

# Louisiana Law Review

---

Volume 6 | Number 3  
December 1945

---

## Conflict of Laws - Jurisdiction for Divorce

Howard W. Wright

---

### Repository Citation

Howard W. Wright, *Conflict of Laws - Jurisdiction for Divorce*, 6 La. L. Rev. (1945)  
Available at: <https://digitalcommons.law.lsu.edu/lalrev/vol6/iss3/11>

This Note is brought to you for free and open access by the Law Reviews and Journals at LSU Law Digital Commons. It has been accepted for inclusion in Louisiana Law Review by an authorized editor of LSU Law Digital Commons. For more information, please contact [kreed25@lsu.edu](mailto:kreed25@lsu.edu).

## Notes

CONFLICT OF LAWS—JURISDICTION FOR DIVORCE—Plaintiff, a soldier, while stationed in a certain parish, married defendant, a resident of that parish. After living with her a few days the plaintiff left the defendant and filed suit for divorce. On seeking to confirm the judgment by default, the trial judge dismissed the suit on the ground that the court lacked jurisdiction because the wife's "domicile was that of her husband and there was no showing that he had abandoned his original domicile."<sup>1</sup> On appeal this judgment was set aside, the court finding that the plaintiff had established a "matrimonial domicile" from the fact that he had stated the "room or apartment was occupied by them with the intention of making it their matrimonial domicile." *Burgan v. Burgan*, 22 So. (2d) 649 (La. 1945).

In the case of *Zinko v. Zinko*<sup>2</sup> a similar situation was involved wherein the wife was suing her soldier husband and the suit was dismissed for lack of jurisdiction. The supreme court held that the district court had jurisdiction provided the cause of action arose in this state and the defendant had his principal domestic establishment in the parish or if the plaintiff had acquired a separate domicile.<sup>3</sup>

Until the first case of *Williams v. North Carolina*<sup>4</sup> a court in order to have jurisdiction for a divorce had to have jurisdiction over the domicile of both parties,<sup>5</sup> or the domicile of one party and have the other personally subjected to the jurisdiction of the court,<sup>6</sup> or have jurisdiction over the place of last matrimonial domicile and the domicile of one of the parties.<sup>7</sup> The *Williams*

---

1. At time of induction plaintiff was domiciled in Virginia and it was clear that when he came to Louisiana he had no intention of establishing domicile here. See Art. 39, La. Civil Code of 1870; *Stevens v. Allen*, 139 La. 658, 71 So. 936 (1916); *Peoples v. Land*, 181 La. 925, 160 So. 631 (1935); Restatement of the Law of Conflict of Laws, § 111.

2. 204 La. 478, 15 So.(2d) 859 (1943).

3. On the question of wife establishing a separate domicile, see *Champon v. Champon*, 40 La. Ann. 28, 3 So. 397 (1888); *Succession of Lasseigne*, 143 La. 1095, 79 So. 873 (1918).

4. 317 U.S. 287, 63 S.Ct. 207, 87 L.Ed. 279 (1942), noted in (1945) 5 Louisiana Law Review 319.

5. *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).

6. *Cheever v. Wilson*, 76 U.S. 108, 19 L.Ed. 604 (1869).

7. *Atherton v. Atherton*, 181 U.S. 155, 21 S.Ct. 544, 45 L.Ed. 794 (1901).

case<sup>8</sup> held that it was sufficient if the court had jurisdiction over the domicile of the plaintiff, thus doing away with the troublesome question of matrimonial domicile.<sup>9</sup> It should be noted that the court did not decide the question of whether a state has the power to refuse full faith and credit to Nevada decrees because they are based on residence rather than domicile. The state of North Carolina relied partially on *Haddock v. Haddock*,<sup>10</sup> which the court overruled; and since the verdict was a general one, the court had to reverse the conviction.<sup>11</sup>

The only question that should have been involved in the above case was whether the plaintiff was in fact domiciled in the parish. The rules of domicile are well established. The domicile of the wife is that of her husband.<sup>12</sup> The domicile of origin continues until another is acquired,<sup>13</sup> and in order to change domicile there must be residence with the intention to remain permanently or indefinitely.<sup>14</sup> The presumption is that there has been no change, with the burden of proof on the party seeking to show the change.<sup>15</sup>

Though the rules are well established as to the change of domicile, it is not always an easy matter to determine if in fact

8. *Williams v. State of North Carolina*, 317 U.S. 287, 63 S.Ct. 207, 87 L.Ed. 279 (1942).

9. The court in the second *Williams* case said that their decision stood for the fact that "domicile of one spouse within a state gives power to that state to dissolve a marriage wherever contracted. The jurisdictional requirements of domicile is freed from the confusing requirements about matrimonial domicile." 5 C.C.H. S.Ct. Bull. (1945) 1497.

10. 201 U.S. 562, 26 S.Ct. 525, 50 L.Ed. 867, 5 Ann. Cas. 1 (1906).

11. *Williams v. State of North Carolina*, 317 U.S. 287, 298, 63 S.Ct. 207, 213, 87 L.Ed. 279, 285 (1942), where the court said: "It seems clear that the provision of the Nevada statute that a plaintiff . . . reside in the state for the required period requires him to have a domicile . . . in the state."

317 U.S. 287, 298n, 63 S.Ct. 207, 213n, 87 L.Ed. 279, 285n: "*As stated in Williamson v. Osenton*, 232 U.S. 619, 624, the 'essential fact that raises a change of abode to a change of domicile is the absence of intention to live elsewhere.'"

This is merely paying lip service to the rules regarding change of domicile.

12. Arts. 39, 120, La. Civil Code of 1870; *Lalche v. His Wife*, 156 La. 165, 100 So. 292 (1924); *Barrow v. Barrow*, 160 La. 91, 106 So. 705 (1926).

13. *Succession of Simmons*, 109 La. 1095, 34 So. 101 (1903); *First National Bank v. Hinton*, 123 La. 1013, 49 So. 692 (1909); *Stevens v. Allen*, 139 La. 658, 71 So. 936 (1916); *Texana Oil & Refining Co. v. Belchic*, 150 La. 88, 90 So. 522 (1922); *Rappenport v. Patten*, 3 So.(2d) 909 (La. App. 1941).

14. *Succession of Simmons*, 109 La. 1095, 34 So. 101 (1903); *Macks v. Gumania Savings Bank*, 110 La. 659, 34 So. 725 (1903); *Texana Oil & Refining Co. v. Belchic*, 150 La. 88, 90 So. 522 (1922); *LeBlanc v. Loughridge*, 153 La. 109, 95 So. 419 (1923); *Succession of Webre*, 172 La. 1104, 136 So. 67 (1931).

15. *Succession of Franklin*, 7 La. Ann. 395 (1852); *Succession of Simmons*, 109 La. 1095, 34 So. 101 (1903); *Kinder v. Scharft*, 125 La. 594, 51 So. 654 (1910); *Person v. Person*, 172 La. 740, 135 So. 225 (1931); *Rappenport v. Patten*, 3 So.(2d) 909 (La. App. 1941).

a change has been made. In each of the above cases it was clear that no change had been made until the time of marriage, and in each case the trial judge found the absence of proper intention to establish a domicile in Louisiana. In the *Burgan* case the court seemed to find that the mere allegation that the parties intended to make Alexandria their "matrimonial domicile" was sufficient manifestation of intent. It is not clear whether the court meant that the plaintiff had changed his domicile, or whether the parties had a "matrimonial domicile" in the parish which was sufficient to give the court jurisdiction. Nor is the rule of the *Zinko* case that the court had jurisdiction if the cause of action arose in the state and the defendant had his principal domestic establishment in the parish any too clear. Since the parties had lived together nowhere else, that was the only place of domestic residence; but it does not necessarily follow that either party was domiciled there. In each case the court seemed to base jurisdiction on the idea of "matrimonial domicile."<sup>16</sup>

Because of the many marriages contracted by soldiers in this state this question is of great importance. In most of those cases the soldiers never intended to make Louisiana their home, but doubtless many of them will seek divorces in this state. In the second case of *Williams v. State of North Carolina*, the court held that the state of domiciliary origin could inquire into the question of domicile and is not bound by the finding as to jurisdiction,<sup>17</sup> so the courts of this state should be cautious in finding jurisdiction for divorce. These decisions seem more within the rules of domicile than those Nevada divorces based on a statute that requires six weeks residence. It is submitted, however, that in order to find a change of domicile there should be clear, positive proof of intent to remain in this state permanently or indefinitely. The declaration of intention or the fact that the principal domestic establishment is in the state, unsupported by further evidence, is not enough.

HOWARD W. WRIGHT

---

16. In the *Zinko* case Judge O'Niell stated that he was of the opinion that "where there is no community property, [the suit for divorce] is strictly a personal action and may be brought therefore at the place where the defendant is residing at the time when the suit is brought, and especially if that is the place where the offense is committed and hence that the judge should not dismiss the suit . . . if the defendant . . . answers the suit and thereby submits to the jurisdiction of the court." *Zinko v. Zinko*, 204 La. 478, 485, 15 So.(2d) 859, 861 (1943).

17. Does this mean that in a criminal action only the state of domiciliary origin can inquire into the question of jurisdiction? Also, is the right to inquire into the jurisdiction limited to criminal cases, precluding question-