JURISDICTION IN EQUITY OVER FOREIGN LANDS.

What is the rule in this State regarding the right of an equity court to render decrees *in personam* though the decrees will affect the title to lands outside the territorial jurisdiction of the court? That such decrees are within the powers of a court of equity has been settled doctrine ever since the decision of Lord Hardwicke in Penn v. Baltimore, 1 Ves. Sen. 455; two prerequisites to granting them being that all interested parties are before the court, and that the suit falls under some head of equity jurisdiction: for example, the specific enforcement of a contract, fraud or trust (Massie v. Watts, 6 Cranch, 148). Another condition of granting the relief is that the decree can be enforced by direct coercion of the defendant; for example, by compelling him to execute a conveyance of the property in question to the plaintiff, or hold it in trust for the latter, or by enjoining him to refrain from waste. The court will not undertake to interfere with the possession of foreign lands or undertake to divert or invest the title by direct decree though it is obvious that by compelling a conveyance the title would be affected. (Westlake, Private International Law, 58; Morris v. Remington, 1 Parson's Equity; Muller v. Dows, 94 U. S. 444.) In Missouri, the exercise of this power of courts of equity has been treated in some decisions as limited by the statute (R. S. 1909, sec. 1753) which provides that "suits for the possession of real estate, or whereby the title thereto may be affected shall be brought in the county within which such real estate, or some part thereof, is situate." (De Lashmutt v. Taylor, 261 Mo. 412; State ex rel v. Grimm, 243 Mo. 667.) In other instances, the courts have exercised the power as though the cited statute had not, as to the particular case, abridged it; (McCune et al v. Goodwillie et al, 204 Mo. 306; Olney v. Eaton, 66 Mo. 563). It may be worth while to examine the authorities bearing upon the question, to ascertain how far they are in conflict, or how far reconcilable. In DeLashmutt v. Taylor, the testator died in Maryland, his domicile, seized of lands in Missouri, which lands his will devised to a trustee with power to sell when and as the trustee deemed best. The testamentary trustee, after serving for years, filed an ex parte petition in a Maryland court to be relieved of the trust, whereupon the court decreed as prayed, and appointed a substitute to act in his place. The substitute trustee sold and conveyed the Missouri lands, acting under the authority of the Maryland decree. The Supreme Court of Missouri held that the

conveyance passed no title to the purchaser, as the trustee acted only as an instrument of the Maryland court and in the execution of its orders, and that said court had no power to decree regarding lands in Missouri. The decision is sound tested by the rules which have always been held to control the power of courts of equity to grant relief *in personam* when it affects foreign immovables, for the Maryland court did not have the parties in interest before it when it appointed the substitute trustee. The Missouri statute was not cited nor was it necessary to do so, but the court referred to the case of State ex rel v. Grimm, *supra*, as drawing the line between cases in which courts may decree concerning foreign lands and those in which they may not; referred also to McCune v. Goodwillie, *supra*, as though the decision in that case was in accord with the one in State ex rel v. Grimm. But those two decisions appear to be in conflict. McCune v. Goodwillie was an action under sec. 650 of the R. S. of 1899 (sec. 2535, R. S. 1909) to establish the title to and the interest of the plaintiffs and the defendants in lands in Henry County, Missouri. The action was converted into a suit in equity by an answer filed by one of the defendants. The common source of title was Dixon Brown, who lived and died in the State of Ohio and left a will dated February, 1878, whereby he devised the lands in dispute to his four children: George, John, and Catherine Brown, and Ella P. McCune. After making this will, he conveyed the lands to his daughter Catherine, and after his death and the death of said Catherine, Ella McCune filed a suit in the court of the testator's Ohio domicile, to set aside and cancel the deed to Catherine for fraud in obtaining it from her father. All the parties in interest being before the court in said cause, a decree was entered that the deed of Dixon Brown to his daughter, Catherine, be set aside and for naught held, and that her son, Frank Stafford, on coming of age, reconvey to the devisees of Dixon Brown all interest in the lands which had accrued to him as heir of his mother, through her father's deed to the mother. The question before the Supreme Court of Missouri was whether this decree of the Ohio court was binding on the parties to the Ohio suit, or whether it was void, because it affected the title to lands in Missouri. Without noticing the Missouri statute cited above, the Supreme Court declared that the parties to the Ohio suit "and all those in privity with them, are estopped by the decree. They had their day in a court of equity having jurisdiction of their persons. It had jurisdiction of the subject matter and could bind and did bind the conscience of every party to that suit. While the decree could not directly affect the bare legal title to lands in Missouri, yet it could and did conclude all parties in every issue

in that case." Though the court held the parties were further estopped by acting in accordance with the Ohio decree, this fact was only stated as an additional reason for the judgment, and in no ways breaks the force of the decision as an authority for the proposition that a foreign court of equity, having the parties in interest before it in a case of equitable cognizance, may bind the parties by a judgment concerning the title of lands in Missouri so far as to estop them from asserting title against the terms of the decree.

State ex rel Hunt et al v. Grimm, Circuit Judge, and the Greer Investment Company, was a proceeding to obtain a writ of prohibition against the defendant judge to prevent him from trying a suit instituted by the Greer Investment Company against the relators Hunt, in which suit it was charged the Hunts had fraudlently procured from the Greer Investment Company the deed to lands in Virginia, which deed the petition prayed might be surrendered and canceled, as a cloud on the Greer company's title. The deed had been recorded in Virginia and it was held that the cancellation of a recorded deed would amount to the destruction of a muniment of title, therefore involved directly the title to real estate and the jurisdiction of the suit was in the State where the land lay. Missouri cases were cited to show the decree in the case would offect the title to real estate: Keyte v. Plummons, 28 Mo. 104; Ensworth v. Holley, 33 Mo. 370; Railroad v. Mahoney, 42 Mo. 467. But the authority mainly relied on was Castleman v. Castleman, 184 Mo. 432, wherein it was held that an action instituted in Cooper County, Missouri, to cancel two deeds to lands in that county, was brought in the right venue, although the defendants resided in St. Louis and were served with summons there. It was contended for the defendants that, as the action was one in *personam,* it would lie only in the county of the defendants' residence, or of the plantiffs', if the defendants could be served in the latter. (R. S. 1909, sec 1751.) Conceding the general soundness of the proposition that equity acts *in personam* and therefore the defendant when brought before the court may be proceeded against by a personal decree, it was declared the cited section of the Missouri Statutes had engrafted an exception on that rule in cases involving title to real estate. Clearly the decision was correct if the statute in question was intended to apply to equity cases affecting the title to lands, as well as to actions as law involving such titles. The statute runs back to an early day and was, at first, a regulation of Chancery practice when the procedures at law and in equity were distinct in this State. In its original form it read "that suits in equity concerning real estate or whereby the same may be affected, shall be brought in the court within whose jurisdiction such

real estate, or the greater part thereof, is situate and in other cases in the court in whose jurisdiction the defendants, or the majority of them, if inhabitants of this State, reside." (R. S. 1825, p. 636, sec. 3.) It will be perceived that the language of the statute has been changed so that its express terms now make it apply either to suits for the possession of real estate or whereby the title may be affected. There can be no doubt that the Castleman case and the other Missouri cases noticed below, which hold that actions in the nature of suits in equity instituted in this State and affecting the title to real estate therein, will only lie in the county where the land lies.

State ex rel Bavin v. Muench, 225 Mo. 210, was a proceeding in prohibition to prevent a judge of the circuit court of the City of St. Louis from entertaining two suits to enjoin the relator Gavin from erecting a railway embankment on a strip of ground, there being an issue in the suit as to whether the strip which lay outside the city occupied by the embankment was a public street or belonged to Gavin. As title was involved, the Supreme Court granted the writ. In Keyte v. Plemmons, *supra,* it was held that by virtue of the statute, a suit would lie in the county where the land lay, to set aside for fraud a judicial sale of it made under a judgment rendered in another county. In Ensworth v. Holley, 33 Mo. 370, the decision was that suit for specific performance of a contract for the sale of lands in Buchanan County, Missouri, would not lie in Holt County, in said State, because the statute required such a suit to be instituted in the venue of the *situs.* It will be observed that all these cases were instituted in Missouri courts and concerned lands in Missouri, therefore were directly within the terms of the statute, for though they were equity cases it has been shown that the statute was enacted to fix the venue of such suits, and therefore restricted the usual power of a court of equity to entertain jurisdiction of suits affecting the title to lands outside its territorial jurisdiction. But it is open to serious doubt whether the statute was meant to take away the power of courts of equity in Missouri to render decrees *in personam* which would affect the title to lands outside the State, as was held in State ex rel v. Grimm, *supra.* It is settled law that no statute takes away an ancient jurisdiction of equity unless the intention to do so is clear on the face of the enactment. The very words of the statute show that it was meant to establish the venue for actions to recover possession of, or which affect the title to, lands in this State. That this was the purpose of the statute and the limit of its operation was pointed out in the dissenting opinion in Sate ex rel v. Grimm. Nevertheless, the majority opinion in that case is the law of the question. Though later than McCune v. Good-

willie, the latter is not overruled, but the two decisions are inconsistent in theory. In McCune v. Goodwillie, as has been seen, the Supreme Court of this State gave effect to the decree of an Ohio court concerning Missouri land, to the extent of holding the parties to the decree estopped by it to claim title to the land. This was doing no more than to acknowledge the power of the Ohio court, as an equity tribunal, to render a personal judgment whereby the title to foreign land might be affected, a ruling which accorded with the general doctrine on that subject, and it is difficult to perceive how a statute to regulate practice in the Missouri Courts could deprive an Ohio Court of this equity power. We may, therefore, say that notwithstanding the construction given to the statute in the Grimm case precludes a Missouri court from rendering decrees *in personam* concerning lands outside the State, there is no decision of the Missouri Supreme Court which positively holds that this ordinary power of equity courts may not be exercised by a court of another State, even though the title to Missouri lands is thereby affected. In line with the decision in McCune v. Goodwillie, is Olney v. Eaton, 66 Mo. 563, a case filed to enforce a vendor's lien for an unpaid balance of the purchase price of land in Atchison County, Missouri. The defendant answered denying any balance was owing on the price of the land, and alleging that the price was to be paid partly in money and partly in 20 acres of land in Kansas, at $40 an acre; that the defendant had tendered the plaintiff a deed to the Kansas land which the latter had refused to accept; that the Kansas land, in connection with other payments plaintiff had received, would overpay the price of the Missouri lands by $400, and enforcement of the contract was prayed by the defendant. The question of the power of the Missouri court to decree specific performance of a contract relating to Kansas land was raised and overruled as presenting no difficulty. The opinion said that equity acted *in personam* "hence the specific performance of the contract for the sale of lands lying in a foreign country will be decreed in equity whenever the party is resident within the jurisdiction of the court." Olney v. Eaton was not overruled in the Grimm case though the two cannot be distinguished, unless the fact that in the latter case the deed was on record in Virginia is material, and it is not perceived that it is, for the parties who had procured that deed by fraud could be compelled to reconvey and the deed of reconveyance could be recorded in Virginia, thus clearing up the title there.

The results of the cases seem to be as follows: first, it is clear that a suit in equity instituted in Missouri courts, and affecting the title to or the possession of land in that State, will only lie if instituted

in the county where the land lies; second, by the decision in the Grimm case, a suit in equity will not lie in a Missouri court, if the decree will affect the title to land outside the State; third, by the decision in McCune v. Goodwillie, the decree of a court in equity of a foreign State affecting the title to land in Missouri, if rendered with all the parties in interest before the court, will estop those parties from claiming contrary to the decree.

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