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Power of State Court to Restrain Suit in Another State: Pitcairn v. Drummond

POWER OF STATE COURT TO RESTRAIN SUIT IN ANOTHER STATE

Pitcairn v. Drummond

Receivers of the Wabash Railway under appointment of the Federal District Court of Missouri sued in Indiana to enjoin defendant from maintaining an action against them in Illinois under the Federal Employers Liability Act to recover for personal injuries occurring in the operation of trains in Indiana. Held, injunction denied. Indiana courts have no jurisdiction to control the setus of actions against federal receivers.[1]

State courts have power to restrain citizens of the state, or other persons within the control of their process, from prosecuting suits in other states or in foreign countries when the prosecution of such suits

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[8] Note (1925) 45 A.L.R. 941.

[9] Phillips v. Edsall, 127 Ill. 535, 20 N. E. 801 (1896); Kellogg v. Winchell, 273 Fed. 745 (1921).

[10] Weicher v. Cargill, 86 Minn. 271, 90 N. W. 402 (1902); Myers v. Miller, 134 Neb. 824, 279 N. W. 778 (1938); Byram v. Miner, 47 F.(2d) 112 (C.C.A. 8, 1931).

[11] HARPER, LAW OF TORTS (1933) Sec. 241.

[12] HARPER, LAW OF TORTS (1933) Sec. 248.

[1] Pitcairn v. Drummond, 23 N. E. (2d) 21 (Ind. 1939).

is contrary to the equitable doctrine of vexatious litigation.[2] The granting of an injunction is said to be not an attempt to control the actions of the court of another state, but is a restriction upon the person within the jurisdiction of the court issuing the injunction.[3] Mere inconvenience or expense to a party does not create vexatious litigation unless the foreign action also deprives him of some substantial right or defense.[4]

The principal case involves not only the Federal Employers Liability Act,[5] but also the right to sue a federal receiver. At common law, receivers could not be sued without leave of the appointing court, and then only upon conditions fixed by the court.[6] This practice was followed in the United States. Both federal and state courts appointing receivers have power to control actions against receivers appointed by them.[7] It has been held contempt of court to sue a receiver without such permission.[8]

Congress has provided by statute[9] that a plaintiff may sue a

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[2] Sandage v. Studebaker Bro. Mfg. Co., 142 Ind. 148, 41 N.E. 380 (1895) (injunction restraining prosecution of foreign suit to avoid substantive law of the domicile of the plaintiff); Kern v. The Cleveland, Cin., Chi. and St. Louis Ry., 204 Ind. 595, 185 N.E. 446 (1933) (injunction restraining prosecution of foreign suit which would be burdensome and expensive to defendant and which would interfere with interstate commerce); Cleveland, Cin., Chi. and St. Louis Ry. v. Shelly, 96 Ind. App. 273, 170 N.E. 328 (1932) (injunction restraining prosecution of foreign suit as distance would cause appellant needless and irreparable damage and give appellee an inequitable and unfair advantage); Reeds Adm'x v. Illinois Central Railroad, 182 Ky. 455, 206 S.W. 794 (1918) (injunction restraining suit in a foreign state on allegation that it was brought for the purpose of harassing the defendant and putting him to greater expense). Note (1930) 5 Ind. L. J. 525, Note (1932) 7 Ind. L. J. 257.

[3] Rader v. Stubblefield, 43 Wash. 560, 86 Pac. 560 (1906); Dehon v. Foster, 4 Allen 545 (Mass. 1862).

[4] Missouri-Kan.-Tex. Ry. v. Ball, 126 Kan. 745, 271 Pac. 313 (1928); Chicago, Mil. and St. Paul Ry. v. Mc Ginley, 175 Wis. 565, 185 N.W. 218 (1921).

[5] 45 U.S.C.A. §56.

[6] Anonymous, 6 Vesey 287, 31 Eng. Rep. 287 (1801); Angel v. Smith, 9 Vesey 335, 32 Eng. Rep. 632 (1804); Russell v. East Anglican Railway, 3 Mac Naghten and Gordon 104, 42 Eng. Rep. 201 (1850).

[7] De Groot v. Jay, 30 Barb. Ch. 483 (N.Y. 1859); Robinson v. The Great Atl. and Great West. Ry., 66 Pa. 160 (1870); Olds v. Tucker, 35 Ohio St. 581 (1880); Davis v. Gray, 16 Wallace 203 (U.S. 1872); Barton v. Barbour, 104 U.S. 126 (1881).

[8] Angel v. Smith, 9 Vesey 335, 32 Eng. Rep. 632 (1804); Davis v. Gray, 16 Wallace (83 U.S.) 203 (1872); Thompson v. Scott, 4 Dill 508, Fed. Cases No. 13,197 (1876); De Visser v. Blackstone, 6 Blatchf. 235, Fed. Cases No. 3,840 (1868).

[9] 28 U.S.C.A. §125 "(Judicial Code, section 66) Suits against receiver. Every receiver or manager of property appointed by any court of the United States may be sued in respect of any act or transaction of his in carrying on the business connected with such property, without the previous leave of the court in which such receiver or manager was appointed; but such suit shall be subject to the general equity jurisdiction of the court in which such manager or receiver was appointed so far as the same may be

federal receiver in any court of competent jurisdiction without obtaining leave of the appointment court.[10] This section does not limit the bringing of the action in the court which appointed the receiver or in a federal court; the receiver may be sued in a state court without the permission of the court apopinting him. It is not within the power of the federal court to deprive a party of that right.[11] The suit must fulfill the requirement that it arise out of an act or transaction of the receiver in carrying on the business connected with the property.[12] The largest class of cases within this requirement are actions to recover judgments for damages for injuries received through the negligent operation of the property by the receiver.[13] Cases involving possession of the property in the hands of the receiver, or its administration or management, are within the exclusive jurisdiction of the appointing court.[14] Any suit which is brought is subject to the general equity jurisdiction of the appointing court. This clothes the federal courts with ample power, by injunction, to prevent judgment creditors from harassing a receiver or interfering with the property in his possession.[15]

The Indiana Courts have enjoined plaintiffs from bringing suits under the Federal Employers Liability Act[16] in other state courts

[10] Mc Nulta v. Lochridge, 141 U.S. 327, 12 S. Ct. 11, 35 L. ed 796 (1891); Texas and Pac. Ry. Co. v. Cox, 145 U.S. 593, 12 S. Ct. 905, 36 L. ed. 820 (1892).

[11] Mc Nulta v. Lochridge, 141 U.S. 327, 12 S. Ct. 11, 35 L. ed 796 (1891); Texas and Pac. Ry. Co. v. Cox, 145 U.S. 593, 12 S. Ct. 905, 36 L. ed 829 (1892); Texas and Pac. Ry. Co. v. Johnson, 151 U.S. 81, 14 S. Ct. 250, 38 L. ed 81 (1894); Erb v. Morasch, 177 U.S. 584, 20 S. Ct. 819 (1900).

[12] Dickinson v. Willis, 239 F. 171 (1916). The act does not authorize the garnishment of funds in the receiver's hands alleged to belong to a debtor in the receiver's employ, Central Trust Co. of New York v. Wheeling and L.E.R. Co., 189 F. 82 (1911).

[13] Mc Nulta v. Lochridge, 141 U.S. 327, 12 S. Ct. 11, 35 L. ed 796 (1891); The St. Nicholas, 49 F. 671 (1891); Texas and Pac. Ry. Co. v. Cox, 145 U.S. 593, 12 S. Ct. 905, 36 L. ed 829 (1892); Berwin-White Coal Mining Co. v. Eastern S.S. Corp., 228 F. 726 (1916). An action for damages may be maintained in a state court against a receiver for negligent operation of a railroad without first obtaining leave from the United States Court appointing him, Malott v. Shimer, 153 Ind. 35, 54 N.E. 101 (1899).

[14] Field v. Kansas City Refining Co., 9 F(2d) 213 (1925), cert. denied, 271 U.S. 676, 46 S. Ct. 489 (1926); Hayes v. Columbus, L. and M. Ry. Co., 67 F. 630 (1895). "The line must be drawn between those cases which seek to recover a judgment against the receiver in the nature of damages and those cases which involve the possession of the property in the hands of the receiver, or the use of such property or the management thereof—the administration of the property in his hands. As to questions of possession, use and management, I am satisfied that the appointing court, whether it be state or federal, has exclusive jurisdiction," Dickinson v. Willis, 239 F. 171 (1916).

[15] Meyer Rubber Co. v. Georgetown and W.R. Co., In re Jones, 177 F. 870 (1910), certiorari denied, 218 U. S. 679, 31 S. Ct. 227, 54 L. ed 1207 (1910).

[16] 45 U.S.C.A. §56.

where the action would be burdensome and expensive to the defendant[17] or cause the defendant irreparable damage and give the plaintiff an inequitable and unfair advantage.[18] Other jurisdictions do likewise.[19] Federal receivers were not involved in these suits. In *Mc Connell v. Thompson*[20] the Indiana court refused to enjoin a plaintiff from bringing an action in a federal court in another state because of the right given the plaintiff under the Federal Employers Liability Act. It held this was a right given by Congress with which the state court could not interfere. The court distinguished its decision from that in *Kern v. Cleveland, Cincinnati, Chicago and St. Louis Railway Co.*[21] which held that an Indiana court could enjoin the bringing of an action under the Federal Employers Liability Act in a foreign state court. The United States Supreme Court held in *Douglas v. New York Railroad Co.*[22] that the jurisdiction of the state courts is concurrent with that of the federal courts in regard to actions under the Federal Employers Liability Act. Therefore, it seems illogical, since the jurisdiction of the federal and state courts is concurrent, that the Indiana court would enjoin the maintenance of an action in a foreign state court and refuse to do so if the action is pursued in a federal court.

RIGHTS OF FIREMEN UNDER THE INDIANA WORKMEN'S COMPENSATION ACT

City of Fort Wayne v. Hazelett

The plaintiff filed a claim under the Workmens Compensation Act for compensation for the death of her husband resulting from an accidental injury suffered while in the performance of his duties as a fireman of the City of Fort Wayne. The Industrial Board awarded compensation, and the City appealed. Held, for appellant. A fireman in the service of the municipality is not an employee within the scope of the act.[1]

The Indiana Act provides that " 'employer' shall include . . . any municipal corporation within the state . . . using the services of another for pay," and " 'employee' shall include every person in the service of another under any contract of hire or apprenticeship, written or implied."[2] The sole question presented by the principal case is whether

[17] Kern v. The Clev., Cin., Chi. and St. Louis Ry., 204 Ind. 595, 185 N.E. 446 (1933).

[18] Cleveland, Cin., Chi. and St. Louis Ry. v. Shelly, 96 Ind. App. 273, 170 N.E. 328 (1932).

[19] Reeds Administratrix v. Illinois Cent. Ry., 182 Ky. 455, 206 S.W. 794 (1918).

[20] 213 Ind. 16, 8 N.E.(2d) 986, 11 N.E.(2d), 183 (1937),

[21] 204 Ind. 595, 185 N.E. 446 (1933).

[22] Douglas v. New York, New Haven and Hartford R.R., 279 U.S. 377, 49 S. Ct. 355, 73 L. ed 747 (1929).

[1] City of Fort Wayne v. Hazlett, 23 N.E.(2d) 610 (Ind. App. 1939).

[2] Ind. Acts 1929, c. 172, § 73, p. 536; BURNS IND. STAT.ANN. (1933) § 40-1701.