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Jurisdiction—Indirectly Affecting Land in Another State by Judgment in Personam

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Notes

Jurisdiction—Indirectly Affecting Land in Another State by Judgment in Personam

A husband and wife were residents of Wyoming. In a divorce proceeding in that state, having both parties before it and having jurisdiction over the subject matter of the suit, the Wyoming court granted a decree of divorce to the wife. The decree ordered the husband to deliver to the wife a quit claim deed to property in Nebraska. The husband did not comply with this order. Instead, he left Wyoming and went to the situs of the land in Nebraska and brought a suit there to have the Wyoming decree declared void and to quiet his interest in the property. The wife cross-petitioned asking that the Wyoming decree be enforced, or in the alternative, to quiet title in the wife to the husband's interest in the property.

The Nebraska Supreme Court remanded the case to the trial court with orders to render a judgment either enforcing the order of the Wyoming Court, or in the alternative, quieting title in the wife to the husband's interest in the property.[1] The problem presented in this case is the effect, in Nebraska, of a decree of a sister state ordering a conveyance of Nebraska real estate.[2]

The full faith and credit clause of the United States Constitution states:

> Full faith and credit shall be given in each state to the public acts, records, and judicial proceedings of every other state.[3]

This clause does not extend the jurisdiction of the courts of one state to property situated in another, but only makes the judgment rendered conclusive on the merits of the claim or subject

[1] Weesner v. Weesner, 168 Neb. 346, 95 N.W.2d 682 (1959).

[2] See Barbour, *Extraterritorial Effect of the Equitable Decree,* 17 MICH. L. REV. 527 at 532 (1919), where it is submitted:

> If the defendant is personally before a court of equity, the court has power to order him to convey foreign land. Such a decree is an effective judgment and determines conclusively his obligation to convey, and this obligation remains binding upon the person of the defendant wherever found. Such a decree ought to be entitled to full faith and credit at the situs of the land.

[3] U.S. Const., art. IV, § 1.

matter of the suit.[4] Thus, it is said that a court of one state cannot directly affect or determine the title to real property located in another state.[5]

But it is also well settled that a court of competent jurisdiction in one state with all necessary parties properly before it in an action for divorce, generally has the power to render a decree ordering the execution and delivery of a deed to property in another state in lieu of alimony for the wife. Such an order is personam in character, and when final it is generally res judicata. Such an order will be given full faith and credit under the Constitution of the United States.[6] Therefore, the real property may be affected indirectly through the instrumentality of the court's authority over the person.[7]

With a decree for money there does not seem to be much trouble in obtaining full faith and credit,[8] but there is a difficulty at times when the decree orders the doing of an act. In *Bullock v. Bullock,*[9] a New Jersey case, an order by a New York court in a divorce proceeding ordering the husband to execute to his wife a mortgage on New Jersey land was not enforced. The New Jersey court refused to enforce the order upon the ground that jurisdiction over land in New Jersey would not be conceded to courts of other states. The opinion also added that at the most, the order of the New York court created only a duty from the husband to the New York court.

The plaintiff husband in the instant case relied upon a Nebraska case, *Fall v. Fall,*[10] later affirmed by the United States Supreme Court in *Fall v. Eastin,*[11] as stating the law of Nebraska

4 Fall v. Eastin, 215 U.S. 1 (1909).

5 Bullock v. Bullock, 52 N.J.Eq. 561, 30 A. 676 (1894); Van Cortlandt v. DeGraffenried, 147 App. Div. 825, 132 N.Y. Supp. 1107 (1st Dep't 1911) *aff'd,* 204 N.Y. 667, 98 N.E. 1118 (1912); Tiedemann v. Tiedemann, 172 App. Div. 819, 158 N.Y. Supp. 851 (1st Dep't 1916) *aff'd,* 225 N.Y. 709, 122 N.E. 892 (1919).

6 Matson v. Matson, 186 Iowa 607, 173 N.W. 127 (1919); Mallette v. Scheerer, 164 Wis. 415, 160 N.W. 182 (1916); See cases cited in 21 U. CHI. L. REV. 620 (1954).

7 Fall v. Eastin, 215 U.S. 1 (1909); See cases cited 19 AM. JUR. *Equity* § 25 (1938).

8 Sistare v. Sistare, 218 U.S. 1 (1910); GOODRICH, CONFLICT OF LAWS § 218 (3d ed. 1949).

9 52 N.J.Eq. 561, 30 A. 676 (1894).

10 75 Neb. 104, 106 N.W. 412 (1905), *rev'd on rehearing* in 75 Neb. 120, 113 N.W. 175 (1907).

11 215 U.S. 1 (1909).

that a sister state decree could not directly affect title to real estate in Nebraska.

In the *Fall* case, a divorce decree was granted in Washington, the court there having jurisdiction over the parties. The husband was ordered to convey to his wife, lands in Nebraska. But instead, the husband executed a mortgage deed to a third party. The former wife brought an action in Nebraska to quiet title to the land and to cancel the mortgage deed, setting up the Washington decree as a basis for her claim. The mortgagee and the grantee appeared but the husband, served by publication only, did not. The Nebraska Supreme Court denied the relief sought by the former wife, and the decision was affirmed on appeal to the United States Supreme Court. It should be noted that the court avoided saying that the decree would not be binding between the original parties, had the husband been before the court.

In the instant case, the *Fall* decision was distinguished[12] in that 1) Nebraska, at the time of the *Fall* case, did not have statutory authority to award real estate of a husband as alimony in a divorce case. Thus, Nebraska was not compelled under the full faith and credit clause to recognize a sister state order which the courts of Nebraska could not themselves lawfully render. That void was filled in 1907. The Nebraska legislature, by enacting what is now Neb. Rev. Stat. § 42-321 (Reissue 1952), gave Nebraska courts the power to award real estate as alimony. 2) The husband in the *Fall* case was not personally served and made no appearance in the suit, while here, the husband was before the court seeking to quiet title to his interest in the real estate.[13]

The plaintiff, in the *Fall* case, was in effect asking that the sister state decree be given in rem effect as against a third person and not merely that it be treated as res judicata on the merits.[14]

[12] It is interesting to note that authorities cite the *Bullock* decision, *supra* note 9 and the *Fall* decision, *supra* note 11 as being in *accord.* GOODRICH, *op. cit. supra* note 8 at 641 and STUMBERG, CONFLICT OF LAWS c. 5 at 127 (2d ed. 1951). Thus as the *Weesner* case answers a like question, but reaches an opposite result, the latter would seem to overrule the *Fall* case. The court, however, stood its ground and distinguished the cases.

[13] Weesner v. Weesner, 168 Neb. 346, 356, 95 N.W.2d 682, 689 (1959).

[14] STUMBERG, *op. cit. supra* note 12 at 128; *But see* Amey v. Colebrook Guaranty Savings Bank, 92 F.2d 62, 64 (2d Cir. 1937) where the court said of the *Fall* opinion:

> The court might have held that the husband's grantee, who took with notice, was under the same personal obligation as he; and that, although the Washington decree had adjudicated nothing as to the interests in the land, his obligation to convey was res judicata.

The maxim that a court of one state cannot directly affect or determine title to real property located in another state is not as final as it sounds. Under the guise of "indirectly affecting" real property, courts of one state may affect real property in another by rendering an in personam order to convey title to that land. Once this order becomes final, it is then backed by the full faith and credit clause of the United States Constitution.

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