

Louisiana Law Review

Volume 33 | Number 2

The Work of the Louisiana Appellate Courts for the

1971-1972 Term: A Symposium

Winter 1973

Public Law: Conflict of Laws

Robert A. Pascal

Repository Citation

Robert A. Pascal, *Public Law: Conflict of Laws*, 33 La. L. Rev. (1973)

Available at: <https://digitalcommons.law.lsu.edu/lalrev/vol33/iss2/17>

This Article is brought to you for free and open access by the Law Reviews and Journals at LSU Law Digital Commons. It has been accepted for inclusion in Louisiana Law Review by an authorized editor of LSU Law Digital Commons. For more information, please contact kreed25@lsu.edu.

to enjoin creditors from suing on, or using any process to collect, a discharged debt.

PROMISE TO PAY DISCHARGED DEBT

A new promise to pay a debt discharged in bankruptcy is actionable without new consideration, in Louisiana⁴⁰ as elsewhere.⁴¹ The promise may be made at any time after the filing of the petition in bankruptcy,⁴² but it must be "definite, express, distinct, and unambiguous."⁴³ These requirements were satisfied in *Credithrift of America, Inc. v. Nash*,⁴⁴ where the court found a specific promise to pay at a fixed future time. A mere acknowledgement of the debt with an expression of intent to pay at an indefinite time would not have been sufficient.⁴⁵

CONFLICT OF LAWS

Robert A. Pascal*

NON-DOMICILIARIES' "JOINT ACCOUNTS" IN LOUISIANA

Louisiana law of *things* does not admit of co-ownership with right of survivorship, the essence of "joint" interests in things according to the traditional Anglo-American law. Thus, two Mississippians having a joint bank account in Mississippi justifiably could expect to have the survivor of them become owner of the whole. Conversely, two Louisianians having what is known here as a "joint" bank account should not expect the survivor of them to become owner of the whole; they should understand that the "jointness" of an account is not a reference to ownership thereof, but to the right of either of them to withdraw funds therefrom without prejudice to the depository. On the other hand, Louisianians having a joint bank account in Mississippi *might or might not* anticipate the result under Mississippi law, and Mississippians having a "joint" bank account in Louisiana *might or might not* expect the result under Louisiana law.

40. *Irwin v. Hunnewell*, 207 La. 422, 21 So.2d 485 (1945).

41. 1A W. COLLIER, BANKRUPTCY § 17.33 (1971).

42. *Id.* § 17.36.

43. *Id.* § 17.34.

44. 256 So.2d 308 (La. App. 1st Cir. 1971).

45. *Securities Fin. Co. v. Washington*, 195 So.2d 733 (La. App. 1st Cir. (1967)).

*Professor of Law, Louisiana State University.

*Dawson v. Capital Bank*¹ involved the latter situation. A "joint" account had been opened here in the names of two Mississippians and the survivor of them claimed ownership of the whole. The trial court honored the survivor's contention, thus giving effect to what probably had been the expectancy of the parties themselves. The trial court, nevertheless, had not analysed the legal situation well and as a result had used an inappropriate conflicts rule. The error of the trial judge was that he had (at least implicitly) treated the whole of the account as a movable in the deceased's succession and stated that Mississippi law applied to determine the distribution of movables in a Mississippian's succession, but then had applied the survivorship rule of Mississippi joint interests instead of the Mississippi law on the distribution of movables on death. The court of appeal reversed, holding that *ownership* of the funds in the account would be determined by Louisiana law and that *succession* to the deceased party's interest would be determined by Mississippi law.

The decision of the court of appeal is in conformity with Louisiana Civil Code articles 9 and 491 at least insofar as it recognized the deceased depositor as the owner of the funds in the "joint" account. Article 491 forbids dispositions of things to be made in Louisiana in such a manner as to create interests not recognized by Louisiana law, and article 9 states more generally that things in this state belonging to non-domiciliaries are subject to the laws of this state. But in applying the general conflict of laws rule that succession to movables is governed by the law of the decedent's domicile—the usual *practice* in Louisiana—the court may have violated articles 9 and 491, for those articles could be construed to require that Louisiana succession laws be applied to determine the inheritance of movables situated in Louisiana even if the deceased owner was domiciled elsewhere at the time of his death.

In the writer's opinion only the trial court's decision did justice, even if for the wrong reason, for it alone probably conformed to the deceased depositor's intention in opening the "joint" account. She was a Mississippian and probably conceived of her action in terms of Mississippi law. If this is correct, then the reasonableness of Civil Code articles 9 and 491 is called into

1. 261 So.2d 727 (La. App. 1st Cir. 1972).

question, for they led to results contrary to the expectancies of the parties; and these expectancies were both *legitimate* according to the law of the political society of which they were members and of *no concern whatsoever* to the persons belonging to the political society of *Louisiana*. Had the situation been one of a Louisianian transacting with one of the Mississippi parties to the Louisiana joint account, then reason would be on the side of protecting the Louisianian's expectancy according to Louisiana law. Non-Louisianians transacting with Louisianians in Louisiana reasonably can expect the Louisianians to transact in the context of Louisiana law. But no such third party was involved here. The only parties concerned were Mississippians. Recognizing the survivorship expectancy of those parties to money could not possible prejudice any reasonable concern for good order in Louisiana.

It is submitted that articles 9 and 491 of the Civil Code, and all other state laws prescribing conflict of laws rules, cannot be considered obligatory when found to be unreasonable claims or denials of state legislative or judicial competence. The conflict of laws in the United States cannot be, as the *Restatement (Second) Conflict of Laws* claims it is, a branch of state law.² It is a subject completely under the authority of Congress by reason of the express provisions of full faith and credit clause of the Constitution and, in default of congressional action, arguably, subject to final determination by the U. S. Supreme Court. The U. S. Supreme Court has admitted this tacitly every time it has rendered a decision on the full faith and credit to be given laws and judgments, for the necessity of giving full faith and credit implies the necessity of criteria for legislative and judicial competence. Were the matter one of state rather than federal competence, the U. S. Supreme Court could have no right to render any decision on the subject. This being so, state conflicts rules can be honored only so long as they meet the reasonable standards for full faith and credit.³ For the reasons given above, it is submitted that the application of Civil Code articles 9 and 491 to the facts of the instant case does not meet constitutional standards.

2. RESTATEMENT (SECOND) CONFLICT OF LAWS (1970) § 2; but see the implicit contradiction of § 2 in § 9, according to which a state may not make an "unreasonable" assignment of legislative competence, and the comments thereunder citing U.S. Supreme Court decisions as authority.

3. The writer has mentioned this view in previous *Symposia*. See 32 LA. L. REV. 295, 296-97 (1972); 31 LA. L. REV. 312, 314 (1971).

DIVORCE JURISDICTION

*Hudman v. Hudman*⁴ continues *Boudreaux v. Welch*'s⁵ misconstruction of the U. S. Supreme Court's decision in *Johnson v. Muelberger*.⁶ In so doing *Hudman* reinforces *Boudreaux*'s invitation to evade Louisiana's lawful legislative and judicial jurisdiction over its domiciliaries' marital status by refusing to hear attacks on a judgment of divorce rendered in another state even when the parties themselves admit fully their having falsely alleged or admitted the domicile of the plaintiff to be in the state in which the suit was brought. Previous discussions of the situation have been sufficient, however, and need not be repeated.⁷ It is to be hoped that attacks on *Boudreaux v. Welch* will continue until the judiciary recognizes its error.

LEX LOCI DELICTI

Two decisions by the Third Circuit Court of Appeal, *Sullivan v. Hardware Mutual Casualty Co.*⁸ and *Jagers v. Royal Indemnity Co.*⁹ follow the Louisiana supreme court's 1970 decision in *Johnson v. St. Paul Mercury Insurance Co.*,¹⁰ which refused to abandon the now discredited "law of the place of the wrong" rule in determining the rights and obligations of the parties to each other. The discussion of that issue need not be repeated here.¹¹ It is interesting to note, however, that in *Deane v. McGee*¹² the supreme court apparently did not consider the *lex loci delicti* relevant in determining whether the "other insurance" clauses in "uninsured motorist" policies issued in Florida to the Florida plaintiffs should be considered valid, though it did temper its opinion with the observation that the same result would follow from the application of Louisiana law.

PROOF OF SISTER-STATE LAWS

The *Sullivan*¹³ and *Jagers*¹⁴ decisions discussed above both

4. 259 So.2d 619 (La. App. 1st Cir. 1972).

5. 249 La. 983, 192 So.2d 356 (1966).

6. 340 U.S. 581 (1951).

7. See the author's previous *Symposia* remarks in 28 LA. L. REV. 312, 322-26 (1968) and 31 LA. L. REV. 312, 314-16 (1971).

8. 260 So.2d 35 (La. App. 3d Cir. 1972).

9. 257 So.2d 806 (La. App. 3d Cir. 1972).

10. 256 La. 289, 236 So.2d 216 (1970).

11. See the author's *Symposium* comments in 31 LA. L. REV. 312, 321-22 (1971).

12. 261 La. 684, 260 So.2d 669 (1972).

13. 260 So.2d 35 (La. App. 3d Cir. 1972).

14. 257 So.2d 806 (La. App. 3d Cir. 1972).

involved proof of sister-state laws. In *Sullivan* copies of the relevant sister-state laws and judgments had been provided the judge and no issue was raised. In *Jagers* the defendant introduced affidavit memoranda by Mississippi attorneys concluding that Mississippi law forbade parent to sue minor child. The majority ruled the authorities cited did not support the conclusion of the memoranda and then "presumed" Mississippi law to be the same as that of Louisiana. It is submitted that a Louisiana judge is never at liberty to presume that a sister-state's law is the same as that of Louisiana. Article 1319 of the Code of Civil Procedure provides that Louisiana courts "shall" take judicial notice of sister-state "common law and statutes." The only liberty judges have under article 1319 is to ascertain the sister-state's laws by their own efforts or to call upon counsel to obtain the information for them. In the writer's opinion, admittedly contrary to long-standing practice, the full faith and credit clause of the United States Constitution properly construed itself, requires every state court to honor the valid and applicable law of every other state, and therefore to discover what it is in order to apply it. In this view article 1319 adds nothing to the constitutional requirement.

INSURANCE

*W. Shelby McKenzie**

The Louisiana supreme court in *Graham v. American Casualty Co.*¹ and *Deane v. McGee*,² overruled numerous decisions from all four courts of appeal in order to permit "stacking" of the coverages under uninsured motorist policies, finding that the language of the "other insurance" clauses limiting liability was inconsistent with the statute requiring that each liability policy contain uninsured motorist coverage in a specified minimum amount. These important decisions are noted elsewhere in this Review.³

The application of the exclusion in automobile liability policies for persons employed in the automobile business has been

* Special Lecturer in Law, Louisiana State University; Member, Baton Rouge Bar.

1. 261 La. 85, 259 So.2d 22 (1972).

2. 261 La. 686, 260 So.2d 669 (1972).

3. 33 LA. L. REV. 145 (1972).