

Louisiana Law Review

Volume 18 | Number 1

The Work of the Louisiana Supreme Court for the

1956-1957 Term

December 1957

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Repository Citation

Joseph Dainow, *Civil Code and Related Subjects: Conflict of Laws*, 18 La. L. Rev. (1957)

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CONFLICT OF LAWS

*Joseph Dainow**

The case of *Brinson v. Brinson*¹ involves a situation in which the decedent had his fling, and in which the property problem he left for his survivors is greatly surpassed by the legal problems he left for the courts and the dialecticians. Evidently Willie Brinson (deceased) believed in marriage but not much in divorce. While still married to Annie, he married Zeola although he was later divorced from Annie. Then he married Effie and lived with her in Louisiana while he also continued to live with Zeola in Mississippi. If he had not left a little property at his death, this fascinating story with numerous legal problems would probably have not come to light. If Willie can look up, or down, from where he is, he may be even more amused by the ensuing disconcerted dissension among the law-men than he was in establishing the original facts. The present discussion is limited to the conflict of laws aspect of the case.

Accepting the proper eventual dissolution of Willie's first marriage to Annie, and the invalidity of his ceremonial marriage to Zeola, the single basic question in conflict of laws is whether the Louisiana court should recognize Willie's continued living (after divorce from Annie) as husband and wife with Zeola as a common-law marriage under the laws of Mississippi. The trial judge and the court of appeal held in the affirmative; the Supreme Court reversed.

Two points emerge for special attention: one is the Louisiana rule of conflict of laws and the method for determining the validity of a marriage in choice-of-law cases; the other is the meaning and use of "public policy" in conflicts cases.

In the United States, the general conflicts rule is that the validity of a marriage is determined in accordance with the law of the place where it was contracted and celebrated.² This rule prevails in Louisiana³ and is apparently accepted by all the courts which dealt with this case. Likewise, the facts are un-

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1. 96 So.2d 653 (La. 1957), reversing 84 So.2d 888 (La. App. 1956).

2. RESTATEMENT, CONFLICT OF LAWS § 121 (1934); GOODRICH, HANDBOOK OF THE CONFLICT OF LAWS 351 (3d ed. 1949); STUMBERG, PRINCIPLES OF CONFLICT OF LAWS 281 (2d ed. 1951).

3. See RESTATEMENT, CONFLICT OF LAWS § 121, Louisiana Annotations (1934).

controverted that after the divorce from Annie, Willie continued to live with Zeola in Mississippi as husband and wife. In Mississippi law, the so-called common-law marriage is valid. There is some difference of opinion among the Louisiana judges as to interpretation of Mississippi law concerning the effect of good faith or bad faith on the part of the individuals, and there was also difference in their findings as to the fact of good faith or bad faith. These issues are not very important in the present discussion because the Supreme Court's final opinion on rehearing assumed *arguendo* that in Mississippi Willie and Zeola would be considered as husband and wife under a common-law marriage.⁴ The opinion goes on to discuss the "public policy" point, but two paragraphs later there is a negation of this concession by referring to "the mere continuation of the meretricious relationship."⁵ Despite the assumption *arguendo* that it was a good marriage in Mississippi, something in the factual situation still rankled the court.

The main issue, and the one apparently intended to be the *ratio decidendi* is the public policy point. In the logical application of the forum's rule of conflict of laws, a court may normally be referred to a foreign law for the determination of the question at issue. If the logical conclusion of this process would produce a result that is repugnant to the fundamental patterns of local society, the court may preclude the operation of the foreign rule on the ground that the result would be contrary to the "public policy" of the forum.⁶

In the present case, this was taken to mean that the recognition of the factual situation as a marriage would be against the public policy of Louisiana. The correct issue should have been whether the Mississippi common-law marriage is repugnant to Louisiana public policy. Yet that is not the case because both the court of appeal⁷ and the Supreme Court⁸ assert that Louisiana courts have, in the application of the conflicts rule of *lex loci celebrationis*, recognized common-law marriages. Here, the court took the issue as whether this *particular* Mississippi marriage

4. 96 So.2d 653, 660 (La. 1957).

5. *Ibid.*

6. RESTATEMENT, CONFLICT OF LAWS § 612 (1934); GOODRICH, HANDBOOK OF THE CONFLICT OF LAWS 21, 273, 369 (3d ed. 1949); STUMBERG, PRINCIPLES OF CONFLICT OF LAWS 168, 198, 278 (2d ed. 1951). See also Dainow, *Policy Problems in Conflict Cases*, 35 TEX. L. REV. 759 (1957); Paulsen, *Public Policy in the Conflict of Laws*, 56 COLUM. L. REV. 969 (1956).

7. 84 So.2d 888, 893 (La. App. 1956).

8. 96 So.2d 653, 656 (La. 1957).

was repugnant. Again, it appears that something in the facts of this case must have rankled the majority of the court.

The original opinion of the Supreme Court was likewise based upon the public policy argument. It must, of course, be understood that there is no purpose in using public policy as a bar against an undesired result unless that result would otherwise emerge from the logical application of regular rules in the normal process. Thus, the marriage, although valid in Mississippi, would not be recognized and could have no legal effect in Louisiana (i.e., no legal effect in Louisiana to a valid Mississippi marriage). Accordingly, there is a switching of ideas in mid-stream when the opinion concludes that "claiming the civil effects of a *bigamous* union, it would be inimical to public policy."⁹ (Emphasis added.) Differing from the lower courts, the Supreme Court found that Zeola was in bad faith, and that fact seems to have pressed them in their thinking. If they had concluded — rightly or wrongly — that under Mississippi law the bad faith prevented a valid common-law marriage, the method of dealing with a choice-of-law case would have been correct and consistent. But where the union is conceded to be a valid marriage under Mississippi law, and it is affirmed that Louisiana does recognize common-law marriages duly contracted in other states, there is an erroneous juxtaposition of ideas when the element of bad faith is used as a criterion to treat this particular marriage as repugnant to Louisiana public policy.

In the light of all the circumstances it might well appear to fair and reasonable arbiters that Effie deserved the greatest consideration in the property where she and Willie had lived together. Some people might well say that "law must be tempered with justice." Others might just as well add that when "justice tampers with law" too much, it destroys the legal system as such; it is recognized that the best of laws may sometimes work harshly, but all situations call for clear and accurate analysis.

9. *Id.* at 659.