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Conflict of Laws

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the effect that appeals shall not suspend any juvenile court judgments. The net result is that an exception is made only in the case of juveniles who have been committed to the care of some person, institution, or agency and that the adult who is convicted in a juvenile court of a crime relating to juveniles is entitled to the general right of bail provided in Section 12 of Article I of the Bill of Rights in the Louisiana Constitution.

VIII. CONFLICT OF LAWS

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The number of cases which require a discussion of conflict of laws is relatively small; although there are only three cases in this section, each one is of particular interest.

Navarette v. Laughlin,[1] involved a contest between the decedent's first wife and his second wife for the recoverable damages in a wrongful death action. Prior to his second marriage, the decedent had obtained a divorce in Mississippi, but the first wife now contends that it was not a valid decree and that she is therefore the lawful claimant in the present action. The validity of the Mississippi divorce depends upon whether the deceased had a bona fide domicile in Mississippi. With regard to this jurisdictional fact there was conflicting evidence. In support of a bona fide Mississippi domicile it was shown that the decedent had resided there for one and a half years. The evidence against this included declarations by the decedent in connection with a voting certificate and a chattel mortgage that his residence was in Louisiana. The court decided that there had been a bona fide domicile,[2] and that the Mississippi divorce decree was therefore entitled to full faith and credit under the decision of the Supreme Court of the United States in *Williams v. North Carolina*.[3] In conclusion, the court observed that the first wife had never thought of attacking her husband's divorce until after his death more than two years later.[4]

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1. 209 La. 417, 24 So. (2d) 672 (1946).

2. The court of appeal weighed the same evidence and concluded that there had not been a bona fide domicile in Mississippi [20 So. (2d) 313 (La. App. 1944)].

3. 317 U. S. 287, 63 S. Ct. 207, 87 L.Ed. 279 (1942); 325 U. S. 226, 65 S. Ct. 1092, 89 L.Ed. 1577 (1945).

4. The extent to which the court may have been influenced by sheer policy considerations does not appear. The facts remain that the first wife had had nothing to do with the decedent for some years before his death,

In applying the new ruling on full faith and credit, the Louisiana courts are not making any actual departure from what had been their previous practice. The well-established rule of conflict of laws in Louisiana has been to recognize voluntarily the foreign divorce decree which had been rendered in the bona fide domicile of one of the parties.[5] But whereas that practice had been one of voluntary adoption in Louisiana at a time when full faith and credit was not required for such a foreign divorce under the *Haddock v. Haddock* case,[6] it is significant that under *Williams v. North Carolina* this is now obligatory.

In the course of its opinion, the Louisiana Supreme Court states that the party who assailed the verity of the Mississippi decree had the burden of proof which she failed to sustain,[7] and that the court "will give full faith and credit to divorce decrees rendered by courts of other states except where it has been conclusively shown by sufficient proof that the court rendering the decree did not have the jurisdictional requirement of domicile."[8] This position represents a liberal attitude of voluntary recognition toward foreign divorce decrees, but need not bind the court to a presumption of valid domicile in all cases. It is well known that in some states the residence requirements for divorce constitute much less than the conflict of laws concept of domicile. Where a record contains contradictory evidence about the bona fide nature of the alleged domicile, it is quite likely that the court's decision will actually be determined by the preponderance of the evidence rather than by the more severe test of the assailant's conclusive evidence against a presumption of bona fide domicile.[9]

Burke v. Massachusetts Bonding and Insurance Company[10]

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and had made no complaint about the divorce; whereas the second wife was actually living with and was dependent upon decedent at the time of his death and for the period immediately prior thereto.

5. Aarnes v. Aarnes, 172 La. 648, 135 So. 13 (1931); Voorhies v. Voorhies, 184 La. 406, 166 So. 121 (1936).

6. 201 U. S. 562, 26 S. Ct. 525, 50 L.Ed. 867 (1906).

7. "The burden of undermining the verity of the Mississippi decree rests heavily upon the assailants" (209 La. 417, 423, 24 So. (2d) 672, 674). "The burden was upon the defendants to show with clear and positive proof that the Mississippi court was without jurisdiction and this burden they have failed to sustain." (209 La. 417, 427, 24 So. (2d) 672, 675).

8. 209 La. 417, 423, 24 So. (2d) 672, 674.

9. Cf. State v. Wenzel, 185 La. 808, 171 So. 38 (1936) and State v. Dickinson, 191 La. 266, 185 So. 20 (1938). In both of these cases the court concluded on the evidence that there was no bona fide foreign domicile, but in neither case is there direct mention of any basic presumption of a valid domicile which had to be rebutted.

10. 209 La. 495, 24 So. (2d) 875 (1946).

has the appearance of a routine disposition of a torts case which involved a conflict of laws problem, but the implications are more far-reaching. Husband and wife, both of Louisiana, were in Mississippi in a car driven by the husband; there was an accident caused by the husband's negligence which resulted in injury to the wife. The present suit was instituted in Louisiana by direct action against the husband's insurer under Act 55 of 1930; and it was dismissed on the grounds that the substantive rights of the parties were governed by Mississippi law under which a wife cannot sue her husband in tort. The court held that Act 55 of 1930 is purely procedural and cannot create a right as against an insurer where there exists no legal claim against the insured.

Generally speaking, the rule of *lex loci delicti* has operated very well for the adjudication of tort cases in conflict of laws. There always were, and there still are, strong reasons why many questions of tort liability should be determined in accordance with the law of the place where the damage was sustained. However, a case like the present one brings up the question of whether the time is not approaching when broader consideration should be given to such cases on a more comprehensive evaluation of all the factors involved, especially the policy consideration of the state which has the greatest or only interest in the matter. If both husband and wife have an undisputed domicile in one state and all their reciprocal rights and obligations with regard to both personal and property matters are determined in relation to the law of their domicile, and if an accident happened when their car crossed a state boundary line—whether it be a matter of inches and minutes, or miles and days—it hardly fits in with the total pattern of regulating the relations between the spouses to subject this one situation to the different law of a state with which there is nothing but a casual and accidental association. In such cases, it may still be possible to reach a result more in keeping with the general concepts of law, without discarding the general applicability of the conflicts rule of *lex loci delicti.* In effect, there are really two distinct substantive questions, each of which can be considered separately. The first question, whether the behavior or acts involved create any general tort liability, can still be determined in accordance with the law of the place where the act took place (or the injury inflicted). In this connection, it is necessary to separate the general

rule of liability for certain acts from the special rule regarding liability or suability between certain persons for these same acts; reference to the former need not necessarily include the latter. The second question, concerning the acquisition of rights and claims (or the regulation of personal and property relations) as between husband and wife, can then be determined in accordance with the law of their domicile.[11]

The case of *Packard Florida Motors Company v. Malone*[12] presents a very practical and oft-repeated situation which results in one of two innocent persons having to suffer a loss. A person borrowed a car in Florida and sold it to a bona fide purchaser for value in Louisiana. The Florida owner was permitted to recover. The emphasis of the defense on behalf of the Louisiana purchaser was placed upon the equity doctrine that the burden of loss should be imposed upon the party who most contributed to it, but the court held that this had no application in the present case.

This kind of a conflicts case presents two transactions and, generally speaking, the effect of each transaction is determined in accordance with the law of the state in which the object was situated at the time. There are two ways in which the present case could have been handled. By means of the first transaction in Florida, the intermediate person obtained the car under a loan and then by conversion he became guilty of larceny under Florida law; but he had not acquired any title to the car. Consequently, by the second transaction in Louisiana the purported sale did not convey any title to the Louisiana purchaser.

A second analysis of these two transactions might be stated as follows: If under the law of Florida an innocent purchaser is protected as against the original owner in such a situation, then by the first transaction of loan in Florida the borrower would have acquired the power to divest the owner of his title by a sale to an innocent purchaser in Florida. Consequently, in the Louisiana transaction the innocent purchaser could be considered as having acquired all the rights that his vendor had the power

11. The holding in the principal case is not without support in other jurisdictions [e.g., Buckeye v. Buckeye, 203 Wis. 248, 234 N. W. 342 (1931)]; but the proposed analysis is also tenable [cf. converse situation in Mertz v. Mertz, 271 N. Y. 466, 3 N. E. (2d) 597 (1936)] and represents a more progressive and functional attitude, placing emphasis on the policy considerations of the state which has the greatest and in fact the only interest in the matter.

12. 208 La. 1058, 24 So. (2d) 75 (1945); noted in (1946) 6 LOUISIANA LAW REVIEW 731 on points of sale and prescription.

to convey.[13] According to this second analysis, the Louisiana purchaser would be protected as against the Florida owner.

The choice between these two methods is one of policy. Applying the actual decision to the mentioned hypothesis of Florida law, it would have turned out to the advantage of the Florida owner that the car was removed from Florida for disposition, which would hardly be the expected result.

13. Cf. Dougherty Co. v. Krimke, 105 N. J. Law 470, 144 Atl. 617 (1929), where a New York broker without *title* to certain diamonds had *power* to pledge, and he effectively pledged them in New Jersey.