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JUDGMENTS-EFFECT OF A RECITAL OF JURISDICTION IN A FOREIGN JUDGMENT RECORD

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JUDGMENTS—EFFECT OF A RECITAL OF JURISDICTION IN A FOREIGN JUDGMENT RECORD—Plaintiff brought an action in the District of Columbia on a Maryland default judgment, offering in evidence the docket entries wherein there was a recital of personal jurisdiction by virtue of a constable's return of summons. Defendant attacked the Maryland judgment on the ground of lack of jurisdiction over the person, testifying and offering evidence, vague and conflicting, but tending to show that he had no notice of the action or judgment until the present suit. Plaintiff testified to the contrary and advanced certain facts to indicate that defendant had been served and had secured several continuances in the prior action. The lower court held that defendant's testimony did not overcome the presumption of service arising from the recital of jurisdictional facts. On appeal, *held,* affirmed. A recital of jurisdictional facts raises a rebuttable presumption of jurisdiction, but when denied, and the evidence is contradicting, the presumption may be weighed against the defendant's testimony. *Koehne v. Price,* (Mun. App. D.C. 1949) 68 A.(2d) 806.

Although early cases were in conflict,[1] it has long been familiar doctrine that when a judgment of a state court is the basis of an action in a sister state, the jurisdiction of the court rendering the prior judgment is the proper subject of collateral inquiry in the later proceeding.[2] Nor is the mere recital of jurisdictional facts in the prior judgment record conclusive against its impeachment by extrinsic evidence.[3] Although the rule seems to be in literal conflict with article IV, section 1 of the Federal Constitution, and the act of 1790 providing that judgments "shall have such faith and credit given to them in every court within the United States as they have by law or usage in the courts of the State from which they are taken,"[4] the rationale is clear. The act of 1790 accorded such faith and credit only to the valid and lawful judgments of the sister state, and did not extend the judicial authority of a state where in fact it had no jurisdiction, and in which case its judgment was no judgment at all but a mere nullity.[5]

[1] Such conflict was due largely to a failure to distinguish domestic judgments, in which case the general rule is that evidence aliunde to impeach the record is inadmissible. Drummond v. Lynch, (5th Cir. 1936) 82 F. (2d) 806; Reinertson v. Rust, 60 N.D. 500, 235 N.W. 346 (1931).

[2] Thompson v. Whitman, 18 Wall. (85 U.S.) 457, 21 L. Ed. 897 (1873); Old Wayne Mutual Life Assn. v. McDonough, 204 U.S. 8, 27 S.Ct. 236 (1907); Darling & Co. v. Burchard, 69 N.D. 212, 284 N.W. 856 (1939); Marshall v. Owen & Co., 171 Mich. 232, 137 N.W. 204 (1912); Leichty v. Kansas City Bridge Co., 354 Mo. 629, 190 S.W. (2d) 201 (1945); 3 FREEMAN, JUDGMENTS, 5th ed., §§1365-1370 (1925); JUDGMENTS RESTATEMENT 71, §12(c) (1942). Jurisdictional determination is of course res judicata if made in proceedings in which the parties had full opportunity to litigate. Buffalo v. Plainfield Hotel Corp., (2d Cir. 1949) 177 F. (2d) 425.

[3] 2 BLACK, JUDGMENTS, 2d ed., 1337-9 (1902); In re Hanrahan's Will, 109 Vt. 108, 194 A. 471 (1937); Lewis v. United Order of Good Samaritans, 182 Ark. 914, 33 S.W. (2d) 53 (1930); Cronin v. Unionaid Life Insurance Co., 184 Ark. 493, 42 S.W. (2d) 758 (1931).

[4] U.S. Rev. Stat. §905 (1790), 28 U.S.C. (1946) §687.

[5] 2 BLACK, JUDGMENTS, 2d ed., 1337-9 (1902); Old Wayne Mutual Life Assn. v. McDonough, supra note 2; Baker v. Baker, Eccles & Co., 242 U.S. 394, 37 S.Ct. 152 (1917).

Further, the full faith and credit clause was read and applied in conjunction with the due process clause, for if a state could deny to a person against whom a personal judgment has been rendered, without jurisdiction, the right to assail the recitals of jurisdiction in such judgment and make it final and conclusive, the result would be to deny to such person the fundamental right of due process of law enjoined and guaranteed by the Federal Constitution.[6] But, though recitals of jurisdictional facts in the sister state's judgment record are not conclusive, they are presumptively correct until contradicted, and the burden of proof is on the party asserting the lack of jurisdiction.[7] There is authority supporting the statement of the principal case that a presumption is in the nature of evidence,[8] but the overwhelming weight of authority is to the effect that a presumption is not evidence and has no probative weight as such, but only determines the party who has the duty of going forward with the evidence, and when that duty is met by the production of evidence the presumption becomes inoperative.[9] The quantum of evidence necessary to overcome a presumption varies with the strength of the particular presumption, and when controverted by other evidence it is the duty of the court to determine the effect.[10] If the presumption is dispelled, the jury considers the proof free from any such rule and may consider the facts which gave rise to the presumption, which are evidentiary and when established remain though the presumption has disappeared.[11] Under the more generally accepted theory of the function of a presumption the result of the principal case would not be altered, for what the court seems to have done, notwithstanding its statement, is either (1) to have found the defendant's evidence insufficient to overcome the presumption, leaving it uncontroverted, or (2) to have weighed, not the presumption dispelled by contrary evidence, but the

[6] Darling & Co. v. Burchard, supra note 2; Old Wayne Mutual Life Assn. v. McDonough, supra note 2; Bigelow v. Old Dominion Copper Co., 225 U.S. 111, 32 S.Ct. 641 (1912).

[7] Scanlon v. Kuehn, 225 App. Div. 256, 232 N.Y.S. 592 (1929); Patterson v. Taylor, 78 N.J.L. 10, 73 A. 225 (1909); Hodge v. International Registry Co., 54 Misc. 442, 105 N.Y.S. 1067 (1907).

[8] Railway Co. v. Hadley, 170 Ind. 204, 84 N.E. 13 (1907); Star Mills v. Bailey, 140 Ky. 194, 130 S.W. 1077 (1910); State v. Kelly, 22 N.D. 5, 132 N.W. 223 (1911); In re Cowdry's Will, 77 Vt. 359, 60 A. 141 (1905).

[9] 9 WIGMORE, EVIDENCE, 3d ed., §2490-1 (1940); McKim v. Abbott, 151 Neb. 704, 39 N.W. (2d) 418 (1949); Jodoin v. Baroody, 95 N.H. 154, 59 A. (2d) 343 (1948); Gaudreau v. Bendix Air Corp., 137 N.J.L. 666, 61 A. (2d) 227 (1948); Pence v. Wessels, 320 Mich. 195, 30 N.W. (2d) 834 (1948); Christiansen v. Hilber, 282 Mich. 403, 276 N.W. 495 (1937); Seiler v. Whiting, 52 Ariz. 542, 84 P. (2d) 452 (1938); Miller v. Pettengill, 392 Ill. 117, 63 N.E. (2d) 735 (1945); McKiver v. Hamm Brewing Co., 67 S.D. 613, 297 N.W. 445 (1941); Blakeslee v. Smith, (D.C. Conn. 1939) 26 F. Supp. 28; Watkins v. Prudential Insurance Co., 315 Pa. St. 497, 173 A. 644 (1934); 95 A.L.R. 869, 878 (1935).

[10] Simonton v. Los Angeles Trust & Savings Bank, 205 Cal. 252, 270 P. 672 (1928); Washington v. Drake, 150 Neb. 568, 35 N.W. (2d) 417 (1948).

[11] Watkins v. Prudential Insurance Co., supra note 9; New York Life Ins. Co. v. Gamer, 303 U.S. 161, 58 S.Ct. 500 (1938); Beggs v. Metropolitan Life Ins. Co., 219 Iowa 24, 257 N.W. 445 (1934); 95 A.L.R. 863 (1935).

plaintiff's clear and convincing evidence, including the recital of jurisdiction which is surely a fact, against the defendant's vague and uncertain evidence, and found the plaintiff's to prevail.

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