Louisiana Law Review

Volume 32 | Number 2
The Work of the Louisiana Appellate Courts for the 1970-1971 Term: A Symposium
February 1972

Public Law: Conflict of Laws

Robert A. Pascal

nullify any judgment as a determination of personal liability on a discharged debt; and to enjoin creditors from suing on, or using any process to collect, a discharged debt.

Promise to Pay Discharged Debt

In Louisiana,[30] and generally, a new promise to pay a debt discharged in bankruptcy is actionable without new consideration;[31] and giving a new note for a discharged debt amounts to such a promise.[32] In *Port Finance Co. v. Daigle*,[33] the debtor signed a new note and the creditor gave new consideration, but the debtor had been coerced into signing, or so the jury believed. In reversing a judgment for defendant, the court of appeal held, over a vigorous dissent, that the evidence did not support the verdict.

CONFLICT OF LAWS

*Robert A. Pascal**

Alimony

de Lavergne v. de Lavergne[1] presents a fascinating problem evoking meditation on the bases of "conflict of laws" rules. A wife domiciled in Louisiana sued *ex parte* in Louisiana for a judgment of separation from bed and board from her husband domiciled in France. In the same suit she asked for alimony *according to Louisiana law*. The defendant husband not being present in the state or expected to appear voluntarily, the plaintiff wife, treating her cause of action for alimony as one for money, proceeded *quasi in rem* by attaching the defendant husband's beneficial interest in a Louisiana trust. A judgment for alimony in the amount of $600 monthly followed, but no attempt was made to enforce payments until $5400 was due. The wife then asked for and received a judgment ordering execution of the whole out of the husband's beneficial interest in trust attached on the commencement of suit. The husband thereupon alleged the nullity of the original alimony judgment, contending that a suit for alimony is not one "for money" which might be

30. Irwin v. Hunnewell, 207 La. 422, 21 So.2d 485 (1945).
31. 1A W. COLLIER, BANKRUPTCY § 17.33 (1971).
32. Booty v. Amer. Fin. Corp., 224 So.2d 512 (La. App. 2d Cir. 1969).
33. 236 So.2d 256 (La. App. 3d Cir. 1970).

* Professor of Law, Louisiana State University.

1. 244 So.2d 698 (La. App. 4th Cir. 1971).

initiated *quasi in rem*. It is assumed that the husband's contention was essentially that a proceeding *quasi in rem* may be used only to enforce an obligation existing before the filing of suit, and not to determine an obligation which will commence only from the moment of the initiation of the suit. Both the trial court and the court of appeal upheld the judgment, citing Louisiana Code of Civil Procedure articles 9 and 3542. The applicability of Louisiana legislation to determine the husband's liability for alimony was not questioned.

The writer does not offer any opinion whether the Louisiana Code of Civil Procedure is properly construed to permit suits for alimony through *quasi in rem* proceedings. Assuming that this legislation is to be so construed, the question which remains is whether it is within the state's competence to enact such legislation. In the writer's opinion, this is a question which cannot be determined authoritatively by a self-serving state declaration of competence; it must be answered according to reasonable criteria for delineating the judicial competences of states. Similarly, the applicability of Louisiana legislation to determine the husband's liability for alimony is not to be assumed, but is to be determined by reasonable criteria for the legislative competences of states. Under the United States Constitution's full faith and credit clause, the authoritative determination of the reasonable criteria for both the legislative and the judicial competences of States of the Union, among themselves at least, belongs primarily to Congress.[2] The criteria for both competences, therefore, are federal questions.[3] If the Congress has not made the determination itself, then the federal judiciary must have the authority to decide what these criteria are.[4] It follows, there-

2. U.S. CONST. art. IV, § 1: "Full faith and credit shall be given in each state to the public acts, records, and judicial proceedings of every other state. And the Congress may by general laws prescribe the manner in which such acts, records and proceedings shall be proved, and the effect thereof."

3. Thus Klaxon Co. v. Stentor Electric Mfg. Co., 313 U.S. 487 (1941), which declares the determination of "choice of law" rules (criteria for the legislative competences of states) to be a matter of state law, is necessarily unconstitutional and should be overruled.

The ultimate determination of the criteria for interstate judicial competence, however, has not been left to the states, the United States Supreme Court always controlling this matter under the due process clause of the fourteenth amendment and the full faith and credit clause itself.

4. If the full faith and credit clause requires each state to give full recognition and effect to every other state's laws and judgments, regardless of content and circumstances, then it makes each state the slave of every other. This could not have been the plan of rational men. It must be concluded, therefore, that the full faith and credit clause intended to obligate each state to give full recognition and effect to only those laws and judg-

fore, that state legislation or decisions prescribing or adopting particular criteria for state legislative and judicial competences cannot be viewed as more than attempts to provide judgments, in the absence of federal determinations, on what these criteria might be. These state rules must stand the test of federal approval.

The legislative competence of a state to impose alimony liability on a non-domiciliary in favor of a domiciliary usually has been assumed, but it is submitted that it cannot stand the test of the full faith and credit clause. The imposition on a non-domiciliary of alimony liability in excess of that imposed by the state in which he chooses to live as a citizen violates the right of the domiciliary state to determine the limits of the alimentary obligations of its own citizens. The same rule should apply as well to persons domiciled in other countries, even if the full faith and credit clause is not considered extendable to delineations of jurisdiction between states and foreign countries, for there would seem to be every reason to treat the situations similarly. In the same way, Louisiana should not be considered entitled to demand more alimony for its citizens than Louisiana would give them under its own laws. Thus, in the instant case it is suggested that the alimentary obligation of the husband, a French domiciliary, should have been determined to be the lesser of the obligations imposed by the Louisiana and French laws.[5]

On the issue of state judicial competence, or state jurisdiction to hear the suit, the writer suggests that *Pennoyer v. Neff*[6] long has been overruled *in principle*, if not expressly or

ments of other states enacted and rendered within the scope of their legislative and judicial competences. This in turn implies criteria by which the legislative and judicial competences of states may be determined. The Congress is given the *right* to prescribe such criteria by being given the right to determine the *effect* to be given sister state laws and judgments; but the Congress is not compelled to exercise its faculty, and yet full faith and credit must be given even if Congress has not exercised it. In that event the criteria have to be found in reasonable custom or reasonable judgment, and the authoritative determination thereof ultimately has to be made by the United States Supreme Court inasmuch as full faith and credit is a rule of the United States Constitution.

5. The Uniform Reciprocal Enforcement of Support Law as enacted in Louisiana moves *in this direction* by specifying that the measure of the "duty of support" shall be that of "any state where the obligor was [is?] present during the period for [in?] which support is sought." LA. R.S. 13:1661 (1950) *as amended*, La. Acts. 1966, No. 288, § 1. *Presence*, in the writer's opinion, cannot be considered a reasonable criterion for legislative competence in alimony matters and therefore offends the full faith and credit clause; but at least the provision indicates that the law of the domicile of the plaintiff is not to determine the defendant's obligation.

6. 95 U.S. 714 (1877).

in all of its applications, and that today the fundamental issue is the reasonableness under the circumstances of permitting one to prosecute a suit against a non-domiciliary defendant, assuming adequate notice and perhaps the appointment of an attorney to represent the absentee. The writer believes it is eminently reasonable to allow alimony suits *in personam* against non-domiciliary defendants to be prosecuted in the plaintiff's state of domicile. Having a spouse or ex-spouse in possible need in a state is as much reason to consider the non-domiciliary subject to *in personam* suit there, for the purpose of ascertaining whether alimony is due, as is "doing business," "using the highways and causing injury or damage," or the host of other criteria used in other kinds of situations.[7]

On the other hand, the writer believes proceedings *quasi in rem* are intrinsically inappropriate to determine alimony liability for the future. A *quasi in rem* suit presupposes a claim resolvable in a money judgment, and a demand for alimony is certainly reducible to that; but to permit this procedure in instances in which the judgment cannot be executed completely as soon as rendered leads to difficulties. As Professor Woody of the Tulane Law School observed accurately in a note on *de Lavergne*,[8] for a *quasi in rem* judgment for future alimony to be truly effective the judgment debtor would have to be forbidden to regain control of the assets attached even if at the moment not a single alimony installment were due. Professor Woody apparently favors legislation adopting such a rule.[9] The writer politely dissents, believing that such a rule should be judged in unreasonable restraint of one's use of his assets before he has defaulted in his obligation.

CRIMINAL LAW

*Frederick W. Ellis**

Dangerous Weapon

In *State v. Levi*[1] the court held that an unloaded and in-

7. *See* R. WEINTRAUB, COMMENTARY ON THE CONFLICT OF LAWS 86-92 (for a summary treatment) and 93-139 (for greater detail) (1971). *See also* Anderson, *Using Long-Arm Jurisdiction to Enforce Marital Obligations*, 11 J. OF FAMILY L. 67 (1971).

8. Woody, *A New Alimony Remedy?*, 19 LA. B.J. 151 (1971).

9. *Id.* at 156.

* Associate Professor of Law, Louisiana State University.

1. 259 La. 591, 250 So.2d 751 (1971). For a different view on this case,