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CML Procedure - Mandamus - Application to Erroneous Refusal to Dismiss on the Ground of Forum Non Conveniens

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RECENT DECISIONS

CIVIL PROCEDURE—MANDAMUS—APPLICATION TO ERRONEOUS REFUSAL TO DISMISS ON THE GROUND OF FORUM NON CONVENIENS—Petitioner railroad, defendant in a suit brought in Illinois under the Federal Employers' Liability Act,[1] moved to dismiss on the ground of forum non conveniens. The accident occurred in New Mexico, and none of the parties or witnesses was a resident of Illinois. The railroad, however, did business in Illinois as well as in other states, and had its principal offices and legal staff in Chicago. Upon denial of the motion to dismiss, the railroad, on original petition to the Supreme Court of Illinois, sought a writ of mandamus to compel dismissal. *Held,* writ denied, two justices dissenting. Mandamus will not lie to review or modify the exercise of judicial discretion on the question of forum non conveniens, and for mere error, however gross or manifest, the appropriate remedy is appeal. *People ex rel. Atchison, Topeka and Santa Fe Railway v. Clark,* 12 Ill. (2d) 515, 147 N.E. (2d) 89.

Although it is well settled that mandamus is available to compel the performance of a ministerial act where the duty is clear,[2] the writ is generally not available when the act is discretionary in character.[3] Where the doctrine of forum non conveniens is recognized,[4] it requires an application of judicial discretion, being a refusal to take jurisdiction under certain circumstances in the interests of justice although the necessary jurisdictional and venue requirements are met.[5] In light of these principles, the majority opinion in the principal case concluded that mandamus will not lie if discretion has in fact been exercised.[6] The underlying rationale in this and similar situations is a policy of not allowing appeal from interlocutory orders, a practice designed to avoid prolonged litigation and piecemeal review. Prior to the ruling in the principal case, the Supreme Court of Oklahoma dealt with this precise issue in an action on the same claim and held that whereas mandamus is generally not available to control

[1] 35 Stat. 65 (1908), as amended, 45 U.S.C. (1952) §51 et seq.

[2] E.g., People ex rel. Iasello v. McKinlay, 409 Ill. 120, 98 N.E. (2d) 728 (1951); People ex rel. Jacobi v. Nelson, 346 Ill. 247, 178 N.E. 485 (1931).

[3] E.g., State v. Phelps, 67 Ariz. 215, 193 P. (2d) 921 (1948); People ex rel. Elliott v. Juergens, 407 Ill. 391, 95 N.E. (2d) 602 (1950); People ex rel. Clark v. McRoberts, 100 Ill. 458 (1881). See also FERRIS, EXTRAORDINARY LEGAL REMEDIES, MANDAMUS §206 (1926).

[4] The doctrine has been adopted in fourteen states either by statute or judicial decision. 56 MICH. L. REV. 439 (1958), note 2, collects the cases from the respective jurisdictions. The federal courts have a similar doctrine under the judicial code. See note 10 infra.

[5] Price v. Atchison, Topeka & Santa Fe Ry. Co., 42 Cal. (2d) 577, 268 P. (2d) 457 (1954); Weed v. Smith, 15 N.J. Super. 250, 83 A. (2d) 305 (1951); J. H. Rhodes & Co. v. Chausovsky, 137 N.J.L. 459, 60 A. (2d) 623 (1948).

[6] When discretion has not been exercised, mandamus is the appropriate remedy. Principal case at 520-521.

the discretion of the trial court, it will lie to correct the exercise of discretion when that discretion has been clearly abused.[7] The basis for the holding in the Oklahoma case appeared to be a concern over the burden of imported litigation in that forum. The federal courts have encountered a similar problem on the question of mandamus to correct errors in the issuance of transfer orders arising in FELA cases[8] under §1404(a) of the judicial code.[9] No unanimity of opinion has resulted.[10] Some appellate courts have taken the position that the necessarily certain delay and expense involved in review by application for a writ of mandamus outweighs the potential risk of error by the district courts in dealing with transfer orders.[11] The contrary view places primary emphasis on the possibility of error without an effective remedy, and allows mandamus to issue when the decision is clearly erroneous.[12] It is submitted that restricting the defendant to a remedy by way of appeal after a trial on the merits substantially defeats the purposes of forum non conveniens. That doctrine has two principal purposes, namely, protection of the defendant from a trial in a location where an undue burden in obtaining witness and evidence for his defense is placed upon him, and protection of the courts from imported litigation which unduly burdens the calendar.[13] A trial on the merits means the courts already have been burdened and the defendant inconvenienced. Also, the defendant's appeal based on the ground of an inconvenient forum in all likelihood will not be regarded

[7] Atchison, Topeka and Santa Fe Ry. Co. v. District Court of Creek County, (Okla. 1956) 298 P. (2d) 427. See also, St. Louis-San Francisco Ry. Co. v. Superior Court, Creek County, (Okla. 1955) 290 P. (2d) 118; Missouri-Kansas-Texas R. v. District Court of Creek County, (Okla. 1956) 294 P. (2d) 579.

[8] A transfer order pursuant to §1404(a) of the judicial code is not to be directly equated with the doctrine of forum non conveniens. Norwood v. Kirkpatrick, 349 U.S. 29 (1955). Section 1404(a) contemplates transfer, while the doctrine of forum non conveniens contemplates dismissal. With this exception, however, there is no appreciable difference.

[9] 28 U.S.C. (1952) §1404(a) provides: "For the convenience of parties and witnesses, in the interest of justice, a district court may transfer any civil action to any other district or division where it might have been brought."

[10] Mandamus has been held to lie to correct transfer orders in Ford Motor Co. v. Ryan, (2d Cir. 1950) 182 F. (2d) 329; Atlantic Coast Line R. Co. v. Davis, (5th Cir. 1950) 185 F. (2d) 766; Nicol v. Koscinski, (6th Cir. 1951) 188 F. (2d) 537; Chicago, Rock Island & Pacific R. Co. v. Igoe, (7th Cir. 1955) 220 F. (2d) 299; Shapiro v. Bonanza Hotel, (9th Cir. 1950) 185 F. (2d) 777; Wiren v. Laws, (D.C. Cir. 1951) 194 F. (2d) 873. Mandamus has been held not to lie to correct transfer orders in In re Josephson, (1st Cir. 1954) 218 F. (2d) 174; All States Freight v. Modarelli, (3d Cir. 1952) 196 F. (2d) 1010; Clayton v. Warlick, (4th Cir. 1956) 232 F. (2d) 699; Great Northern Ry. Co. v. Hyde, (8th Cir. 1957) 238 F. (2d) 852. The question has not yet been decided by the Supreme Court. Norwood v. Kirkpatrick, note 8 supra. Cf. generally LaBuy v. Howes Leather Co., 352 U.S. 249 (1957), noted in 56 MICH. L. REV. 130 (1957).

[11] All States Freight v. Modarelli, note 10 supra; In re Josephson, note 10 supra.

[12] Ford Motor Co. v. Ryan, note 10 supra.

[13] Gulf Oil Corp. v. Gilbert, 330 U.S. 501 (1947); Stewart v. Litchenberg, 148 La. 195, 86 S. 734 (1920); Universal Adjustment Corp. v. Midland Bank, 281 Mass. 303, 184 N.E. 152 (1933); 56 MICH. L. REV. 439 at 441 (1958).

as reversible error,[14] and may even be regarded as moot.[15] Although allowing a writ of mandamus to correct clear error is desirable in the federal system, it is even more appropriately applied to state courts since, unlike the federal courts of appeal,[16] the highest state court has broad powers of superintending control and an obligation not only to the litigants in affording effective review, but to the state as well in providing proper judicial administration. Where the plaintiff's choice of forum is upheld, and that decision is clearly erroneous, the state has an interest in avoiding a trial on the merits, and thereby avoiding the burden of imported litigation.[17] When the trial court is clearly wrong, the discretion vested in it has been abused, and a writ of mandamus should be available to protect the interests of the petitioner and of the state.

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[14] Ford Motor Co. v. Ryan, note 10 supra.

[15] St. Louis-San Francisco Ry. Co. v. Superior Court, Creek County, note 7 supra. But see Gore v. U.S. Steel Corp., 15 N.J. 301, 104 A. (2d) 670 (1954).

[16] The scope of the court of appeals' power to exercise superintending control is defined by 28 U.S.C. (1952) §1651(a).

[17] The magnitude of this burden is apparently not negligible. Mooney v. Denver & Rio Grande Western R., 118 Utah 307, 221 P. (2d) 628 (1950), a case dealing with forum non conveniens in FELA litigation, made reference to an unreported Illinois case, Motley v. Kansas City Southern Railway (Dec. 19, 1949), in which it was stated that the number of jury cases in Cook County, Illinois, had increased from 4,385 in 1942 to 9,249 in 1949. The Utah court implied that a contributing factor in this increase was the burden of imported litigation.