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Case Digest

CASE DIGEST

CONFLICT OF LAWS: Most Significant Contacts Choice of Laws Rule

Fabricus v. Horgen, — Iowa —, 132 N.W.2d 410 (1965).

Appellee, administrator of an Iowa motorist and passengers who were killed in a head-on collision in Minnesota with an automobile owned and operated by a second Iowa motorist, brought wrongful death actions against the administratrix of the second motorist under a Minnesota statute. The district court overruled motions to dismiss, and the administratrix appealed. *Held*: Judgment affirmed and remanded for further proceedings. On the question of which state's law was applicable in determining the measure of damages and who could maintain suit for their recovery in Iowa, the court held that "[w]hen an Iowa administrator brings an action in the Iowa courts for the benefit of Iowa people and against an Iowa defendant *his standing, his methods of procedure and his measure of damages are according to Iowa law.*" *Id.* at ...., 132 N.W.2d at 416 (Emphasis added.) In so ruling, the court also held that the question of actionable negligence was to be determined according to the laws of Minnesota, where the claimed tort occurred.

This decision expands recent Iowa holdings and abandons the former Iowa rule of *lex loci delicti* in favor of the "most significant contacts" rule canonized in Restatement of Conflict of Laws, Second, Tentative Draft No. 9, § 379. The Restatement's position is that the mere fortuitous occurrence of an accident in a state does not necessarily give rise to application of that state's laws under the older "place of the injury" rule, but rather the interests of the states having contact with the issues and the parties should be taken into account.

This newer and more flexible rule has gained favorable recognition as a result of its adoption in *Kilberg v. Northeast Airlines, Inc.*, 9 N.Y.2d 34, 211 N.Y.S.2d 133, 172 N.E.2d 526 (1961) and the more recent decision in *Griffith v. United Air Lines, Inc.* 416 Pa. 1, 203 A.2d 796 (1964). The approach has been favorably acknowledged by the United States Supreme Court in *Richards v. United States*, 369 U.S. 1, 12-13 (1962), but has received criticism from several commentators. See, *e.g.*, Ehrenzweig, "The 'Most Significant Relationship' in the Conflicts Law of Torts", 28 *Law and Contemporary Problems* 700 (1963). It appears that Nebraska adheres to the older rule of *lex loci delicti*. See, *Missouri Pac. Ry. v. Lewis*, 24 Neb. 848, 40 N.W. 401 (1888).

CRIMINAL LAW: Statutes; Void for Vagueness

Markham v. Brainard, 178 Neb. 544, 134 N.W.2d 84 (1965).

Appellant was convicted under section 28-1011.07 of the Nebraska Revised Statutes which makes it unlawful for any person who has been "charged either by complaint, information or indictment with a crime of violence, or who has been convicted of a crime of violence amounting to a felony . . ." to possess any firearm of a given description. Appellant had previously been convicted of armed robbery. On appeal, two constitutional objections to the statute were raised: (1) the term "crime of violence" is undefined in the statute making it void for vagueness, and (2) the statute applies to a person charged with a crime of violence whether he knew of the charge or not. *Held*: Conviction reversed on both grounds. A crime must be defined with sufficient standards to inform persons of what conduct is prohibited and the person accused must know the act was a crime at the time of its commission.

This case is further illustration that criminal statutes in Nebraska may be attacked on a void for vagueness theory by demonstrating any hypothetical situation in which application of the statute would be ambiguous. In *Draper v. Signer,* 177 Neb. 726, 131 N.W.2d 131 (1964) the court in interpreting section 29-2620 of the Nebraska Revised Statutes which provides for indeterminate sentences for those accused of other than crimes of violence, held that robbery was a crime of violence. Thus, although appellant clearly fell within the terms of the statute in *Markham,* the court recognized the difficulty of construing "crime of violence" in other contexts and on this basis held the statute void.

It is also clear that appellant knew of his conviction for armed robbery, but the statute did not require such knowledge in all hypothetical cases and was thus void on this ground also. For a successful hypothetical attack on an obscenity statute see State v. Pocras, 166 Neb. 642, 90 N.W.2d 263 (1958).

The effect of *Markham* on the Indeterminate Sentencing Act is unclear. This statute would probably not be considered a penal statute and thus not subject to the void for vagueness doctrine. However, some cases have held that statutes relating to criminal procedure designed to protect or grant rights to accused persons should be liberally construed in favor of the accused. State v. Campbell, — Del. —, 190 A.2d 610 (1963). The exemption of those accused of crimes of violence from operation of the Indeterminate Sentencing Act may be thus narrowly confined, assuming that the parole potential related to an indeterminate sentence is a right given to those accused of a crime.

PLEADING: Counterclaims; Allegation of "no value"

Stahlhut v. County of Saline, 176 Neb. 189, 125 N.W.2d 520 (1964).

Plaintiff brought this action to recover damages for personal injuries sustained by him and damage to his automobile due to the negligence of the defendant county in failing to properly maintain a bridge which collapsed while the plaintiff was driving over it. The defendant answered alleging that the collapse of the bridge and whatever damage resulted therefrom was occasioned solely by the plaintiff's own negligence and counterclaimed for judgment against the plaintiff for costs which would be necessitated to replace the destroyed bridge. Plaintiff replied to the defendant's answer and to the counterclaim by a general denial of new matter contained therein, specifically denied any negligence on his part, and alleged the bridge had "no value whatever". In the district court, the case was tried to a jury, resulting in a verdict for the defendant on its counterclaim in the amount of $8,500. Plaintiff's motion for a new trial or in the alternative for judgment notwithstanding the verdict was overruled and appeal was taken. *Held*: Judgment affirmed. It was not prejudicially erroneous to instruct the jury to determine damages for replacing the bridge on the basis of reasonable cost, even though such instruction failed to consider the uncontested salvage value estimate of $2,830.80. The court ruled that the pleadings alleging "no value" as a defense to the counter-claim and plaintiff's failure to request an instruction which might or would have been more explicit eliminated the issue of salvage value from the consideration of the court and jury. *Dissent*: The uncontested estimate of the destroyed bridge's salvage value reestablished that issue in the case, and the failure to instruct the jury in relation to it was prejudicial in that it indicates that issue was not considered by the jury in their verdict.

This decision is in accord with *Barkalow Bros. Co. v. English,* 159 Neb. 407, 67 N.W.2d 336 (1954), which held that each party can avail himself of the other's pleadings as to issues raised and disputed. The *Stahlhut* rule illustrates the pitfalls of alleging "no value" as a defense whereafter the party so alleging offers no requested instruction rendering his allegations more explicit.

PRE-TRIAL PUBLICITY: Civil Trials

Siegfried v. City of Charlottesville, — Va. —, 142 S.E.2d 556 (1965).

The city of Charlottesville filed a petition seeking to condemn land owned by appellant. The day before the freeholders were scheduled to meet, a news article concerning the trial was pub-

lished including: (1) that the city offered $12,717 for the land; (2) that appellant asked $400,000 for the land; (3) that two dozen other parcels were purchased for the city's project without condemnation proceedings; (4) that an award to another landowner similarly situated was $20,000. This information was also broadcasted over a local radio station. On *voir dire* all freeholders called admitted reading the newspaper article, but on a question from the court replied that they were not prejudiced and would render a verdict solely on the evidence presented. The court then instructed the freeholders that they must try the case solely on evidence presented at the trial. The freeholders rendered a verdict of $14,750, and appeal was taken on the theory that it was error to permit the trial to proceed in light of the newspaper article. *Held*: Judgment reversed.

> It cannot be overlooked that the article was published on the afternoon immediately preceding the trial and that the prejudicial information was freshly imprinted upon the minds of the commissioners. Under these circumstances, the mental processes of at least one of the commissioners could have been subtly influenced by the article during the trial of the case, and we cannot say with reasonable certainty whether or not the award was affected. *Id.* at ——, 142 S.E.2d at 561.

Even though all freeholders answered that they could render an impartial verdict on only evidence admitted at trial, the Virginia Supreme Court of Appeals relied on the fact that evidence which would be inadmissible at trial was fresh in the freeholders mind as a result of the newspaper article. With the current controversy over pre-trial publicity in criminal proceedings, this case is significant in that it is a civil trial. The Nebraska rule with respect to civil trials is that the juror is not disqualified if he states under oath that he can impartially render a verdict in accordance with the law and evidence, even though he has prior knowledge of facts obtained from newspaper coverage. *Scott v. Chope*, 33 Neb. 41, 49 N.W. 940 (1891). For a discussion of the pre-trial problem in criminal proceedings, see Comment, 44 *Nebraska Law Review* 614 (1965).

SERVICE OF PROCESS: Immunity; Extradition

Santos v. Figueroa, 87 N.J. Super. 227, 208 A.2d 810 (1965).

Appellant, domiciled in Illinois, was arrested in Illinois upon a New Jersey criminal complaint for fraudulent conversion of a sum of money entrusted to him. No extradition proceedings were instituted, for appellant voluntarily agreed to appear and defend the charge in New Jersey. During the appellant's attendance at

the arraignment, he was served with a summons in a civil action arising out of the conversion. In the trial court, defendant moved to set aside the process on the ground that he was a non-resident of New Jersey who had voluntarily come into the state to attend a judicial proceeding and was consequently immune from service of process. The trial court sustained the motion and appeal was taken. *Held*: Judgment reversed and case remanded. A defendant who voluntarily comes into New Jersey to defend a criminal charge is not immune from service of process under the common law. The Superior Court held that appellant's failure in the trial court to raise immunity granted by the Uniform Extradition Act precluded him from asserting that immunity on appeal. The court stated, "We take no position on the question whether the statute would have been effective to invalidate his service had it been appropriately taken advantage of by the defendant." *Id* at —, 208 A.2d at 815.

The applicable section of the Uniform Extradition Act in force in New Jersey reads:

> A person brought into this state on, or after waiver of, extradition based on a criminal charge shall not be subject to service of personal process in civil actions arising out of the same facts as the criminal proceeding to answer which he is being or has been returned, until he has been convicted in the criminal proceeding, or, if acquitted, until he has had reasonable opportunity to return to the state from which he was extradited.

This is similar to section 29-753 of the Nebraska Revised Statutes except that the Nebraska statute deletes the words "or after waiver of".

The common law in Nebraska is similar to the now existing common law of the State of New Jersey. The Nebraska Supreme Court held in *In re Walker,* 61 Neb. 803, 86 N.W. 510 (1901), that a non-resident defendant brought into the State on a criminal extradition charge is not immune from service of process as to any suit, be it criminal or civil, whether or not arising out of the same transaction. This verdict was rendered before Nebraska adopted the Uniform Criminal Extradition Act in 1935. The adoption of the act changes the common law rule in that it affords the defendant immunity in a civil action arising out of the same transaction. The reason for this immunity is to prevent the abuse of the extradition process at the instance of claimants seeking to bring a defendant into the State solely to effect the civil process. *Santos v. Figueroa, supra.*

If the *Santos* case is followed in Nebraska, it would become imperative for the defendant to raise in the trial court the de-

fense of immunity under the Uniform Extradition Act. In the absence of the waiver provision in the Nebraska statute, it may be necessary for the defendant to require the actual institution of extradition proceedings to gain the immunity granted by the act. This seems to be an anomalous situation in view of the fact that it is far less costly if the defendant voluntarily agrees to come into the State, and exactly the same result occurs, *i.e.* the defendant's person is within the jurisdiction of the court. On the other hand, if the sole purpose of the act is to prohibit abuse of process, the Nebraska statute may reach the right result.

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