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Constitutional Law - Full Faith and Credit - Divorce

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agency, his animal escapes from a fenced close and runs onto the highway where it causes damage. Where there is no ordinance prohibiting owners from permitting their stock to run at large, the owner is not negligent in permitting them to be at large. Thus it has been held that the owner of stock is not liable for damages to a passing car;[22] and that he may recover if his animal is injured.[23] Where animals are being lawfully driven along the highway and one escapes and causes damage, the owner is not liable, regardless of the fact that an ordinance exists.[24]

In earlier times many United States courts entirely rejected the rule of strict liability for animal trespasses, as contrary to local custom; but as the country has become more closely settled, the tendency has been to restore the common law rule either by statute or decision.[25] The Louisiana legislature has shown considerable foresight in making this question a matter of local option, thus leaving each parish free to adopt a rule suitable to local circumstances. As the state becomes more industrialized and the need for a uniform law outweighs the economic burden on the owners of animals, a general statute may be enacted which will obligate the owner to keep his stock from running at large on the highway, or from wandering onto the fields and gardens of his neighbor.

C. C. L.

CONSTITUTIONAL LAW — FULL FAITH AND CREDIT — DIVORCE— Petitioners were married to their respective spouses in North Carolina, where they continued to live for a number of years. Then they went together to Nevada, and, after remaining there for a period of approximately six weeks, filed actions for divorce against their respective North Carolina spouses. The defendants in those divorce actions did not appear, nor were they served with process in Nevada. Service was had on them through publication and substituted service. The Nevada court found petitioners to be bona fide and continuous residents of Nevada and the divorces were granted. Immediately after obtaining the divorces petitioners were married in Nevada and returned to North Carolina. The State of North Carolina indicted and convicted petitioners of the

22. Demarco v. Gober, 19 La. App. 236, 140 So. 64 (1932).
23. See Dunckelman v. Schockly, 183 So. 52, 53 (La. App. 1938). Recovery not allowed as driver did all possible to prevent hitting the animal.
24. Cook v. Tooke, 17 La. App. 307, 135 So. 917 (1931).
25. Prosser, Handbook of the Law of Torts (1941) 434.

crime of bigamy.[1] The Supreme Court of the United States granted certiorari.[2] *Held,* a decree of divorce is entitled to full faith and credit when the court granting it has jurisdiction over the domicile of the plaintiff, even if the defendant is served constructively and makes no appearance in the action. *Williams v. State of North Carolina,* 63 S.Ct. 207 (1942).

In upholding the conviction the supreme court of North Carolina relied on the case of *Haddock v. Haddock.*[3] North Carolina had held in several cases that a foreign decree of divorce against a resident of North Carolina, where there had been neither personal service within the jurisdiction of the forum nor personal appearance, was void in the state.[4] Before discussing the holding and doctrine of the *Haddock* case it is necessary to outline the general principles of divorce jurisdiction. Since marriage is the foundation of our modern organized society it is obvious that the state has an interest in the marital status of its citizens and therefore it has an interest in supervising the circumstances and rules under which such status can be legally dissolved. Divorce proceedings, being proceedings for the dissolution of a status, are generally considered as proceedings in rem.[5] As all actions in rem, the divorce action must be brought where the res is situated, and here domicile becomes all-important. Since this is the basis of divorce jurisdiction it follows that a state in which *both* parties are domiciled has jurisdiction to terminate their marriage by divorce.[6] On the other hand, a state in which *neither* party is domiciled has no jurisdiction to dissolve the marriage relation of the parties.[7] A divorce decree rendered in such state is therefore not entitled to full faith and credit in the other states.[8]

1. State v. Williams, 220 N.C. 445, 17 S.E.(2d) 769 (1941).
2. Williams and Hendrix v. North Carolina, 315 U.S. 795, 62 S.Ct. 918 (1942).
3. 201 U.S. 562, 26 S.Ct. 525, 50 L.Ed. 867, 5 Ann. Cas. 1 (1906).
4. Arrington v. Arrington, 102 N.C. 491, 9 S.E. 200 (1889); Harris v. Harris, 115 N.C. 587, 20 S.E. 187, (1894); State v. Herren, 175 N.C. 754, 94 S.E. 698 (1917); Pridgen v. Pridgen, 203 N.C. 533, 166 S.E. 591 (1932).
5. Stumberg, Principles of Conflict of Laws (1937) 270; Goodrich, Conflict of Laws (1938) 342, § 128.
6. Harding v. Harding, 198 U.S. 317, 25 S.Ct. 679, 49 L.Ed. 1066 (1905); Haddock v. Haddock, 201 U.S. 562, 26 S.Ct. 525, 50 L.Ed. 867, 5 Ann. Cas. 1 (1906).
7. Bell v. Bell, 181 U.S. 175, 21 S.Ct. 551, 45 L.Ed. 804 (1901); Streitwolf v. Streitwolf, 181 U.S. 179, 21 S.Ct. 553, 45 L.Ed. 807 (1901); Andrews v. Andrews, 188 U.S. 14, 23 S.Ct. 237, 47 L.Ed. 366 (1903); Lister v. Lister, 86 N.J. Eq. 30, 97 Atl. 170 (1916). The cases of *Andrews v. Andrews* and *Lister v. Lister* also illustrate the view that divorce jurisdiction will not be granted by mere appearance of the parties if there was no jurisdiction in fact.
8. Hood v. State, 56 Ind. 263, 26 Am. Rep. 21 (1877); State v. Fleak, 54 Iowa 429, 6 N.W. 689 (1880); Van Fossen v. State, 37 Ohio St. 317, 41 Am. Rep. 507 (1881).

A more difficult situation arises when a divorce is granted at the domicile of *one* of the parties.[9] The problem presented in such a case is whether the decree is entitled to recognition in other jurisdictions. Since the solution of this question necessarily involves an interpretation of the "full faith and credit" clause of the Federal Constitution[10] the matter is one for the Supreme Court of the United States to adjudicate. Several situations have been presented. Where the divorce is granted at the domicile of either spouse and the defendant has been personally subjected to the jurisdiction of the court it has been held that the decree must be given full faith and credit.[11] A decree of divorce likewise has been held to be entitled to such recognition when the state granting it had jurisdiction over the last matrimonial domicile and the plaintiff was domiciled in the state, even though there was neither actual service within the state nor appearance.[12] Let us suppose that, as in the instant case, the plaintiff in a divorce action has wrongfully abandoned the defendant at the matrimonial domicile and has acquired a new domicile in a different state in which he secures a decree of divorce. It was held in the celebrated case of *Haddock v. Haddock*[13] that such a judgment would not be entitled to full faith and credit in the other states of the Union. It should be observed at this point that the *Haddock* case did not compel the states to refuse recognition of such decrees, and these judgments, unless contrary to good morals and public policy, were usually recognized on grounds of comity.[14]

9. In American Law Institute, Restatement of the Law of Conflict of Laws (1934) 170, § 113, the following solution of the problem is presented: "A state can exercise through its courts jurisdiction to dissolve the marriage of spouses of whom one is domiciled within the state and the other is domiciled outside the state, if

"(a) the spouse who is not domiciled in the state (1) has consented that the other spouse acquire a separate home; or (2) by his or her misconduct has ceased to have the right to object to the acquisition of such separate home; or (3) is personally subject to the jurisdiction of the state which grants the divorce; or (b) the state is the last state in which the spouses were domiciled together as man and wife."

10. U.S. Const. Art. 4, § 1, provides: "Full faith and credit shall be given in each state to the public acts, records, and judicial proceedings of every other state."

11. Cheever v. Wilson, 76 U.S. 108, 19 L.Ed. 604 (1869). A decree obtained by the wife who had acquired a separate domicile in Indiana was held entitled to recognition in the District of Columbia when the husband had personally appeared in the action.

12. Atherton v. Atherton, 181 U.S. 155, 21 S.Ct. 544, 45 L.Ed. 794 (1901); Thompson v. Thompson, 226 U.S. 551, 33 S.Ct. 129, 57 L.Ed. 347 (1913).

13. 201 U.S. 562, 26 S.Ct. 525, 50 L.Ed. 867, 5 Ann. Cas. 1 (1906). This case has been extensively discussed. Beale, Constitutional Protection of Decrees for Divorce (1906) 19 Harv. L. Rev. 586; Beale, Haddock Revisited (1926) 39 Harv. L. Rev. 417; Bingham, In the Matter of Haddock v. Haddock (1936) 21 Corn. L.Q. 393; Goodrich, Matrimonial Domicile (1917) 27 Yale L.J. 47.

14. Crimm v. Crimm, 211 Ala. 13, 99 So. 301 (1924); Gildersleeve v. Gil-

In the instant case, the court basing the decision on an apparently broader view of the full faith and credit clause and different conceptions of public policy expressly overruled the *Haddock* case and held the Nevada decree entitled to recognition in North Carolina. In the opinion, *Haddock v. Haddock* is attacked as being contra to the historical view that a proceeding for divorce is a proceeding in rem. The question of whether petitioners were bona fide domiciliaries of Nevada was evaded by the court.[15] The theory behind this evasion was that since the verdict against petitioners was a general one, and one of the grounds on which it was rendered (the doctrine of the *Haddock* case) was invalid under the Federal Constitution, the judgment could not be sustained.[16] In this way the case was distinguished from cases in which the court granting the divorce has no jurisdiction over the domicile of either party.

The decision in *Williams v. State of North Carolina* is a momentous one. It holds that, regardless of the réason for a separate domicile, a divorce decree obtained at the domicile of the plaintiff is entitled to full faith and credit. Comity is supplanted by the imperative force of constitutional command. The shades of Mr. and Mrs. Haddock no longer hover over the beneficiary of a "fly by night" divorce, and his new status now has constitutional sanction.

Whether this extension of the full faith and credit clause was desirable is a question on which disagreement will most likely prevail. It is obvious that this new interpretation of the full faith and credit clause will impair the proper protection of state policies in a matter of vital public interest—the marital status of domiciliaries. Since rather obviously petitioners were never bona fide residents of Nevada, Mr. Justice Jackson was justified in stating in his dissenting opinion that "It is not an exaggeration

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dersleeve, 88 Conn. 689, 92 Atl. 684 (1914); Joyner v. Joyner, 131 Ga. 217, 62 S.E. 182, 18 L.R.A. (N.S.) 647 (1908); Holdorf v. Holdorf, 198 Iowa 158, 197 N.W. 910 (1924). Louisiana has followed this view. Aarnes v. Aarnes, 172 La. 648, 135 So. 13 (1931); Voorhies v. Voorhies, 184 La. 406, 166 So. 121 (1936). See Comment (1939) 14 Tulane L. Rev. 96.

15. The language of the court follows: "In the first place, we repeat that in this case we must assume that petitioners had a bona fide domicil in Nevada, not that the Nevada domicil was a sham. We thus have no question on the present record whether a divorce decree granted by the court of one state to a resident as distinguished from a domicilary is entitled to full faith and credit in another state. Nor do we reach here the question as to the power of North Carolina to refuse full faith and credit to Nevada divorce decrees because, contrary to the findings of the Nevada court, North Carolina finds that no bona fide domicil was acquired in Nevada."

16. Stomberg v. California, 283 U.S. 359, 51 S.Ct. 522, 75 L.Ed. 1117, 73 A.L.R. 1484 (1931).

to say that this decision repeals the divorce laws of all the states and substitutes the law of Nevada as to all marriages one of the parties to which can afford a short trip there." Mr. Justice Murphy, also dissenting, raised a very pertinent question as to whether, in an appraisement of relative jurisdictional interests, those of Nevada could fairly be said to prevail over those of North Carolina.[17]

It has been said that "the life of the law is its ability to adjust itself to changing social needs" and that "the law must necessarily conform, to a large extent, to prevailing community standards."[18] These concepts will help to understand the overruling of the *Haddock* case. In the thirty-six years which have elapsed since *Haddock v. Haddock* divorce statistics will show a steady increase in the dissolution of marriages throughout the nation. Undoubtedly the Supreme Court was impressed with the necessity of securing greater uniformity in regulation of the marital status, in order to avoid the undesirable situation of having persons married in one state and unmarried in the others. From such a situation serious social complications would necessarily arise.

Who can tell, however, but that this decision allowing the spouse who has abandoned the other party to obtain a divorce entitled to recognition will create even greater evils.

It is submitted that the advantages of uniformity were scarcely a sufficient reason for thus sacrificing the right of the individual states to govern the marital relations of their citizens. In effect it tends to force the divorce standards of all states down to the level of those jurisdictions which have chosen, for not too laudable reasons, to make the dissolution of the marital status a perfunctory matter.

R. R. A.

CRIMINAL LAW—ASPORTATION AS AN ESSENTIAL ELEMENT OF LARCENY—Defendant was charged, under the cattle stealing act,[1]

17. As stated by Murphy, J., in the dissenting opinion, the Supreme Court has "recognized an area of flexibility in the application of the clause to preserve and protect state policies in matters of public concern. We have said that conflicts between such state policies should be resolved 'not by giving automatic effect to the full faith and credit clause . . . but by appraising the governmental interests of each jurisdiction, and turning the scale of decision according to their weight.'" Alaska Packer's Ass'n v. Industrial Accident Comm., 294 U.S. 532, 547, 55 S.Ct. 518, 527, 79 L.Ed. 1044, 1052 (1935).

18. Harper, The Myth of the Void Divorce (1935) 2 Law & Comtemp. Prob. 335, 341.

1. La. Act 64 of 1910 [Dart's Crim. Stats. (1932) § 1057].