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Extra-Territorial Effect of Foreign Guardianship Proceedings in Florida

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dependent unit, approaching, if not actually reaching, the status of a state supreme court.

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EXTRA-TERRITORIAL EFFECT OF FOREIGN GUARDIANSHIP PROCEEDINGS IN FLORIDA

A rather involved litigation culminating in the decree rendered on rehearing in *Beverly Beach Properties, Inc. v. Nelson*[1] presented several problematic points of conflict law for the resolve of the Florida Supreme Court.

Briefly, the facts involved were: the decedent, domiciled in Florida for many years, sojourned to California, where he spent the last remaining five years of his life and died. While he was living in California, the California court adjudicated him an incompetent, appointed Dora Miller as his guardian, and authorized her to vote shares of stock which the incompetent owned in a Florida corporation. Dora Miller voted the shares (by proxy) to ratify a sale of Florida land, which was the main asset of the corporation. The California court validated the sale. After the decedent's death, Dora Miller was appointed in California as executrix of his will in original probate proceedings upon a finding that the decedent was domiciled in California. Later, Samuel Nelson was appointed administrator c.t.a. in an original administration proceeding in Florida, predicated on a finding by the Florida court that the decedent was at all times prior to and at his death domiciled in Florida.[2]

The primary purpose of the litigation was to set aside the sale of the corporation's land which the guardian's vote of the decedent's stock authorized.

An analysis of the Court's final decree adjudicating this claim will be attempted towards the end of divining the court's position on the conflicts of law problems presented.

Reversing its position on rehearing, the court held that the California appointed guardian could vote shares of stock in a Florida corporation which her ward owned: that it was incumbent upon Florida to recognize the validity of the acts of the California guardian by virtue of the mandates of the Full Faith and Credit Clause of the Federal Constitution.

It is elementary that the appointment of a guardian of the person of an incompetent by a state having personal jurisdiction over the incompetent is due recognition in sister states by virtue of the Full Faith and Credit Clause.[3] However, it is equally well settled that the guardian has no rights as concerns property of the ward, real or personal, which is situate in another than the state which appointed him.[4]

1. 68 So.2d 604 (Fla. 1953).
2. Miller v. Nelson, 160 Fla. 410, 35 So.2d 288 (1940).
3. *In re* Baxter, 191 Iowa 407, 182 N.W. 217 (1921); *In re* Chase, 195 N.C. 143, 141 S.E. 471 (1928).
4. Hoyt v. Sprague, 103 U.S. 613 (1880); Brown v. Fox, 51 Atl. 621 (N.J. (1901); George v. Cleveland Trust Co., 22 Ohio 1, 153 N.E. 914 (Court of Appeals of Ohio 1926); *In re* McGuigan's Estate, 349 Pa. 581, 37A.2d 717 (1944).

Since a court can validly adjudicate only as to property within its jurisdiction, the determining factor as to the validity of the vote, and ultimately the conveyance of land which depended upon it, is the jurisdictional situs of the stock.

Generally it may be said that situs for jurisdictional purposes in a given state exists when some reason can be found which extenuates towards the recognition by other states of the action on the res by that state.[5] It would seem to follow that, of necessity, for any given purpose, there can be but one "situs" for any given res because recognition cannot be given by one state to the adjudications on the same res of two or more other states. This, however, does not preclude a given res from having several situses, each for a different purpose. Nor does it preclude the assignment of two or more situses to the same res for taxation purposes, as this latter class of cases depends for its effectuation upon jurisdiction in personam, the recognition of the validity of the jurisdictional situs of the res in other jurisdictions is unnecessary and unsolicited, i.e., the status of the res itself remains unaffected.

The weight of authority is to the effect that shares of stock have a situs in the jurisdiction where the corporation was organized.[6] Shares have been held to have a situs elsewhere for purposes of taxation,[7] and, where the U.S.T.A. is in effect in both the place of incorporation and the forum, shares may be attached or garnished wherever the certificates are found.[8] However, with few exceptions, it has been held that, regardless of the place where the certificates happen to be, the state in which the corporation has been organized is the situs of the shares for the purpose of administration.[9]

A logical conclusion from this latter rule would be: an administrator, executor or guardian, even if appointed at the domicile of the decedent (or incompetent), would not have any rights per se in respect to shares of stock in corporations incorporated elsewhere than in the state of decedent's domicile. However, this has not been the result. It has been held that a domiciliary executor or administrator has the right to vote shares of stock

5. See Beale, *Jurisdiction of a Sovereign State,* 36 HARV. L. REV. 341.

6. Jellenick v. Huron Copper Mining Co., 177 U.S. 1 (1889); United Cigarette Mach. Co. v. Canadian Pac. Ry., 12 F.2d 634 (2d Cir. 1926); Harris v. Chicago Title and Trust Co., 338 Ill. 245, 170 N.E. 285 (1930); Kennedy v. Hodges, 215 Mass. 112, 102 N.E. 432 (1913); Ewing v. Warren, 144 Miss. 233, 109 So. 601 (1926).

7. Baldwin v. Missouri, 281 U.S. 586 (1930); Bullen v. Wisconsin, 240 U.S. 625 (1916); People v. Union Trust Co., 255 Ill. 168, 99 N.E. 377 (1912).

8. Simpson v. Jersey City Contracting Co., 165 N.E. 193, 58 N.E. 896 (1900); Puget Sound Nat. Bank of Everett v. Mather, 60 Minn. 362, 62 N.W. 396 (1895).

9. Baker v. Baker, Eccles and Co., 242 U.S. 394 (1917); Sylvania Industrial Corporation v. Lilienfield's Estate, 132 F.2d 887 (4th Cir. 1943); Jane v. Martinez, 104 Miss. 208, 61 So. 177 (1913). *But cf.* Lohman v. Kansas City So. Ry., 326 Mo. 868, 33 S.W.2d 117 (1930) which held that, in the absence of any unpaid debts or claims in Missouri, stock in a Missouri corporation had situs in New York, decedent's domicile, for transfer purposes.

in foreign corporations without ancillary proceedings.[10] Although the cases are not clear on the reasoning behind such rulings, since the right to vote is dependent upon title to the stock, the decisions are apparently based upon an application of the doctrine "mobilia sequuntur personam" which operates to vest title to a decedent's personalty, wherever situate, in the domiciliary representative.[11]

Most cases found in which the rule that stock has a situs for administrative purposes in the state of incorporation has been invoked by that state involve a contest as between the representatives appointed by two sister states for the right to administer the stock.

Thus, in *Riley v. New York Trust Co.*[12] the Supreme Court held that Delaware, in which state the corporation whose shares where involved was organized, had the right to determine the domicile of the decedent according to its own laws–in order that it could decide to whom it should transfer the shares as between litigants both claiming to be domiciliary administrators appointed by different states. In *Baker v. Baker, Eccles and Co.*,[13] the same court held, in resolving a controversy between two administrators claiming under original proceedings in separate states (as in the *Riley Case, supra*), that the situs of the stock was in the state of incorporation; despite the fact that the share certificates were located elsewhere. The court in dicta stated that the contention that the personal estate of a decedent is a legal unit having a situs at the domicile was erroneous.

The rule that domicillary executors and administrators can vote stock in foreign corporations has been extended in a few cases to include guardians.[14] It does not appear from the cases whether or not these guardians were appointed by courts at the incompetent's domiciles, but according to the rationale for such decisions discussed *supra* ("mobilia sequuntur personam"), it is fairly safe to assume that they were.

At this point it should be noted that the doctrine of "mobilia sequuntur personam" does not operate to divest of jurisdiction.[15] It is merely a convenient, perhaps outmoded, legal fiction which is applied by the courts as a matter of convenience when it chooses to apply the law of a jurisdiction other than that of the forum.[16]

Accordingly, none of these cases have held that the right of a foreign appointed administrator or guardian to vote shares of stock in a domestic corporation must be recognized because of Full Faith and Credit requirements. To so hold would be to allow extra-territorial effect to the decree of a sister state adjudicating in re property not within its administrative

10. Allen v. Fairbanks, 36 Fed. 402 (C.C.D. Vt. 1804); Glake v. Arnett, 38 Idaho 716, 225 Pac. 796 (1924); Babcock v. Chicago Ry., 325 Ill. 16, 155 N.E. 773 (1927); *In re* Cape May and D.B.N. Co., 51 N.J.L. 78, 16 Atl. 191, 193 (1888).
11. *In re* Cape May and D.B.N. Co., 51 N.J.L. 78, 16 Atl. 191, 193 (1888).
12. 315 U.S. 343 (1942).
13. 242 U.S. 394 (1917).
14. Glake v. Arnett, 38 Idaho 716, 225 Pac. 796 (1924); Babcock v. Chicago Ry., 325 Ill. 16, 155 N.E. 773 (1927); State v. Farmer's Bank in Leonard, 61 N.D. 427, 238 N.W. 122 (1931).
15. Hutchinson v. Ross, 262 N.Y. 381, 187 N.E. 65, 75 (1933).
16. See Beale, *The Situs of Things*, 28 YALE L.J. 525.

jurisdiction. This is clearly not within the purpose nor effect of the Full Faith and Credit Clause.

Indeed, even when a foreign appointed administrator has complied with the requirements of ancillary administration, courts often do not recognize any rights of such administrator to personalty within the forum.[17]

Two other points merit consideration.

The Court said: "...We cannot see how there could be any conflict as to the jurisdiction between the State of California and Florida during the period of guardianship proceedings because we hold to the rule that intangible personal property in contemplation of law, accompanies the person of the owner." If the court meant physical person of the owner it was not "holding" to a rule, it was "originating" one. And if the court meant domicile of the owner, in view of the fact that the court had already held the incompetent to have been domiciled in Florida, the statement cannot be deemed to support the result of the case.

The last point is that the court, having held that the decree of the California court validating the sale was entitled to Full Faith and Credit, nevertheless conducted in inquiry into the adequacy of the consideration paid for the land. This would appear to be a violation of Full Faith and Credit.[18]

It will be interesting to see the result of the appeal being taken from this decision to the Supreme Court.

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17. Brown v. Fox, 51 Atl. 621 (N.J. 1901); George v. Cleveland Trust Co., 153 N.E. 914 (Court of Appeal of Ohio 1926.)

18. See Lincoln v. Tidewater Oil Co., 177 Okla. 270, 58 P.2d 320 (1936) which held that the question of adequacy of purchase price for property of ward cannot be raised in a collateral proceeding.