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Divorce and Separation - Interstate and Intrastate Jurisdictional Bases - Domicile of Wife

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This case seems to indicate also that the court has extended the doctrine of apportionment to instrumentalities of interstate commerce which visit a state sporadically and for only fractional periods of the year.[26] Perhaps the only guides in the future application and possible extension of the doctrine are (1) under the commerce clause, what portion of an interstate organization " 'may appropriately be attributed to each of the various states in which it functions,' "[27] and (2) under the due process clause, " 'whether the tax in practical operation has relation to opportunities, benefits, or protection conferred or afforded by the taxing state.' "[28]

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DIVORCE AND SEPARATION—INTERSTATE AND INTRASTATE JURISDICTIONAL BASES—DOMICILE OF WIFE—Husband and wife were married in 1930, established their matrimonial domicile in Ascension Parish, and lived together in that parish until 1947. In July, 1947, the wife left her husband and moved to the home of her sister in Orleans Parish. In April, 1948, she filed a suit for separation from bed and board in the Civil District Court for the Parish of Orleans, alleging cruelty. Citation issued, and the husband was served at his domicile in Ascension Parish. Exceptions to the jurisdiction ratione materiae and ratione personae of the Orleans District Court were sustained. Plaintiff filed a motion for rehearing, alleging that her husband's cruelty had privileged her to establish a separate domicile in Orleans Parish; that she had taken with her to that parish the marital *res* (marital relationship); and therefore that the Orleans Parish Court acquired jurisdiction over the marital status, regardless of the domicile of the

26. "It is said in this case that the visits of the vessels to Louisiana were sporadic and for fractional periods of the year only and that there was no average number of vessels in the state every day. The District Court indeed said that there was no showing that the particular portion of the property sought to be taxed was regularly and habitually used and employed in Louisiana for the whole of the taxable year." Ott v. Mississippi Valley Barge Line Co., 69 S.Ct. 432, 435 (U.S. 1949). See note 1, supra. The court would not resolve this question (or these contentions) on the ground that the appellees had not exhausted their state administrative and judicial remedies. See also headnotes 1 and 3, p. 432.

27. Ott v. Mississippi Valley Barge Line Co., 69 S.Ct. 432, 434 (U.S. 1949).

28. Ibid. In view of (1) the conclusion of the court under the facts involved, (2) the broad language of the court (e.g., at p. 435, "We can see no reason which should put water transportation on a different constitutional footing than any other interstate enterprises."), and (3) the concurrence if eight members of the court in contrast to the four diverse opinions of the Northwest case, it seems likely that the doctrine of apportionment will be extended also to the taxation of the remaining important instrumentality of interstate commerce—aircraft.

defendant. The district court reversed itself and overruled the exceptions. On appeal the supreme court sustained the exceptions, holding (1) that defendant must be sued at his own domicile, as provided by Article 162 of the Code of Practice; (2) that since the marital domicile was in Ascension Parish and the cause of action arose there, the court of that parish had jurisdiction; and (3) that Louisiana has never recognized that a wife could establish a separate domicile if the cause of action arose in this state and the parties were both domiciled here. *Hymel v. Hymel,* 37 So.(2d) 813 (La. 1948).

Although the result reached in this case is undoubtedly correct, both the argument of the wife on motion for rehearing and the second reason offered by the court as the basis for the decision exhibit confusion as to the requirements of interstate and intrastate jurisdiction.

The *res* theory of divorce jurisdiction had its origin and justification in the necessity for developing a basis for determining interstate divorce and separation jurisdiction sufficient to insure full faith and credit. The traditional theory is that full faith and credit must be given if the court has jurisdiction; and if the court has jurisdiction, it then applies the law of the state in which it sits. Perhaps a better way of expressing this is to say that only a state which has legislative jurisdiction[1] may allow its courts to hear the case. The *res* theory of divorce and separation cases then appears to be a means of determining this legislative jurisdiction. Until 1942, it was thought the state of matrimonial domicile alone had the *res*,[2] but now any state in which either party is domiciled has the *res* and therefore legislative jurisdiction.[3]

The problem of finding the *res* to determine legislative jurisdiction does not arise in intrastate divorce and separation cases, even if the spouses are considered domiciled in different parishes, because there can be no question of legislative jurisdiction. Obviously, the laws of the state will apply regardless of the parishes in which the parties may be domiciled. The problem of determining the parish to be the site of the action involves no question of full faith and credit, and therefore the state rules governing divorce jurisdiction should apply. In Louisiana the court of

1. Legislative jurisdiction with regard to a person or thing may be said to exist when a state has the power to enact and enforce laws affecting the legal status of that person or thing.

2. Atherton v. Atherton, 181 U.S. 155, 21 S.Ct. 544, 45 L.Ed. 794 (1901); Haddock v. Haddock, 201 U.S. 562, 26 S.Ct. 525, 50 L.Ed. 867 (1906).

3. Williams v. North Carolina, 317 U.S. 287, 63 S.Ct. 207, 87 L.Ed. 279 (1942), noted in (1943) 5 LOUISIANA LAW REVIEW 319.

the parish of defendant's domicile has jurisdiction over divorce and separation suits.[4] Therefore, in cases involving exclusively intrastate or inter-parish elements, the only necessity for determining the domicile of either party is to determine the parish in which the suit must be filed.

In determining the domicile of the wife, the supreme court consistently has applied Article 39 of the Civil Code,[5] which states that the wife has no domicile other than that of her husband. Though by way of dictum often mentioning the possibility of a contrary conclusion,[6] the supreme court invariably has refused to allow a wife to establish a separate domicile in cases involving intrastate or inter-parish jurisdictional questions[7] Indeed, if the wife were allowed to establish a separate domicile because of the husband's cruel treatment, it would be necessary to decide the merits of the case in order to determine in which parish the suit should be brought. Because of the necessity of insuring full faith and credit in interstate cases, however, the court has allowed a wife to establish a domicile in this state when her husband was domiciled in another.[8] But these decisions and the reasons underlying them should never be confused with those cases involving only intrastate or inter-parish jurisdictional issues.

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LABOR LAW—VALIDITY OF STATE LAWS BANNING THE UNION SECURITY CONTRACT—A North Carolina statute[1] and a Nebraska constitutional amendment[2] providing that no person be denied an opportunity to obtain employment because he is or is not a member of a labor organization and forbidding employers from entering into contracts or agreements obligating themselves to exclude

4. Art. 162, La. Civil Code of 1870.

5. Art. 39, La. Civil Code of 1870: "A married woman has no other domicile than that of her husband."

6. Laiche v. His Wife, 156 La. 165, 100 So. 292 (1924); McGee v. Gasery, 185 La. 839, 171 So. 49 (1936); Bruno v Mauro, 205 La. 209, 17 So.(2d) 253 (1944).

7. Evans v. Saul & His Wife, 8 Mart. (N.S.) 247 (La. 1829); Glaude v. Peat, 43 La. Ann. 161, 8 So. 884 (1891); Laiche v. His Wife, 156 La. 165, 100 So. 292 (1924); Switzer v. Elmer, 172 La. 850, 135 So. 608 (1931); McGee v. Gasery, 185 La. 839, 171 So. 49 (1936).

8. Champon v. Champon, 40 La. Ann. 28, 3 So. 397 (1888); Smith v. Smith, 43 La. Ann. 1140, 10 So. 248 (1891); George v. George, 143 La. 1032, 79 So. 832 (1918); Zinko v. Zinko, 204 La. 478, 15 So.(2d) 859 (1943); Burgan v. Burgan, 207 La. 1057, 22 So.(2d) 649 (1945).

1. N.C. Laws (1947) c. 328, § 2.

2. Neb. Const. Art. XV, § 13, as adopted in 1946.