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Conflict of Laws - Validity of Nevada Divorces

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Notes

CONFLICT OF LAWS—VALIDITY OF NEVADA DIVORCES—Petitioners were indicted for bigamous cohabitation, in violation of the laws of North Carolina. For many years, the petitioners and their respective spouses had lived in North Carolina. On May 7, 1940, they went to Las Vegas, Nevada. Six weeks later each filed suit for divorce in Nevada on grounds recognized in that state. Service was by publication and both were granted uncontested divorces. On the same day they were married in Nevada and returned to North Carolina where they lived together. The trial court convicted them of bigamous cohabitation, refusing to recognize the Nevada divorces. The North Carolina Supreme Court affirmed the conviction, relying upon the celebrated case of *Haddock v. Haddock*.[1] The United States Supreme Court granted certiorari, overruled the *Haddock* decision, reversed the judgment of the North Carolina court and remanded the case for further proceedings.[2]

Upon a reconsideration of the case the North Carolina Supreme Court, in turn, remanded the case to the trial court for the taking of evidence on the question of whether the petitioners had acquired a bona fide domicile in Nevada. The jury found that such a domicile had not been acquired. The trial court therefore held that the Nevada court had no jurisdiction to grant divorces to the petitioners, who were again convicted. The North Carolina Supreme Court affirmed the judgment and the United States Supreme Court upheld the North Carolina court's decision. (*Williams v. North Carolina*, C. C. H., 5 U. S. Sup. Ct. Bull. 1495—May 21, 1945.)

The two *Williams* cases are the latest development in a very confused area of the law. A state court has jurisdiction to grant a divorce decree if it has jurisdiction of the subject matter.[3] In the final analysis jurisdiction over the marriage status turns upon the question of domicile. If both parties are domiciled within the state the court has jurisdiction.[4] If neither party is domiciled

1. 201 U. S. 562, 26 S. Ct. 525, 50 L. Ed. 867 (1906).
2. Williams v. State of North Carolina, 317 U. S. 287, 63 S. Ct. 207, 87 L. Ed. 279 (1942), noted in (1943) 5 LOUISIANA LAW REVIEW 319.
3. For a comprehensive discussion see Rodman, Bases of Divorce Jurisdiction (1945) 39 Ill. L. Rev. 343.
4. Harding v. Harding, 198 U. S. 317, 25 S. Ct. 679, 49 L. Ed. 1066 (1905).

within the state the court does not have jurisdiction.[5] The conflict arises when only one of the parties is domiciled within the state. The problem is intensified when, as in the instant case, the full faith and credit clause is invoked in order to compel a state to give effect to divorce decrees of sister states whose divorce laws are much more liberal than those of the forum.

Forty years ago the United States Supreme Court rendered the *Haddock* decision. This case was of far reaching importance and gave rise to much discussion and criticism.[6] It involved a suit for separation and alimony brought by the wife in New York. The husband pleaded in defense a divorce decree obtained by him in Connecticut where he had established a separate domicile. Service on the wife had been obtained by publication and she had not entered a personal appearance. The court held that New York, the matrimonial domicile where the wife still resided, need not give full faith and credit to the Connecticut decree since it had been obtained by the husband who had wrongfully left his wife at the matrimonial domicile.

In the *Haddock* case, the United States Supreme Court affirmed, but distinguished its earlier holdings in *Cheever v. Wilson*[7] and *Atherton v. Atherton*.[8] In the *Cheever v. Wilson* one spouse was domiciled in the state where the divorce was granted and the court had personal jurisdiction over the other. The decree was entitled to full faith and credit. In *Atherton v. Atherton* the state of matrimonial domicile granted the divorce with constructive service upon the other spouse. Jurisdiction over the subject matter was based upon the fact that the state granting the divorce was the matrimonial domicile. In the *Haddock* case the court granting the divorce was the separate domicile of the husband who had deserted his wife. This was not sufficient to impart jurisdiction to dissolve the marital status. Jurisdiction over the other spouse, or over the marriage relation, which was

5. 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).

6. Among these are Beale, Constitutional Protection of Decrees for Divorce (1906) 19 Harv. L. Rev. 586; Bingham, The American Law Institute vs. the Supreme Court—In the Matter of Haddock v. Haddock (1936) 21 Corn. L. Q. 393; Holt, Any More Light on Haddock v. Haddock? (1941) 39 Mich. L. Rev. 689; Lewis, Divorce and the Federal Constitution (1915) 49 Am. L. Rev. 852; McClintock, Fault as an Element of Divorce Jurisdiction (1928) 37 Yale L. J. 564; Rodman, Recognition of Divorce Decrees (1939) 12 Rocky Mt. L. Rev. 16; Strahorn, A Rationale of the Haddock Case (1938) 32 Ill. L. Rev. 796; Vreeland, Mr. and Mrs. Haddock (1934) 20 A.B.A.J. 568.

7. 76 U. S. 108, 19 Law Ed. 604 (1870).

8. 181 U. S. 155, 21 S. Ct. 544, 45 L. Ed. 794 (1901).

deemed to rest at the matrimonial domicile, was essential. Thus where the parties live separately the element of fault becomes a jurisdictional factor which may be inquired into by other states. The doctrine is well established that the full faith and credit clause does not preclude an investigation of jurisdictional facts.[9]

The rule of the *Haddock* decision, good or bad, was the law for forty years and was incorporated into the Conflict of Laws Restatement.[10] Some of the writers who had strongly criticised the case in the beginning were becoming reconciled to its holding.[11] Then in the first *Williams* decision, the case of *Haddock v. Haddock* was expressly overruled.[12] The jurisdiction requirement, where the state of the divorce was the domicile of the complaint only, was freed from the somewhat confusing refinements concerning "matrimonial domicile." Mr. Justice Douglas, speaking for the court, declared, "we see no reason, and none has been advanced, for making the existence of state power depend on an inquiry as to where the fault in each domestic dispute lies."[13] In so ruling the court upheld the rule of *Fauntleroy v. Lum*[14] that an otherwise valid judgement, rendered by the court of another state which had complete jurisdiction, is entitled to full faith and credit regardless of the public policy of the state of the forum.

In holding that the Nevada divorce was entitled to full faith and credit in North Carolina the court was careful to leave open the question as to whether the Nevada decree would be entitled to full faith and credit if the North Carolina court had found contrary to the Nevada holding that there was no bona fide domicile in Nevada. That was precisely the question with which the court was confronted in the second *Williams* case. After pointing out that under our system of law judicial power to grant a divorce is based on domicile, the supreme court concluded that one state's finding of domicile is not binding on another state. "In short, the decree of divorce is a conclusive adjudication of everything except the jurisdictional fact."[15] The court recog-

9. Thompson v. Whitman, 85 U. S. 457 (1873); Cooper v. Newell, 173 U. S. 555, 19 S. Ct. 506, 43 L. Ed. 808 (1899). See Jacobs, Attack on Decrees of Divorce (1936) 24 Minn. L. Rev. 749; Gavit, Jurisdiction of the Subject Matter and Res Judicata (1932) 80 U. of Pa. L. Rev. 386.

10. Restatement, Conflict of Laws (1934) 113 (a) (ii).

11. Beale, Haddock Revisited (1929) 39 Harv. L. Rev. 417.

12. 317 U. S. 287, 304, 63 S. Ct. 207, 216, 87 L. Ed. 279, 289 (1942).

13. 317 U. S. 287, 301, 63 S. Ct. 207, 214, 87 L. Ed. 279, 287.

14. 210 U. S. 230, 28 S. Ct. 641, 52 L. Ed. 1039 (1908).

15. Williams v. North Carolina, C. C. H., 5 U. S. Sup. Ct. Bull. 1495, 1499 (May 21, 1945).

nized the two opposing factors: a state's right to safeguard its interest in the family relations of its people, and the power of another state to grant divorces to litigants appearing in its courts. The necessary adjustment of these opposing interests could be left to neither state. Though the United States Supreme Court does not set itself up as a "court of probate and divorce," it is open to all claims that full faith and credit has not been accorded a divorce decree of a sister state. The court makes this clear in its statement, "The challenged judgment must, however, satisfy our scrutiny that the reciprocal duty of respect owed by the States to one another's adjudications has been fairly discharged, and has not been evaded under the guise of finding an absence of domicil and therefore a want of power in the court rendering the judgment."[16]

In the instant controversy, North Carolina's finding that petitioners had never abandoned their domicile in that state appeared to be favored by the court.[17] In the first *Williams* case, in discussing the social effects of the *Haddock* decision, the court quoted with approval from Mr. Justice Holmes' dissent in *Haddock v. Haddock*.[18] The text of the discussion was that if decrees of a state altering the marital status of its domiciliaries are not valid throughout the nation a rule would be fostered which could not help but bring "considerable disaster to innocent persons" and bastardize children who had heretofore been considered as the offspring of lawful marriage. In the second *Williams* case, however, the court concluded that statistics do not justify the lurid foreboding that parents will disregard the fate of their offspring or be unmindful of the status of dignity to which they are entitled.[19] There have always been strong dissents in the cases which attempt to solve the problem of tangled marital status. The *Haddock* case and the first *Williams* case have been criticised. No doubt the second *Williams* case will bring forth voices of protest. Perhaps Mr. Justice Frankfurter is right in saying of the problems before the court, "they arose before and after the decision in the Haddock case . . . and will, I daresay, continue to rise no matter what we do today. . . . Neither the crudest nor the subtlest juggling of legal concepts could enable us to bring forth a uniform national law of marriage and divorce."[20]

16. Id. at 1500.
17. Id. at 1503.
18. 201 U. S. 562, 628, 26 S. Ct. 525, 551, 50 L. Ed. 867, 894 (1906).
19. Williams v. North Carolina, C. C. H., 5 U. S. Sup. Ct. Bull. 1495, 1503.
20. 317 U. S. 287, 304, 63 S. Ct. 207, 216, 87 L. Ed. 279, 289 (1942).

The Louisiana courts have usually recognized the divorce decrees of sister states on the grounds of comity.[21] The *Haddock* decision did not foreclose such recognition. *Voorhies v. Voorhies*[22] and *Aarnes v. Aarnes*[23] involved "Reno" divorces. In both cases the burden was on the person attacking the foreign decree to prove there was no bona fide residence. The intent to reside permanently in Reno was found by the court in both cases. Apparently the decisions in the *Williams* cases will not preclude Louisiana from following the rule applied in the above cases.

One may safely generalize that, for the time being at least, a state in which one of the spouses is domiciled is empowered to issue a valid divorce decree. Such decree will be entitled to full faith and credit in all states. The question of domicile will depend upon intent to reside permanently in the state that issues the divorce. The plaintiff's fault in leaving the matrimonial domicile will have no effect upon the validity of the decree.[24] Thus the only time a state court can refuse full faith and credit to a divorce decree of another state is upon a finding that there was no bona fide domicile of either spouse in the other state. Since the state which issued the divorce naturally found a bona fide domicile, the refusal of another state to recognize the divorce is subject to review by the United States Supreme Court.

E. P. C.

CRIMINAL LAW—ASSAULT WITH AN UNLOADED FIREARM—The defendant, a member of the New Orleans police force, had been engaged in an argument and fight with a soldier. While in an intoxicated condition and in pursuit of his adversary, defendant entered the residence of a third person, pointed his unloaded revolver at the occupants and pulled the trigger several times simultaneously demanding, "Where is my man? Tell me where he is or I will kill you." The defendant was forthwith charged with and convicted of aggravated assault. In affirming his conviction the supreme court took the position most favorable to

21. Aarnes v. Aarnes, 162 La. 648, 135 So. 13 (1931); Voorhies v. Voorhies, 184 La. 406, 166 So. 121 (1936). See Comment (1939) 14 Tulane L. Rev. 96.

22. 184 La. 406, 166 So. 121 (1936).

23. 172 La. 648, 135 So. 13 (1931).

24. "In view of *Williams v. North Carolina,* the jurisdictional requirement of domicil is freed from confusing refinements about 'matrimonial domicil.'" C. C. H., 5 U. S. Sup. Ct. Bull. 1495, 1497 (May 21, 1945). Apparently *Haddock v. Haddock* is not reinstated by the second *Williams* case.