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Civil Code and Related Subjects: Conflict of Laws

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CONFLICT OF LAWS

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DOMICILE

Successions of Rhea[1] involved a question of inheritance taxation. If decedents' domicile had been in Louisiana, the tax would be about $167,000, but if their domicile had been in Tennessee, the tax would be only a little over $1,000. The evidence concerning the domiciliary intent of the parties was conflicting, for although they moved their residence and personal life completely out of Louisiana and into Tennessee, certain business interests were preserved in Louisiana. In addition, they filed their federal income tax returns in Louisiana, purchased some of their automobile licenses in Louisiana, and so forth. Following principles of domicile that are well established in Louisiana, and giving more weight to acts and conduct than to words and statements, the court found their domicile to have been in Tennessee. The decedents had only one residence; it was in Tennessee and that was their principal establishment. The fact that they may have entertained a floating intention to return to Louisaina at some future date was treated by the court as immaterial. This decision lost a substantial sum of money to the state coffers, but it was the right conclusion to reach. Furthermore, it emphasizes that people cannot determine at will the place of their domicile unless this also corresponds with the actual state of facts.

In the case of *Juneau v. Juneau*[2] a separation suit was instituted by the husband, and by reconventional demand the wife asked for recognition of a Nevada divorce which she had obtained. The court refused to give full faith and credit to the Nevada decree on the ground that there had been no divorce jurisdiction,[3] because the evidence contradicted any bona fide domicile by the wife in Nevada. In the fall of 1952, a divorce suit had been instituted in Louisiana, but it was dismissed by consent on January 30, 1953. The following day, the wife left for Nevada and there obtained a divorce on April 9, 1953. Her absence from Louisiana consisted of two weeks vacation (with

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1. 227 La. 214, 78 So.2d 838 (1955).
2. 227 La. 921, 80 So.2d 864 (1955).
3. Williams v. North Carolina II, 325 U.S. 226 (1945).

pay) from her job, together with a leave of absence during part of which she worked for the same company in its Houston, Texas, office. A few weeks after her divorce in Nevada, she was back in her former employ in New Orleans.

On the facts of this case, the conclusion that a domicile had not been established in Nevada is almost inescapable[4]—despite Justice Hamiter's dissent on the ground that the record did not affirmatively rebut the presumption that the Nevada court had jurisdiction—and this would be so regardless of whether the Nevada plaintiff had been the wife or the husband. In such event, the discussion in the majority opinion about the domicile of a married woman being that of the husband might be considered as dictum. Nevertheless, some comment should be addressed to it.

To begin with, a distinction must be drawn between the Louisiana rules concerning domicile for (1) matters which are purely local, that is, *intrastate* or limited in all aspects within the territorial boundaries of Louisiana, and (2) other matters which are *interstate* in character by reason of revelant elements which are connected with other states. For the former situation, there is no question (within due process) that Louisiana can establish its own rules concerning domicile in general and governing the domicile of married women in particular. For the latter, it is likewise within the competence of Louisiana to establish rules of domicile, but in a case which involves a full faith and credit issue, these Louisiana rules of domicile and the method of their application (for interstate purposes) may be reviewed by the Supreme Court of the United States.[5]

In this respect, therefore, it would be preferable for the Louisiana rules to be in line with the rules generally recognized by the other states and by the United States Supreme Court. Accordingly, there should be a re-examination of this question and a reconsideration of the issue before relying in a conflict of

4. Although in effect at the time of the events in this case, no mention is made of the Uniform Divorce Recognition Act, which was passed as Act 241 of 1952 and became LA. R.S. 9:351-354 (1950) — perhaps because it was repealed in 1954. Under LA. R.S. 9:352-353 (1950), the divorce in this case would not have been entitled to recognition.

5. Rice v. Rice, 336 U.S. 674 (1949): "It is not for us to retry the facts, and we cannot say that in reaching their conclusion the [Connecticut] courts did not have warrant in evidence and did not fairly weigh the facts," quoting from Esenwein v. Commonwealth *ex rel.* Esenwein, 325 U.S. 279, 281 (1945). See also Thompson v. Whitman, 85 U.S. (18 Wall.) 457 (1873), that a recital of jurisdictional facts in the record is not conclusive.

laws (interstate) case upon the Louisiana local (intrastate) rules that a married woman has no other domicile than that of her husband,[6] and that suits between spouses for divorce or separation must be brought at the matrimonial domicile established for them by the husband;[7] the limited exception being that a married woman may establish a separate domicile in the event that her husband's conduct has been such as would furnish lawful grounds for divorce.[8] The other states and the United States Supreme Court have been much more liberal in this regard;[9] furthermore, it would also be more in keeping with the Louisiana emancipatory acts which purported to give married women an equality of legal status more than a quarter of a century ago.[10]

DIVORCE

The question of giving full faith and credit to an Arkansas divorce was presented in the case of *Eaton v. Eaton*.[11] The husband interposed this Arkansas decree as a bar to his wife's present suit for divorce in Louisiana. The court held that the Arkansas decree was not entitled to full faith and credit, and affirmed the lower court's judgment granting a divorce to the wife. This decision involved two issues. The first one was that from the dates on which the evidence established the husband's presence in Louisiana, he could not have had the required residence in Arkansas to obtain a valid divorce there—much less, satisfy the requirements for domicile as a basis for divorce jurisdiction in the interstate sense.

The second issue was the more interesting one. In order to facilitate the procurement of the Arkansas divorce, the husband had obtained from his wife (while she was visiting the husband's

6. LA. CIVIL CODE art. 39 (1870).

7. Zinko v. Zinko, 204 La. 478, 15 So.2d 859 (1943), quoted with approval in Juneau v. Juneau, 227 La. 921, 927, 80 So.2d 864 (1955).

8. See note 7 *supra*.

9. RESTATEMENT, CONFLICT OF LAWS § 28 (Supp. 1948): "If a wife lives apart from her husband, she can have a separate domicile." This new text is explained by the following *Reason for Change*: "Decisions since the publication of the Restatement [1934] indicate the continuance of growth of the idea that women's legal emancipation includes the ability to acquire a domicile of choice."

See also GOODRICH, CONFLICT OF LAWS 79-82 (3d ed. 1949); STUMBERG, PRINCIPLES OF CONFLICT OF LAWS 40-45 (2d ed. 1951); 1 RABEL, THE CONFLICT OF LAWS: A COMPARATIVE STUDY 403 (1945); Williams v. North Carolina I, 317 U.S. 287 (1942); Sherrer v. Sherrer, 334 U.S. 343 (1948); Cook v. Cook, 342 U.S. 126 (1951); May v. Anderson, 345 U.S. 528 (1953).

10. LA. R.S. 9:51, 101-105 (1950).

11. 227 La. 992, 81 So.2d 371 (1955).

sister in California) a signed instrument entitled "Waiver of Summons and Entry of Appearance." On the basis of the United States Supreme Court's decisions in the *Sherrer* and *Coe* cases,[12] the husband contended that the Arkansas court's finding of jurisdiction was res judicata and that the divorce decree must therefore be recognized. The outcome of this issue depended upon the meaning and procedural significance of the signed waiver, and the solution was apparently reached by reference to Louisiana's (conflict of laws, or interstate) concepts rather than those of Arkansas, where it was used. No reference was made to the question of whether such a signed waiver would result in res judicata if the issue were raised in Arkansas, although from the point of view of *full faith and credit* in Louisiana, this point would not be conclusive.

In evaluating the waiver in the present case, the court found that (1) the wife had not filed it in the divorce proceedings but had merely sent it to her husband, (2) she had not made any personal or attorney appearance in the suit, and (3) she had not been served with process in Arkansas. This amounts to saying that she was not in court. Accordingly, the *Sherrer* and *Coe* cases were distinguished on that ground, as well as on the plaintiff's establishment of the actual residence requirements in each of these cases. Thus, it cannot be said in the present case that the questions of the husband's residence and the court's jurisdiction had been litigated or that the wife had participated in the proceedings without availing herself of the opportunity to raise the jurisdictional issue.

In addition to denying recognition to the Arkansas divorce, the court had to dismiss a contention of estoppel which was urged against the wife because she accepted six monthly payments of $100 each pursuant to the husband's agreement when she signed the waiver. The court did not consider this of any consequence because the husband was not doing anything more than fulfilling an existing alimentary obligation to his wife. The husband's apparent fraud in procuring what amounted to a "mail-order" divorce, and his lack of domicile in Arkansas, were certainly good reasons for refusing to recognize the decree; the interpretation of the waiver as not constituting a submission to the jurisdiction of the court is a less reassuring factor.

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