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Federal Courts--Personal Jurisdiction Not Required on Transfer to Cure Venue Defect

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criminal suspects. 70 YALE L.J. 694, 724 (1961). Lie detectors have been valuable in determining the validity of paternity claims. 4 DE PAUL L. REV. 31 (1954). It is well settled that confessions obtained by the use of lie detectors are admissible if otherwise properly obtained. Annot., 23 A.L.R. 2d 1310 (1952).

In preliminary investigations as distinguished from judicial litigation, the use of lie detectors seems to have passed beyond the experimental stage. Several states allow lie detector evidence upon stipulation, and upon the theory that absolute infallibility is not the standard for admissibility of scientific evidence. The status of lie detector evidence in West Virginia seems an open question although the use of polygraph evidence has been advocated in 48 W.VA. L.Q. 37 (1941-2). The eventual admission of lie detector evidence does appear feasible, with further investigation and research into interrogation techniques, the formulation of standards for polygraph examinations, and the use of multiple scientific techniques to record the reactions of those being examined.

John Everett Busch

Federal Courts—Personal Jurisdiction Not Required in Transfer to Cure Venue Defect

Anti-trust action was transferred from the district court in state A to the district court in state B because of improper venue. Court B dismissed the action on the grounds that court A lacked authority to transfer the action since it did not have personal jurisdiction over the *Ds*. *Held*, reversed. 28 U.S.C. § 1406(a) (1958), permits the court in the district in which the action is filed to transfer it to another district, when venue is laid in the wrong district, if it be in the interest of justice, whether the court in which the action was originally filed had personal jurisdiction or not. *Goldlawr, Inc. v. Heiman*, 369 U.S. 463 (1962).

Prior to 1948 if the defendant's objection to improper venue was sustained the action had to be dismissed, because there was no machinery to transfer the case. To avoid this harsh rule, in 1948, Congress enacted a provision which provided for a transfer to a court in which venue was proper. 28 U.S.C. § 1406(a) (1948). In 1949, this provision was amended to provide for a dismissal or "if it be in the interest of justice" to transfer to a district in which it could have been brought. 28 U.S.C. 1406 (a) (1958). This amendment was

enacted to prevent a plaintiff from deliberately bringing an action in the wrong district to effect service of process on the defendant and after perfection of such process, obtaining a transfer of the case to the proper district. If such abuse is found in a particular case, the court has the power of dismissal. 1 MOORE, FEDERAL PRACTICE ¶ 0.146(3), 0.146(4) (2d ed. 1961).

Transfers under this section would only arise when there is a defect in venue, and a majority of cases concede that transfer is authorized under the section where the transferor-court has personal jurisdiction. *Hohensee v. News Syndicate, Inc.*, 286 F.2d 527 (3d Cir. 1961); *Orion Shipping and Trading Co. v. U.S.*, 247 F.2d 755 (9th Cir. 1957). The principal case has broadened the apparent scope of this section by permitting transfer where the court lacks personal jurisdiction if it be in the interest of justice, thus ending the conflict between the Circuit Courts of Appeal over this subject. *Goldlawr, Inc. v. Heiman*, 288 F.2d 579 (2d Cir. 1961); *Hohensee v. News Syndicate, Inc.*, 286 F.2d 527 (3d Cir. 1961); *Orion Shipping and Trading Co. v. U.S.*, 247 F.2d 755 (9th Cir. 1957); *Internatio-Rotterdam, Inc. v. Thomsen*, 218 F.2d 514 (4th Cir. 1954).

By this holding, plaintiffs who have begun an action can transfer the action rather than having it dismissed and then going through the formality of re-filing the case. Thus the policy of the federal courts to orderly and expeditiously adjudicate cases would be furthered. *Internatio-Rotterdam, Inc. v. Thomsen*, 218 F.2d 514 (4th Cir. 1954).

Another effect of this decision would be that a plaintiff who acts in good faith will not be required to begin his action again because of a mere technicality. Dismissal for improper venue would be a severe penalty and should be reserved for cases where the institution in an improper venue evidences an element of bad faith on behalf of the plaintiff. Courts should strive to decide and dispose of cases rather than dismiss litigants on pleas in abatement. 1 MOORE, FEDERAL PRACTICE ¶ 0.146(5) (2d ed. 1961).

Arguments in support of the principal case are based on the fact that Congress intended to extend this section to situations where transfer can be made without personal jurisdiction. It is also contended that decisions denying power to transfer where the court lacks personal jurisdiction seem to read into the provision a restriction which its language does not contain and which defeats its purpose. BARRON & HOLTZOFF, FEDERAL PRACTICE & PROCEDURE § 88 (Supp.

1961). This argument further asserts that Congress negated any abuse of this section by leaving with the court the power of discretion to choose between dismissal and transfer. The standard to determine if an action should be transferred is controlled by the flexible legal cliché "if it be in the interest of justice". 1 MOORE, FEDERAL PRACTICE ¶ 0.146(5) (2d ed. 1961). In *Internatio-Rotterdam, Inc. v. Thomsen*, 218 F.2d 514 (4th Cir. 1954) and *Skilling v. Funk*, 173 F. Supp. 939 (W.D. Mo. 1959), the courts held that transfer was in the interest of justice if the plaintiff acts in good faith and such transfer will expedite the adjudication of the case. On the other hand, transfer should not be ordered if inequitable or vexatious. *Petroleum Finance Corp. v. Stone*, 116 F. Supp. 426 (S.D. N.Y. 1953).

To the opposite extreme, other authorities argue that the section should be strictly construed and that any extension of the provision by courts enter the realm of judicial legislation. The refusal to transfer has generally been based on the proposition that until service of process is perfected, and personal jurisdiction obtained, no action is brought and the court may not issue any decree affecting an adverse party. It is also contended that since the section was enacted to cure venue defects and also contains a section providing for waiver of venue, 28 U.S.C. § 1406 (b) (1958), that it is presupposed that the defendant has been served and has the opportunity to object. *Hohensee v. News Syndicate, Inc.*, 286 F.2d 527 (3d Cir. 1961); Comment, 61 COLUM. L. REV. 902 (1961).

It should also be noted that before a transfer will be allowed, the transferor-court must have jurisdiction of the subject matter of the case. *First Nat'l Bank of Chicago v. United Air Lines*, 190 F.2d 493 (7th Cir. 1951). This contention was also upheld before the enactment of 28 U.S.C. § 1406(a) (1958), in *U.S. v. Corrick*, 298 U.S. 435 (1936), in which the court held that a court without subject-matter jurisdiction is powerless to affect the proceedings in any way. Further confirmation of this point is found in *Internatio-Rotterdam, Inc. v. Thomsen*, 218 F.2d 514 (4th Cir. 1954), where it was held that if the transferor-court has subject-matter jurisdiction, failure of the plaintiff to effect service in the transferor-district should not act as a rigid bar to a transfer to a district where venue would be proper and service could be made on the defendant.

It also seems that the section would be inoperative if personal service of process cannot be obtained in either the transferor or transferee district. *In re Josephson*, 218 F.2d 174 (1st Cir. 1954) held

that if the transferor-court does not have service of process over the defendant and the defendant is not amenable to service of process in the transferee-district, even though venue is proper in both districts, the transferor-court could not transfer the action because both courts lack personal jurisdiction over the defendant, unless he submits thereto. Certainly if the transferor-court does not have jurisdiction over the defendant's person, the transferee-court could not obtain jurisdiction by the act of transfer alone. *Wilson v. Kansas City So. Ry.*, 101 F. Supp. 56 (W.D. Mo. 1951); *Scarmardo v. Mooring*, 89 F. Supp. 936 (S.D. Tex. 1950)

The decision in the principal case has clarified the interpretation of the statute and has set out a rule to be followed in the future. Since personal jurisdiction is not prerequisite to transfer, the use of the section will be expanded to situations where the plaintiff, acting in good faith, mistakenly believes the defendant to be a resident of the transferor-district. This will enable the federal courts to more swiftly and easily adjudicate cases to the best interests of the parties concerned.

Frank Thomas Graff, Jr.

Labor Law—Norris-LaGuardia Act—Power of Federal Court to Enjoin Breach of No Strike Clause

An employer and union agreed to arbitrate all grievances concerning wages, hours, and other conditions of employment. The union also promised to engage in no strikes or work stoppages. However, on nine different occasions during a period of nineteen months, production was in fact interrupted by labor strife. The employer sought injunctive relief, but both the district and circuit court dismissed the complaint. On appeal to the United States Supreme Court in a five to three decision, *held*, affirmed. The Norris-LaGuardia Act, 29 U.S.C. § 101 (1958) proscribes injunctive relief against concerted activities arising out of labor disputes. *Sinclair Ref. Co. v. Atkinson*, 370 U.S. 238 (1962).

In construing § 301 (a) of the Labor Management Relations Act, 29 U.S.C. § 185 (a) (1958), the United States Supreme Court decided that Congress intended federal substantive law fashioned from national labor policy to apply in labor disputes. *Textile Workers of America v. Lincoln Mills*, 353 U.S. 448 (1957). The Supreme Court held in that case that a federal district court could grant specific per-