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Conflict of Laws - Divorce - Jurisdiction

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Notes

CONFLICT OF LAWS—DIVORCE—JURISDICTION

Husband and wife were married in New York in 1940, remained there for several years, and then moved to France. In 1953, the wife returned to New York and instituted this suit for a divorce, relying on a New York statute conferring jurisdiction to divorce upon the state courts "where the parties were married within this state."[1] The husband was given notice of the suit by publication and made a special appearance to contest the court's jurisdiction. *Held*, the celebration of a marriage within a state empowers that state to divorce the parties. *David-Zieseniss v. Zieseniss*, 205 Misc. 836, 129 N.Y.S.2d 649 (Sup. Ct. 1954).

The Supreme Court of the United States decided in *Williams v. North Carolina I*[2] that a divorce decree rendered in the state where the plaintiff was domiciled when the suit was instituted is entitled to full faith and credit in other states. Most writers believe that a divorce decree rendered at the defendant's domicile is similarly entitled to full faith and credit.[3] The Supreme Court has also held that, when the defendant in a divorce proceeding contests the court's jurisdiction[4] or enters a general appearance,[5] the principles of res judicata prevent him from questioning the jurisdiction of the court in another proceeding. The court has never decided that, either for purposes of full faith and credit or solely under the due process clause of the fourteenth amendment, the state where the plaintiff or defendant is domiciled is the only one which has jurisdiction to grant the parties a divorce. But there are statements in its decisions[6] and assertions by certain writers[7] to that effect. Moreover, some

1. N.Y. CIVIL PRACTICE ACT § 1147(2).

2. 317 U.S. 287 (1942).

3. RESTATEMENT, CONFLICT OF LAWS § 113 (Supp. 1948); STUMBERG, PRINCIPLES OF CONFLICT OF LAWS 295 (2d ed. 1951). *But see* Comment, 14 LOUISIANA LAW REVIEW 257 (1953).

4. Sherrer v. Sherrer, 334 U.S. 343 (1948).

5. Coe v. Coe, 334 U.S. 378 (1948); see also Johnson v. Muelberger, 340 U.S. 581 (1951).

6. "Under our system of law, judicial power to grant a divorce—jurisdiction strictly speaking—is founded on domicil." Williams v. North Carolina II, 325 U.S. 226, 229 (1945); see also *id.* at 239; Sherrer v. Sherrer, 334 U.S. 343, 349 (1948).

7. GOODRICH, HANDBOOK OF THE CONFLICT OF LAWS 395 (3d ed. 1949); STUMBERG, PRINCIPLES OF CONFLICT OF LAWS 295 (2d ed. 1951); see also RESTATEMENT, CONFLICT OF LAWS § 110 (1934).

courts have held unconstitutional legislative attempts to provide a basis for divorce jurisdiction other than the actual existence of one party's domicile within the territory at the time of suit.[8] A recent decision of the Supreme Court has invalidated such an attempt by the legislature of the Virgin Islands, ostensibly on the narrow grounds that Congress had simply not given the Virgin Islands any such power. A strong dissent attempted to show, however, that the court had in fact decided, erroneously, that domicile is an essential ingredient of divorce jurisdiction.[9]

The court in the instant case applied the New York statute literally and exercised jurisdiction solely because "the parties were married within this state."[10] It considered the celebration of a marriage within the state as establishing a permanent relationship between the parties and the state of sufficient importance to serve as the basis of divorce jurisdiction. The court also reasoned that, since the validity of a marriage is usually determined in accordance with the law of the place of its celebration, that place should also be "an appropriate place for determining whether or not and for what causes the marriage may be dissolved."[11] The court took note of *Alton v. Alton*,[12] in which the Court of Appeals for the Third Circuit stated that domicile of one of the parties was essential to divorce jurisdiction. That decision held unconstitutional a territorial statute making six weeks' residence prima facie proof of domicile in the Virgin Islands and also allowing Virgin Islands courts to divorce parties who were both before the court. This statute is the one recently declared invalid on other grounds by the Supreme Court in *Granville-Smith v. Granville-Smith*.[13] The court in the instant case also considered *Jennings v. Jennings*,[14] in which an Alabama court declared unconstitutional a statute allowing the courts of that state to divorce nonresidents whenever both parties were before the court. Both decisions were distinguished as cases where there

8. Alton v. Alton, 207 F.2d 667 (3d Cir. 1953), 14 LOUISIANA LAW REVIEW 893 (1954), *judgment vacated*, 347 U.S. 610 (1954); Jennings v. Jennings, 251 Ala. 73, 36 So.2d 236 (1948).

9. Granville-Smith v. Granville-Smith, 75 Sup. Ct. 553, 561 (1955).

10. N.Y. CIVIL PRACTICE ACT § 1147(2). It is not entirely certain that the intent of the legislature was to make marriage within the state sufficient. See cases cited Note, 54 COLUM. L. REV. 1165 (1954).

11. David-Zieseniss v. Zieseniss, 205 Misc. 836, 129 N.Y.S.2d 649, 655 (Sup. Ct. 1954).

12. 207 F.2d 667 (3d Cir. 1953), 14 LOUISIANA LAW REVIEW 893 (1954), *judgment vacated*, 347 U.S. 610 (1954).

13. 75 Sup. Ct. 553 (1955).

14. 251 Ala. 73, 36 So.2d 236 (1948).

was no connection between the marriage and the forum which could reasonably serve as the basis of jurisdiction when the possibility of domicile had been ruled out.

Although the need for deciding the question was not present in the instant case and the court seems to have deliberately avoided stating its views in this regard,[15] it is submitted that the court's decree would not be entitled to full faith and credit in another state. This seems to be implicit in the decisions of the Supreme Court discussed above. In general, indications are that the Court will accept a state's claim to jurisdiction, for purposes of full faith and credit, only when the state has sufficient interest in the matter in controversy.[16] Consequently, even were the Supreme Court to recognize some basis other than domicile for jurisdiction to render a divorce decree entitled to full faith and credit, it would not seem that a state acquires sufficient interest in a marriage, solely by reason of its celebration there, to render such a decree.[17] Some writers believe that the requirements of jurisdiction for purposes of due process under the fourteenth amendment are the same as those of the full faith and credit clause.[18] Under this view, the court's decree in the instant case would be invalid in New York if, as submitted, it is not entitled to full faith and credit elsewhere. On the other hand, there is some authority for the view that, while the decree might not be entitled to full faith and credit, the court's exercise of jurisdiction might still satisfy the requirements of due process.[19] What these requirements are cannot be readily stated.

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15. David-Zieseniss v. Zieseniss, 205 Misc. 836, 129 N.Y.S.2d 649, 654 (Sup. Ct. 1954).

16. See, *e.g.*, Pink v. A.A.A. Highway Express, Inc., 314 U.S. 201 (1941); Alaska Packers Ass'n v. Industrial Accident Comm., 294 U.S. 532 (1935); Bradford Electric Co. v. Clapper, 286 U.S. 145, 163 (1945) (especially concurring opinion).

17. The instant case may later be explained as one based on the fact that the parties had made New York their domicile for several years after marriage and thus gave the state a greater interest in the marriage than it would have from its mere celebration there. But nothing in the court's opinion supports such an explanation.

18. Griswold, *Divorce Jurisdiction and Recognition of Divorce Decrees—A Comparative Study*, 65 HARV. L. REV. 193, 212 n. 57 (1951); *The Work of the Louisiana Supreme Court for the 1952-1953 Term—Persons*, 14 LOUISIANA LAW REVIEW 114 (1953); Comment, 14 LOUISIANA LAW REVIEW 257, 265 (1953); Note, 68 HARV. L. REV. 543 (1955); see also Alton v. Alton, 207 F.2d 667 (3d Cir. 1953), 14 LOUISIANA LAW REVIEW 893 (1954); Crownover v. Crownover, 58 N.M. 597, 274 P.2d 127 (1954).

19. Justice Frankfurter, dissenting, has said: "A divorce may satisfy due process requirements and be valid where rendered, and still lack the jurisdictional requisites for full faith and credit to be mandatory." Sherrer v. Sherrer, 334 U.S. 343, 368, n. 16 (1948); see also Comment, 39 CORN. L.Q. 293, 299 (1954); Powell, *And Repent at Leisure—An Inquiry into the Unhappy*

But the theory of the court in the instant case that the mere fact that a marriage has been celebrated within the state creates a lingering *res* over which the state may exercise jurisdiction is not convincing. Moreover, while it is true, as the court pointed out, that some states have exercised jurisdiction to annul a marriage solely on the grounds that the marriage was celebrated within the state, there seems to be a fundamental difference between annulment and divorce proceedings.[20] The court's suggestion that the parties had impliedly consented to its jurisdiction by marriage within the state seems equally questionable, since it is generally agreed that jurisdiction to divorce cannot be conferred even by express consent of the parties.[21] However, the possible effects of defendant's special appearance to contest the court's jurisdiction should not be overlooked. Under the principles of res judicata, this appearance may operate to bar the parties from later attacking the decree if the proceeding terminated with the instant decision. However, the Supreme Court has thus far applied the doctrine of res judicata only to cases where, after the defendant appeared and either questioned or admitted the existence of plaintiff's domicile as a jurisdictional requirement, the court rendering the divorce decree did not attempt to base its jurisdiction on anything but domicile.[22] It is a different case when the court bases its jurisdiction on a denial that the existence of a party's domicile within the territory is essential, as the court in the instant case did. The *Restatement of Judgments* states that where a court having jurisdiction over the parties determines that it has jurisdiction over the subject matter, the parties cannot collaterally attack this determination "unless the policy underlying the doctrine of res judicata is outweighed by the policy

Lot of Those Whom Nevada Hath Joined Together and North Carolina Hath Put Asunder, 58 HARV. L. REV. 930, 936 (1945).

20. An annulment decree merely declares that the marriage relationship never came into existence because it did not comply with the law of the state where the ceremony took place. This would seem to be some justification for a state's exercising jurisdiction in an action for annulment on the basis of the parties' having been married there. A divorce decree, however, admits the validity of the marriage, but purports to dissolve that relationship by reason of events which occurred subsequently and in accordance with the law where the action is brought. Thus in the latter case it would seem that there should be some *present* connection with the forum where the divorce action is being brought in order to give the forum a sufficient interest on which to exercise jurisdiction to dissolve the relationship. See STUMBERG, PRINCIPLES OF CONFLICT OF LAWS 321, 324 (2d ed. 1951).

21. See note 8 *supra*.

22. Sherrer v. Sherrer, 334 U.S. 343 (1948); Coe v. Coe, 334 U.S. 378 (1948),

against permitting the court to act beyond its jurisdiction." Significantly, among the factors listed that might justify permitting such collateral attack is "the fact that the determination as to jurisdiction depended upon a question of law rather than of fact."[23]

In conclusion, it may be said that the court's suggestion that all states adopt the rule laid down in its decision seems neither sound nor likely to be accepted. Should the court's decree be entitled to full faith and credit, one more step in the encouragement of migratory divorces would be taken. If it is valid in New York but not entitled to full faith and credit elsewhere, an unfortunate instability in the status of the parties as they move from state to state has been made possible.

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CONSTITUTIONAL LAW—CONSTITUTIONALITY OF LOUISIANA DIRECT ACTION STATUTE—SUITS ON OUT-OF-STATE CONTRACTS CONTAINING NO-ACTION CLAUSES

Plaintiff, a Louisiana resident, brought a direct action against defendant insurer, a British corporation, to recover damages for injuries resulting from the use in Louisiana of a product manufactured by the insured, a Delaware corporation. Suit was removed to the federal district court on the ground of diversity. The contract of insurance was issued in Massachusetts and delivered there and to a subsidiary corporation in Illinois. It contained a provision, valid and enforceable in Massachusetts and Illinois, prohibiting actions against the insurer until the amount of the insured's obligation to pay had been determined either by judgment against the insured or by written agreement. As a condition to doing business in Louisiana, the defendant insurer had consented to be sued[1] under the Louisiana direct action

23. RESTATEMENT, JUDGMENTS § 10 (1942). The date of the *Restatement* of course indicates that the American Law Institute did not have in mind the problems of divorce jurisdiction that have recently arisen. The 1948 supplement to the *Restatement* does not alter the section quoted. However, the original comment (b) of this section states: "[I]f a suit for divorce is brought in the court of a justice of the peace, which has no jurisdiction to grant a divorce, and judgment is given granting the divorce, the judgment is void and subject to collateral attack even though the defendant appeared in the action and the question of the jurisdiction of the court to grant a divorce was litigated and determined adversely to the defendant."

1. Consent is required under La. Acts 1950, No. 542, p. 986, now LA. R.S. 22:983E (1950): "No certificate of authority to do business in Louisiana shall