"Under the general rule of Lis Pendens actual service is recognized as the test for the requirement of jurisdiction."

This case also cites the statute on the commencement of a civil action along the same line of reasoning of jurisprudence says 1 O. Jur. 2 D, 310 Section 39:

"It is clear that the petition must be filed and the summons issued."

O. Jur again says 1 O. Jur. 2 D 313, Section 42:

"A cause of action exists where there is a demand capable of present enforcement, a suitable party against whom it may be enforced and a party who has a present right to enforce it."

1 O. Jur. 2 D 73, Section 50.

"Where Plaintiff dies after suit is filed but before service of process, the proceedings abate eo instintani. The case does not become a case in Court."

6 ON P (Ns) 457. Welsch vs Trevar.

"Where Plaintiff to an action dies before summons is served on the Defendant, the action abates, eo instintani."

At 58:

"The Court had not yet secured jurisdiction through service."

10 O.C. Rep. 652. 1st Sylabus.

" Where an action is brought against a party, and the summons is returned not found, dead, there is no suit which could be revived against the administrater of such deceased person."

5 O. 225. "The summons forms part of the record and indicates, from its date, the commencement of the suit."

"The jurisdiction of a cause of action attaches on filing the petition and issuing summons. Colier vs Beckley, 33 O.S. 523, Bank vs Building Co. 2 D 336.

The Ohio Constitution set forth the requirement for due process of law and provides in Article 1, Section 16:

"The Courts shall be open, and every person having injury done him in his land, goods person, or reputation, shall have remedy by due course of law, and shall have justice administered without denial or delay."

The United STates Constitution grants to the litigant the right to have his property. That right can be abridged only through due process of law as defined in the Fifth Amendment to the Consitution of the United States, which reads in part as follows:

"No person shall be - - - deprived of life, liberty, or property, without due process of law."

Defendant contends that the statute clearly provides for the manner of proceeding and defines explicitly the commencement of a civil action. Defendant contends that any other preceeding violates the defendants Constitutional Rights. Filed: Aug. 30, 1957 Hocking County
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to make good his cause of action or defense, he must do so by all the lawful means within his control; and if he fails to do so, purposely or negligently, it will not afterward be permitted him to re-litigate the same matters between the same parties, nor to deny the correctness of the final determination.

Sears vs. Cresop, 28 O. S. 668 at 669.

" A litigation between parties is conclusive upon all matters in issue, when carried into judgment. It is not only conclusive as to matters actually mooted, but also those which the parties might have controverted in the cause."

Hixson vs Ogg, 53 O.S. 361 at 366.

"The general rule, established by the uniform current of authority, is that an issue once tried, decided and carried into judgment works an estoppel, and cannot be relitigated by the same parties in a subsequent action, though the subject of the two actions are different."

And again at 367.

" A judgment is conclusive, notonly as to the subject-matter in suit, but as to all other suits which through concerning other subject matters involve the same questions of controversy."

And again at 368.

"And if, in such case, the common and material fact has been judicially ascertained in the action first tried, it should be regarded as established in respect of the other action, so long as the judgment remains in force."

And again at 369.

"It must always do that where it in fact prevents the assertion of a just demand or denies the interposition of a meritorious defense; but these results rarely occur, and where they do occur, they can usually be traced to the negligence of the party estopped. The possibility of an occasional advantage unfairly secured by one of the parties to an action by reason of the rule, is indeed a slight evil when compared with themischief which would result from its abrogation. The rule is founded upon that principle of public policy which requires that litigation shall not be interminable, and demands that when a party has had a fair trial before a tribunal established for that purpose, and has exhausted the remedies provided by law to obtain a new trial, he shall be held to abide the judgment of the court."

The Defendant contends that dismissal of Case Number 11,382 operated as a dismissal of Case Number 11,404. Victor Mortgage Co. vs Acnoff, 67 Ohio Law Abstracts 459.

"The rule in such cases is that when two causes of action are brought and a Journal Entry disposes of one but does not dispose of or mention the other, the silence of the Journal Entry as to the second is considered as dismissing it, and such dismissal is Res Adjudicata." 72 O. App. 235.

Where the parties have brought two actions on the same cause of action, the actions have been merged into a single cause of action with a dismissal of both actions.

Law provides a forum for involving matters between parties. It is a theory of law that problems which cannot be resolved between people individually, must be resolved between people in the forum of the Court Room. Law is to provide a safe haven for the satisfactory adjustment of the problems between man and man. The issues once resolved should be resolved for all times. 64 Ohio Law Abstracts. Decisions of the same nature are as follows:

"citations: 14 O. Jur. 329, Section 14; 14 O. Jur. 340, Section 27; 23 O. Jur. 821 FF, Section 521 at 825; 27 O. S. 233 Covington and Cincinnati vs Lemuel H. Sargent; 20 O.S. 315 Ewing vs McNair; 28 O.S. 668 at 669 Sears vs Cresop; 53 O.S. 361 at 366 at 367 at 369 Hixon vs Ogg."

Persistent relitigation of a single issue is not conducive to a harmonious society and is subject to the equitable principle concerning a multiplicity of suit. Bridge Co vs Sargent, 27 O. S. 233. The case of Bridge Co vs Sargent is a case in point concerning the right of a contentious party persisting to relitigate the same matter. The following language is pertinent:

"When the facts which constitute the cause of action or defense have been, between the same parties, submitted to the consideration of the court, and passed upon by the court, they can not again be the proper subjects for an action or defense, unless the finding and judgment of the court is opened up or set aside by proper authority. This principle of law extends still further in quieting litigation. A party can not re-litigate matters which he might have interposed, but failed to do in a prior act on between the same parties or their privies, in reference to the same subject-matter. And if one of the parties failed to introduce matters for the consideration of the court that he might have done, he will be presumed to have waived his right to do so." 30 Iowa, 433; 13 Ohio State 283; 1 Johns. Cas. 436; 25 Cal. 266.

MEMORANDUM

BRANCH III

In Defendant's Second Defense, which Defense was carried forward in all defenses, the Defendant alleged that Logan Development Company was guilty of maintenance. Maintenance, as the court undoubtedly knows, is more commonly known as champerty and as such is against public interest. The party admittedly guilty of maintenance cannot come into the court of equity with clean hands and cannot, therefore, be heard. In the case of Key vs Wattier, 1 O. 132 at 144, the court describes maintenance as:

MAINTENANCE. "It is an offense against public justice, as it keeps alive strife and contention, and perverts the remedial process of the law into an engine of oppression." citing 4 Blackstone's Comentary, 134.

And again at page 146 the same court says:

"Suits may be brought in succession against an individual, until his patience is exhausted, and he is reduced to the terms of his oppressor."

And again at page 147 the same court says:

"Such practices are oppressive on the parties immediately concerned. They have an injurious effect on the community at large. They are against the policy of the law and ought to be suppressed."

Another court describing maintenance described it as being:

"An unlawful taking in hand or upholding of quarles or sides to the hindrance of common right."
51 Me. 63.

This Defendant further alleges that the Plaintiff has suborned testimony by payment of money's to the other party's Plaintiff, which perverts justice.

In the case of Rade Skrbina Admr., 111 O.S. 108:

"It is almost uniformly held that evidence tending to prove that a party to a civil action, or his agent, has attempted to influence a witness, is admissible, whether that influence has tended to the giving of false testimony or to supressing a witness."

In 21 O. Jur. 2 D, 220 Section 208:

"Thus an offer of money, made by one party to an witness for the purpose of influencing the latters attitude as such, is competent testimony agains the party making such offer."

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sanctioned in any manner by the Defendant. In a case in point, Jacob White vs Bank of the United States, 6 O. 528 (232) at 233:

"It is laid down in Sugden, that a decree of dismissal, unless qualified by the words, WITHOUT PREJUDICE, is conclusive on the subject matter laid in the bill. Has there been fraud in the rendition of the decree in Common Pleas? It is not pertended, nor does the fill filed in this case seek to avoid it on that ground. It is sought, however, to avoid it, because counsel were negligent, and did not notify the complainant in time for him to put in bail within the thirty days.

Our opinion is, that the decree of the Common Pleas upon the same matters set up here, and when the same relief was sought, is a bar. That decree being by consent to enable the complainant to appeal, which appeal not being perfected by the mere negligence of the party, no fraud, no accident, no mistake set up, by which the complainant was deprived of his right of appeal, does not entitled him to any relief against the operation of that decree."

Other case citations:

14 Ohio Jurisprudence 329, Section 14: 14 Ohio Jurisprudence 340, Section 27; 23 Ohio Jurisprudence 821 FF, Section 521 at 825; 27 Ohio State 233 Covington and Cincinnati vs Lemuel H. Sargent; 20 Ohio State315 Ewing vs McNair; 28 Ohio State 668 at 669 Sears vs Cresop; 53 Ohio State 361 at 366 at 367 at 369 Hixson vs Ogg.

The case of Bridge Company vs Sargent, 27 O. S. 233 is a case in point concerning the right of a contentious party persisting to relitigate the same matter. The following language is pertinent:

"When the facts which constitute the cause of Action or defense have been, between the same parties, submitted to the consideration of the court, and passed upon by the court, they can not again be the proper subjects for an action or defense, unless the finding and judgment of the court is opened up or set aside by proper authority. This principle of law extends still further in quieting litigation. A party can not re- litigate matters which he might have interposed, but failed to do in a prior act on between the same parties or their privies, in reference to the same subject-matter. And if one of the parties failed to introduce matters for the consideration of the court that he might have done, he will be presumed to have waived his right to do so." 30 Iowa, 433; 13 O.S. 283; 1 Johns. Cas. 436; 25 Cal. 266.

If a party fails to plead a fact hemight have plead, or makes a mistake in the progress of an action, or fails to prove a fact he might have proven, the law can afford him no relief.

When a party passes by his opportunity the law will not aid him.

In Ewing vs McNairy & Clafflin, 20 O.S. 315 at 322 the Judge says:

"By refusing to relieve parties against the consequences of their own neglect it seeks to make them vigiland and careful. On any other principle there would be no end to an action, and there would be an emt to all vigilance and care in its preparation and trial." The same principle is well settled in numerous authorities. See 3 Comst. 511; 9 Wis. 23; 5 Sanf. 135.

We are of opinion that, in an action where a party is called upon to

IN THE COURT OF COMMON PLEAS, HOCKING COUNTY, OHIO

IN RE: THE VACATION AND ALTERATION OF PART OF PLAT OF GRACELAND ADDITION TO THE CITY OF LOGAN, OHIO, WHICH PART OF THE PLAT TO BE VACATED AND ALTERED IS PARTICULARLY DESCRIBED AS BEING THE WEST HALF OF LOTS NOS. 12, 25 AND 50, AND ALL OF LOTS NOS. 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 51 AND 52 IN SAID GRACELAND ADDITION TO THE CITY OF LOGAN, OHIO.

No. 11,404

MOTION

Now comes the Defendant and moves the Court to dismiss this proceeding, since there is no action pending before the Court.

LESLIE G. JOHNSON
Attorney for Defendant

MEMORANDUM

Ohio Revised Code, Section 2703.01 and Revised Code Section 2703.02 define the procedure required for the commencement of a civil action.

"A civil action must be commenced by filing a petition and causing summons to issue thereon."

Revised Code 2305.17 defines the actions that constitute a civil action.

I am of the opinion that no action has been commenced in this Comstock Case. In view of the fact that Plaintiff failed to file a Precipe ordering the issuance of a summons and failed to use the alternative procedure of invoking jurisdiction by filing an affidavit for Service of Summons by publication upon non-resident defendants. The Court, if no action is pending, has nothing upon which to act and any papers filed in the action are a nullity. The jurisdiction of the Court is invoked only by following the requirements of the revised Code 2703.01, which is a manditory requirement.

There will be a great deal of talk concerning waiver of jurisdiction by the filing of pleadings in the action. Examination of all of the cases available shows that wavers of jurisdiction always take place where the jurisdiction of the Court has been properly invoked by a Plaintiff's compliance with the statute concerning issuance of summons by the filing of a Precipe, and from attempt by the requirement the legally constituted authority to serve process upon the opposition party in litigation.

The other circumstances are those where the Defendant has filed a statement waving failure to meet the statutory requirements of process. In the case of Creager vs Creager, 22 O. App. 261 at 263 the Court says: