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Obiter Dicta

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"An *obiter dictum,* in the language of the law, is a gratuitous opinion, an individual impertinence, which, whether it be wise or foolish, right or wrong, bindeth none—not even the lips that utter it."*

"At Home Abroad"

America has again demonstrated its penchant for the unusual. The house on wheels, more familiarly called a trailer, is gaining widespread use. Witness the exhibits at the recent automobile shows; a casual glance at our highways will confirm this popularity. As necessarily follows from any innovation which affects a great portion of society, legal regulation is contemplated and, in some instances, has already been effected. The New York Joint Legislative Committee on Interstate Cooperation recently invited delegates from nine states to a conference to discuss measures tending to promote health and safety in the use of trailers. New York Times, March 14, 1937, Sec. II, p. 1. Apart from sanitation, safety and traffic problems, this increasingly popular vehicle presents interesting questions of substantive law.

A Trailer Jurisprudence?

The determination as to whether this hybrid is to be considered a house or vehicle was involved in a recent ruling construing a municipal housing ordinance. It was held to be the former, and its owner was found guilty of failing to comply with a regulation requiring a human dwelling to contain a certain amount of cubic feet per occupant. *City of Pontiac, Mich. v. Gumarsol,* New York Sun, Nov. 13, 1936, p. 21. It is doubtful whether this sole ruling on the question will control when other problems arise. In the law of searches and seizures, for example, the issue is squarely presented. Would a warrant be necessary to conduct a valid search of a trailer in the light of *Carroll v. United States,* 267 U. S. 132 (1925), holding that none is required to search a moving vehicle provided that reasonable belief exists that a crime has been committed? Or would the rule of *Agnello v. United States,* 269 U. S. 20 (1925), to the effect that a warrant is necessary to search a private dwelling, prevail? It would seem that the doctrine of the *Carroll* case, founded upon the fact that the vehicle might be quickly moved out of the jurisdiction and thus prevent search and seizure of evidence, would be applicable in the case of a trailer in motion. *Sed quere,* would this rule be extended to a trailer permanently at rest?

House or Vehicle?

Prolific in possibilities of potential problems is the field of Conflict of Laws. The nomadic urge which prompts one to abandon his house and take to the open road would seem to negate the requisite intent to set up a domicile in any new locale. However, it is possible to argue that one might acquire a new domicile with each extended stay; the presentation of evidence required in such a case to overcome the rule, that one retains his domicile until a new one is acquired, might be exceedingly arduous. Jurisdictional questions in actions to probate wills, to administer intestate estates or to protest taxes might conceivably become hopelessly ensnarled with contradictory evidence. Matrimonial problems

Domicile in Transitu

*Birrell, Obiter Dicta (1886) title page.

resting on domicile will be faced with similar difficulty. Strongly indicative that ours is an age of speed is the fact that the Restatement of the Law of Conflict of Laws, though completed but three years ago, is silent on the status of the trailer. It contemplates a situation wherein one makes his home in a "boat, car, van, or other vehicle," but unfortunately the rule enunciated is limited to a case where the vehicle regularly remains in a particular place for a considerable time each year; that place designates the domicile. RESTATEMENT OF THE LAW OF CONFLICT OF LAWS (1934) §17.

Prophetic of future popularity is the prediction that by the end of 1937 there will be 1,000,000 trailers with 3,000,000 users. 15 FORTUNE (March, 1937) 107. Can it be that as a result a return to the law of the tribe will be necessary? An application of this personal rather than territorial law, long used to govern itinerant peoples [*Matter of Patterson*, 245 N. Y. 433, 157 N. E. 734 (1927)], might solve some of the difficulties presented by widespread trailer use since tribal law, reminiscent of Roman law, follows the individual whither he wanders. Truly then, *in situ* as well as *in transitu*, the trailer-nomad would be "at home abroad."

TRIAL BY BATTLE

The Gage is Thrown Down

When the contract to engage in a prize-fight in New York on June 3rd, was signed by both Champion James J. Braddock and Max Schmeling, a titanic struggle was promised by the newspapers. But it appears now that the spring air will reverberate with the blow of the judicial gavel upon the rostrum rather than with the thud of leather or the roar of the crowd. Braddock has agreed to another contest with the young boxer, Joe Louis on June 22nd in Chicago, only nineteen days after his scheduled bout with Schmeling. Because of this, the New York promoters seek legal redress and another equally ancient and contentious profession becomes interested.

Lawyers for the Madison Square Garden Corporation, promoter of the first contest, threatened proceedings for "anticipatory breach of contract." The widely cited case of *Hochster v. De La Tour*, 2 El. & Bl. 678, 118 Eng. Reprints 922 (K. B. 1853) first pointed the way to this action. And in *Frost v. Knight*, L. R. 7 Exch. 111 (1872) Cockburn, J., said "The promisee has an inchoate right to the performance of the bargain, which becomes complete when the time for performance has arrived. In the meantime he has the right to have the contract kept open as a subsisting and effective contract. Its unimpaired efficacy may be essential to his interests." This quotation might be considered quite apt by the Garden Corporation. In New York, the theory of anticipatory breach is well settled and is applicable to cases dealing with personal services. *Howard v. Daly*, 61 N. Y. 362 (1875).

The Armory Is Opened

Whether injunctive relief in equity is also available to the promoter is debatable. Braddock had agreed not to fight Louis before June 3rd. Theoretically, this stipulation is not violated nor is his contest with Schmeling affected by his agreement to box on June 23rd. Had the Louis fight been scheduled prior to June 3rd, injunctive relief would have been granted. Even in the absence of the express stipulation, the doctrine of negative covenants as expounded in *Lumley v. Wagner*, 1 De G. M. & G. 604, 42 Eng. Reprints 687 (Ch. 1852) would apply. However a court of equity would not enforce the affirmative contract to fight Schmeling since contracts for personal services are not specifically enforcible in equity. The issuance of an injunction restraining Braddock

from the Chicago encounter would impel him to go through with his New York date, but the fact of the nineteen day period separating the two dates argues none too well for the injunction.

The Champions Enter the Lists

While much of the controversy has centered about Braddock, it might be well to examine the status of the Chicago promoter, who might be termed the "*causa causans.*" There are authorities holding one, who interferes with a contract, liable to the party injured by such interference. *Walker v. Cronin,* 107 Mass. 555 (1871); *London Guarantee Co. v. Horn,* 206 Ill. 493, 69 N. E. 526 (1903). Indeed in a case somewhat akin in its facts, the plaintiff was a contract breaker who was suing the interferer, and Glennon, J., thought that the defendant "may have been guilty of a wrong for inducing the plaintiff to repudiate his agreement." *Budd v. Morning Telegraph,* 241 App. Div. 142, 145, 271 N. Y. Supp. 538, 542 (1st Dep't 1934). Perhaps the whole affair would be most appropriately settled by invoking that hoary procedure of the common law, sanctioned when knighthood was in flower and justice more exciting. Let us have a "trial by battle" immediately—according to the rules of chivalry. "Marshal, let the trumpets sound—set forward combatants."