Private Law: Conflict of Laws

Joseph Dainow
The Work of the Louisiana Supreme Court for the 1949-1950 Term

This symposium, presented for the thirteenth time in the LOUISIANA LAW REVIEW, examines the main work of the Supreme Court of Louisiana during the judicial term from October 1949 to September 1950.

I. Private Law

CONFLICT OF LAWS

Joseph Dainow*

DOMICILE

Two unexpected ideas about domicile were expressed recently by the Louisiana Supreme Court. The first idea is that a "matrimonial domicile," once established, continues after the separation of the spouses—and conceivably after the departure of both spouses—as long as no new matrimonial domicile has been established. In Latham v. Latham, after the couple had established a matrimonial domicile in Louisiana, the husband moved to Mississippi under conditions whereby the wife's refusal to follow constituted an abandonment. The husband obtained a Louisiana judgment of separation from bed and board in a contested action; and later he followed up by procuring a divorce. In appealing from the divorce decree, the wife contended that the Louisiana court was without jurisdiction for either separation or divorce because the husband's domicile, and with it the matrimonial domicile, was in Mississippi. The court found that "the husband attempted to establish a matrimonial domicile in Vicksburg [Mississippi] but was unsuccessful because his wife would not accompany him to that place." The lower court judgments were affirmed by reason of "the matrimonial domicile being situated at Monroe [Louisiana]."

The use of matrimonial domicile as an important point of reference in American conflict of laws cases has been limited to

* Professor of Law, Louisiana State University.
1. 216 La. 791, 44 So. 2d 870 (1950).
2. 216 La. 791, 795, 44 So. 2d 870, 871 (1950).
3. Ibid.
the scope and life-span of the *Atherton* case, during the *Haddock* regime. There has never been any formulation of general principles concerning matrimonial domicile; nor has there been any legal concept of a continuing matrimonial domicile until replaced by a "new" matrimonial domicile. The idea in the principal case has no historical foundation; whether it will have any future significance remains to be seen.

In the case of *Interdiction of Toca* another unexpected idea is the distinction drawn between the "actual domicile, the domicilium habitatioinis" and the "merely legal or constructive domicile." The question of the jurisdiction of a Louisiana court to interdict a person whose last legal domicile was in Louisiana but who has been an inmate of a mental institution for nineteen years in another state, is discussed elsewhere in this symposium. However, the distinction between these domiciles is doubly unexpected: in the first place, because the significance of domicile, especially in conflict of laws, has always been as a legal concept (distinguished from the physical fact of residence); and secondly, because the distinction here made is not borne out by the case cited as its source. However, the idea in the principal case may have a different explanation or unexplored possibilities.

**CORPORATIONS**

*Dale E. Bennett*

**RECEIVERSHIP FOR MISMANAGEMENT**

The protection of minority shareholders includes a special statutory right to apply for a receivership where minority rights are jeopardized by gross mismanagement or misapplication of funds by the officers, directors and majority stockholders. The appointment of a receiver, however, is a harsh and expensive remedy which will not be decreed unless the need for such relief

---

5. See comments on this case in section on Persons (Interdiction), infra p. 177.
6. In the earlier case of *Interdiction of Dumas*, 32 La. Ann. 679 (1880), the court was examining the text of Article 392 of the Civil Code, providing that "Every interdiction shall be pronounced by the competent judge of the domicile or residence of the person to be interdicted," and the court there concluded that this provision "contemplates that such domicile or residence should be, as a rule, the place of abode of such person, the locus habitatioinis, the place where the body can be found and reached, within the territorial limits of the court itself, and, as an exception, the place of the bona fide abode, intentional or accidental, of such person within the national boundaries of the sovereignty which the court represents." (32 La. Ann. 679, 682.)

*Professor of Law, Louisiana State University.