BOOK REVIEWS


To the growing collection of volumes of the Restatement of the Law is now added one dealing with the subject of Judgments or, more particularly, their validity and their effect on subsequent controversies. Though confined in scope, since enforcement of judgments is not considered, the work bears the evidence of the same careful planning, arrangement and format that has marked earlier publications of the American Law Institute. In some one hundred and thirty sections is set forth an analysis of the elements necessary to a valid judgment whether in rem or in personam, the effect of invalidity with its complementary problems of direct and collateral attack, the scope of res adjudicata, and the binding effect thereof, and lastly a consideration of the problems arising in conjunction with equitable relief against judgments. It is not, nor was it intended to be, a complete treatment of the subject, for the Restatement is clearly not designed as a series of texts on isolated subjects. Adequate cross-reference to companion volumes is, therefore, provided so that overlapping of subject matter has been avoided. It is, however, an essential starting point for any investigation of a topic of the law which, if not highly irrational, has at least presented the anomaly of a court taking jurisdiction of a cause for the purpose of determining that it lacks jurisdiction.

Particularly significant are the sections dealing with jurisdiction over foreign persons and corporations found within the state or conducting business therein. The view of Judge Goodrich, in his work on Conflict of Laws, regarding jurisdiction over such persons as to matters disconnected with the business being transacted within the state is met with a caveat in the official restatement drafted by the Institute’s Committee on Judgments on which he served. The Committee’s reluctance to enter such a debatable field should not, however, be too severely criticized for there is but slender basis in precedent for any definite position on that point.

The Illinois lawyer reading this work will find some positions taken which do not accord with his understanding of the existing law of his own state. Too close similarity between law in fact and law as restated would arouse suspicion that Illinois had achieved that static condition from which only decay could ensue. On such problems, therefore, as venue in case of confession of judgment, the right to bring several actions for

2 Restatement, Judgments § 30, p. 123.
3 Compare Restatement, Judgments § 18, p. 88, comment (e), with Ill. Rev. Stat. 1941, Ch. 110, § 174(5), as interpreted in Houston v. Ingels, 318 Ill. App. 383, 48 N.E. (2d) 196 (1943).
distinct harms arising from one act,⁴ and the right to maintain two actions in case the tortious injury produces a period of lingering illness and ultimately results in death,⁵ a marked difference exists between the local law and the views of the Restatement. This conflict may well serve as a sign that dynamic, rather than static, conditions prevail in the law of this state.

A caveat should also be expressed in connection with Section 110 of the Restatement which provides that when a court decides that one of the parties has a right or title superior to that of the other in certain property, then "the judgment has the effect of an involuntary transfer from the unsuccessful party to the other." Such may be the case in actions to quiet title, but would hardly be recognized as the rule in Illinois in cases involving specific performance of contract and the like,⁶ where a deed of conveyance would be regarded as essential and the judgment or decree would not, ipso facto, operate to transfer title.

One unfortunate piece of cross-reference work seems to have occurred. In discussing the effect of a judgment in a representative or class action, Section 26 indicates that the court possesses jurisdiction over the members of the class if the action is "properly" brought. To determine when such action is so instituted, the reader is referred to Sections 86 and 116. The first of these cross-references does not, except by indirection, touch on the effect of fraud or collusion on the part of those conducting the litigation. The second suggests that equitable relief may sometimes be available if the proceedings "were not conducted with due regard" for the interests of the persons alleged to have been represented, but does not elaborate thereon. The specific effect of fraud in obtaining such a judgment, well illustrated by the decision in Hansberry v. Lee,⁷ is primarily considered under Section 91, but even there the specific topic is not treated to any appreciable extent. A clearer note to Section 26 might have been constructed. Such a minor defect, however, should not be used to detract credit from a work otherwise skillfully and carefully prepared.

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⁴ Compare Restatement, Judgments § 62, particularly comment (e), with Clancey v. McBride, 338 Ill. 35, 169 N.E. 729 (1930). The view adopted in the Restatement does, however, represent that of the overwhelming majority of states. See, for example, Fields v. Philadelphia Rapid Transit Co., 273 Pa. 282, 117 A. 59 (1922).

⁵ Compare Restatement, Judgments § 92, with Holton v. Daly, 106 Ill. 131 (1882) and Susemiehl v. Red River Lumber Co., 378 Ill. 138, 33 N.E. (2d) 211 (1941).

⁶ Compare Restatement, Judgments § 110, with Poole v. Koons, 252 Ill. 49, 96 N. E. 556 (1911) and Eich v. Czervonko, 330 Ill. 455, 161 N.E. 864 (1928).

⁷ 311 U. S. 32, 61 S. Ct. 115, 85 L. Ed. 22 (1940).