

Justice Courts, Process Served Outside of County. Process in Justice Courts, Service of Outside of County.

Writs of attachment, or of execution, being mesne and final process, cannot legally be served outside of the county in which the justice of the peace issuing the same holds office.

Helena, Montana, March 30, 1910.

Hon. H. S. Hepner,
County Attorney,
Helena, Montana.

Dear Sir:

I am in receipt of your letter of March 28, requesting an opinion upon the following proposition:

"Has the sheriff of this county authority to serve writ of attachment or execution, issuing out of a justice's court in another county?"

Section 20, of article VIII., of the constitution, provides that justice's courts shall have original jurisdiction within their respective counties as may be prescribed by law, but nowhere does the constitution give such courts jurisdiction outside of their counties.

The statutes provides in what cases the justice's courts will have jurisdiction in their counties.

See section 6286 to 6288.

Section 6282 defines the territorial limits of their civil jurisdiction, and reads as follows:

"The civil jurisdiction of justices' courts extends to the limits of the county in which they are held, and mesne and final process of any justice court in a county may be issued to and served in any part of the county."

This section clearly limits the service of "mesne and final process" to the county, and the question then arises as to what was intended by the words "mesne and final process."

The definition of the word "process," when not modified by another word, includes all writs, warrants, summons and orders of courts of justice or judicial officers." (See sections 16, 3009 and 8071, revised codes.)

On the other hand mesne process, in the absence of a statute showing a different meaning, has been defined as follows:

"In its strict significance mesne process is used to embrace all writs and orders of the court necessary for the carrying on of the suit after its institution, from and after the summons which is the original process up to, but not including those writs which are necessary to secure the benefits of the suit to the successful party, and which are final process."

Birmingham Dry-Goods Co., v. Bledsoe, 21 So. 403, (Ala.)

Final process is defined as follows:

"Final process is usually used as equivalent to a process of of execution, as distinguished from mesne process which must issue before final judgment."

32 Cyc. p. 420.

From the above definitions of mesne and final process it is apparent that writs of attachment and of execution can only be served in the county in which the justice court issuing the same is situated, unless the provisions of said section 6282 are modified by the provisions of section 7028, which relates to the issuance of writs of attachment by justice's courts.

This section provides that:

"The writ may be directed to the sheriff or any constable of the county, or the sheriff of any other county," etc.

However, it will be noticed that this part of said section 7028 is identical with the language of such section as it appeared in the codes of 1895 before the amendment of March 7, 1899. Section 1562 of the code of civil procedure of 1895 was an original section, while section 63 of the code of civil procedure of 1895 was part of an act approved March 7, 1895, and, therefore, repealed said section 1562 of the original code in so far as there was an conflict.

Therefore, in our opinion, the amendment of said section 1562 by the act of March 7, 1899, did not re-enact the part of the section which had already been repealed by implication by said section 63. (See Sections 119 and 124 Revised Codes.)

On the other hand, we are of the opinion that the words "or the sheriff of any other county," as they now appear in section 7028, (which is section 1562 after the amendment of March 7, 1899. First, for the reason that said section 6282, dealing exclusively with the subject of jurisdiction of justices' courts, would prevail over an incidental clause in a section dealing with another subject. And, this construction is strengthened by an examination of the following sections relating to executions to-wit:

Section 7061 provides that the execution must be directed to the sheriff, or to a constable of the county, no provision being made for its issuance to the sheriff of any other county.

Section 7078 provides that:

"Justices of the peace may issue * * * final process on any judgment recovered therein to any part of the county."

Here, again, we find no authority for issuing final process to a sheriff outside of the county.

As there is no authority for the issuance of executions to sheriffs outside of the county, it would be an absurd and unreasonable construction of said section 7028 to hold that a writ of attachment could be directed to a sheriff outside of the county authorizing him to attach property in his county when it would be impossible, if the action had been prosecuted to judgment, to have an execution issued whereby the property attached could be levied on and sold.

Therefore, in our opinion, a sheriff has no authority to serve a writ of attachment or an execution in his county which had been issued out of a justice's court of another county.

It is true that section 7002 provides for the service of summons outside of the county in which it was issued in certain instances. But this section does not conflict with said section 6282, for the reason that the summons is the original process, as distinguished from the mesne and final process, as used in said section.

Cole v. Fisher, 5 Pac. (Cal.) 915.

Very truly yours,

ALBERT J. GALEN,

Attorney General.