Constitutional Law--Jurisdiction of State Courts Over Causes Arising Under Federal Employer's Liability Act

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up a title in himself inconsistent with the title of the mortgagee.\footnote{7} Opposed to that result, in a very recent case\footnote{8} where the defendant claimed an interest prior to the making of the mortgage, under an oral contract with the mortgagor and possession taken pursuant thereto, the court held no freehold was involved, citing \textit{Becker v. Fink}\footnote{9} and another case.\footnote{10} \textit{Becker v. Fink} involved only a question of priority of liens, but \textit{Williams v. Spitzer}, the other case cited, involved a defense by a third person who claimed title from the mortgagor under a deed that antedated the mortgage, yet under circumstances, where at the time of the conveyance to him his grantor held nothing but a contract right under a contract with the mortgagor. In holding, as it does, that no freehold was there involved, that case relies upon \textit{Van Meter v. Thomas},\footnote{11} which involved a claim of lien on the decree obtained by the mortgagees, because of a judgment obtained against one mortgagee, and this can hardly be said to sustain the decision which relies upon it for support.

In that quandary appears the case which is the subject of this note.\footnote{12} That case was one where the defendants claimed title by deed from the mortgagor which they insisted was delivered prior to the making of the mortgage. In effect, that case is very much like \textit{Kerfoot v. Cronin} supra. The majority opinion held a freehold was involved, thus arriving at the same result but without reference to the \textit{Kerfoot} case, citing in support of that result, instead, three cases\footnote{13} none of which appear to sustain the position taken. A dissenting opinion relies upon \textit{Farmers State Bank v. Fast}.\footnote{14}

Inasmuch as it is really only a question of practice, it is hoped that the law upon that aspect of this question is now settled in favor of the rule of \textit{Kerfoot v. Cronin}, for the majority opinion having reached that result apparently unaware of the existence of that case, the opinion must necessarily be strengthened by its addition.

\textbf{Elmer M. Leesman.}

\textbf{Constitutional Law—Jurisdiction of State Courts over Causes Arising under Federal Employer's Liability Act.—[United States]} In 1910, sec. 6\footnote{1} of the Federal Employers Liability Act was amended by adding the following:

\begin{itemize}
  \item \textbf{9. Note 3 supra.}
  \item \textbf{10. Williams v. Spitzer} (1903) 203 Ill. 505.
  \item \textbf{11. (1894) 153 Ill. 65.}
  \item \textbf{12. Sullivan v. Abbott} (1929) 335 Ill. 129.
  \item \textbf{13. Gage v. Pease} (1883) 107 Ill. 598; discussed in 8 Illinois Law Review 176, 179; Franklin v. Loan and Investment Co. (1894) 152 Ill. 345; \textit{Van Meter v. Thomas}, see note 11 supra.
  \item \textbf{14. See note 8 supra.}
\end{itemize}

1. "No action shall be maintained under this chapter unless commenced within two years from the day the cause of action accrued."
"Under this chapter an action may be brought in a district of the residence of the defendant, or in which the cause of the action arose, or in which the defendant shall be doing business at the time of commencing such action. The jurisdiction of the courts of the United States under this chapter shall be concurrent with that of the courts of the several states, and no case arising under this chapter and brought in any state court of competent jurisdiction shall be removed to any court of the United States."

Two recent cases, *Hoffman v. State of Missouri,*\(^3\) and *Michigan Central Railway Company v. Mix*\(^4\) involving jurisdiction over cases brought in state courts, on causes of action arising under the Federal Employers Liability Act have completely ignored sec. 6, as amended. The question in each case was whether the principle announced in *Davis v. Farmers Co-operative Equity Company*\(^5\) could be applied to defeat the jurisdiction of the state courts. In the *Davis* case it was held that a statute authorizing service upon an agent soliciting business for an interstate carrier in Minnesota, construed by the courts of Minnesota as compelling every foreign interstate carrier to submit to suit as a condition precedent to the right of maintaining a soliciting agent within the state, was invalid under the commerce clause. In that case the statute compelled the submission to jurisdiction in an action which arose outside of that state and where neither of the parties were residents of that state; where the defendant did not operate or maintain any portion of its transportation system within the state of Minnesota, and where the trial of a case so far from the residence of the witnesses would adversely affect the interstate business of the carrier.\(^6\) The Employers Liability Act was not involved in the *Davis* case.

In the *Hoffman* case there was a suit in a state court in Missouri against a Missouri corporation, by a citizen of Kansas upon a cause of action arising in Kansas under the Employers Liability Act. It was held by the Supreme Court that the *Davis* case did not apply because the railroad company was sued in the state of its incorporation, and was engaged in both intrastate and interstate business in the state. In the *Mix* case, X, an employee of the Michigan Central Railroad Company, was killed in Michigan. His widow moved to Missouri, was there appointed administratrix of his estate, and brought suit in a state court under the Employer's Liability Act. The railroad company was a Michigan corporation and had only a soliciting agency in Missouri. It was held that the principle of the *Davis* case defeated the jurisdiction of the state court; that jurisdiction

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6. The *Davis* case was followed, with questionable propriety, in *Iron City Produce Co. v. American Ry. Express Co.* (1926) 22 Ohio App. 165, 153 N. E. 316. It was held in *Griffin v. Seaboard Airline* (1928) 28 Fed. (2d) 998, that it did not apply if the plaintiff was a resident of the state. In none of these cases was the Employer's Liability Act involved.
NOTES

is determined by the residence of the parties at the time the cause of action accrued rather than at the time the suit is commenced.7

Nothing is said in either case as to sec. 6 of the Employer’s Liability Act. It is difficult to believe that it was overlooked.8 The conclusion must be that the court considered sec. 6 to be so clearly inapplicable as to require no comment. That it is not quite so simple as that is evidenced by at least one decision to the effect that sec. 6 made inapplicable to a suit under the act the doctrine of the Davis case.9

The provision of sec. 6 in regard to suits in the federal courts is probably only a venue statute. The federal courts clearly had jurisdiction under existing legislation, for the cause arose under “the Constitution or laws of the United States.”10 Jurisdiction was here originally limited to claims in excess of three thousand dollars.11 But this limitation was removed in 1911, when sec. 24 of the Judicial Code was amended, giving the district courts jurisdiction “of all suits and proceedings arising under any law regulating commerce.”12

If it be construed to regulate venue or jurisdiction still sec. 6 can be sustained as valid Federal legislation, either under the power of Congress over the federal courts, or under its power over interstate commerce.13 There would seem to be no doubt but that if in

7. The principal case was a suit brought by the railroad company for a writ of prohibition against the trial court’s action in assuming jurisdiction. Mr. Justice Brandeis makes the surprising assumption that the widow did change, or might have, changed her residence for the express purpose of bringing the suit in Missouri, rather than in Michigan. If this had been the fact, and were it pertinent, clearly the burden was on the railroad company to plead and prove it.

8. The Mix case was decided Feb. 18, 1929. The case of Douglas v. N. Y., N. H. & H. R. Co., 49 Sup. Ct. Rep. 355, was first argued January 16, 1929, and specifically involved the question of the proper construction of sec. 6. It was held in that case that sec. 6 did not impose a duty upon a state court to accept jurisdiction of suits arising under the act. Although the court of Secured Employers Liability cases (1912) 223 U. S. 1, 32 Sup. Ct. Rep. 169, 56 L. Ed. 327, as sustaining this result, the language of that case is to the contrary. The court there said, “The suggestion that the act of Congress is not in harmony with the policy of the state, and therefore that the courts of the state are free to decline jurisdiction, is quite inadmissible.” (P. 57.)


the Mix case the action had been brought in the federal court in Missouri it could have been maintained. The objection that there was an interference with interstate commerce is obviously met by the answer that Congress expressly has given legislative sanction to it.

Does not the same answer apply to an action in the state courts, in a state where the defendant is doing business? Sec. 6 gives the federal courts and the state courts concurrent, i. e., equal, jurisdiction. If the first portion of the section be construed to be a regulation of the venue of actions in the federal courts and therefore inapplicable to the jurisdiction of state courts, still by other valid federal legislation all the federal district courts are given jurisdiction. The competent courts of all states therefore have jurisdiction, because all federal district courts have jurisdiction.

If the first portion of the section be construed to be a regulation of the jurisdiction of the federal courts, then jurisdiction of the state courts is limited to those states where the parties are residents, or where the action accrued, or the carrier is doing business.

In either event it would seem that the Supreme Court could not re-regulate the jurisdiction of the federal and state courts, but would be forced to accept the regulation of Congress to the effect that any competent federal or state court in a state where the carrier was doing business has jurisdiction.

BERNARD C. GAVIT.

Receiverships—Process—Foreign Corporations.—[New York] In an action begun in New York by a Vermont citizen against a Vermont corporation for negligence occurring in Vermont and causing death there the summons was served upon a director residing in New York. The defendant had been placed in the hands of receivers in Vermont and the receivership had been extended to New York under U. S. Jud. Code sec. 56, after the cause of action arose but before the service of process. The defendant having moved to set aside the service, held, the motion should be granted. Gaboury v. Central Vermont Ry. Co.1

The efficiency of post-receivership service of process in suits arising out of pre-receivership business has but rarely come before the courts. In the instant case, the court (Cardozo, C. J.) rested its decision on two grounds: (1) that a foreign corporation which has been placed in receivership is in the same position as if it had

against removal of causes to the federal courts, if begun in the state courts, was given unquestioned effect.

14. There can be no question but what the railroad company was "doing business" in Missouri within the meaning of sec. 6. It may have been doing interstate business exclusively, but the act makes no distinction between interstate and intrastate business. It requires merely that the defendant be "doing business" in the district.

15. See supra, notes 10 and 12.