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Private Law: Conflict of Laws

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bility insurer under the direct action statute is in tort and prescribes in one year. At the same time, it was recognized that if a claimant first gets judgment against an insured who, after paying, then sues his insurer, the action is in contract. The principal holding was based on *Reeves v. Globe Indem. Co.*,²⁹ which was decided in 1930. It does not appear that subsequent amendments to the direct action statute require a change in this view.

A holding that seems to be not in keeping with the intention of the insurer but that is supportable on the principle of ambiguity was made in *Collins v. Government Employees Ins. Co.*³⁰ An insured had two automobiles covered under one policy. One of them had collision coverage but not the other. The latter was traded for a new car, which was damaged in collision over a month thereafter. The court sustained insured's claim of collision coverage on the new car. This seems to result in giving the insured the benefit of collision coverage on both cars after the trade was made. And for this he had not paid.

CONFLICT OF LAWS

*Joseph Dainow**

*Succession of King*¹ centered on an exception of no cause of action to a petition for annulment of a will, but the real issue was the validity of an olographic will which had been made while the testator was domiciled in Louisiana and disposed of movable property located in Louisiana; but at the time of his death the testator was domiciled in Florida. In Louisiana, an olographic will is valid; in Florida, it is not. The petition for annulment urged the applicability of the Florida law; the court applied Civil Code article 10² and followed a prior Supreme

29. 185 La. 42, 168 So. 488 (1930).

30. 168 So. 2d 415 (La. App. 3d Cir. 1964).

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1. 170 So. 2d 129 (La. App. 4th Cir. 1965).

2. LA. CIVIL CODE art. 10 (1870): "The form and effect of public and private written instruments are governed by the laws and usages of the places where they are passed or executed.

"But the effect of acts passed in one country to have effect in another country, is regulated by the laws of the country where such acts are to have effect.

"The exception made in the second paragraph of this article does not hold,

Court decision in holding the will good.³

The petitioner's contention is based upon a generally well-settled rule of conflict of laws that the validity of a will is determined in accordance with the law of the testator's last domicile. However, as properly pointed out by the court, "that rule is not applicable where there is a statute to the contrary."⁴ This must necessarily follow from the in rem jurisdiction of the state where the property is located. In restating the same rule that was set out in the first Restatement on Conflict of Laws,⁵ the tentative draft of the second Restatement adds the qualification "unless the law of the state in which a chattel or document is situated is to the contrary."⁶

The court's opinion could have been supported additionally by reference to Louisiana's general policy of seeking to sustain the formal validity of a will as reflected in the 1912 adoption of the Uniform Wills Act which accepts compliance with any one of several possibilities as meeting the formal requirements of a testamentary disposition.⁷

when a citizen of another State of the Union, or a citizen or subject of a foreign State or country, disposes by will or testament, or by any other act *causa mortis* made out of this State, of his movable property situated in this State, if at the time of making said will or testament, or any other act *causa mortis*, and at the time of his death, he resides and is domiciliated out of this State."

3. Succession of Senac, 2 Rob. 258, on rehearing, 2 Rob. 262 (1842).

4. Succession of King, 170 So. 2d 129, 132 (La. App. 4th Cir. 1964).

5. RESTATEMENT (FIRST), CONFLICTS OF LAWS § 306 (1934).

6. RESTATEMENT (SECOND), CONFLICTS OF LAWS § 306 (Tent. Draft No. 5, 1959).

7. La. Acts 1912, No. 176, now LA. R.S. 9:2401 (1950).