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Equity-Injunction-Enjoining Suits in Another State

EQUITY—INJUNCTION—ENJOINING SUITS IN ANOTHER STATE—Joseph Crandall, an employee of defendant railroad and an inhabitant of Vanderburgh county, Indiana, was killed while engaged in interstate commerce. His widow was appointed administratrix by the probate court of Vanderburgh county, and she filed suit against the railroad in Missouri under the Federal Employer's Liability Act to recover damages for the death of her husband. Upon petition of the railroad the probate court of Vanderburgh county enjoined the administratrix from directly or indirectly prosecuting the Missouri suit. Thereupon the widow dismissed the Missouri suit, but had her attorney appointed administrator in Missouri, and he filed a similar action there. The administratrix was then adjudged in contempt by the probate court of Vanderburgh county, and was fined and imprisoned. At this point she secured a writ of habeas corpus from the Federal District Court. Upon a motion to quash the writ, *Held,* writ dismissed and petitioner remanded to the custody of the sheriff. *Ex parte Crandall.* District Court, S. D. Indiana, Evansville Division, 52 Fed. (2d) 650.

Because of the Missouri law permitting a verdict by nine of twelve jurors, and the Minnesota law permitting a verdict by ten of the twelve jurors, the courts of these states have become popular for damage suits against railroads. Consequently railroad companies are often harassed by being forced to defend suits far from the scene of the accident, and far from the residence of the parties and their witnesses, and they frequently resort to injunctions restraining the prosecution of the suits in the above states.

The rule is well-settled that a court of equity, having jurisdiction over the party, will, upon a proper showing, enjoin him from prosecuting the action in the courts of another state. *Cole v. Cunningham,* 133 U. S. 107; *Sandage v. Studebaker,* 41 N. E. 380, 142 Ind. 148; *Cleveland, C. C. & St. L. Ry. Co. v. Shelly,* 170 N. E. 328 (Ind. App.). The issuance of such an injunction is not an attempt to control the actions of the court of another state, but is a restriction upon the person of one within the jurisdiction of the court issuing the injunction. *Rader v. Stubblefield,* 43 Wash. 334, 86 Pac. 560 (Wash.).

It is not disputed that the probate court possesses general equitable jurisdiction, Burns R. S. 1926, sec. 1762, 1771. However the petitioner insists that the Employers' Liability Act, 45 U. S. C. A., Sec. 51-59, gives her an absolute right to sue in the state courts of Missouri, and that this right cannot be abridged by a state court of equity. This contention has been raised before, and the courts have held that the Federal Employers' Liability Act does not "require state courts to entertain suits arising under it, but only empowers them to do so," *Douglas v. New Haven R. R.,* 279 U. S. 377, and that it does not confer additional jurisdiction upon state courts, but that the jurisdiction of state courts remains the same, and that since the state courts could enjoin the prosecution of actions in a foreign state before the act, they may still do so. *Cleveland, C., C., C. & St. Louis Ry. Co. v. Shelly, supra; Chicago, M. & St. Paul R. R. v. McGinley,* 175 Wis. 565, 185 N. W. 218; *Reed's Adm'x v. Illinois Central R. R.,* 182 Ky. 455, 206 S. W. 794. But the state courts cannot interfere with the

exercise of jurisdiction by federal courts. *Chicago, M. & St. Paul R. R. v. Schendel,* 292 Fed. 326.

The question of when the courts will exercise such jurisdiction leads to greater difficulty. All courts will enjoin a foreign suit when its purpose is to evade the substantive law of the domicile of the plaintiff in such suit; but most courts refuse an injunction merely because the procedure in the foreign state is different. *Sandage v. Studebaker, supra.* The favorite expression of the courts is that an injunction will issue only to prevent hardship, fraud, or oppression. *Illinois Life Ins. Co. v. Prentiss,* 277 Ill. 383, 115 N. E. 554. The court in the McGinley case did not think that the loss of the privilege of examining the plaintiff before the suit, the subjection of the defendant to the verdict of ten of twelve jurors, the fact that the jury could not view the scene of the accident, the fact that defendant's witnesses could not be subpoenaed, or the allegation that plaintiff's attorneys were ambulance chasers warranted an injunction. The court held in the Prentiss case that an injunction was not justified because defendant would be subjected to the verdict of nine of twelve jurors. But the Indiana Court in the Shelly case thought that the verdict of nine of twelve jurors would give plaintiff an unfair advantage, although the court also based the issuance of the injunction upon the trouble and expense of defending a suit in a foreign jurisdiction. The Supreme Court of Washington held that the great distance between the state of Washington, the residence of plaintiff and defendant, and the state of Minnesota, where the suit was filed, warranted an injunction against the prosecution of the suit in Minnesota. *Northern Ry. v. Richey and Gilbert Co.,* 132 Wash. 526, 232 Pac. 355. The allegations that the defense of a suit in a foreign jurisdiction would entail inconvenience and expense, and that the finding of fact by the jury was not subject to review on appeal were held not to entitle defendant to an injunction. *Lancaster v. Dunn,* 153 La. 15, 95 So. 385. The allegation in *Reed's Adm'x v. Illinois Central, supra,* that the plaintiff's attorney had been retained because of unethical practice was insufficient to justify an injunction, but an injunction was granted upon the allegation that the suit was brought in a foreign state merely for the purpose of harassing the defendant, and putting him to greater expense. The Indiana court in *Culp v. Butler,* 69 Ind. App. 668, 122 N. E. 684, enjoined the plaintiff from prosecuting an action in Illinois when the statute of limitations had barred the action in Indiana. The decision has been criticized in 33 *Harvard L. R.* 92, the author of that article being of the opinion that the decision was erroneous because the plaintiff's cause of action still existed in Indiana, although his remedy was lost. A suit filed in a foreign jurisdiction may be enjoined because its prosecution would be a burden on interstate commerce. *Michigan Central R. R. v. Mix,* 278 U. S. 492; *Davis v. Farmer's Co-operative Equity Co.,* 262 U. S. 312; *Weinard v. Chicago, M. & St. Paul R. R.,* 298 Fed. 977.

The rule to be deduced from the above authorities is that the courts, though often reluctant to do so, will issue an injunction if they think the litigation vexatious. But each court has a somewhat different conception of vexatiousness. In the principal case the probate court, upon the authority of the Shelly case, properly issued the injunction. And since the

court acted within its jurisdiction the dismissal of the writ of habeas corpus by the district court was correct, it being available only when there is a want of jurisdiction. *United States v. Pridgeon*, 153 U. S. 48.

R. O. E.