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Courts - Extent of Jurisdiction - Situation of Real Property - Local or Transitory Actions

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agreement imposes no obligation on the purchaser and is therefore invalid.[7] But this is not true where the agreement binds the purchaser to take from the seller whatever may be required for an established business for a definite length of time, such agreements being considered sufficiently definite and certain to be binding.[8] Most courts hold that where the purchaser is engaged in jobbing, wholesaling, or acting as a middleman, and enters into a contract of the type found in the instant case, the contract is not sufficiently definite to be enforceable, since future requirements cannot be definitely known.[9] However, a small minority of courts have held valid agreements to supply middlemen or those not engaged in an established business under some conditions.[10] The present decision nevertheless seems in accord with the weight of authority.

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COURTS—EXTENT OF JURISDICTION—SITUATION OF REAL PROPERTY—LOCAL OR TRANSITORY ACTIONS. Defendant committed a trespass upon plaintiff's property located in Missouri. Plaintiff brought an action in Arkansas for the injuries sustained. The Arkansas court, rejecting the well established rule that such actions are local and must be brought within the state where the land is located, *held* that plaintiff might maintain his action. The court cited the Arkansas Constitution: "Every person is entitled to a certain remedy in the laws for all injuries or wrongs he may receive in his person, property, or character." [1] The dissenting opinion labeled the Court's action as judicial legislation. *Reasor-Hill Corp. v. Harrison*, 249 S.W.2d 994 (Ark.,1952).

Early English litigation established that an action to recover damages for injuries to land can be brought only in the jurisdiction where the land is located.[2] This rule became established due to the rules of venue which developed in England, venue being based on and controlled by the factual knowledge of the jurors who participated at the trial.[3] When the question

7. See cases cited note 1, *supra*.

8. T.W.Jenkins Co. v. Anaheim Sugar Co., 247 Fed. 958 (8th Cir. 1918); Golden Cycle Mining Co. v. Rapsom Coal Mining Co., 188 Fed. 179 (8th Cir. 1911); Edison Electric Illuminating Co. v. Thatcher, 229 N.Y. 172, 128 N.E. 124 (1920); Wells v. Alexandre, 130 N.Y. 642, 29 N.E. 142 (1891); Secor v. Ardsley Ice Co., 133 App. Div. 136, 117 N.Y. Supp. 414 (1909), *aff'd*, 201 N.Y. 603, 95 N.E. 1139 (1911).

9. For a discussion of this point, see the dissenting opinion in Oscar Schlegel Mfg. Co. v. Peter Cooper's Glue Factory, 189 App.Div. 843, 179 N.Y.Supp. 271 (1919). The amount of commodities required by jobbers and middlemen is so largely controlled by the price which can be obtained for them that to sustain contracts giving middlemen an indefinite option to purchase is simply to give the middleman an undue advantage should prices rise or fall. See Crane v. C. Crane & Co., 105 Fed. 869 (7th Cir. 1901); American Trading Co. v. National Fibre and Insulation Co., 1 W.W. Harr. (Del.) 65, 111 Atl. 290 (1920).

10. See Texas Co. v. Pensacola Maritime Corp. 279 Fed. 19 (5th Cir. 1922); Ehrenworth v. George F. Stuhmer & Co., 229 N.Y. 210, 128 N.E. 108 (1920).

1. Arkansas Constitution, Art. 2, §13.

2. Skinner v. East India Co., 6 How. St. Tr. 710 (1666); Shelling v. Farmer, 1 Str. 646 (1725); Doulson v. Matthews, 4 T.R. 503, 100 Eng. Rep. 1143 (1792); British South Africa Co. v. Companhia de Mocamibique, A.C. 602 (1893).

3. *See* Scott, Fundamentals of Procedure in Action at Law 18 ff. (1922) "Every fact relied upon in the pleadings had to be stated as having occurred at a certain place. It was the place at which the facts in issue were asserted to have occurred that determined the venue . . ."; Note, *May an Action for Trespass to Land in Another State Be Maintained in Kentucky?* 28 KyL.J. 462 (1930).

first arose in America, the courts followed the reasoning of the English courts and held that such actions were necessarily local.[4] The now classic case of *Livingston v. Jefferson* [5] undoubtedly has been more influential than any other case in adding stability to the rule in the United States. Chief Justice Marshall, in writing the opinion for the court, severely criticized the law and recognized the injustice done to the plaintiff, but refused to deviate from the judicial precedent. The practical result of the rule, which allows the defendant to escape liability for his tortious conduct merely by crossing a state line, is to leave the plaintiff without a remedy in law. This situation is recognized and criticized by eminent text writers who touch on the subject.[6]

Judges are also fully cognizant of the shortcomings of the doctrine and courts often go to great lengths to evade the enforcement of it.[7] This is accomplished in some cases by finding that the case is one of conversion of personal property in which event, the doctrine does not apply,[8] and in other cases by finding that the action is one based on contract and thus transitory.[9] Some states, notably New York, have adopted statutes as a means of circumventing the rule without overturning it.[10] However, where the case is one which comes within the rule, the rule will not be disregarded and even a waiver on the part of the defendant as to jurisdiction will not usually avail the plaintiff of a remedy.[11] It is also interesting to note that whether the trespass was intentional [12] or one of negligence,[13] the rule will still be enforced,

4. Ellenwood v. Marietta Chair Co., 158 U.S. 105 (1895); Livingston v. Jefferson, 1 Brock. 203, Fed. Cas. No. 8411, 664 (C.C.A. Va. 1811) "It has been said that the decisions of British courts, made since the Revolution, are not authority in this country. I admit it-but they are entitled to the respect which is due to the opinions of wise men."; Prichard v. Campbell, 5 Ind. 494 (1854); Brown v. Irwin, 47 Kan. 50, 27 Pac. 184 (1891); Champion v. Doughty, 18 N.J. 3, 35 Am. Dec. 523 (1840).

5. Brock. 203, Fed. Cas. No. 8411, 660 (C.C.A. Va. 1811).

6. II Cooley, Torts §345 (4th ed. 1932); Scott, Fundamentals of Procedure in Actions at Law, 32 (1922) "The rule rests upon no living principle of logic or policy, but upon a historical accident."

7. *See* Potomac Milling & Ice Co. v. Baltimore & O. Ry., 217 Fed. 665, (1914); Brisbane v. Pennsylvania Ry., 205 N.Y. 431, 98 N.E. 752, 753 "Were the question an open one, I would favor the doctrine that our courts have jurisdiction of actions to recover damages for injuries to foreign real estate."

8.Ophir Silver Mining Co. v. Superior Court, 147 Cal. 467, 82 Pac. 70 (1905) (action brought for value of ore removed rather than injury to freehold); Bruheim v. Stratton, 145 Wis. 271, 129 N.W. 1092 (1911) (action for conversion of timber rather than injury to realty).

9. Campbell v. W.M. Ritter Lumber Co., 140 Ky. 312, 131 S.W. 20 (1910) (action to recover damages for injuries to houses occupied by defendant"s servants while removing timber under contract); Mattix v. Swepston, 127 Tenn. 693, 155 S.W. 928 (1913) (action for use of right of way merely appurtenant to contract to remove timber).

10. *E.G.*, N.Y. Real Property Law §536 (1939) "An action may be maintained in the courts of this state to recover damages for the injuries to real estate situate without the state, or for breach of contracts or of convenants relating thereto, whenever such an action could be maintained in relation to personal property without the state. The action must be tried in the county in which the parties or someone thereof resides, or if no party resides within the state, in any county."

11. Morris v. Missouri Pac. Ry. Co., 78 Tex. 17, 14 S.W. 228 (1890) (trial court declined jurisdiction on its own motion); Van Ommen v. Hogeman, 100 N.J.L. 224, 126 Atl. 468 (1924) (court disclaimed jurisdiction on appeal). *Contra*: Sentenis v. Ladew, 140 N. Y. 463, 35 N.E. 650 (1893) (no objection to foreign jurisdiction constitutes a waiver of the objection).

12. *E.g.*, Arizona Commercial Mining Co. v. Iron Cap Copper Co,. 119 Me. 213, 110 Atl. 429 (1920) (intentionally mining plaintiff's ore); Montesano Lumber & Mfg. Co. v. Portland Iron Works, 78 Ore 53, 152 Pac. 244 (1915).

13. *E.g.*, Karr v. New York Jewell Filtration Co., 78 N.J.L. 198, 73 Atl. 132 (1909) (excavation causing plaintiff's building to weaken); Dippold v. Cathlamet Timber Co., 98 Ore. 183, 193 Pac. 909 (1920) (defendant allowed fire to spread, burning plaintiff's timber in another state).

although some early cases in the United States did make such a distinction and allowed the plaintiff to recover where the tort had been one of negligence.[14]

Of some encouragement to those who advocate a change in the law on this point, is the decision of the Minnesota court in an early case which repudiated the entire doctrine as being purely technical, wrong in principle and in no sense a rule of property.[15] Prior to the instant case, Minnesota was the only jurisdiction adopting outright repudiation of the doctrine, yet Missouri, in a comparatively late decision, held that the doctrine did not apply except where the title to the property was directly in controversy.[16] The only North Dakota case in point involved a counterclaim in which it was alleged that damage had been done to the defendant's property located in Minnesota. The North Dakota court refused to allow recovery on the counterclaim, holding that it was a local action to be tried in Minnesota.[17]

In the instant case the Arkansas court has based its deviation from the rule upon the constitutional right of every individual to a remedy at law. In states whose constitutions provide such a right,[18] this would appear to be a sound basis for allowing an otherwise remediless plaintiff to recover, and for affording the courts an opportunity to dispense with an obviously inequitable rule.

EDWARD E. DESSERT

MARRIAGE—RESTITUTION OR OTHER DISPOSITION OF PROPERTY, AND COMPENSATION—RIGHT OF PUTATIVE WIFE TO PROPERTY JOINTLY ACCUMULATED—Plantiff and defendant were both previously married. The plaintiff separated from her husband in 1937 and moved into the home of the defendant in 1941. Subsequently she obtained a divorce on 90 days residence in Arkansas and ceremonially married the defendant in 1945. In 1948 the plaintiff's first husband secured a divorce from her, after which she again married the defendant in Mississippi. Through their joint efforts, plaintiff and defendant accumulated a good deal of property. Plaintiff sued for divorce. Without determining the validty of the plaintiff's Arkansas divorce, the court *held* that she was not married to the defendant because of the defendant's pre-existing marriage, that she had entered into the illicit relationship in good faith, and granted a decree annulling the marriage and awarding the plaintiff certain real property as her equitable share of the property accumulated by the joint efforts of the parties during their relationship before and after the purported marriages. *Chrismond v. Chrismond*, 52 So.2d 624 (Miss 1951).

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14. Scott, Fundamentals of Procedure in Actions at Law 7, n.9 (1922).

15. Little v. Chicago, St.P.,M. & O.RY.Co., 65 Minn. 48, 67 N.W. 846, 847 (1896) "If the courts of England, . . . were at liberty to invent a fiction in order to change the ancient rule that all actions were local, . . . we cannot see why the courts of the present day should deem thesmelves slavishly bound by those limitations."

16. Ingram v. Great Lakes Pipe Line Co., 153 S.W.2d 547 (Mo.App., 1941) (destruction of spring by blasting, title only incidentally involved).

17. Farmer v. Dakin, 28 N.D. 452, 149 N.W. 354 (1914).

18. North Dakota Const. Art. I, §22, "All courts shall be open, and every man for any injury done him in his lands, goods, person or reputation shall have remedy by due process of law, and right and justice administered without sale, denial or delay. . . ."