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ACTIONS AGAINST NON-RESIDENTS AND ABSENTEES.

NEARLY all governments have found it necessary to authorize their courts, in the administration of justice, to entertain jurisdiction to some extent over non-residents and absentees from their territory. A due regard for the welfare of their own citizens, whose rights of property or person, it is argued, should not be impaired by the absence of persons who may be interested with, or related to them, is offered, as a justification for the practice. It is proposed in the present article, to ascertain the proper limits within which such jurisdiction may be exercised. But before entering upon the task, it is thought that a statement of the different modes in which it has been asserted, may throw some light upon the discussion. At least, it will show how extensively the practice prevails; and in this fact will be found an excuse for the discussion, which otherwise might not be of much practical importance.

In Indiana (2 vol. Stat. Ind. (1860), p. 64), California (Comp. Laws Cal., p. 524, § 30 (1850-1853)), Kentucky (Stanton's Code Pr. Ky., sec. 88, p. 52), and Maine (Rev. Stat. Maine, p. 499 (1857), § 24), actions at law may be maintained against non-residents upon constructive service of process by publication or such mode as the court may order. In Tennessee (Code of Tenn., p. 779 (1858)), Mississippi (Rev. Code Miss., p. 545 (1857)), North Carolina (Rev. Code N. C., p. 188 (1854)), Vermont

(Comp. Laws Vermont, p. 210 (1850)), Illinois (1 vol. Stat. Ill., p. 139 (1863)), Arkansas (Ark. Digest of Statutes, p. 227 (1846)), and Colorado (Laws Colorado, p. 183 (1861–2)), suits in chancery may be maintained against non-residents upon constructive service of process by publication. Actions at law may be brought upon like service of process in Minnesota (Stat. Min., p. 335 (1851)), Kansas (Comp. Laws Kansas, p. 136, sec. 78 (1862)), Nebraska (Laws Nebraska, p. 119 (1857–1859)), Iowa (Rev. Laws Iowa, p. 501 (1860)), Ohio (2 Rev. Stat. O., p. 964 (1860)), Wisconsin Rev. Stat. Wis., p. 719 (1858)), and New York (Voorhies N. Y. Code, p. 167, § 135 (1864)), where the defendant absconds or withdraws himself from his usual place of abode, with the intent to defraud his creditors or to evade the process of the court. Reference is now had to actions *in personam;* but it is not to be inferred that all the statutes cited authorize every form of such action. According to the law of Scotland, suit might be instituted and judgment rendered against an absent subject having heritable property in the kingdom. Service was effected by proclamation made by a messenger-at-arms at the market cross of Edinburgh and the pier and shore of Leith. On this mode of service a judgment of horning might be rendered, which was executed in a writ giving authority to arrest and *poind*, also to charge the debtor to pay, and, in default of payment, to denounce him as a rebel and put him to horn: Bell's Laws of Scotland 2396. The record of such a case will be seen in *Douglass* v. *Forrest*, where the validity of such a judgment was sustained in the Court of Common Pleas of England: *Douglass* v. *Forrest*, 4 Bingham 686. The decision, however, may be regarded as resting upon the statute of 54 Geo. 3, c. 137, in which this mode of serving process was recognised, and not upon any principle of international law. Under the French law the attorney-general is charged with the duty of attending to the interests of absentees: Code Civil, liv. 1, T. 4, cap. 1, art. 114. The notice of suit might be left with him, as representative of the absentee: Code Pro. Civ. Partie 1, liv. 2, tit. 2, art. 69. A judgment rendered upon this mode of service in one of the British islands where the French law prevailed, was held valid in the courts of England: *Bequet* v. *McCarthy*, 2 Barn. & Adol. 951. Under the Civil Code of Louisiana, the court appoints curators to attend to the interest of absent defendants, on whom citation may be served:

Hill v. *Bowman*, 14 La. 447; *Gray* v. *Trafton*, 11 Martin 246; La. Civ. Code, art. 57; Code Prac. 116–194, 964.

Under the Admiralty Law of England, citation in proceedings *in personam* could be served by posting in the Royal Exchange: Story's Confl. Laws, sec. 546 (3d ed.). The warrant of seizure in suits *in rem* was served, by taking possession of the property and reading or producing the warrant to the persons in charge: 2 Browne's Civ. & Ad. Law 397–398. In the United States our admiralty practice requires the marshal after seizure to give public notice of the seizure and time of return of the writ, in such newspaper in the district as the court shall direct: 2 Conk. Adm. Pr., p. 152 (2d ed.).

Process at the common law had to be served upon the person of the defendant. If he failed to appear in court, in obedience to the verbal warning of the sheriff holding the original writ, writs of attachment or *pone* issued from the court commanding the sheriff to attach him by taking certain of his goods, which should be forfeited if he did not appear. If after this he neglected to appear, writs of distress issued from time to time till he was stripped of his goods and the profits of his lands, which all became forfeited to the king. Here the process ended in cases of injuries without force, until the enactment of statutes which allowed a *capias* for his person in actions of account, detinue, and case, in like manner as it had before been used in actions for injuries accompanied with force. If he could not be found upon the return of this writ the suit was at an end: 3 Bl. Com. 283–4. The proceedings of outlawry which followed at the option of the plaintiff, resulted in a general forfeiture of his property to the king, from whom the plaintiff on petition to the Court of Exchequer or Lords of the Treasury could obtain the satisfaction of his demand. But he was left without judgment on his claim, and the satisfaction of it was limited, of course, by the value of the property found. In recurring to these requirements of the old common law, we are more deeply impressed with the departure from it, which is witnessed on every hand; having in our daily practice almost forgotten that our ancestors were in the habit of seizing the defendant and putting him under arrest, before they felt justified in entering a judgment against him.

Nearly the same strictness prevailed in the Court of Chancery until the enactment of modern statutes. It was a rule in equity

that all persons legally or beneficially interested in the subject-matter of a suit, should be made parties. But it was the practice of the court to dispense with all persons over whom it did not possess jurisdiction, if it could be done consistently with the merits of the case, their absence being stated in the bill: Mitford's Pl. p. 30. Justice was administered, as far as it could be, to those within the jurisdiction. It was usual to state the name of the absent party and pray process against him when he came within the jurisdiction: Story's Eq. Pl., sec. 78, 79. In the reign of George the Second, the Court of Chancery was authorized to commence and proceed to final judgment against a subject of the kingdom, who had withdrawn or absconded from his usual place of abode, for the purpose of evading process: 5 Geo. II. cap. 25. Notice of the suit had to be inserted in the London Gazette and posted in some public place at the Royal Exchange. This statute was repealed by 11 Geo. IV. and 1 Will. IV. c. 36, in which, however, the provisions relating to process by constructive notice were re-enacted: 11 Geo. IV. and 1 Will. IV. c. 36. These statutes have probably been the basis of the laws authorizing service of process by publication in suits in chancery in the different states. In the state of Georgia, the 5 Geo. II. cap. 25 was held to be in force as a part of the English law introduced into the colonies; but it was not regarded as applying to non-residents who had not been inhabitants, absconding from, or leaving, the state: *Dearing* v. *Bank of Charleston*, 5 Geo. Rep. 497.

That the person or thing proceeded against must be within the jurisdiction of the court entertaining the cause of action, seems to be well settled as a general principle of international law. As such it commands the assent of all the authorities cited in this article, which in any way refer to it. The diversity of opinion is encountered in fixing the qualifications and exceptions to it. It will be found that some courts have gone so far in doing this, as practically to deny the force and virtue of a general principle, to which they have yielded their formal assent.

In respect to actions in the nature of proceedings *in rem*, there is scarcely any controversy. To enforce any right of action against property real or personal, it must be within the jurisdiction or possession of the tribunal assuming to give judgment against it: *Rose* v. *Himeley*, 4 Cranch 241; *Monroe* v. *Douglass*,

4 Sandf. Ch. 126. It has been intimated by some judges, that a notice of some sort, either actual or constructive, to persons interested in the property is necessary to an exercise of the jurisdiction: *Cavan* v. *Stewart*, 1 Starkie 525; Story's Confl. Laws, § 592; *Fisher* v. *Lane*, 3 Wils. 302. In all the states and governments to which reference has been made, notice is provided for in some form or another. It is an easy thing to give, and a prudent administration of justice would seem to require it. It would be difficult to maintain, however, that a formal notice of any kind was indispensable, or that our courts would be justified in ignoring the record of a suit *in rem* which fails to show a notice, if it comes from a state or nation whose laws did not require it. In compliance with the general principle already laid down, which has its source in the comity of nations, such record would be entitled to full faith and credit, unless impeached for actual fraud; for the reason that the court had jurisdiction over the thing proceeded against, and gave judgment according to the laws of the land: *Monroe* v. *Douglass*, 4 Sandf. Ch. 126. In many actions *in rem* the levy upon, or seizure of, the property answers the office of a notice. This is eminently so in admiralty proceedings: Story's Confl. § 440; *The Jerusalem*, 2 Gall. 191; *Hollingsworth* v. *Barbour*, 4 Peters 466. The action of attachment according to the custom of London is entirely unprovided with any kind of notice, either actual or constructive, except what may be implied in the seizure of the property: Drake Attach. § 5 (2d edition); *Kilburn* v. *Woodworth*, 5 Johns. 37.

It may be remarked in passing, that many actions are of a twofold character. They have for their object the enforcement of demands against both person and property. The common action of attachment as it prevails in the United States is referred to as one of them. So far as its proceedings terminate in a judgment against the person of the defendant, they rest upon the same ground with other actions *in personam*, and should disclose the same kind of service of process. If they fail in this, the judgment will not be recognised in other jurisdictions as extending beyond the property actually seized or levied upon: *Spencer* v. *Sloo*, 8 La. 290; *Fiske* v. *Anderson*, 33 Barb. 71; *Winston* v. *Taylor*, 28 Mo. 82; *Steel* v. *Smith*, 7 W. & S. 447; *Phelps* v. *Halker*, 1 Dall. 162; *Pawling* v. *Wilson*, 13 Johns. 192; *Cochran* v. *Fitch*, 1 Sandf. Ch. 142; *Chamberlain* v. *Farris*, 1

Mo. 517; *Kibbe* v. *Kibbe*, Kirby 119; the presence of property being no ground for founding jurisdiction over the person: Story's Conflict of Laws, § 549; *McVicker* v. *Beeby*, 31 Maine 314.

In actions for partition, foreclosure of mortgages, and the enforcement of liens and demands against property, the manifest injustice of withholding all legal remedy from those interested in, or against the property, for the reason that others who are interested with them are not inhabitants of the country or cannot be found therein, is a sufficient excuse for a resort to constructive service of process. In the enactment of laws upon this subject, injustice has been done only by extending the jurisdiction of courts to a class of cases in which it cannot be sustained under the laws of nations. This brings us to a consideration of that class, which will be found embracing nearly every description of proceeeings *in personam*.

There is one exception to the general principle here advocated, which is now acquiesced in by the best authorities. Reference is had to proceedings in divorce. If one of the parties is an inhabitant of the territory of the forum, suit may be instituted and decree rendered upon constructive notice, although the other party may never have been amenable to the jurisdiction by presence or inhabitation: 2 Bishop M. & D. 141. This exception rests upon grounds peculiar to the nature of the action. The state, being interested in every marriage contract which imposes upon its citizens a *status* in life, assumes the right to change and modify that *status* whenever the public good demands it. And this right, unless exercised unjustly, will be conceded by all foreign governments.

In all other actions *in personam* the authorities concur in denying all jurisdiction whatever over non-resident foreigners, upon anything short of actual notice given within the territorial limits of the forum, or voluntary appearance there.[1] It may be

[1] *D'Arcy* v. *Ketchum*, 11 How. U. S. 165; *Buchanan* v. *Rucker*, 9 East 192; *Steel* v. *Smith*, 7 W. & S. 447; *Miller* v. *Miller*, 1 Bailey 242; *Sallee* v. *Hays*, 3 Mo. 116; *Gillett* v. *Camp*, 23 Mo. 375; *Williams* v. *Preston*, 3 J. J. Marsh. 600; *Cobb* v. *Haynes*, 8 B. Monroe 139; *Whiting* v. *Johnson*, 5 Dana 392; *Harris* v. *John*, 6 J. J. Marsh. 257; *Buttrick* v. *Allen*, 8 Mass. 273; *Bissell* v. *Briggs*, 9 Mass. 462; *Phelps* v. *Brewer*, 9 Cush. 390; *Hall* v. *Williams*, 6 Pick. 232; *Warren* v. *McCarthy et al.*, 25 Ill. 94; *Sim* v. *Frank*, 25 Id. 125; *Harrod* v. *Barreto*,

remarked that the delivery of notice to the non-resident outside the territory of the forum, will be regarded in no more favorable a light than notice by publication: *Ewer* v. *Coffin*, 1 Cush. 23; *Fiske* v. *Anderson*, 33 Barb. 71. It will be seen from the citation of authorities that the question here discussed has been before the United States Supreme Court. In the case of *D'Arcy* v. *Ketchum*, 11 How. U. S. 165, it appeared that a judgment had been rendered in the state of New York in favor of Ketchum against Gossip and D'Arcy upon a partnership note of theirs. There was personal service on Gossip, and no service on D'Arcy, who was an inhabitant of Louisiana. Judgment was rendered against him in accordance with a New York statute, which provided that where joint debtors were sued, and one of them was brought into court, judgment should go against the others in like manner as if they were served with process, the service of process upon one being regarded as constructive service upon the rest. An action upon this judgment was brought in the Circuit Court of the United States against D'Arcy. The court held, that, under the Act of May 26th 1790, the record was entitled to full faith and credit, and gave judgment accordingly. This judgment of the Circuit Court was reversed in the Supreme Court on appeal, where it was held that the courts of New York acquired no jurisdiction over D'Arcy; and that not being a citizen or inhabitant of that state, he could not be affected by laws to which he was not amenable.

Judgments upon constructive service of process against citizens temporarily absent from their country, are supposed to rest upon a different principle. It is maintained by some that every citizen is amenable to the laws of his country wherever he may be. In respect to judgments from countries wholly foreign to us, no well-founded reason for a departure from the general principle can be perceived. For although it is true that each sovereignty may provide any mode of service of process it chooses, which will be

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1 Hall 155; *Smith* v. *Smith*, 17 Ill. 482; *Flowers* v. *Foreman*, 23 How. U. S. 132; *Shumway* v. *Stillman*, 6 Wend. 447; *Bissel* v. *Wheelock*, 11 Cush. 277; *Hopkirk* v. *Bridges*, 4 Hen. & M. 413; *Hunt* v. *Johnson*, Freeman's Ch. 282; *Fullerton* v. *Horton*, 11 Vt. 425; *Adams* v. *Lamar*, 8 Ga. 83; *Ridgeley* v. *Webster*, 11 N. H. 299; *Foster* v. *Glazener*, 27 Ala. 391; *Lorejoy* v. *Albee*, 33 Me. 415; *Maude* v. *Rhodes*, 4 Dana 144; *Miller* v. *Sharp*, 3 Rand. 41; *Menlove* v. *Oakes*, 2 McMullen 162; *Pattison* v. *Mayfield*, 10 La. 220.

obligatory in its own courts, yet inasmuch as foreign judgments have no extra-territorial force except what is yielded to them by the comity of nations, the courts, guided by the reason and justice of that comity, have invariably withheld their approval from all judicial proceedings which could be shown to be against reason and justice: 2 Kent Com. 120. And the act of entering up a judgment against a person, who has no actual notice of the proceeding against him, is so revolting to the common sense and perception of justice as to constitute the plea of it a good defence whenever made out, notwithstanding the practice may have been in strict conformity with the laws of the sovereignty to which the defendant owed his allegiance.

But where such a record comes from a sister state, a difficulty is presented in sustaining the plea which is not so easily overcome. In the Act of Congress of May 26th 1790, it is provided that the records of the different states "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 or shall be taken." If judgments are rendered upon service of process by publication in the state of California against her own citizens, why shall they not have the same faith and credit in the courts of other states that is given to them at home? In almost all the cases upon the subject, the defendant has sought to impeach the record on the ground that he was not a resident of the territory of the forum or amenable to its laws; and in not a few his plea has been sustained upon this ground alone, the courts intimating that if he had been a citizen or inhabitant of the territory of the forum, the judgment upon constructive notice would be valid as against him: *Bimeler* v. *Dawson*, 4 Scam. 536; *Smith* v. *Smith*, 17 Ill. 482; *Sim* v. *Frank*, 25 Ill. 125; *McRae* v. *Mattoon*, 13 Pick. 53; *Green* v. *Sarmiento*, 1 Peters C. C. 74. The light in which the English courts have regarded judgments upon constructive notice in some of their subject provinces would seem to support this view: *Douglass* v. *Forrest*, 4 Bing. 686; *Bequet* v. *McCarthy*, 2 Barn. & Ad. 951; *Smith* v. *Nicolls*, 5 Bing. N. C. 208. If any difference of treatment is to be observed towards the judgments from sister states, it must be considered as imposed by the Act of Congress to which we have referred. If that act was again open to construction, it might be thought difficult to escape the conclusion intimated in *Bimeler* v.

Dawson. But after an extended controversy it is now settled that the judgments of sister states under the Act of Congress of 1790 shall have full faith and credit as domestic judgments: *Mills* v. *Duryee*, 7 Cranch 48; *Hampton* v. *McConnell*, 3 Wheat. 234; except where they have been fraudulently obtained, or where the courts rendering them had no jurisdiction of the subject-matter or parties: *Bissell* v. *Briggs*, 9 Mass.; *Shumway* v. *Stillman*, 4 Cow. 292; *D'Arcy* v. *Ketchum*, 11 How. U. S. 165.

Now if our courts are justified under the Act of 1790, in withholding full faith and credit from the record of a judgment of a sister state, against a non-resident foreigner, upon service of process by publication, as seems to be well established, they are equally justified under that act in ignoring the validity of a record upon similar service of process against a citizen of the state temporarily absent but still amenable to her laws; for the reason that in said state the two judgments have the same force and validity, no distinction being made between foreigners and citizens. The embarrassment arising from the Act of 1790 being removed by the decisions of the Supreme Court in the case of judgments against non-resident foreigners, and the question of jurisdiction being thus thrown open to inquiry, the courts are at liberty to govern their conduct upon the subject, by the principles of international law, and declare in all suits on foreign judgments, whether rendered against non-residents or citizens of the forum, what constitutes sufficient jurisdiction to support a judgment, which shall command the faith and respect of all tribunals. It is a question of record or no record. If the defendant had no actual notice of the proceedings, the record of them is a nullity as against him, and does not comply with the definition of a judicial record within the meaning and intent of the Act of Congress of 1790: *Thurber* v. *Blackburne*, 1 N. H. 242; *Holt* v. *Alloway*, 2 Blackf. 108. It matters not how it may be regarded, or what it may be denominated, at home. The general understanding of the essential requisites of a record, under the laws of nations, and which is the one undoubtedly embraced in the Act of 1790, cannot be changed or modified by the laws and regulations of the states. This will be the conclusion reached by all the courts when the proper cases shall arise. In the case of *Webster* v. *Reid*, 11 How. 437, Justice McLean accepts it with-

out any qualification. It appeared in that case, that the legislature of Iowa by special statute authorized suits *in personam* against "owners of the half-breed lands" lying in Lee county. It was provided that service of process should be effected by publication in the newspapers. Their lands were seized and sold under judgments rendered in accordance with this statute, and the question about their validity rose in a controversy upon the title to the lands. Justice McLean in the decision uses the following language: "These suits were not a proceeding *in rem* against the land, but were *in personam* against the owners of it. *Whether they all resided within the territory or not does not appear, nor is it a matter of any importance. No person is required to answer in a suit on whom process has not been served, or whose property has not been attached.* In this case there was no personal notice, nor attachment or other proceeding against the land until after the judgments. *The judgments, therefore, are nullities*, and did not authorize the executions on which the land was sold."

In some states the fact that the defendant has absconded from his usual place of abode, or conceals himself, with a design to evade process, is made a ground of entertaining jurisdiction over him upon constructive notice. This it seems to us is equally objectionable, as in cases where he is temporarily absent, or cannot be found. For a court to enter judgment against a person, as if he was present submitting to its jurisdiction, when from the record itself it appears that he is not only not in court but cannot be brought in, it presents such a contradiction on the face of the record as ill becomes the truth and solemnity which has always been accorded to judicial proceedings. Such facts when proved might be a good ground of proceeding against the property of the fugitive by attachment; or by confiscation as in outlawry at common law. But an attempt to extend a jurisdiction over his person, for the reason that he puts himself beyond the territory or process of the court, only tends to produce a confusion in the general understanding of the object and province of courts of justice.

Strictly speaking there is no personal service, except that of reading or delivering the writ or notice to the defendant. Where the recitals of the record disclose this mode of service, they have been held conclusive upon the parties, by some of the highest

authorities: *Bimeler* v. *Dawson*, 4 Scam. 536; *Wescott* v. *Brown*, 13 Ind. 83; *Pritchett* v. *Clark*, 5 Har. (Del.) 63; *Field* v. *Gibbs*, Peters C. C. 155; *Roberts* v. *Caldwell*, 5 Dana 512; *Wilcox* v. *Kassick*, 2 Mich. 165; but the decision of Judge MARCY in *Starbuck* v. *Murray*, 5 Wend. 148, against this position is unanswerable. The weight of authority at present concedes only the force of *primâ facie* evidence to such recitals, and allows the defendant to contradict them by parol testimony: *Long* v. *Long*, 1 Hill 597; *Norwood* v. *Cobb*, 15 Tex. 500. This was the conclusion reached by Chief Justice SHAW in the case of *Carleton* v. *Bickford*, 13 Gray 591.

Service of process may be effected under the laws of many of the states by leaving a copy of the writ or notice at the usual place of abode of the defendant. A recital of such service is *primâ facie* evidence of the court having jurisdiction over him: *Tullerton* v. *Horton*, 11 Vt. 425. The burden of disproving it rests with him. This is equally true with recitals of voluntary appearance by defendant: *Gleason* v. *Dodd*, 4 Metc. 333; or of his appearance by attorney: *Phelps* v. *Brewer*, 9 Cush. 390; *Sherrard* v. *Nevins*, 2 Ind. 241; *Aldrich* v. *Kinney*, 4 Conn. 380. A distinction has been taken in the courts of Missouri which excludes the defendant from contradicting the recitals or proof of appearance by attorney, if those recitals are conclusive in the state from which the record comes: *Warren* v. *Lusk*, 16 Mo. 102. In the case of *Warren* v. *Lusk* the court held the recital of appearance by attorney in a record from the state of Illinois, was conclusive under the Act of Congress of 1790. In reaching this conclusion the court adhered to the old English doctrine upon the conclusiveness of such a recital in a domestic judgment, and then presumed that in the absence of proof the law of Illinois corresponded with that of Missouri, which would make it conclusive at home and therefore conclusive abroad. The error committed by the court was in yielding to the old doctrine in relation to such a recital in a domestic judgment, as opposed to the more just and reasonable one which is fast being adopted in modern times, and which regards such a recital only *primâ facie* evidence of jurisdiction: 5 Am. Law Reg., N. S. (May 1866), 387; *Shelton* v. *Tiffin*, 6 How. U. S. 163; *Harshey* v. *Blackman*, 19 Iowa 101.

A return or recital of service of process by publication in a

foreign record is not even *primâ facie* evidence of jurisdiction (*Steel* v. *Smith*, 7 W. & S. 447; *Winston* v. *Taylor*, 28 Mo. 82; *Aradt* v. *Aradt*, 15 O. 33; *McVicker* v. *Beeby*, 31 Maine 316; *Bicknell* v. *Field*, 8 Paige 440), as against citizens and residents of other states. If a record does not show jurisdiction as to the parties upon its face, it cannot be aided by proof of such fact *aliunde*: *Noyes* v. *Butler*, 6 Barb. 613.

A reflection may be added in closing this discussion. If it is the will of the law-making power of a state that all manner of judgments should be rendered against non-residents and absentees upon constructive service of process, such as publication, there would seem to be no power in the courts of that state to refuse obedience. It could hardly be shown that such a law was in violation of the Federal Constitution, and the courts would not be justified in declaring it void as opposed to natural justice or the principles of international law. Considerations of this sort belong exclusively to the legislative department, and afford no aid to the courts in opposing the ascertained will of the state. It is only when the records come before foreign tribunals that the questions rise which are here discussed. The same principles which govern them in passing upon the validity of such records, should be the guide of the legislature of each state in conferring authority upon its courts. It is to be regretted that such has not always been the case, and that our courts are called upon so often to withhold their approval from the records of judicial proceedings in sister states, for the reason that they do not conform to the requirements of an enlightened jurisprudence.[1] A. M.

[1] In the recent revision of the statutes of Missouri, this subject has been placed upon grounds eminently rational and just. Orders of publication are granted "in suits in partition, divorce, attachment, and for the foreclosure of mortgages and deeds of trust, and for the enforcement of mechanics' liens and all other liens against either real or personal property, and in all actions at law or in equity which have for their immediate object the enforcement or establishment of any lawful right, claim, or demand to or against any real or personal property within the jurisdiction of the court: Rev. Stats. Mo., p. 655 (1865).