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Future Earning as Basis for Equity Jurisdiction

JURISDICTION

FUTURE EARNINGS AS BASIS FOR EQUITY JURISDICTION

To compel the support and maintenance of minor children of parties to a divorce, an equity court ordered sequestration of future salary of the nonresident husband, who had been served by publication. The salary was payable by his resident employer, a party to the action. Later the court ordered that either the husband pay the award decreed within a specified time or that the amount accumulated by the employer be paid to the plaintiff. Held: affirmed. The decree for maintenance was in rem since (a) a man's labor or right to labor is the highest form of property,[1] (b) the husband's property in his work was in existence at the time of the sequestration order by analogy to

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1. Massie v. Cessna, 239 Ill. 352, 358, 70 N.E. 564, 565 (1904) (freedom to contract for assignment of wages); Frorer v. People, 141 Ill. 171, 181, 31 N.E. 395, 396 (1892) (freedom to contract for manner of payment of wages).

a trust fund case,[2] and (c) the alternative feature of such a decree preserves its character as a decree in rem.[3] *Mowrey v. Mowrey*, 65 N.E. (2d) 234 (Ill. App. 1946).

A purely personal decree for alimony or maintenance against a non-resident, who does not appear after constructive notice, is void.[4] But where the nature and situs of the property will support a proceeding in rem or quasi in rem,[5] the court, if authorized by statute, will render such decree against property within the jurisdiction specifically proceeded against.[6] Attachment or seizure of the property at the beginning of or during pendency of the suit is not essential to jurisdiction.[7]

Here the only question is whether the nature of the property[8]

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2. Tuttle v. Gunderson, 254 Ill. App. 552 (1929), cert, dis'm., 341 Ill. 36, 173 N.E. 175 (1930).
3. Cox v. Cox, 192 Ill. App. 286, 295 (1915); Crawford v. Nimmons, 180 Ill. 143, 146, 54 N.E. 209, 210 (1899); Kirby v. Runals, 140 Ill. 289, 297, 29 N.E. 697, 699 (1892).
4. Smith v. Smith, 74 Vt. 20, 51 Atl. 1060, 1061 (1901); Hicks v. Hicks, 193 Ga. 446, 447, 18 S.E. (2d) 754, 755 (1942); Proctor v. Proctor, 215 Ill. 275, 277, 74 N.E. 145, 146 (1905).
5. "The proceeding in rem can be correctly and adequately understood only if it be realized that it is essentially an anonymous proceeding, being aimed to reach the interest of the true owner (or owners) of the property whoever he may be. The proceeding quasi in rem is, on the other hand, aimed to reach only the interest of a named party." Hohfeld, "Fundamental Legal Conceptions" (1923) 110, n. 103.
6. Wilson v. Smart, 324 Ill. 276, 281, 155 N.E. 288, 291 (1927) (real estate); Clark v. Clark, 202 Ind. 104, 111, 172 N.E. 124, 126 (1930) (trust fund); Geary v. Geary, 272 N.Y. 390, 398, 6 N.E. (2d) 67, 70 (1936) (retirement or pension fund); Reed v. Reed, 121 Ohio St. 188, 167 N.E. 684, 687 (1929) (real estate).
7. Illustrations of other methods are: service of process upon trustees of defendant's funds, Clark v. Clark, 202 Ind. 104, 111, 172 N.E. 124, 126 (1930); general prayer for relief, Twing v. O'Meara, 59 Iowa 326, 331, 13 N.W. 321, 323 (1882); descriptioin of property in petition and prayer for vindication through same, Reed v. Reed, 121 Ohio St. 188, 167 N.E. 684, 687 (1929); preliminary injunction, Benner v. Benner, 63 Ohio St. 220, 58 N.E. 569, 571 (1900). On the general subject matter see Notes (1924) 29 A.L.R. 1381, (1928) 64 A.L.R. 1392, (1937) 108 A.L.R. 1302.
8. The word "property" has no definite or stable connotation. Sometimes it is employed to indicate the physical object to which various legal rights, privileges, etc. relate; then again with greater discrimination it is used to denote the legal interest (or aggregate of legal relations) appertaining to such physical object. Hohfeld, "Fundamental Legal Conceptions" (1923) 28. The court in the principal case founded its jurisdiction on a man's property in his labor, but relied on cases involving the protection of the right to labor and exemplifying loose usage by designating labor as the highest form of property. See n. 1 supra; cf. Gleason v. Thaw, 185 Fed. 345, 347 (C.C.A. 3d, 1911). The word "property" is a very general term and its meaning should be restricted by the more specific words with which it is associated and by the purpose for which it is used.

is such as to support a "decree in rem".[9] In a creditor's suit the defendant's salary can be reached only to the amount accrued at commencement of the action.[10] Such earnings are not subject to a suit in aid of execution or to process of a court of equity because defendant has neither legal nor equitable title thereto.[11] Thus, under facts similar to the instant case, it was held that, since future earnings cannot be reached by a suit in equity, it would be an anomoly to allow sequestration of earnings accruing subsequent to appointment of a receiver.[12] The court distinguished sequestration of future income from a trust or pension fund on the ground that such income would be subject to a judgment creditor's suit.[13] Also in such cases the right to the income was vested in the defendant when sequestration was sought. But in the salary case an agreement, though prescribing rate of payment in writing, does not of itself give a right to receive the salary. Such salary, if given, is only payment for services to be rendered.[14]

Neither reason nor precedent support the instant case. The state's interest in the marriage contract[15] and its responsibility upon divorce

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9. In terms of the Hohfeldion analysis, a right in rem, or multital right, correctly understood is simply one of a large number of fundamentall similar rigghts residing in one person; and any one of such rights has as its correlative one and only one, of a large number of general, or common duties—that is, fundamentally similar duties residing respectively in many different persons. A right in personam is one having few if any "companion rights", whereas a right in rem always has many such "companions". All rights in rem are against persons. The intrinsic nature of substantive primary rights, whether they be rights in rem or rights in personam, is not dependent on character of proceedings by which they may be vindicated. A primary right in personam, e.g., A's right that B pay $1000 may frequently be vindicated only by an attachment proceeding, one quasi in rem. Hohfeld, "Fundamental Legal Conceptions" (1923) 76, 77, 95, 110, 114; cf. Cook, "Powers of Courts of Equity" (1915) 15 Col. L. Rev. 37, 106.

10. McGrew v. McGrew, 38 F. (2d) 541, 544 (App. D.C. 1930), cert. denied, 50 Sup. Ct. 349 (1930); State ex rel. Busby v. Cowan, 232 Mo. App. 391, 394, 107 S.W. (2d) 805, 807 (1937); Browning v. Bettis and Garrow, 8 Paige 568 (N.Y. 1841); Valentine v. Williams, 159 N.Y. Supp. 815 (1916); Note (1937) 106 A.L.R. 588.

11. See n. 10 supra.

12. Tompers v. Tompers, 159 N.Y. Supp. 817 (1916), appeal denied, 159 N.Y. Supp. 1146.

13. Zwingmann v. Zwingmann, 150 App. Div. 358, 134 N.Y. Supp. 1077 (2d Dep't 1912) (pension fund); Moore v. Moore, 143 App. Div. 428, 128 N.Y. Supp. 259 (1st Dep't 1911) (trust case).

14. Tompers v. Tompers, 159 N.Y. Supp. 817 (1916), appeal denied, 159 N.Y. Supp. 1146; cf. Bruton v. Tearle, 7 Cal. (2d) 48, 53, 59 P. (2d) 953, 955 (1936), where the court emphasizing that means of enforcing an alimony judgment are different and more effective than those applicable to an ordinary money judgment, appointed a receiver of the future earnings of the husband. See criticism Note (1937) 106 A.L.R. 588. The case is distinguishable from the present decision where future earnings are the basis for the court's jurisdiction.

15. People v. Case, 241 Ill. 279, 284, 89 N.E. 638, 640 (1909); Jarrard v. Jarrard, 116 Wash. 70, 198 Pac. 741, 742 (1921).

to provide for the support and custody of children is well recognized;[16] yet "public policy" alone is not a sufficient justification for the decision. Since divorce law is statutory,[17] legislative authority for the procedure followed would be preferable.

STATUTORY CONSTRUCTION

CHANGE IN INTERPRETATION AFTER REENACTMENT

In an aplication for naturalization, a native of Canada, a Seventh Day Adventist, refused to promise to bear arms in defense of this country on the basis that the promise would be contrary to his religious belief. He was willing to do military service as a non-combatant and was willing to take the oath of allegiance as required of aliens by the Nationality Act of 1940,[1] which does not specifically require that petitioners for citizenship must promise to bear arms. Held: The District Court's order admitting the applicant to citizenship was affirmed.[2] *Girouard* v. *United States*, 66 S. Ct. 826 (1946).[3]

The question presented is one of statutory construction. Does the statute require an applicant for citizenship to state under oath that he is willing to take up arms in defense of his country? A divided court, interpreting the Naturalization Act of 1906,[4] held in the *Schwimmer*,[5] *Macintosh*,[6] and *Bland*[7] cases that it was an implied requirement.[8] The decisions met with prolific adverse criticism.[9] For

16. Kelley v. Kelley, 317 Ill. 104, 110, 147 N.E. 659, 661 (1925); Hickey v. Thayer, 85 Kan. 556, 118 Pac. 56, 57 (1911), 41 L.R.A. (N.S.) 564 (1913).

17. Barrington v. Barrington, 206 Ala. 192, 89 So. 512, 513 (1921); Sweigart v. State, 213 Ind. 157, 167, 12 N.E. (2d) 134, 138 (1938). E.g., Ill. Rev. Stat. (1945) c. 40, § 1-21.

1. 54 Stat. 1137, 1157, 8 U.S.C.A. § 735 (b) (1940).

2. The decision of the District Court of Massachusetts, admitting him to citizenship was reversed by the Circuit Court of Appeals, U.S. v. Girouard, 149 F. (2d) 760 (C.A.A. 1st, 1945). The Circuit Court took its action on the authority of U.S. v. Schwimmer, 279 U.S. 644 (1929); U.S. v. Macintosh, 283 U.S. 605 (1931); U.S. v. Bland, 283 U.S. 636 (1931).

   As a matter of statutory construction, the Court held that Congress did not intend to require a promise to bear arms as a prerequisite to citizenship, and that judicial interpretation rendered prior to legislative re-enactment of the Naturalization Act did not preclude judicial review of previous Supreme Court decisions.

3. Stone, C. J., Frankfurter and Reed, J. J., dissenting.

4. 34 Stat. 596 (1906).

5. U.S. v. Schwimmer, 279 U.S. 644 (1929).

6. U.S. v. Macintosh, 283 U.S. 605 (1931).

7. U.S. v. Bland, 283 U.S. 636 (1931).

8. The Court in the principal case has adopted the dissenting opinion of Hughes, C.J., in U.S. v. Macintosh, 283 U.S. 605, 635 (1931), ". . . while recognizing the power of Congress, the mere holding of religious or conscientious scruples against all wars should not disqualify a citizen from holding office in this country, or an applicant otherwise qualified from being admitted to citizenship. . ."

9. Fields, "Conflicts in Naturalization Decisions" (1936) 10 Temp.