed. 1484 (1914), cited with approval in the cases cited below.

Only one case has been found on the point raised in the second paragraph of this comment, and it seems that this case is not in accord with the Restatement. *Busch v. Louisville & N. R. Co.*, 322 Mo. 469, 17 S. W. (2d) 337 (1929). In this case the plaintiff and all witnesses were non-residents, the defendant was a foreign corporation engaged only in interstate business in Missouri, and the cause of action arose out of foreign interstate business. It was held that the prosecution of the suit did not violate the commerce clause of the Federal Constitution. Although the Supreme Court of the United States denied a petition for writ of certiorari in this case (280 U. S. 569, 50 S. Ct. 27, 74 L. Ed. 622), it is difficult to reconcile this decision with the decisions of the Supreme Court of the United States. In *Michigan Central R. Co. v. Mix*, 278 U. S. 492, 49 S. Ct. 207, 73 L. Ed. 470 (1929), the plaintiff sued in Missouri where residence was gained subsequent to the time the action arose, and the action arose out of foreign interstate business. The defendant was engaged only in interstate commerce in Missouri. It was held that the prosecution of the action violated the commerce clause. Accord: *Denver - R. G. W. R. Co. v. Terte*, 52S. Ct. 152 (U.S. 1932) (point as to jurisdiction over Denver & R. G. W. R. Co.) The *Mix Case* leaves unsettled the question of whether the prosecution of such a suit would violate the commerce clause if the plaintiff were a resident of the state of the forum when the foreign cause of action developed. Cf. *State ex rel. St. Louis, etc., R. Co. v. Taylor*, 298 Mo. 474, 231 S. W. 383 (1923) (A garnishment case. Plaintiff was doing business in Missouri, and the cause, if in contract, and perhaps if in tort, arose within the state.); *Griffin v. Seaboard Air Line*, 28 F. (2d) 998, 38 F. (2d) 98 (D. C. W. D. Mo. 1930) (where the plaintiff was a resident). *Hoffman v. Missouri ex rel. Foraker*, 309 Mo. 625, 274 S. W. 362 (1925), aff. 274 U. S. 21, 47 S. Ct.

485, 71 L. Ed. 905 (1927), cited in the *Busch Case*, is not in point. In that case the defendant was a Missouri corporation, and engaged in intrastate, as well as interstate business, in Missouri. See *Annotation* to Section 93, supra.

The language of paragraph two of this comment is not broad enough to include *Bright v. Wheelock et al*, 323 Mo. 840, 20 S. W. (2d) 684 (1929). In that case a resident of Illinois brought an action under the Federal Employers Liability Act for personal injuries received in Illinois. The defendant, an Illinois corporation, was engaged in intrastate, as well as interstate business in Missouri. On appeal by plaintiff from an order granting a new trial to defendant, the order of the trial court was affirmed upon non jurisdictional grounds. The court said, however, that the prosecution of the action was not an undue burden on interstate commerce, distinguishing the *Mix Case*, supra, and other decisions, on the ground that in each of those cases the defendant was engaged only in interstate commerce within the state of the forum. The court relied upon *Hoffman v. Missouri ex rel.*, supra, but as pointed out above, that case involved a Missouri corporation. In *Shaw v. C. & A. R. Co.*, 314 Mo. 123, 282 S. W. 416 (1926) and *Wells v. Davis*, 303 Mo. 388, 261 S. W. 58 (1924), also cited by the Court, the constitutional question was not discussed. It has been held that even though the foreign corporation is engaged in intrastate transactions in the state, its interstate transactions are protected from undue burdens arising from suits on causes entirely foreign to the forum. *Weinard v. Chicago, etc., R Co.*, 298 Fed. 977 (D. Minn. 1924). Contra: *Schodel v. McGhee*, 300 Fed. 273 (C. C. A. 8th 1924). But the lower federal court decisions are not directly in point because the commerce clause is not a restriction upon the power of Congress, but a grant of power. Federal jurisdictional legislation is not restricted by the commerce clause. *Harris v. American Ry. Express Co.*, 12 F. (2d) 487 (Ct. of App. D. C. 1926); 24 Ill. Law. Rev. 581, 585. Cf. *Denver & R. G. W. R. Co. v. Terte*, 52 S. Ct. 152 (U. S. 1932). However, *Bright v. Wheelock et al*, supra, is not inconsistent with paragraph two of this comment, for this comment refers to foreign corporations engaging only in interstate commerce in the state of the forum.

Comment c: No Missouri decisions have been found on the point raised in paragraph one of this comment. Apart from the act relating to the regulation of motor carrier transportation, no provision seems to have been made by statute in Missouri for the method of service mentioned in paragraph one of this comment. This provision applies to any corporation operating motor vehicles for hire. (R. S. 1929, Sec. 5264). Sec. 5280 of the act provides for service upon a state official. If Sec. 5280 applies to foreign corporations (See R. S. 1929, Secs. 5271-72, cited under Section 97 of the Restatement), it is broad enough to include causes of action not arising out of business done within the state, and is not in accord with *Comment c*. In any event, Sec. 5280 is unconstitutional. See *Annotation* to Section 93.

The cases in which a corporation designated a public official to accept service of process are cited under Section 97, *supra*.

Special Note to Comment c: The language of the Missouri statutes is very broad and is not limited to causes of action arising out of business done within the state. (R. S. 1929, Secs. 728, 744, 2196) In *Bright v. Wheelock et al*, 323 Mo. 840, 20 S. W. (2d) 684 (1929), and *Busch v. Louisville & N. R. Co.*, 322 Mo. 469, 17 S. W. (2d) 337 (1929), cited under *Comment b*, supra, the claims did not arise out of business done within the state, and service was had upon agents of the defendants. It was held that the rendition of such a judgment did not violate the commerce clause of the Federal Constitution, but the point raised in the *"Special Note" of Comment c* was not considered, i. e. whether the rendition of such a judgment violates the Fourteenth Amendment of the Federal Constitution. In *Newcomb v. N. Y. Cent. & H. R. R. Co.*, 182 Mo. 687, 81 S. W. 1069 (1904), the claim did not arise out of business done within the state, and service was had upon an agent of the defendant. The service was upheld but the point under consideration was not discussed. No Missouri decision has been found which does discuss this point.

For a discussion of the many problems raised by Section 98, see: 43 Harv. L. Rev. 1156 (1930); 24 Ill. L. Rev 581 (1930); 14 Cornell L. Q. 489 (1929); 42 Harv. L. Rev. 1062 (1929); 27 Mich. L Rev. 338 (1929), 77 U. Pa. L. Rev. (1929); 7 Minn. L. Rev. 407 (1923).

As to whether a sheriff's return of process is conclusive in an action against a foreign corporation, see Annotations to Section 82.

Section 99. Ceasing to Do Business.

A state can exercise through its courts jurisdiction over a foreign corporation which has done business in the state but has ceased so to do business at the time of service of process, as to causes of action arising out of the business done within the state, if by the law of the state at the time when the business was done the corporation by doing business in the state subjected itself to the jurisdiction of the state to that extent.

Comment:

a. Having once subjected itself to the jurisdiction of the state by doing business, it cannot by ceasing to do business within the state deprive the state of jurisdiction as to causes of action arising out of business already done.

Annotation:

No Missouri decision has been found on this point, and it is not expressly covered by the statutes cited under Section 98. In *Stegall v. Pigment & Chemical Co.*, 150 Mo. App. 251, 130 S. W. 144 (1910), 237 Mo. 329, 141 S. W. 585 (1911), 263 Mo. 719, 173 S. W. 674, the defendant was probably doing some business within the state down to that time of trial. However, the Court of Appeals said: "We do not think that it is within the spirit of our law to allow business to be done here, debts contracted, service to be performed here, from the very inception of the corporation down to a very few weeks before suit and then allow the corporation to shift out of our jurisdiction, leaving debts here contracted unpaid and their establishment in our courts impossible." (150 Mo. App. l. c. 291).

The cases on this point are collected in 45 A. L. R. 1447. As to whether the authority of an agent or public official appointed to receive service is revocable at any time, see statutes cited under Section 97.

TITLE IV. JURISDICTION OVER PERSONS TO AFFECT FOREIGN ACTS OR THINGS

Section 100. Decree to be Carried Out in Another State.

Except as stated in Section 101, a state cannot exercise through its courts jurisdiction to make a decree which is by its terms to be carried out in another state.

Comments:

a. This principle is applicable to a court, or to an administrative body acting judicially.

Illustrations:

1. A court of law is asked to grant a writ of mandamus to compel a domestic railway company to operate railroad lines outside the state. The court has no jurisdiction to grant the writ.

2. A court of equity is asked to order the abatement of a foreign nuisance. The court has no jurisdiction to make the order.

3. A, one of the heirs of a decedent, petitions a court to order a partition of foreign land. All the heirs are in court. The court has no jurisdiction to grant the petition.

b. A court which has jurisdiction of all parties interested may decline to order an act on various grounds:

(i) On the ground that the subject-matter of the requested order is beyond the jurisdiction of the court. This is the ground on which action is refused under this Section.

(ii) On the ground that the machinery of the court is not calculated to secure the performance of the order. It is on this ground that equity frequently refuses to order the performance of certain continuous or complicated acts.

(iii) On the ground that the defendant has not committed nor threatened to commit any wrongful act. Jurisdiction over a person alone does not enable a court to order the person to act; a personal decree will not be rendered even against a person who is subjected to the jurisdiction of the court unless the plaintiff establishes either a property right or a right against a defendant resulting from a wrong or threatened wrong of the defendant.

The second and third grounds may be removed by a change of law. A court might be empowered by the legislature to order the performance of any act, however complicated; and a statute might so alter the existing law as to impose a duty of obedience to the court on the defendant, unless such a statute were unconstitutional. If the court is unable to order a person within its jurisdiction to do an act because it is outside the jurisdiction of the state to make the order, jurisdiction cannot be conferred by statute. Neither the state whose sovereignty is invaded by the order nor a third state would recognize the validity of the order, in spite of the statutory authority.

Illustrations:

4. By the law of Mexico an accident to a passenger on a railroad gives rise to a claim of weekly indemnity. Suit is brought for such an accident in a Texas court. The court refuses to entertain the suit, because it involves a series of payments, to secure which it has no proper form of judgment. The Texas legislature by statute provides a form of judgment for such cases. The court will entertain the suit.

5. By the law of state X, the situs of land, there is no duty upon one tenant in common to give a deed of partition of the land to the other tenant. One co-tenant of land is within the jurisdiction of state Y. His co-tenant files a bill in a court of equity of Y, seeking a partition of the land in X to be carried out by giving joint deeds. The court refuses to grant a decree on the ground that the defendant is under no duty to give such a deed. The legislature of Y provides that all tenants in common of land situated in any state shall give joint deeds in execution of a decree of partition made by any court. The same plaintiff brings his bill again. He is entitled to a decree.

Annotation:

This section raises a point upon which there is little Missouri authority.

Comment a: In *State ex rel. Granite City, etc., R. Co. v. Homer*, 164 Mo. App. 334, 145 S. W. 497 (1912), it was held that a writ of prohibition should not issue against the St. Louis circuit court's entertaining a suit to enforce a covenant in regard to switching cars in Illinois, because the court had jurisdiction of the parties and it did not appear that it would be necessary to go into Illinois to enforce obedience to the court's decree. The court said: "We cannot anticipate what decree or judgment the circuit court of the city of St. Louis may make in the case. It will hardly undertake to operate the road in Illinois." (pp. 355-56).

Section 101. Order to Institute or Defend Proceedings in Another State.

A state can exercise through its courts jurisdiction to order a person subject to its jurisdiction to institute proceedings in a court or other governmental agency in another state, or to defend or appear in such proceedings.

Comment:

a. Such a decree submits a controversy involving affairs in another state to the proper tribunal for determining the question. Both parties to the controversy being before the court, a decree may be made that the question shall be litigated by both parties in the proper state; and as all facts already litigated between them will be res judicata, there will be no injustice to either party by reason of the decree.

Illustrations:

1. A is receiver of B in Massachusetts. There are assets of B in New York. The Massachusetts court may order A to apply to the proper court in New York to have the assets in that State delivered to him.

2. Defendant in a suit in New Jersey is alleged to have obtained by fraud a judgment against the plaintiff in Pennsylvania. The New Jersey court may order defendant to show the facts to the Pennsylvania court and ask that the judgment be set aside.

3. A and B are sole heirs of C, deceased, who owned land in Maryland and Virginia. A brings a bill for partition against B in Maryland; and B appears, and claims that C before his death had given B a deed of all his land in both States. A alleges that the deed in invalid. The issue of the validity of the deed is decided against its validity. The court may partition the Maryland land, and order B to appear in Virginia in any suit brought by A for partition of the Virginia land.

Annotation:

No Missouri cases have been found involving this point.

Section 102. Enjoining Acts in Another State.

A state can exercise through its courts jurisdiction to forbid a person who is subject to its jurisdiction to do an act in another state.

Comment:

a. A judicial decree which can be carried out without disturbing the

existing physical status quo in another state is not objectionable. Such a decree is an injunction against doing an act abroad; since the defendant may obey the injunction by remaining within the state which issues the decree, and in that case the decree will not affect conditions in the other state at all.

Iuustrations.

1. A brings suit in state X against B to enjoin the performance in state Y of a copyrighted play. The court has jurisdiction to issue the injunction.

2. A brings suit against B in state X to restrain B from trespassing on A's land in state Y. The court has jurisdiction to issue the injunction.

Annotation:

In most of the Missouri cases dealing with this point, the act sought to be enjoined was that of suing the plaintiff in another state. It has been held that a defendant within the control of a Missouri court may be enjoined from bringing a suit against the plaintiff in another jurisdiction. *Kansas City Ry. Co. v. McCardle*, 288 Mo. 354, 232 S. W. 464 (1921); *Kelly v. Siefert*, 71 Mo. App. 143 (1807); *Wabash Western Ry. Co. v. Seifert*, 41 Mo. App. 35 (1890). In *Wyeth Hardware & Mfg. Co. v. Lang*, 54 Mo. App. 147 (1893) relief was refused because the plaintiff failed to show that it would not be completely protected by the litigation in Kansas which sought to hold plaintiff as garnishee. It was not that no injunction could be granted but the facts shown did not warrant it. Cf. *Laumeier v. Laumeier*, 308 Mo. 201, 271 S. W. 481 (1925). But in *Kepner v. Cleveland, C. C. & St. L. Ry. Co.*, 322 Mo. 299, 15S. W. (2d) 825 (1929), the Supreme Court refused to recognize an injunction granted in Indiana, restraining a person from prosecuting an action in another state. The court took the view that the full faith and credit clause of the Federal Constitution did not require the courts of Missouri to recognize the injunction. Writ of Certiorari denied 280 U. S. 564, 50 S. Ct. 24, 74 L. Ed. 618 (1929). As to the extraterritorial recognition of injunctions against actions in other states, see Note (1930) 5 Ind. L. J. 527; Note (1930) 39 Yale L. J. 719; Note (1924) 72 U. Pa. L. Rev. 429; Note (1919) 1 A. L. R. 148.

In *State ex rel. Hog Haven Farms, Inc. v. Pearey*, 41 S. W. (2d) 403 (1931), a suit to enjoin anticipated nuisance by garbage contractor in Illinois, the petition alleging conspiracy to create nuisance between contractor and defendant city and city officials, it was held that the court had jurisdiction to make injunction order against city and city officials.

In *State ex rel. Delmar Jockey Club v. Zachitz*, 166 Mo. 307, 65 S. W. 999 (1901), it was held that where a license to make books, sell pools and register bets on horse races, under a statute which made the doing of such acts without a license criminal, was obtained by fraud, equity has jurisdiction to enjoin such license holder from making books, etc. While this case did not involve an act in another state, the court said: "It appears from the petition that the race course on which the licenses authorized the bookmaking, etc., to be carried on, was partly in the county of St. Louis, and hence it is argued that the circuit court of the city of St. Louis had no jurisdiction. The action is purely one of equitable cognizance. Such actions are transitory in nature, and the process of courts of equity therein operate in personam, and when such courts acquire jurisdiction of the person, they have jurisdiction of the subject matter. *Olney v. Eaton*, 66 Mo. 563" (p. 313).

Section 103. Decree Affecting Thing in Another State.

A state can exercise through its courts jurisdiction to order or to forbid the doing of an act within the state, although to carry out the decree may involve doing an act or affecting a thing in another state.

Comments:

a. A court may order a party who is subject to its jurisdiction to execute and deliver a deed of land situated in another state.

Illustrations.

1. A brings a suit against B in New York to rectify the boundaries of their adjoining lands in Connecticut, and B is served with process. The court may order the parties to execute mutual deeds.

2. A brings suit against B in New York for specific performance of a contract to convey land in Connecticut, and B is served with process. The court may order B to make the conveyance.

3. A brings suit against B in New York, alleging that B obtained title to land in Connecticut from A by fraud, and B is served with process. The court may order a reconveyance by B.

b. If land can be transferred only by an act done by the defendant within the state where the land is, the court of another state has no jurisdiction to order him to transfer the land (Section 100).

Illustration:

4. Land in state X can be transferred only by livery of seisin where the land lies. A sues B in state Y for specific performance of a contract to convey land in X, and B is served with process. The court will not order a conveyance.

c. A court cannot decree foreclosure of a mortgage of land in another state if by the law of the other state foreclosure can be had only by an act done in the other state; but it may order a foreclosure sale under a power in the mortgage deed, or by a trustee under a trust deed, as the acts ordered do not have to be performed in another state.

Illustrations:

5. By the law of state X, a mortgage is foreclosed by a sheriff's sale under order of court. A court of state Y cannot order such a foreclosure.

6. Land in state X is mortgaged, the mortgage containing a power of sale by the mortgagee for default. There is no requirement by the law of X requiring the doing of any act in that state. Mortgagor and mortgagee both being before a court in state Y, the court may find a default and order the mortgagee to exercise the power.

7. All the property of a railroad corporation including land in state X and state Y is conveyed to a trust company to secure an issue of bonds. A court of Y may find default and order the trustee to sell the property and distribute the proceeds among the bondholders.

d. A court will not order a conveyance of land in another state if as a preliminary to the conveyance the court must according to its law order an inspection or valuation. (Section 100.)

Illustration:

8. A petition is filed in a court of state X for partition of land in state Y. By the law of X a partition is granted only after an officer of the court has viewed and appraised the land and recommended a division of the land or a sale. The court will not order a partition.

e. An injunction may be granted against doing an act within the state, even though the party enjoined can obey the injunction only by acting in another state or causing an act to be done there.

Illustration:

9. By building a dam in state X, B wrongfully floods A's land in state Y. A files a bill in Y to enjoin B from flooding his land, and B is served with process. B can cease flooding the land only by removing the dam in X. The court may grant the injunction against flooding the land.

Annotation:

Comment a, Illustration 2: In *Olney v. Eaton*, 66 Mo. 563 (1877), plaintiff brought suit to recover the purchase price of Missouri land sold to defendant and to enforce a vendor's lien. Defendant denied the indebtedness and pleaded specially that plaintiff agreed to accept lands in Kansas as part payment of the purchase money, tendered a deed and prayed specific performance. The trial court dismissed that part of the defendant's answer setting up the contract in relation to the Kansas land. The Supreme Court affirmed this ruling upon non-jurisdictional grounds, but admitted that the trial court had jurisdiction. The court said: "The question of jurisdiction discussed in the briefs, would have presented no difficulty. The decrees of courts of equity do, indeed, primarily and properly act *in personam*, and at most, collaterally only *in rem*. Hence, the specific performance of a contract for the sale of lands lying in a foreign country, will be decreed in equity, whenever the party is resident within the jurisdiction of the court. Story's Eq., 2 Vol., Sec. 1291." (p. 567). This statement is in accord with *Illustration 2*, and was quoted with approval in *Hewitt v. Price*, 204 Mo. 31, 45, 102 S. W. 647 (1907). In *State ex rel. Hunt v. Grimm*, 243 667, 678, 148 S. W. 868 (1912), Lamm, J., dissenting, said: "It is familiar doctrine that specific performance may be decreed in a court of equity in one State although the land is situated in another. (*Olney v. Eaton*, 66 Mo. l. c. 567)."

Illustration 3: No Missouri decision has been found involving the identical facts stated in this illustration, but the following cases are of interest in this connection.

In *McCune v. Goodwillie*, 204 Mo. 306, 102 S. W. 997 (1907), the Missouri court held that a decree of a court of Ohio having jurisdiction of the parties, setting aside a deed to land in Missouri from testatrix to her daughter, and directing the minor son of the grantee (the grantee having died) to execute a reconveyance to the devisees in the will as soon as he attained his majority, while it could not directly affect the legal title to the Missouri land yet could and did conclude all the parties on every issue in that case, and could and did bind the conscience of the minor to reconvey when he attained his majority. It does not appear that the minor executed a formal conveyance pursuant to the Ohio decree, but he did participate in a domestic partition among the heirs and devisees of the testatrix by which the parties accepted deeds in severalty. The court said that any contention that the son was a minor and was not bound by the conveyances was without avail, because he purged his conscience by adopting and ratifying the partition conveyances when he attained his majority, and thereby became bound. It is clear that if the son had not participated in the domestic partition and ratified the partition conveyances, the Ohio decree could not directly affect the title to lands in Missouri in the absence of a formal reconveyance by the son pursuant to the terms of the decree. See Section 237, 261. This was recognized by the Missouri court because it was said that the Ohio decree could not directly affect the title to the Missouri lands. It is equally clear, however, that the court recognized the principle of

Illustration 3, that when a case otherwise properly cognizable in equity is presented, a court of equity having personal jurisdiction of the parties may assume jurisdiction although land in another state may be affected, if it can grant effective relief by a decree acting solely upon the person whose title or interest is to be affected, as distinguished from a decree acting directly upon the title to the land. See also Sections 237, 261, 483, 485, *infra*.

In *State ex rel. Hunt v. Grimm*, 243 Mo. 667, 148 S. W. 868 (1912), the plaintiff asked to have cancelled as a cloud on his title to Virginia land, a deed procured from him by fraud of the defendant and recorded in Virginia. Plaintiff's petition also asked for general relief. Relief was denied, Lamm, J., dissenting. The majority of the court gave two reasons for the decision. First, the majority construed the petition as stating a cause of action to cancel and impound the deed, and held that a court of one state cannot by its decree directly affect the title to land in another state. Second, it was said that the Missouri court was without jurisdiction to hear and determine the case because a Missouri statute requires suits affecting the title to real property to be brought in the county where the land is situated. As to the first point, it is submitted that the majority of the court lost sight of the fact that the plaintiff also asked for general relief and that the difference between an actual cancellation and a reconveyance is only formal. The defendants were residents of Missouri and served with process. In the absence of a local limitation, there is nothing to show why the court could not have compelled the defendant to execute a deed of reconveyance which the plaintiff could have recorded in Virginia. See dissenting opinion of Lamm, J., on page 678. Assuming, however, that the majority opinion is sound as to the proper interpretation of the petition, the decision is not inconsistent with the Restatement because it is well settled, as stated above, that a court of one state cannot by its decree directly affect the title to land in another state. See, Sections 105, 237, 261. As to the effect of the Missouri statute mentioned above, it is clear that a state's jurisdiction goes to the full extent stated in *Comment a. Massie v. Watts*, 6 Cranch 148, 3 L. Ed. 181 (1810). But Missouri by statute or court decision may limit the jurisdiction of its courts more narrowly. This involves no inconsistency with the Restatement, which declares what a state may do and does not purport to say what an individual state does do within those limits. Even if the Missouri statute prohibits a court of this state from ordering a party who is subject to its jurisdiction to execute and deliver a deed of land situated in another state, this does not mean that the law of Missouri is in disagreement with the Restatement, but the State has not exercised the power which, under the rules of Conflict of Laws, it could exercise if it chose to do so. It is doubtful, however, whether the Missouri statute applies to action involving the title to land in a sister state. See dissenting opinion of Lamm, J., page 668; *Coleman v. Lucksinger*, 224 Mo. 1, 123 S. W. 441 (1909).

It would seem, therefore, that the law of Missouri is consistent with *Comment a*.

TOPIC B. JURISDICTION OVER THINGS

TITLE I. JURISDICTION OVER THINGS IN GENERAL

Section 104. Extent of Jurisdiction over Things.

A state can exercise through its courts jurisdiction over things within its territory, except as stated in Sections 45 and 52.

Comments:

a. A state exercises jurisdiction through its courts over a thing by creating, through the judgment or decree of its courts, rights affecting the thing, which under the principles of the common law will be recognized as valid in other states.

b. Over things within the territory of the state it can exercise jurisdiction with the following exceptions:

(i) Over some things within the state the exercise of jurisdiction is prevented by principles of international law which have been accepted as part of the common law, or by the constitutional provisions, or by some treaty or other formal act to which the state is a party (section 45). These limitations are not considered in the Restatement of this Subject.

(ii) To the extent stated in Section 52 a state cannot exercise jurisdiction over things within its territory which have been brought into the state without the owner's consent.

c. To the extent to which a state has jurisdiction over a thing within its territory, it may exercise through its courts jurisdiction in such a way as to affect either the interests of everyone in the thing, or merely the interests of particular persons.

Illustrations:

1. A ship belonging to A is in a port of State X. The ship may be condemned and sold by a court of X, so as to give the purchaser a title good against all claimants.

2. In a suit brought in state X for the foreclosure of a mortgage upon land situated in X, the land is sold. The purchaser acquires a title good against the mortgagor and mortgagee but not against third parties who have outstanding claims to the land.

d. Although a state can exercise jurisdiction through its courts over things within its territory, it does not necessarily exercise this jurisdiction through any particular court or through any of its courts.

Illustration:

3. A makes a valid contract to sell to B land situated in state X. B brings a suit in a court of equity in X against A who is not personally subject to the jurisdiction of X to compel specific performance of the contract. In the absence of a statute the court of equity does not specifically enforce the contract.

Annotation:

Comment a: The principle of this comment is recognized in the Missouri statutes and decisions. Concrete applications follow in the later portions of the Restatement, and the relevant local authorities are cited under Section 107 and following.

Comment b: See *Annotation* to Section 52.

Comment c: No Missouri decisions have been found dealing with the case mentioned in *Illustration 1.* The following cases illustrate the application of the principle of *Illustration 2, i. e.*, a dealing with a thing which does not purport to affect the rights of everyone, but only the interests of particular persons: *Grimes v. Miller*, 221 Mo. 636, 121 S. W. 21 (1909); *Williams v. Hudson*, 93 Mo. 524, 6 S. W. 261 (1887); *Gitchell v. Kreidler*, 84 Mo. 472 (1884); *Corrigan v. Bell*, 73 Mo. 53 (1880); *Valentine v. Havener*, 20 Mo. 133 (1854). See *Woodward v. Householder*, 315 Mo. 1155, 1163, 289 S. W. 571 (1926). Another example of a dealing with a thing which does not purport to affect the rights of everyone, but only the interests of a particular person is shown in the action of replevin. R. S. 1929, Sec. 1624 et seq. (replevin in Courts of Record); Sec. 2548 et seq. (replevin in Justice Courts).

Comment d: The statement that a state does not necessarily exercise such jurisdiction

through any particular court is illustrated by the venue statutes providing that certain actions must be brought in certain counties. R. S. 1929, Secs. 721-22. *Chapman v. Chapman*, 269 Mo. 663, 192 S. W. 448 (1917) shows that in a particular case a state may not exercise jurisdiction over property within the state through any of its courts. In that case it was held that the statutes do not authorize a proceeding to apply to the satisfaction of a claim for alimony property subject to the jurisdiction of the state belonging to a non-resident defendant against whom the claim is asserted. As to the specific performance case stated in *Illustration 3*, see *Annotation* to Section 107, *Illustration 6*.

Section 105. Things Outside the State.

A state cannot exercise through its courts jurisdiction over things outside its territory, except as stated in Section 54.

Comments:

a. A state has jurisdiction over a chattel outside its boundaries only in certain cases (see Section 54).

1. If the chattel is habitually kept within the state, but is temporarily outside it; or

2. If the chattel was removed from the state without the consent of the owner; or

3. If the title to the chattel is merged in a document which is subject to the jurisdiction of the state.

b. Under the Fourteenth Amendment to the Constitution of the United States the rendition of a judgment by the courts of a State, purporting to create rights in a thing outside the boundaries of the State, except as stated in Comment *a*, is invalid even in the State where the judgment is rendered.

Annotation:

The following cases recognize the principle that the rendition of a judgment or decree of a court, purporting to create rights in land outside the state, is invalid: *DeLashmutt v. Teetor*, 261 Mo. 412, 169 S. W. 34 (1914); *State ex rel. Hunt v. Grimm*, 243 Mo. 667, 148 S. W. 868 (1912); *McCune v. Goodwillie*, 204 Mo. 306, 102 S. W. 997 (1907); *Union Nat. Bank v. State Nat. Bank*, 155 Mo. 95, 55 S. W. 989 (1900). For a discussion of these cases, see *Annotation* to Sections 103, 237, 261, 483, 485. In *State ex rel. v. Barnett*, 245 Mo. 99, 149 S. W. 311 (1912), it was held that a Missouri court had no jurisdiction to cancel bonds held in New York under a trust agreement to be performed in New York for the benefit of persons not before the court. In *Smith v. McCutchen*, 38 Mo. 416, 417 (1866), the court said: "No sovereignty can extend its powers beyond its own territorial limits to subject either persons or property to its judicial decisions. . . . .Even, therefore, should a Legislature of a State expressly grant such jurisdiction to its courts over persons or property not within its territory, such grant would be treated elsewhere as a mere attempt at usurpation, and all judicial proceedings in virtue of it held utterly void for every purpose."

No Missouri cases have been found dealing with the exceptions noted in *Comment a, subdivisions 1 and 2*. As to *Comment a, subdivision 3*, see Section 109.

Section 106. Notice and Opportunity to be Heard.

A state cannot exercise through its courts judicial jurisdiction over a thing, although it is within the territory of the state, unless a method of notification is employed which is reasonably calculated to give knowledge of the attempted exercise of jurisdiction and an opportunity to be heard to persons whose interests in the thing are affected thereby.

Comments:

a. In the absence of constitutional limitations, the legislture of a state may direct its courts to render judgment without any form of notification to persons whose interests are to be affected by the judgment, and such a judgment will be valid in the state in which it is rendered; but such a proceeding is not a judicial proceeding and other states will not recognize such a judgment as valid.

A state can exercise jurisdiction over things within its territory by a non-judicial proceeding, for example by an executive or legislative proceeding, without notice to persons whose interests in the thing are affected thereby (see Section 78, Comment *b*) and the legal result of this exercise of jurisdiction would be recognized in other states and would be enforced in so far as the result of executive or legislative action would there be enforced.

b. Under the Fourteenth Amendment to the Constitution of the United States, the rendition of a judgment by the courts of a State without such notification and opportunity to be heard is invalid even in the State in which it is rendered.

c. If the court has jurisdiction over the property, it is not necessary to the validity of a judgment binding in property that persons whose interests are affected thereby should have received knowledge of the proceeding. It is sufficient that steps were taken which under all the circumstances had a reasonable tendency to give to persons whose interests are affected knowledge of the proceeding and an opportunity to be heard.

Illustration:

1. A statute of state X provides that in a suit to foreclose a mortgage, if the mortgagor cannot be personally served with process within the state, he may be served by handing him a summons outside the state or by mail or by publication in a newspaper. In an action brought in X by A against B to foreclose a mortgage upon land in X service in accordance with the statute is sufficient to give the court jurisdiction.

Annotation:

Comment b: The principle of this section is recognized in the statutes cited under Sections 107 *et seq.*, where provisions are made for notice and opportunity to be heard. Except in one instance, noted below, the Missouri decisions recognize the principle of this section. *Partition Suits: Flynn v. Tate*, 286 Mo. 454, 228 S. W. 1070 (1920). See *Jones v. Patterson*, 307 Mo. 462, 271 S. W. 370 (1925); *Jones v. Park*, 282 Mo. 610, 222 S. W. 1018 (1920). TAX SUITS: *Hider v. Sharp*, 301 Mo. 625, 257 S. W. 112 (1923;) *Wilcox v. Phillips*, 260 Mo. 664, 169 S. W. 55 (1914); *Ohlmann v. Clarkson Saw Mill Co.*, 222 Mo. 62, 120 S. W. 1155 (1909); *Turner v. Gregory*, 151 Mo. 100, 52 S. W. 234 (1899). ATTACHMENT SUITS: *Graves v. Smith*, 278 Mo. 592, 213 S. W. 128 (1919); *Givens v. Harlow*, 251 Mo. 231, 158 S. W. 355 (1913) *Winningham v. Trueblood*, 149 Mo. 572, 51 S. W. 399 (1899); *Tufts v. Volkening*, 122 Mo. 631, 27 S. W. 522 (1894); *Weidman v. Byrne*, 207 Mo. App. 500, 226 S. W. 280 (1920).

In *Kwilecki v. Holman*, 258 Mo. 624, 167 S. W. 989 (1914), the plaintiff brought an action in Georgia against B, a non-resident of Georgia, and personal property of B was attached. No notice was given to B, either by summons or by publication, and B did not

appear. Under the Georgia statutes governing attachment suits, a non-resident defendant was not entitled to notice of the suit other than the legal seizure of his property. Judgment was rendered against B and the property sold under execution to C. B brought an action in Missouri against C for conversion of the property, claiming that the Georgia judgment was void for want of notice to him. Held, that the Georgia judgment was valid and that C had acquired a valid title to the property at the execution sale. The court said that the Georgia procedure did not violate the due process clause of the Federal Constitution, as the legal seizure of the property was constructive notice to B.

Comment c: The principle of this comment is recognized in the statutes and decisions. R. S. 1929, Secs. 739, 745, 748, 2436, 14567-68. The decisions hold that actual notice is not necessary to the validity of such a judgment. *State ex rel. Rabiste v. Southern*, 300 Mo. 417, 254 S. W. 166 (1923). In *Jones v. Park*, 282 Mo. 610, 627, 222 S. W. 1018 (1920), the court said: "But though notice is required, actual notice is not. (Cases supra.)"

See also cases cited under *Comment b, supra*, and authorities cited under Sections 107-8, 113-114.

Section 107. Jurisdiction over Land.

Except as stated in Section 45, a state can exercise through its courts jurisdiction over land situated within the territory of the state, although a person owning or claiming the land or an interest in the land is not personally subject to the jurisdiction of the state.

Comment:

a. The limitations upon the exercise of jurisdiction mentioned in Section 52 are not applicable to land. To the extent that a state has jurisdiction over land within its territory, it can exercise jurisdiction through its courts.

Illustrations:

(In the following illustrations it is assumed that proper notice of the proceedings and an opportunity to be heard have been given in accordance with the requirements of Section 106.)

1. A statute of state X provides that one who claims to be owner of land may bring a proceeding to register his title to the land and that the title so registered shall be good against all other claimants. A brings a proceeding in a court of X to register his title to land in X. A judgment of the court registering A's title gives him an indefeasible title to the land.

2. A and B are tenants in common of land in state X. In accordance with a statute of X, A brings an action in X for partition. B is not subject to the jurisdiction of X. The court has jurisdiction to decree a partition of the land.

3. In accordance with a statute of state X, A brings suit in X to foreclose a mortgage on land in X. A decree of foreclosure is made. The decree is valid, so far as it affects the land, although the mortgagor is not subject to the jurisdiction of X, and no personal decree can be made against him.

4. In accordance with a statute of state X, A, claiming to own land in X, brings an action to quiet title. B, an adverse claimant, is not subject to the jurisdiction of X. The court may bar the claim of B.

5. A, the beneficiary of a trust of land in state X, brings a suit in X to remove B, the trustee, and to have a new trustee appointed. B is not subject to the jurisdiction of X. In accordance with a statute of X, the court orders B removed as trustee and appoints C trustee and makes an order investing the title in C. The title vests in C.

6. A contracts to sell to B land situated in state X. B brings a suit in X for specific performance. A is not subject to the jurisdiction of X. Under a statute of X allowing it to do so, the court may make an order vesting title to the land in B.

7. A, the owner of land in state X, dies intestate. A proceeding is brought in X to declare the land escheated. B, who is not subject to the jurisdiction of X, claims to be A's heir. B does not appear. The court may declare the land escheated.

8. Under a statute of state X, a proceeding is brought in X to sell land situated in X for non-payment of taxes. A, the owner of the land, is not subject to the jurisdiction of X. The court may order the land sold.

Annotation:

Comment a: This section restates the law of Missouri.

Illustration 1: No Missouri cases have been found dealing with this case.

Illustration 2: The statutes are in accord with this case. R. S. 1929, Secs. 1545-1608. Provisions are made for notice and opportunity to be heard. R. S. 1929, Secs. 739, 745, 748, 14567-68. See *Jones v. Patterson*, 307 Mo. 462, 271 S. W. 370 (1925) (involving a judgment of a sister state); *Jones v. Park*, 282 Mo. 610, 222 S. W. 1018 (1920) (same as last case); *Bell v. Brinkman*, 123 Mo. 270, 27 S. W. 374 (1894).

Illustration 3: The law of Missouri is in accord with this case. R. S. 1929, Secs. 3060-96. Provisions are made for notice and opportunity to be heard. R. S. 1929, Secs. 739, 745, 748, 14567-68. See *Jones v. Edeman*, 223 Mo. 312, 122 S. W. 1047 (1909).

Illustration 4: The statutes provide for the exercise of such jurisdiction. R. S. 1929, Secs. 749-52, 1520-31. Provision is made for service upon non-residents. R. S. 1929, Secs. 739, 745, 748, 1525-26, 14567-68. The decisions are in accord with this case. *Rutledge & Taylor Coal Co. v. Dent*, 308 Mo. 547, 274 S. W. 30 (1925); *Simms v. Thompson*, 291 Mo. 493, 236 S. W. 876 (1922); *Shemwell v. Betts*, 264 Mo. 268, 174 S. W. 390 (1915); *Long v. Lackawanna Coal & Iron Co.*, 233 Mo. 713, 136 S. W. 673 (1911); *Mitchner v. Holmes*, 117 Mo. 185, 22 S. W. 1070 (1873); *Downing v. Anders*, 202 S. W. 297 (Mo. App. 1918).

Illustration 5: See R. S. 1929, Sec. 3135 et seq. See also *State ex rel. Bensberg v. Hartmann*, 19 S. W. (2d) 637, (1929 Mo.)

Illustration 6: In the early stages of equity jurisprudence decrees for specific performance were enforced only *in personam*. However, statutes giving to courts of equity permission to render decrees *in rem* now exist in most of the states of the Union. Statutes providing for service on non-residents in actions *in rem* have been enacted in every state of the Union.

In states having a statute giving to decrees for conveyances of real property an effect *in rem* and a statute providing for constructive service upon non-residents, the decisions are in accord with this illustration. *Light v. Doolittle*, 77 Ind. App. 187, 133 N. E. 413 (1921); *Hollander v. Central Metal Supply Co.*, 109 Md. 131, 71 Atl. 442, 23 L.R.A. (N. S.) 1135 (1928); *Garfein v. McInnis*, 248 N. Y. 261, 162 N. E. 73 (1928); *Clem v. Givens*, 106 Va. 145, 55 S. E. 567 (1906). A few jurisdictions have reached the same result without the aid of a statute giving to decrees for conveyances an effect *in rem: Bush v. Aldrich*, 110 S. C. 491, 96 S. E. 922 (1918). See WALSH ON EQUITY, Sec. II et seq; Cook, *The Powers of a Court of Equity* (1915) 15 Col. L. Rev. 37, 106; Note (1928) 14 Cornell L. Q. 97; Huston, *The En-*

forcement of Decrees in Equity, Chap. II. As to the constitutionality of such procedure, see *Arndt v. Griggs*, 134 U. S. 316, 10 S. Ct. 557, 33 L. Ed. 918 (1890).

The Missouri statutes provide for constructive service "in all actions at law or in equity, which have for their immediate object the enforcement or establishment of any lawful right, claim or demand to or against any real or personal property within the jurisdiction of the court." R. S. 1929, Secs. 739, 748. The statutes give to decrees for conveyances of real and personal property an effect *in rem*. R. S. 1929, Secs. 1089, 1091. Sec. 1134 provides for the recording of such decrees as affect real property. See *Otto v. Young*, 227 Mo. 193, 127 S. W. 9 (1909), where it does not appear that the defendants were non-residents. In *Bray v. McClury*, 55 Mo. 128, 134 (1874), the court said: "A court of equity has the power to pass title to real estate within its jurisdiction." In *Carthage Nat. Bank v. Poole*, 160 Mo. App. 133, 141 S. W. 729 (1911), it was held that the statute was self executing and hence in case of corporate shares it was not necessary that any act be done on the part of the corporation. In *Adams v. Heckscher*, 80 Fed. 742 (C. C. W. D. Mo. 1897); s. c. 83 Fed. 281 (C. C. W. D. Mo. 1897), services by publication against a non-resident was held insufficient to confer jurisdiction upon a Federal court sitting in Missouri of a suit for the specific performance of a contract to convey real estate in Missouri; but the decision was upon the ground that the bill not only prayed for a conveyance, but for other relief including a money judgment and a decree requiring the defendant to perfect the title by furnishing abstracts. In the latter of the two opinions it was conceded that under the Missouri statute service by publication is sufficient to sustain the jurisdiction in a suit for specific performance of a contract to convey real estate where the decree may operate *in rem* and transfer the title to the property from the defendant to the complainant. As to the exercise of such jurisdiction by the Federal courts, see Huston, *The Enforcement of Equitable Decrees*, pp. 23-38.

The principle here involved is identical with the principle applied in actions to quiet title. See annotations to *Illustration 4, supra*. Although no Missouri decisions have been found in which such a decree was rendered against a non-resident defendant, it is clear, in view of the above cited statutes, that a Missouri court of equity can exercise such jurisdiction.

Illustration 7: This illustration restates the law of Missouri. R. S. 1929, Secs. 620-42.

Illustration 8: The law of Missouri is in accord with this illustration. R. S. 1929, Secs. 739, 748, 9952-56; *Johns v. Hargrove & Ruth Lumber Co.*, 219 S. W. 967 (Mo. 1920); *South Mo. Pine Lumber Co. v. Carroll*, 255 Mo. 357, 164 S. W. 599 (1914); *Cruzen v. Stephens*, 123 Mo. 337, 27 S. W. 557 (1894).

Other Illustrations: The following references are relevant to the principle of Sec. 107: R. S. 1929, Secs. 739, 748, 2539-47, 3156 et seq. governing liens of mechanics and materialmen. R. S. 1929, Secs. 1340-49, governing condemnation suits by corporations. See also *Irvine v. Leyh*, 124 Mo. 361, 27 S. W. 512 (1894) (attachment of land); *Adams v. Cowles*, 95 Mo. 501, 8 S. W. 711 (1888) (suit to set aside deed); *Payne v. Brooke*, 217 S. W. 595 (Mo. App. 1920) (attachment of land).

Section 108. Jurisdiction over Chattel.

Except as stated in Sections 45 and 52, a state can exercise through its courts jurisdiction over a chattel within the territory of the state, though a person owning or claiming the chattel or an interest in the chattel tardily surrenders jurisdiction over it.

Comments:

a. Chattels within the territory of a state are subject to the jurisdiction of the state, except in the cases referred to in Section 104, Comment *b*, and the state may exercise this jurisdiction through its courts.

Illustrations:

(In the following illustrations it is assumed that proper notice of the

proceedings and an opportunity to be heard have been given in accordance with the requirements of Section 106.)

1. A ship belonging to A is in a port of state X. B, the owner of another ship, libels A's ship in a proper court of X, claiming that B's ship was injured in a collision with A's ship, caused by the negligence of the captain of A's ship. A's ship may be condemned and sold.

2. A contracts to sell a chattel to B. B brings suit for specific performance of the contract in a court of state X where the chattel is. Under a statute allowing it to do so, the court may vest the title to the chattel in B.

3. A, the bailee of a chattel which is in state X, brings an interpleader suit in X naming B and C, who are making adverse claims to the chattel, as defendants. B is personally served with process in X but C is served outside X. Under a statute allowing it to do so, the court may award the chattel to B and bar C's claim to it.

b. Although a state can exercise through its courts jurisdiction over a chattel which the owner has been induced by fraud of the plaintiff to send into the state or which the owner has allowed to be sent into the state to be used as evidence in a judicial proceeding, the courts do not exercise jurisdiction over such a chattel, unless the owner allows it to remain in the state after he has had a reasonable opportunity to remove it, or otherwise waives the exemption.

The rule under which the courts refuse to exercise jurisdiction, while a common-law principle, is not a principle of jurisdiction. If the courts of a state, on their own initiative or in obedience to a statute, in the absence of constitutional limitations, disregard the principle and exercise jurisdiction, the rights created thereby will be recognized as valid by the courts of other states.

Annotation:

Comment a: The Missouri statutes and decisions recognize the principle of this section. As to the cases referred to in Section 104, Comment b, see *Annotation* to Section 52.

Illustration 1: No Missouri decision has been found directly in point. But see *Boylan v. Steamboat Victory*, 40 Mo. 244 (1867), 6 Wall. (U. S. 382, 18 L. Ed. 848 (1867); *Cavender & Rowse v. Steamboat Fanny Baker*, 40 Mo. 236 (1867); *Phegley v. Steamboat David Tatum*, 33 Mo. 461 (1863); *Ritter v. Steamboat Jamestown* 23 Mo. 348 (1856); *Steamboat Raritan v. Smith*, 10 Mo. 527 (1847).

Illustration 2: No Missouri decision has been found involving the exercise of such jurisdiction in a suit against a non-resident defendant. The statutes give to decrees for conveyances of personal property an effect *in rem*. R. S. 1929, Secs. 1089, 1091. In *Carthage Nat. Bank v. Poole*, 160 Mo. App. 133, 141 S. W. 729 (1911), where the defendants appeared in the action, it was held that the statute was self executing and hence in case of corporate shares it was not necessary that any act be done on the part of the corporation. The statutes also provide for constructive service upon non-residents. R. S. 1929, Secs. 739, 748. It would seem, therefore, that the law of Missouri is in accord with this illustration, even in the case of a non-resident defendant served by publication. For a discussion of this problem in the case of land, see *Annotations* to Section 107, *Comment a, Illustration 6, supra.*

Illustration 3: It would seem that a bailee should be given relief under the Uniform Bills of Lading Act (R. S. 1929, Secs. 14450-52) and the Uniform Warehouse Receipts Act

(R. S. 1929 Sec. 14390-92), if the statutes providing for substituted service on non-residents (R. S. 1929, Secs. 739, 748) are sufficiently broad to apply to interpleader. See also R. S. 1929, Sec. 5384, governing interpleader by banks. It is doubtful, however, in view of the cases cited below, whether the Missouri courts would permit the exercise of such jurisdiction as against non-resident claimants.

R. S. 1929, Sec. 1422 provides that if a garnishee discloses in his answer that "a debt owing by him to the defendant, or the supposed property of the defendant in his hands, has been sold or assigned to a third person," and the plaintiff disputes the sale or assignment, the court shall order the supposed vendee or assignee to appear and sustain his claim. The statute provides for service by publication if personal service cannot be had on such third person. But it has been held that the courts of Missouri have no authority to order *non-residents* to appear and interplead and litigate their right to property or funds attached. *Sheedy v. Second Nat. Bank*, 62 Mo. 17 (1876); *State ex rel. McIndoe v. Blair*, 238 Mo. 132, 142 S. W. 326 (1911). *Freeland v. Wilson*, 18 Mo. 380 (1850) contains *dicta* contra. For a discussion of *Freeland v. Wilson*, see Chafee, *Interstate Interpleader*, (1924) 33 Yale L. Jour. 685, 698. In view of the first two cases cited above, it cannot be said that the law of Missouri is in accord with *Illustration 3*. For an exhaustive discussion of this problem, see Chafee, *op. cit. supra*.

Other Illustrations: Another application of Sec. 108 is the procedure for disposal of unclaimed personal property. R. S. 1929, Secs. 620-42. The statutes also apply the principle in the procedure for foreclosure of liens on personal property. See R. S. 1929, Index, Title "Liens".

Comment b: No Missouri decisions have been found on this point.

Section 109. Jurisdiction over Document.

A state can exercise through its courts jurisdiction over a document which is within the territory of the state.

Comments:

a. Over the document itself a state can exercise jurisdiction through its courts; that is, it can by the judgment or decree of its courts create rights affecting the document which will be recognized in other states as valid (see Section 51, Comment *b*).

b. To the extent to which by the law which governs a chattel at the time a document is issued, title to the chattel is merged in the document, a state which has jurisdiction over the document can exercise through its courts jurisdiction over the title to the chattel which is merged in the document (Section 53).

Illustration:

1. Goods belonging to A are delivered by him in state X to a common carrier which issues a bill of lading. By the law of X the control of the bill of lading controls the goods. B brings an action in state Y where the bill of lading is and attaches the bill of lading. The goods are subject to the attachment.

c. If by the law of the state which creates a right the right is embodied in a document, a state which has jurisdiction over the document can exercise through its courts jurisdiction over the right embodies in the document (Section 56).

Illustration:

2. A executes a negotiable instrument under seal or promissory note whereby he promises to pay B $1000. C claims that B has transferred the bond or note to him. C brings an action in a court of state X where the instrument is situated. The court has jurisdiction to determine the right as between B and C, although B is not personally subject to the jurisdiction of the court.

Annotation:

In the Uniform Warehouse Receipts Act provision is made to prevent the seizure on legal process of goods for which there is an outstanding negotiable receipt, and to aid a creditor in reaching the document itself. R. S. 1929, Secs. 14398-99. Similar provisions are found in the Uniform Bills of Lading Act. R. S. 1929, Secs. 14454-55. These statutes show an application of the principle of Section 109 and comments thereon.

The statutes governing attachment suits provide for the attachment of "defendant's account books, accounts, notes, bills of exchange, bonds, certificates of deposit, and other evidences of debt, as well as his other property, real, personal and mixed." R. S. 1929, Sec. 1292. It has been held that promissory notes may be attached. *Tipton v. Christopher*, 135 Mo. App. 619, 116 S. W. 1125 (1908); *Dunlap v. Mitchell*, 80 Mo. App. 393 (1899). See *Fleisch v. Nat. Bank of Commerce*, 45 Mo. 225 (1891). In *Industrial Loan & Inv. Co. v. Mo. State Life Ins. Co.*, 222 Mo. App. 1228, 3 S. W. (2d) 1046 (1928), it was held that an insurance policy may be attached upon the theory that it is personal property under R. S. 1929, Sec. 1292, *supra*. See also *Pounds v. Farmer's Union Mercantile Co.*, 190 S. W. 374 (Mo. App.) (1916), replevin for a promissory note.

Section 110. Jurisdiction over Shares in Corporation.

(1) A state can exercise through its courts jurisdiction over shares in a corporation incorporated in the state.

(2) A state within whose territory a share certificate is situated can exercise through its courts jurisdiction over the certificate.

(3) To the extent to which the state in which the corporation was incorporated merges the share in the certificate, the state which has jurisdiction over the certificate can exercise through its courts jurisdiction over the share.

Comment:

a. The general principles of jurisdiction over shares in a corporation are discussed in Section 57.

Annotation:

The law of Missouri on this point is not clear. Levy on corporate shares is treated in R. S. 1929, Secs. 1172, 1181-84. At common law they could not be levied upon. *Foster v. Potter*, 37 Mo. 525 (1866). Now they may, by statute, be attached in the same manner as provided for execution. R. S. 1929, Sec. 1293; *Tufts v. Volkening*, 122 Mo. 631, 27 S. W. 522 (1894).

In *Armour Bros. Banking Co. v. St. Louis Nat. Bank*, 113 Mo. 12, 20 S. W. 690 (1892), it was held that shares of stock in a foreign corporation cannot be subjected to attachment by seizure of the certificates of stock in Missouri. But compare *Smith v. The Pilot Mining Co.*, 47 Mo. App. 409, (1891), where the foreign corporation transacted its business, kept its stock books, and exercised all of its corporate functions in Missouri. See also *Dean Rapid Tel. Co. v. Howell*, 162 Mo. App. 100, 144 S. W. 135 (1912). In *Richardson v. Busch*, 198 Mo. 174, 95 S. W. 894 (1906), the certificates of stock in a New York corporation were in Missouri at the time of the owner's death. Held, that the stock itself was not in Missouri

for the purposes of administration. In discussing *Armour Bros. Banking Co. v. St. Louis Nat. Bank, supra,* the court said: "The court rested its decision on two propositions: first, that our statute prescribing the mode of serving writs of attachment and garnishment to reach stock in a corporation was intended only to reach stock in a domestic corporation; second, that the stock itself was not within the State although the certificate was here."

In the above cited cases the Missouri court regarded the certificates of stock as mere evidence of ownership, without considering the extent to which the states in which the corporations were domiciled merged the shares in the certificates. It was held that jurisdiction over the certificates did not give the state jurisdiction over the shares of stock. These cases are consistent with Section 110, *subdivision 1,* but they do not recognize the principle of Section 110, *subdivisions 2* and *3.* However in three recent decisions the Supreme Court rejected the view that a share of stock can have no situs as property at any other place than in the corporate domicil. In these cases the court adopted the modern mercantile doctrine that certificates of stock constitute property in themselves, and not merely evidence of ownership, and that shares of stock have a situs for some purposes in the state where the certificates are located. Where certificates of stock in a Missouri corporation were left in New York at the death of the owner, it was held that the shares had a situs in New York for the purpose of transfer and administration, at least in the absence of creditors in Missouri. *Lohman v. Kansas City Southern Ry. Co.,* 33 S. W. (2d) 112 (Mo. 1930). See also the two companion cases reported in 33 S. W. (2d) 117 (Mo. 1930) and 33 S. W. (2d) 118 (Mo. 1930). These decisions are consistent with Sec. 110, subdivisions (2) and (3). It remains to be seen whether the doctrine of these cases will be followed in future cases dealing with jurisdiction over sharesof stock. In this connection, see Note, *Situs of Stock,* (1926) 39 Harv. L. Rev. 485; Ann. Cases, 1912D 954.

Several decisions deal with disputes as to the ownership of stock, but the jurisdictional question was not discussed. *Merchants Natl. Bank v. Richards,* 6 Mo. App. 454 (1879), s. c. 74 Mo. 77 (1881); *Boatmen's Ins. & Trust Co. v. Able,* 48 Mo. 136 (1871); *State of Mo. v. The Bank of Mo.,* 45 Mo. 528 (1870); *Smith v. Becker,* 192 Mo. App. 597, 184 S. W. 943 (1916) (a foreign corporation case); *Watson v. Woody Printing Co.,* 56 Mo. App. 145 (1893). See Note, *Jurisdiction to Adjudicate the Ownership of Shares of Stock* (1917) 30 Harv. L. Rev. 486.

Section 111. Jurisdiction over Intangible Things.

A state can exercise through its courts jurisdiction over such intangible things as are localized within the state.

Comment:

a. As a general rule no state has jurisdiction over intangible things (Section 55). Some intangible things, however, are so connected with a locality that they are within the jurisdiction of the state with whose territory they are connected (Section 58). Over such intangible things a state can exercise jurisdiction through its courts.

Illustrations:

1. A obtains a judgment for $1000 against B in a court in state X. X has jurisdiction to reach the judgment and apply it to a debt of A to C.

2. A deposits $1000 in a bank in state X. A leaves X and is not heard from for twenty years. By statute a proceeding may be brought in the name of the state to have the amount of the deposit paid to the state. X has jurisdiction to compel the payment.

Annotation:

Illustration 1: The statutes provide for the attachment of judgment debts. R. S. 1929,

Sec. 1292. It has been held, however, that after a final judgment has been rendered in Missouri neither the original debt which was merged in the judgment nor the judgment itself considered as a debt, is subject to garnishment proceedings instituted in another state. *Meierhoffer v. Kennedy*, 304 Mo. 261, 263 S. W. 416 (1924) and cases cited. And a judgment debtor in an action brought to final judgment in another state cannot be held as a garnishee in a subsequent suit in Missouri. *Eisenstadt Mfg. Co. v. Smelting & Refining Co.*, 219 Mo. App. 620, 282 S. W. 119 (1926).

Illustration 2: The statutes provide for the disposition of escheated estates. R. S. 1929, Secs. 620-42. Money deposited in a bank within the state is subject to garnishment as a debt due the execution defendant. *Gregg v. Farmer's & Merchants Bank*, 80 Mo. 251 (1883)

See *State ex rel. American Auto Ins. Co. v. Gehner*, 320 Mo. 702, 8 S. W. (2d) 1057 (1928); *State ex rel. American Cent. Ins. Co. v. Gehner*, 320 Mo. 901, 9 S. W. (2d) 621, and Note, (1929) 59 A. L. R. 1046, dealing with taxation of bank accounts. See also *Annotation* to Section 59.

Section 112. Continuation of Jurisdiction.

If in an action a court obtains jurisdiction over a thing, that jurisdiction continues throughout all subsequent proceedings in the action until the court voluntarily surrenders jurisdiction over it.

Comments:

a. If a court has once obtained jurisdiction over a thing, jurisdiction is not lost by the wrongful removal of the thing.

Illustration:

1. An action is brought by A against B in a court of state X and a horse in X is attached. B wrongfully takes the horse from the possession of the sheriff and removes it to state Y. C brings an action against B in a court of Y and attaches the horse. The court of X still has jurisdiction over the horse.

b. If a court having obtained jurisdiction over a thing surrenders the thing, the jurisdiction of the court over the thing terminates.

Illustration:

2. A brings an action against B in a court of state X and attaches a chattel belonging to B. B gives a bond to discharge the attachment and the chattel is returned to B. An action is brought in another court by C against B and the same chattel is attached. The latter court has jurisdiction over the chattel; the former court has not.

c. The jurisdiction acquired by a court over a thing in an action extends only to claims made in the original action and does not extend to other claims thereafter made.

Illustration:

3. A brings an action against B in a court of state X and attaches a chattel belonging to B. B mortgages his interest in the chattel to C. A substitutes a new cause of action for the original cause of action sued upon. C's mortgage takes precedence over the lien of the attachment.

Annotation:

No Missouri cases have been found involving this point.

TITLE II. JURISDICTION TO APPLY THINGS TO THE PAYMENT OF CLAIMS

Section 113. Application of Things to Payment of Claims.

A state can exercise through its courts jurisdiction to apply to the satisfaction of a claim things subject to the jurisdiction of the state belonging to the person against whom the claim is asserted, although the state has no jurisdiction over him.

Comments:

a. This jurisdiction is commonly exercised through a proceeding begun by an attachment or by a bill in equity.

b. A judgment rendered in such a proceeding is effective solely against property subject to the jurisdiction of the state. It is not effective against property not subject to the jurisdiction of the state, nor is it effective to impose a personal liability upon the person against whom the claim is asserted, if he is not subject to the jurisdiction of the state.

The things subject to the jurisdiction of a state are enumerated in Sections 104 to 112.

Illustration:

1. A brings an action against B for debt in a court of state X. B is not subject to the jurisdiction of X, but a horse belonging to B is attached. B fails to appear. The court has jurisdiction to render a judgment under which the property may be sold on execution; but no other property of B can be sold and the judgment does not impose a personal liability upon B.

c. This jurisdiction cannot be exercised except by a proceeding in which property is seized or a claim is directed against the property.

Illustration:

2. A brings an action against B for debt in a court of state X. B is not subject to the jurisdiction of X, and no property of B is attached. B fails to appear. Judgment is given against B by default. Execution is levied on a horse of B in X and the horse is sold to C. C acquires no title to the horse.

d. In accordance with the principles stated in Section 104, it is necessary to give such notice to the person against whom the claim is asserted as is reasonably calculated to give him knowledge of the proceeding against his property and an opportunity to be heard.

e. If no property was attached or otherwise proceeded against before the rendition of the judgment, and if no steps were taken reasonably calculated to give to the person against whom the claim is asserted knowledge of the claim against the property and an opportunity to be heard, there is no jurisdiction to render a judgment. The rendition of a judgment under such circumstances by a court of a State is in violation of the Fourteenth Amendment to the Constitution of the United States and is invalid even in the State in

which it is rendered, and execution levied subsequent to the rendition of the judgment will be invalid.

Annotation:

The Missouri statutes contain detailed provisions for the exercise of jurisdiction in accordance with this section. Attachment in Courts of Record is dealt with, R. S. 1929, Secs. 1274-1339; attachment in Justice Courts, R. S. 1929, Secs. 2426-43.

Comment a: The following cases illustrate the exercise of such jurisdiction by attachment: *Irvine v. Leyh*, 124 Mo. 361, 27 S. W. 512 (1894) (attachment of land); *Wigley v. Beauchamp*, 51 Mo. 544 (1873) (attachment of land). See *Payne v. Brooke*, 217 S.W. 595 (Mo. App. 1920); *First Nat. Bank v. Griffith*, 192 Mo. App. 443, 182 S. W. 805 (1916) (where defendant answered to the merits). In *Bray v. McClury*, 55 Mo. 128, 134 (1874), the court said: "The real suit is in favor of and against individual persons. The property itself is, in no sense of the word, a party to the suit, but is brought before the court as ancillary or in aid of the remdy against the real party, who is presumed to be the owner of it. The attached property does not represent the defendant, but is merely held in *custodia legis* to satisfy the debt that may be proven to exist against the defendant."

Comment b: Both statutes and decisions recognize that the jurisdiction is limited to the property attached, if the defendant is not subject to the jurisdiction of the state. R. S. 1929, Secs. 1310-11 (attachments in Courts of Record); Sec. 2439 (attachments in Justice Courts).

A judgment rendered in such a proceeding is not effective to impose a personal liability upon the person against whom the claim is asserted, if he is not subject to the jurisdiction of the state. *Givens v. Harlow*, 251 Mo. 231, 158 S. W. 355 (1913); *Bryant v. Duffy*, 128 Mo. 18, 30 S. W. 317 (1895); *Smith v. McCutchen*, 38 Mo. 415 (1866); *Johnson v. Holley*, 27 Mo. 594 (1859); *Clark v. Holliday*, 9 Mo. 711 (1846); *Chamberlain v. Farris & Tracy*, 1 Mo. 517 (1825); *Smith Premier Typewriter Co. v. Nat. Cash Register Co.*, 156 Mo. App. 98, 135 S. W. 992 (1911). See *Palmer v. Bank of Sturgeon*, 281 Mo. 72, 218 S. W. 873 (1920), s. c. 258 U. S. 603, 42 S. Ct. 271, 66 L. Ed. 785 (1920); *Walter v. Scofield*, 167 Mo. 537, 560, 67 S. W. 276 (1902); *Payne v. Brooke*, 217 S. W. 595 (Mo. App. 1920).

Comment c: The statutes recognize that this jurisdiction cannot be exercised except by a proceeding in which property is seized or a claim is directed against the property. R. S. 1929, Secs. 1291-93, 1296-1307 (attachment in Courts of Record); R. S. 1929, Secs. 2426-43 (attachments in Justice Courts). The following decisions recognize this principle: *Palmer v. Bank of Sturgeon*, 281 Mo. 72, 218 S. W. 873, s. c. 258 U. S. 603, 42 S. Ct. 271, 66 L. Ed. 785 (1920); *Graves v. Smith*, 278 Mo. 592, 213 S. W. 128 (1919); *Bagby v. Kirby*, —Mo. App.—, 35 S.W.(2d) 54 (1931); *Riley Penn. Oil Co. v. Symmonds*, 195 Mo. App. 111, 190 S. W. 1038 (1916); *Smith-Premier Typewriter Co. v. Nat. Cash Register Co.*, 156 Mo. App. 98, 135 S. W. 992 (1911); *Shanklin ex rel. Wetzler v. Francis*, 67 Mo. App. 457 (1896); *Newton v. Strang*, 48 Mo. App. 538 (1892); *Russell v. Major*, 29 Mo. App. 167 (1888). See, *State ex rel. Rice v. Harrington*, 28 Mo. App. 287, 291 (1887).

Comment d: This comment is met by requirements as to notice where no personal service on the defendant is had. R. S. 1929, Secs. 739, 748, 2436. See also *Graves v. Smith*, 278 Mo. 592, 213 S. W. 128 (1919); *Givens v. Harlow*, 251 Mo. 231, 158 S. W. 355 (1913) *Russel v. Grant*, 122 Mo. 161, 26 S. W. 958 (1894); *Weidman v. Byrne*, 207 Mo. App. 500, 226 S. W. 280 (1920). Cf. *Kwilecki v. Holman*, 258 Mo. 624, 167 S.W. 989 (1914), discussed under Section 106, *Comment b*.

Comment e: In *Graves v. Smith*, 278 Mo. 592, 597, 213 S. W. 128 (1919), the court said: "On the other hand, when no personal or general judgment is sought or can be obtained and the suit is brought only to charge or fix a lien upon lands of a non-resident defendant, the statute provides a method of subjecting the *res* by attachment of his property and notice to him by publication in the prescribed form, or by substituted service. Unless both of these statutory requirements are complied with, the local court acquires no jurisdiction to proceed and any judgment rendered by it, special or general, is an absolute nullity and open to collateral attack in any other court where rights thereunder are attempted to be enforced."

See also cases cited under *Comments b, c* and *d, supra.* Cf. *Kwilecki v. Holman,* cited under *Comment d, supra.*

There remains the question as to whether attachment is permitted in Missouri in all cases where it is legally possible for it to be had. In *Chapman v. Chapman,* 269 Mo. 663 192 S. W. 448 (1917), the plaintiff brought an action for divorce and alimony on service by publication. The petition described certain real estate of the defendant and prayed for its sequestration in satisfaction of the alimony. Held, that the Missouri statutes do not authorize such a proceeding against a non-resident's property either at law or in equity. See also *Elvins v. Elvins,* 176 Mo. App. 645, 159 S. W. 746 (1913), cited under Sec. 115.

That a state's jurisdiction goes to the full extent stated in Section 113 is well established. But there must be authorization for the particular court to act upon the property. *Chapman v. Chapman* merely holds that the law of Missouri does not authorize the exercise of such jurisdiction in an action for alimony This involves no inconsistency with the Restatement which declares what a state may do and does not purport to say what an individual state does do within those limits. In this connection see last paragraph of annotations to Section 115.

Section 114. Chattels.

A state can exercise through its courts jurisdiction to apply to the satisfaction of a claim a chattel belonging to the person against whom the claim is asserted in the possession or under the control of another person, by compelling that other person to surrender the chattel, if

(a) The person who is in possession or has control of the chattel to be applied is subject to the jurisdiction of the state; and

(b) The chattel to be applied is within the jurisdiction of the state.

Comments:

a. This jurisdiction is commonly exercised through a proceeding called garnishment, foreign attachment or trustee process, or by a bill in equity.

b. If the chattel is within the territory of the state, but the person who is in possession or has control of the chattel is not subject to the jurisdiction of the state, the chattel can be reached by attachment or by a bill in equity in accordance with the principle stated in Section 113.

c. In accordance with the principle stated in Section 106, it is necessary to give such notice to the person against whom the claim is asserted as is reasonably calculated to give him knowledge of the proceeding against his property and an opportunity to be heard.

d. If the person who is in possession or has control of the chattel is subject to the jurisdiction of the state, but the chattel is not within the state or subject to its jurisdiction, the chattel may not be reached by any process.

e. The jurisdiction discussed in this Section must of course be so exercised as not to deprive third persons of interests they may have in the chattel.

Annotation:

Comment a: The law of Missouri is in accord with this section. R. S. 1929, Secs. 1278, 1291-92, 1296, 1396, et seq. In the following cases personal property of the defendant was attached in the hands of a third person. *State ex rel. Rabiste v. Southern,* 300 Mo. 417, 254 S. W. 166 (1923) (contents of a safe-deposit box); *Adamson v. Fogelstrom,* 221 Mo. App.

1243, 300 S. W. 841 (1927) (attachment of sheep); *Letts-Spencer Gro. Co. v. Mo. Pac. Ry. Co.*, 138 Mo. App. 352, 122 S. W. 10 (1909) (involving Kansas attachment suit).

Comment b: No case has been found on this point. It is clear, however, that this comment would be followed by the Missouri courts. See annotations to Section 113.

Comment c: This comment is met by the requirements as to notice where no personal service on the defendant is had. R. S. 1929, Secs. 739, 748, 2436. See cases cited under Section 113, *Comment d.*

Comment d: The Missouri courts recognize the principle that a state cannot exercise such jurisdiction over chattels outside its territory. See Annotations to Section 105.

Comment e: The law of Missouri is in accord with this comment. The statutes provide that persons claiming attached property may interplead. R. S. 1929, Sec. 1325. See also R. S. 1929, Sec. 1422. which is discussed under Sec. 108, *Illustration 3.* In the following cases the interests of third persons were considered and determined. *Wangler v. Franklin*, 70 Mo. 659 (1879); *Wray v. Wrightsman*, 139 Mo. App. 635, 124 S. W. 38 (1909); *Letts-Spencer Gro. Co. v. Mo. Pac. Ry. Co.*, 138 Mo. App. 352, 122 S. W. 10 (1909); *Carp v. Itkowitz*, 77 Mo. App. 592 (1898); *Huels v. Boettger*, 40 Mo. App. 310 (1890).

Section 115. Debts.

A state can exercise through its courts jurisdiction to compel payment by a person who is subject to the jurisdiction of the state of the amount of a claim against him to another person and to apply the proceeds to the satisfaction of a claim against the other person, although the state has no jurisdiction over that person.

Comments:

a. This jurisdiction is commonly exercised through a proceeding called garnishment, foreign attachment or trustee process, or by a bill in equity.

b. Although the obligation has no physical location, a state has jurisdiction to reach it and apply it to the payment of a claim if the state has jurisdiction of the obligor, whether he is domiciled in the state or is only temporarily in the state, although the state has no jurisdiction of the obligee.

Illustration:

1. A has a claim against B for a debt of $1000 and B has a claim against C for a debt of $500. A brings an action against B in a court of state X and serves a summons upon C who is temporarily in X. B is domiciled in state Y and is served with a summons in Y. B fails to appear in the action. The court has jurisdiction to give a judgment that A recover $500 from C, and payment of the judgment by C gives a defense to B's claim against him, which will be recognized as valid in other states.

c. Payment by the garnishee (the obligor who is compelled to pay) discharges his duty to the extent of the payment, even though the state had no jurisdiction over the principal defendant (the person to whom the garnishee owed the duty), provided the garnishee made a reasonable attempt to notify the principal defendant of the garnishment proceeding, or the principal defendant had knowledge of the proceeding.

Annotation:

Comment a: The garnishment statute applies to "effects and credits of the defendant in whose hands soever the same may be found." In suits in Justice Courts, the statute

applies to "effects and credits of the defendant wheresoever found within the county." R. S. 1929, Sec. 1278. See also Secs. 1291-92, 1296, 1396 et seq. The statutes make provision for notice where no personal service on the defendant is had. R. S. 1929, Secs. 739, 748, 2436.

In a few cases it has been held that a proceeding in the nature of an equitable garnishment is the proper proceeding to reach a debt due the defendant which cannot be reached on execution or by garnishment under the statutes. *Pendleton v. Perkins*, 49 Mo. 565 (1872); *Pickens v. Dorris*, 20 Mo. App. 1 (1885). See *Humphreys v. The Atlantic Milling Co.*, 98 Mo. 542, 10 S. W. 140 (1889).

Where the defendant is not personally served within the state, but is served by publication, and does not appear, a personal judgment may not be entered against him; and where the garnishee is not indebted to the defendant, no valid judgment can be rendered against the garnishee. *Smith-Premier Typewriter Co. v. Nat. Cash Register Co.*, 156 Mo. App. 98, 135 S. W. 992 (1911).

Comment b: This comment restates the law of Missouri. *Briggs v. Block*, 18 Mo. 281 (1853); *First Nat. Bank v. Proffitt*, 293 S. W. 524 (Mo. App. 1927); *Riley Penn Oil Co. v. Symmonds*, 195 Mo. App. 111, 190 S. W. 1038 (1916); *First Nat. Bank v. Griffith*, 192 Mo. App. 443, 182 S. W. 805 (1916); *State ex rel. Leahy v. Barnett*, 193 Mo. App. 36, 180 S. W. 458 (1915).

In some of the above cited cases the obligor (garnishee) was domiciled in Missouri. In others the domicil of the garnishee does not appear. In the following cases the garnishees were foreign companies doing business in the state, and the garnishment was upheld. *Western Assur. Co. v. Walder*, 238 Mo. 49, 141 S. W. 595 (1911) (involving an Illinois garnishment); *Farrar v. American Express Co.*, 219 S. W. 989 (Mo. App. 1920). See Note (1923) 27 A. L. R. 1396. In these cases the courts cited with approval the case of *Wyeth Hardware & Mfg. Co., v. Lang & Co.*, 127 Mo. 242, 29 S. W. 1010, 27 L. R. A. 651 (1895), where the opinion of the Kansas City Court of Appeals in the same case (54 Mo. App. 147) was adopted. It is there said: "Wherever the creditor might maintain a suit to recover the debt, there it may be attached as his property provided the laws of such place authorize it." It seems clear, therefore, that garnishment will not be denied because the obligor (garnishee) is a non-resident of Missouri. But no Missouri case has been found in which a non-resident individual temporarily in the State was summoned as garnishee. As to this point, see *Harris v. Balk*, 198 U. S. 215, 25 S. Ct. 625, 49 L. Ed. 1023 (1904).

In the early cases garnishment was denied where the garnishee's payment to the principal defendant was to have been made outside the state. It was said that such a debt had its situs outside the state, and hence the process of Missouri courts could not subject it to garnishment in this state. All of these cases have been overruled, however, and the exercise of such jurisdiction is now permitted regardless of the place of payment of the original obligation. *Wyeth Hardware & Mfg. Co. v. Lang & Co., supra*; *Farrar v. American Express Co., supra*. See also *Western Assur. Co. v. Walden, supra*.

Palmer v. Bank of Sturgeon, 281 Mo. 72, 218 S. W. 873 (1920), is of interest in this connection. In that case A, of Tennessee, had a claim against B, a resident of Missouri, and C, a resident of Tennessee, was indebted to D, a Missouri bank. B had a certain sum on deposit in the D bank. A brought a garnishment suit in Tennessee against B to enforce his claim. A attempted to reach B's deposit in the Missouri bank by serving C with process in Tennessee. B and the D bank were served by publication. B did not appear, but the bank appeared in the Tennessee suit without objecting to the jurisdiction of the court and answered that it was indebted to B. The court held that B was indebted to A; that C was indebted to D bank which in turn was indebted to B; and that the debt of C to the bank be applied to the payment of the decree in favor of A. In accordance with this decree, C paid A the amount due from C to the D bank. B then brought an action in Missouri against the D bank to recover his deposit, and the bank pleaded the foregoing facts. Held, that B was not bound by the Tennessee proceeding impounding the money for the use of A, for jurisdiction over C could not give the court the right to reach a debt that the D bank owed B. It was also held that the bank's voluntary appearance in Tennessee did not give the court jurisdiction over B or the deposit, and that the bank was not discharged by the Tennessee proceeding. On

writ of error to the Supreme Court of the United States, dismissed for want of jurisdiction. 258 U. S. 603, 42 S. Ct. 271, 66 L. Ed. 785 (1922).

Comment c: Western Assur. Co. v. Walden, 238 Mo. 49, 141 S. W. 595 (1911), is in accord with *Illustration 1, supra*. It was held that the Illinois court had jurisdiction to give a judgment that the plaintiff in the Illinois suit recover a certain sum from the garnishee (the plaintiff in the Missouri suit), and that payment by the garnishee discharged its duty to the extent of the payment. The court said that the decision in *Harris v. Balk*, 198 U. S. 215, 25 S. Ct. 625, 49 L. Ed. 1023 (1904) required the Missouri courts to give full faith and credit to the judgment in the Illinois garnishment proceeding. In *Howland v. C. R. I. & P. Ry. Co.*, 134 Mo. 474, 36 S. W. 29 (1896), it was held that where in an action for debt the defendant answered that the debt had been garnished in another state, judgment should be given for the plaintiff with stay of execution until the garnishee is released from the garnishment. The court said, however, that "had the debt in this instance been condemned by a court of competent jurisdiction in the state of Iowa in a proceeding which is, or is equivalent to, a proceeding *in rem*, there can exist no doubt that a judgment thus rendered could not be contested in this state by a party to the record in Iowa, claiming the debt or property." (p. 480). In *Miner v. Rogers Coal Co.*, 25 Mo. App. 78 (1887), it was held in an action of debt, that an answer is sufficient as a plea of payment which states that the defendant was summoned as garnishee of plaintiff in an action in another state and was compelled to pay the debt to plaintiff's creditor, although the foreign garnishment suit was subsequent to the suit in which the answer was filed. Cf. *Norman v. Penn Fire Ins. Co.*, 237 Mo. 576, 141 S. W. 618 (1911).

In *Western Assur. Co. v. Walden, supra*, the defendant in the Illinois suit had knowledge of the Illinois proceding. In *Harris v. Balk, supra*, the very case stated in *Illustration (1)*, the court said. ". . . . . It is recognized as the duty of the garnishee to give notice to his own creditor, if he would protect himself so that the creditor may have the opportunity to defend himself against the claim of the person suing out the attachment. . . . . Fair dealing requires this in the hands of the garnishee." This requirement has never been mentioned by the Missouri courts.

It has been held that a judgment against a garnishee in an attachment will not protect him against a subsequent recovery in favor of one who had previously to the garnishment taken an assignment of the debt. *Wilson v. Murphy*, 45 Mo. 409 (1870); *Weil v. Tyler*, 38 Mo. 558 (1866). But the garnishee may set up, in his answer, that a debt owing by him to the defendant has been assigned to a third person and have the third person brought into court and required to interplead. A judgment after notice to such assignee will protect the garnishee. R. S. 1929, Secs. 1422-23; *First Nat'l Bank v. Griffith*, 192 Mo. App. 443, 182 S. W. 805 (1916). It has been held, however, that the courts of Missouri have no authority to order non-residents to appear and interplead and litigate their right to funds attached. See *Annotation* to Section 108, *Illustration 3*.

There remains the question whether garnishment is permitted in Missouri in all cases where it is legally possible for it to be held. In *State ex rel. McIndoe v. Blair*, 238 Mo. 132, 142 S. W. 326 (1911), a garnishment suit by a judgment creditor of an insolvent corporation against a non-resident stockholder for unpaid stock held by him, it was held that under the Missouri statutes the question whether the non-resident stockholder, served by publication, was indebted for such stock, could not be adjudicated. *Hill v. Barton*, 194 Mo. App. 325 188 S. W. 1105 (1916), holds that the Missouri attachment law is not available against property belonging to an estate in the course of administration. In *Trinidad Asphalt Mfg. Co. v. Standard Oil Co.*, 214 Mo. App. 115, 258 S. W. 64 (1924), where no jurisdiction was obtained over the defendant's person and no property of defendant was attached in the City of St. Louis, it was held that the court was without jurisdiction to issue a writ of garnishment directed to the Sheriff of another county. See also *Marvin v. Hawley*, 9 Mo. 382 (1845); *Elvins v. Elvins*, 176 Mo. App. 645, 159 S. W. 746 (1913).

That a state's jurisdiction for garnishment goes to the full extent stated in Sec. 115 of the Restatement is settled by the decision in *Harris v. Balk, supra*. So the courts of Missouri must recognize the validity of a garnishment in another state of the Union under the conditions stated in the Restatement. But Missouri, by statute or court decision, may limit garnishment proceedings here more narrowly. It may eliminate the process of garnish-

ment altogether; it may confine it to certain cases. It follows, therefore, that the last mentioned Missouri decisions are not inconsistent with the Restatement, which declares what a state may do and does not purpose to say what an individual state does within those limits.