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Civil Code and Related Subjects: Conflict of Laws

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and merchantable title. There were twenty-four lots in the square involved, and the original possessor went into possession of the whole square although he had acquired only nineteen of them. As to the five lots here in question, he took possession as agent for the bank in which he was employed. The evidence that later "he took that property as his own" was not enough to change his precarious possession (for another) into a legal possession (for himself) which is indispensable for any acquisitive prescription.[10] Of significant value in deciding future cases is the court's clarification of the criteria that he "could not become an adverse possessor in the absence of a showing that he manifested such an intention by some *unequivocal act of hostility* which was *brought to the attention of the bank.*"[11] (Italics supplied.)

CONFLICT OF LAWS

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In two cases the court was requested to give recognition to the custody decree of another jurisdiction, and in both instances this was refused. One was a foreign-country judgment rendered in Panama, and the other was a sister-state judgment from Tennessee. In the latter case, even the "full faith and credit" clause offered no help. Custody decrees frequently fail to finish the family fights for the offspring, because the desire of one parent for its child is not dissipated by a judicial award to the other. At the same time, courts usually seek a solution in the best interests of the children. In a conflict of laws case involving movement from one place to another, the question is kept open by non-recognition of the custody decree previously rendered in another jurisdiction. If, according to the general principles of conflict of laws, the court which rendered the custody decree did not have jurisdiction to do so, the refusal to recognize is simple enough. It is a little more involved but not much more difficult to disregard the custody decree even of a sister state and even where there may have been present all the elements for jurisdiction.

10. Arts. 3436, 3441, 3446, 3489, 3490, 3510, LA. CIVIL CODE of 1870.
11. 224 La. 9, 14, 68 So.2d 739, 741 (1953).
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An illustration of the former is *Francis v. Carpenter*,[1] where the plaintiff had obtained a divorce with custody and alimony from a court in the Republic of Panama. The father and children were not in Panama at the time of this decree, and some years later one son, then aged seventeen, left his father's domicile in Louisiana and went to live with his mother at her domicile in Virginia. The mother's suit in Louisiana for alimony to support this child, based on a request for recognition of the Panama judgment, was dismissed. The situation would have been quite different if the mother had instituted an ordinary suit to seek custody and alimony, thereby submitting the question to the jurisdiction of the Louisiana court—and this possibility is expressly kept open in the decision. But to demand recognition of a custody and alimony decree from a foreign country which had no jurisdiction in the international (or conflict of laws) sense, was predestined to be a vain gesture.

The problem of a sister-state custody decree appeared in the case of *State* ex rel. *Huhn v. Huhn*.[2] While all the parties lived in Tennessee, a court of that state rendered a divorce dissolving the marriage and awarding custody to the father of the children. The mother was given the privilege of having them for weekend visits, and both parents were enjoined from taking the children out of the jurisdiction of the court. When the father took the children to live in Louisiana, the mother obtained a modification order in Tennessee holding him in contempt and awarding custody to her. By habeas corpus proceedings in Louisiana, the mother sought recognition of her Tennessee custody decree, but the favorable action of the district court was reversed in a holding that the Tennessee order was not entitled to compulsory recognition in Louisiana.

Since the Full Faith and Credit Clause of the Federal Constitution requires only that a sister-state judgment be given the same faith and credit that is accorded to it in the state of its rendition, it is asking too much of Louisiana to recognize a custody decree which is not final but subject to modification in Tennessee. Furthermore, even if final and conclusive under the conditions existing at the time of the award, subsequent facts and circumstances have been considered sufficient by the United States Supreme Court to authorize a reexamination of

1. 224 La. 916, 71 So.2d 326 (1954).
2. 224 La. 591, 70 So.2d 391 (1954).

the merits.[3] The present decision follows the holding in the recent Louisiana case of *State* ex rel. *Girtman v. Ricketson.*[4]

Although the wife's modified Tennessee custody decree was obtained in the absence of the husband and the children, the order may well have been considered in Tennessee as a further proceeding in the original action, so that the court would be deemed to have continuous jurisdiction.[5] Under such circumstances there would be no point in citing *May v. Anderson,*[6] where the court which awarded the custody to one parent had no personal jurisdiction whatsoever over the other parent.

If, in either of the two cases here discussed, the Louisiana Supreme Court had felt that it would be in the best interests of the administration of justice to recognize the foreign custody decree, their action might have been surprising but it would not be subject to any constitutional review for accepting voluntarily a foreign judgment which they were not compelled to recognize under the Full Faith and Credit Clause.

MINERAL RIGHTS

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In *Smith v. Holt*[1] it was most logically decided that when the same lessee, owner, under definition given in the Conservation Act, was operating a drilling unit established by the commissioner, an order for pooling was unnecessary. Thus, drilling on one part of the unit was user as to all, though two different servitudes were involved, and the land covered by one had not been used.

In *Barnsdall Oil Co. v. Succession of Miller,*[2] the evidence disclosed no intention on the part of the landowners to sign a joint contract of lease with the servitude owners. Indeed, it was found that the landowners did not know that the servitude owners were to be parties to the lease. Thus, there was no

3. New York *ex rel.* Halvey v. Halvey, 330 U.S. 610 (1947).
4. 221 La. 691, 60 So.2d 88 (1952). See *The Work of the Louisiana Supreme Court for the 1951-1952 Term—Conflict of Laws,* 13 LOUISIANA LAW REVIEW 230, 234 (1953); Note, 27 TULANE L. REV. 361 (1953).
5. Michigan Trust Co. v. Ferry, 228 U.S. 346 (1913).
6. 345 U.S. 528 (1953), 14 LOUISIANA LAW REVIEW 683 (1954).

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1. 223 La. 821, 67 So.2d 93 (1953), 14 LOUISIANA LAW REVIEW 438 (1954).
2. 224 La. 216, 69 So.2d 21 (1953).