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Injunctions--Exercise of Power to Enjoin Litigant within Court's Territorial Jurisdiction from Bringing Suit in Distant Tribunal--Federal Employers' Liability Act Nonrestrictive of General Equitable Power

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INJUNCTION — EXERCISE OF POWER TO ENJOIN LITIGANT WITHIN COURT'S TERRITORIAL JURISDICTION FROM BRINGING SUIT IN DISTANT TRIBUNAL — FEDERAL EMPLOYERS' LIABILITY ACT NONRESTRICTIVE OF GENERAL EQUITABLE POWER. — Decedent was fatally injured in West Virginia while in the employ of the plaintiff railroad, a Maryland corporation carrying on business in several states, including West Virginia and Indiana. The decedent's administratrix proceeding under the Federal Employers' Liability Act[1] employed counsel in Chicago and in Hammond, Indiana, and instituted suit in a federal district court of Indiana, a distance of approximately five hundred miles from her residence and from place where injury occurred. Thereupon, the railroad filed a bill of complaint in a federal district court for West Virginia, in the territorial jurisdiction of which defendant administratrix resided, and, seeking to enjoin the suit pending in Indiana, alleged as grounds for relief that: (a) defendant administratrix could secure competent attorneys in West Virginia and obtain a fair trial in either state or federal courts within six miles of her residence; (b) suit had been brought in distant court pursuant to an understanding between defendant and her attorneys solely to avoid suing in West Virginia; (c) the necessity of defending in a distant tribunal would entail great inconvenience, disruption of railroad's business and expense that could not be recovered at law; (d) that disruption of the railroad's affairs occasioned by such a distant suit would constitute an unreasonable burden on interstate commerce. *Held,* that the power of a court of general equity jurisdiction to restrain persons within its territorial jurisdiction from exercising a purely legal right in an inequitable manner is not abridged by the venue sections of the Federal Employers' Liability Act and that a preliminary injunction would issue to prevent prosecution of defendant's suit in any court sitting at an unreasonable distance from defendant's residence. *Baltimore & Ohio R. R. v. Bale.*[2]

That a state may in a proper case enjoin its citizens from the performance of illegal or inequitable acts in another state is well established.[3] Although the venue sections of the Federal Employ-

[1] Federal Employers' Liability Act, 35 STAT. c. 149 (1908), 10A F. C. A. Tit. 45, §§ 51-59 (1938).

[2] 31 F. Supp. 221 (N. D. W. Va. 1940).

[3] Cole v. Cunningham, 133 U. S. 107, 10 S. Ct. 269, 33 L. Ed. 538 (1890); Mason v. Harlow, 84 Kan. 277, 114 Pac. 218, 33 L. R. A. (N. S.) 234 (1911); Miller v. Gettings, 85 Md. 601, 37 Atl. 372, 37 L. R. A. 654, 60 Am. St. Rep. 352 (1897); 32 C. J. § 137, p. 115.

But only as a matter of comity will a foreign court abate a suit after the plaintiff has been enjoined from further participation therein by court of his

ers' Liability Act[4] expressly give a plaintiff an election of suing either in state or federal courts at the place (a) where plaintiff resides, (b) where cause of action arose, (c) wherever the defendant railroad is doing business, the act has quite uniformly been construed as effecting no abridgement of the general powers of equity.[5] Necessarily, the exercise of the power in cases arising under the act is discretionary and dependent upon the facts of each case.[6] When the problem of the instant case has been before the courts the allegations of grounds for relief have generally corresponded to those urged in the present bill of complaint,[7] with occasional additions such as the difficulty of applying the law of the jurisdiction where cause of action arose in the court of choice[8] and the possible detriment that the defendant carrier might suffer from differences in procedure.[9]

State courts generally have granted injunctions on proper showing to restrain their citizens from suing under the act in tribunals of sister states.[10] Fewer direct adjudications, by federal

domicil or presence, Alford v. Wabash Ry., 229 Mo. App. 102, 73 S. W. (2d) 277 (1934).

[4] 10A F. C. A. Tit. 45, § 56.

[5] *Ex parte* Crandall, 52 F. (2d) 650 (S. D. Ind. 1931), *aff'd* 53 F. (2d) 969 (C. C. A. 7th, 1931), *cert. denied* 285 U. S. 540, 52 S. Ct. 312, 76 L. Ed. 933 (1932); Reed's Adm'x v. Illinois Central Ry., 182 Ky. 455, 206 S. W. 794 (1918); Missouri-Kansas-Texas R. R. v. Ball, 126 Kan. 745, 271 Pac. 313 (1928). But a court given jurisdiction over a case by the act cannot refuse to hear such case: Connelly v. Central R. R., 238 Fed. 932 (S. D. N. Y. 1916); Schendal v. McGee, 300 Fed. 273 (C. C. A. 8th, 1924); Southern Ry. v. Cochran, 56 F. (2d) 1019 (C. C. A. 6th, 1932).

[6] Landcaster v. Dunn, 153 La. 15, 95 So. 385 (1932) (fact that person sought to be enjoined is administrator or administratrix appointed by court in which complaint is filed seems to be highly persuasive to granting injunction). New York C. & St. L. Ry. v. Perdiue, 97 Ind. App. 517, 187 N. E. 349 (1933); Reed's Adm'x v. Illinois Central Ry., 182 Ky. 455, 206 S. W. 794 (1918).

[7] Mere inconvenience is not enough to justify injunction, Missouri-Kansas-Texas R. R. v. Ball, 126 Kan. 745, 271 Pac. 313 (1928); Chicago, *etc.*, Ry. v. McGinley, 175 Wis. 565, 185 N. W. 218 (1922).

Mere fact that burden on interstate commerce is alleged is not sufficient for legislature has not deemed it such, Mobile & O. Ry. v. Parrent, 260 Ill. App. 284 (1931).

[8] Not sufficient alone, Chesapeake & O. Ry. v. Vigor, 17 F. Supp. 602 (S. D. Ohio, 1936); Chicago, M. & St. P. Ry. v. McGinley, 175 Wis. 565, 185 N. E. 218 (1922).

[9] Held not sufficient grounds, Missouri-Kansas-Texas R. R. v. Ball, 126 Kan. 745, 271 Pac. 313 (1928); Wabash Ry. v. Lindsey, 269 Ill. App. 152 (1933); held sufficient ground, Kern v. Cleveland, *etc.*, Ry., 204 Ind. 595, 185 N. E. 446 (1933).

[10] Cleveland, *etc.*, Ry. v. Shelly, 96 Ind. App. 273, 170 N. W. 328 (1932); Kern v. Cleveland, *etc.*, Ry., 204 Ind. 595, 185 N. E. 446 (1933); *In re* Spar's Estate, 191 Iowa 1134, 183 N. W. 580 (1921); McConnell v. Thomson, 200 N. E. 96 (Ind. App. 1936); New York C. & St. L. Ry. v. Perdiue; Reed's Adm'x v. Illinois Central Ry., both *supra* n. 6; injunction refused, Payne v. Knapp,

courts restraining persons within their jurisdiction from proceeding in distant federal courts, have been found. In this latter category, an Ohio federal court refused to enjoin an Ohio citizen from prosecuting his suit in Indiana.[11] Contrary in view, *habeas corpus* was refused by a federal court after petitioner, an Indiana citizen, had been imprisoned for contempt of an Indiana state court injunction forbidding him from suing in Missouri on a Tennessee cause of action.[12] Similarly, after a Virginia state court had enjoined one of her citizens from suing on a Virginia cause of action in a New York federal court, the latter court refused to prevent the defendant railroad from enforcing the injunction.[13]

From the standpoint of fairness the result reached in the instant case seems eminently desirable. Aside from the equitable considerations arising between the parties, another element must be taken into account in some of the cases where suits brought under the act in distant courts have been enjoined, *i.e.*, the participation of certain lawyers who are engaged with their non-lawyer agents in a systematic business of interstate "ambulance chasing".[14] Injunction would seem to place an effective curb on this pernicious practice. W. E. N.

OIL AND GAS — ENFORCEMENT OF FREE GAS CLAUSE IN EQUITY. — *P* owned land which he leased for oil and gas purposes to *D*. The lease was for a fixed term and "as long thereafter as oil and gas, or either of them, is produced from" the leased premises. The lease also provided that *D* pay a fixed royalty for gas from each well drilled on the premises, "the product of which is marketed and sold off of the premises," payments to continue so long as gas was marketed and used, or the "well shut in as a gas well." There was a further provision in the lease that *P* could take free gas for use in the two dwelling houses on the premises. One well was

197 Iowa 737, 198 N. W. 62 (1924); Chicago, M. & St. P. Ry. v. McGinley; Missouri-Kansas-Texas R. R. v. Ball, both *supra* n. 7.

[11] Chesapeake & O. Ry. v. Vigor, 17 F. Supp. 602 (S. D. Ohio, 1936), *aff'd* 90 F. (2d) 7 (C. C. A. 6th, 1937).

[12] *Ex parte* Crandall, 52 F. (2d) 650 (S. D. Ind. 1931), *aff'd* 53 F. (2d) 969 (C. C. A. 7th, 1931); *cert. denied* 285 U. S. 540, 52 S. Ct. 312, 76 L. Ed. 933 (1932).

[13] Bryant v. Atlantic C. L. Ry., 92 F. (2d) 569 (C. C. A. 2d, 1937).

[14] Expressly recognized as an element in the *ratio decidendi* where the client has cooperated with the attorney: Reed's Adm'x v. Illinois Central Ry., 182 Ky. 455, 206 S. W. 794 (1918); Chicago, M. & St. P. Ry. v. McGinley, 175 Wis. 565, 185 N. W. 218 (1922); *quaere*, to what extent does the obvious presence of "ambulance chasing" form the "inarticulate major premise" where injunction is sought to restrain suit in distant court?