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Divorce - Foreign Divorce - Conclusiveness of Nevada Divorce under Federal Constitution

DIVORCE—FOREIGN DIVORCE—CONCLUSIVENESS OF NEVADA DIVORCE UNDER FEDERAL CONSTITUTION

After marrying and living together with their respective spouses for many years in North Carolina, A and B went into Nevada, residing for a little more than six weeks in an "Auto Court" near Las Vegas. Each filed suit for divorce in Nevada, employing the same attorney. In neither suit was defendant personally served in Nevada, nor did defendants appear. Service was by publication. Both obtained divorce decrees, and the day the second decree was obtained, A and B married each other in Nevada. Thereafter they returned to North Carolina and lived together as man and wife, until indicted. Subsequently they were tried and convicted of bigamous cohabitation under the North Carolina Code. The North Carolina Court affirmed the conviction. Held, on certiorari, reversed and remanded. The full faith and credit clause of the Constitution requires that North Carolina recognize fully the Nevada decrees, the Nevada domicile not being in issue. Williams v. State of North Carolina, — U. S. —, 63 Sup. Ct. 207 (Dec. 21, 1942) (6-2 decision).

Domicil of the plaintiff within the state is indispensable to confer jurisdiction upon a court to grant a valid divorce decree Andrews v. Andrews, 188 U. S. 14, 23 Sup. Ct. 237 (1903); Thelen v. Thelen, 75 Minn. 433, 78 N. W. 108 (1899); Smith v. Smith, 10 N. D. 219, 86 N. W. 721 (1901); Graham v. Graham, 9 N. D. 88, 81 N. W. 44 (1899); Smith v. Smith, 7 N. D. 404, 75 N. W. 783 (1898); 1 BEALE, CONFLICT OF LAWS (1935) § 111; 1 RESTATEMENT, CONFLICT OF LAWS § 111. In addition, statutes usually require continuous residence by the plaintiff for a specified period, residence in such cases being construed as synonymous with domicil. Smith v. Smith, 7 N. D. 404, 75 N. W. 783 (1898). Even personal appearance by both parties in court, when neither is domiciled within the state, does not provide the bases for a divorce decree entitled to any recognition by compulsion of the full faith and credit clause. Andrews v. Andrews, 188 U. S. 14, 23 Sup. Ct. 237 (1903); Bell v. Bell, 181 U. S. 175, 21 Sup. Ct. 551 (1901). If the plaintiff is domiciled within the decree-granting state and the court acquires personal jurisdiction over the other party, the decree is good and must be given full faith and credit by other states. Cheever v. Wilson, 9 Wall. 108, 19 L. ed. 604 (1870). The present position of the Supreme Court as just announced by the principal case is to the effect that full faith and credit must be given a decree of divorce granted by a state wherein the plaintiff was domiciled, notwithstanding that the other party was never personally within the jurisdiction of the court and was served only by publication. Justice Douglas, writing for the Majority, states expressly that Haddock v. Haddock is overruled. Haddock v. Haddock, 201 U. S. 562, 26 Sup. Ct. 525 (1906), had been giving difficulty for several decades. It was authority for the rule that full faith and credit does not have to be given a decree of divorce granted by a state that is the domicil of the plaintiff, but not the matrimonial domicil (i. e. place where

the parties live together as husband and wife), if the court had no personal jurisdiction over the defendant and if the plaintiff wrongly abandoned the defendant. In the case, the husband wrongfully left his wife in New York, the state of matrimonial domicil, acquired a new domicil in Connecticut, and obtained a divorce under Connecticut law from a Connecticut court. The wife never appeared nor was she personally served in Connecticut, and service was by publication only. New York was upheld in its refusal to recognize the Connecticut divorce. By New York law the husband wrongfully left the wife. Connecticut officially undoubtedly knew nothing of this, as there was no one in the Connecticut suit to make that point. However, an earlier rule was not touched by the Haddock case, and Justice Holmes dissented on the ground that the factual distinctions did not justify the different results. The Atherton case had given this earlier rule to the effect that full faith and credit must be accorded a decree of divorce granted by the court of a state which is the last matrimonial domicil of the parties, if the plaintiff is domiciled in this state aforesaid, and notwithstanding that the defendant is an absent nonresident, not personally within the jurisdiction of the court. Atherton v. Atherton, 181 U. S. 155, 21 Sup. Ct. 544 (1901). A majority of state courts, from considerations of comity or expediency, had given recognition to divorce decrees granted where the plaintiff only was domiciled within a state and the defendant was served only by publication, and where the decree-granting state was not that of last matrimonial domicil of the parties. Miller v. Miller, 200 Iowa 1193, 206 N. W. 262 (1925); GOODICH, CONFLICT OF LAWS (2nd ed. 1938) § 128. The principal case seemingly leaves them no longer any choice; recognition is mandatory under the Constitution.

The significance of the Williams case upon careful analysis may not be so great as at first assumed. It would seem definitely to make of no importance whether the state granting the divorce is that of last matrimonial domicil or one where the plaintiff has subsequently acquired a domicil, after wrongfully leaving a spouse in another state. But has it added much beyond this? The question of fault or wrong in the marital rift is immaterial so far as exercise of divorce granting power by a non-matrimonial domicil state is concerned, the majority opinion tells us. Yet the old familiar rule that a wife at fault in regard to her marriage relationship cannot acquire a domicil seprate from that of her husband's domicil and divorce him in such a state of attempted separate domicil, is not altered; inasmuch as Justice Douglas carefully skirts around any consideration of domicil. He says that North Carolina isn't contesting the cases on the ground of failure of Nevada domicil; that by Nevada statutes and cases, plaintiffs had a Nevada domicil. Of more interest, is the disinclination to go into the question of whether the Nevada domicils were in good faith. The dissent of Justice Reed would treat plaintiffs' Nevada domicil as sham, not in good faith, and for that reason of failure of domicil, as well as failure of due process, deny the Nevada decree extra-territorial effect. Only because the doctrines of the

Haddock case was one of two possible grounds for the North Carolina conviction of the parties does Justice Douglas find it necessary to consider that case and determine it not a good ground, and the case overruled. The practical side of the present situation, it is submitted, sums up to the following: in the absence of any questioning of the good faith of the domicil in Nevada, Nevada can grant a divorce which must be given full faith and credit in all states, notwithstanding that plaintiff left a spouse in another state, by the law of which deserting spouse was at fault and in the wrong is respect to the marital rift. Nevada applies its own law as to divorce and its own concept of domicil and residence. Defendant, non-resident, and absent, may be served only by publication, and so actually know nothing of the Nevada proceedings, and consequently never come in to protest either on merits or question of domicil and jurisdiction. Such a condition in effect does make the present ultimate divorce law of the United States that of the most lax or liberal state, the only drawback being expense and trouble of satisfying the law of that state as to domicil and residence. If, as one gathers concurring Justice Frankfurter hopes, this decision spurs on the adoption of a Constitutional Amendment and a national, uniform law of marriage and divorce, eventually the result may be salutary. No revolutions or sheddings of blood have followed in any single state upon determining what moral sensibilities shall be legalized in respect to marriage and divorce laws. It is most conceivable that Congress could draw up a uniform law upon domestic relations, without provoking more than forensic battles and the customary amount of legislative sparring behind the lines. There will always be some who view with pious horror or defy with unholy disregard. But until a national, uniform law is adopted, the chances are good that we shall see an effort to neutralize practically the principal decision by a means inferentially left wide open by Justice Douglas, and openly sponsored by the dissent of Justice Reed. This line of attack will be by showing that the domicil in the decree-granting state was a sham, not in good faith. The rule yet remains that a divorce obtained in a state where the plaintiff had only a sham domicil is not entilted to full faih and credit. Bell v. Bell, 181 U. S. 175, 21 Sup. Ct. 551 (1901). The forum in each case applies its own test in determining whether an alleged domicil is sham, or in good faith; and even although the record of the court of a sister state recites facts and conclusions as to domicil and jurisdiction, another court in another state can hear evidence refuting the record of the first state, and completely thus impeach the judgment of the sister state, making it of no extra-territorial validity so far as the impeaching forum is concerned. German Savings & Loan Soc. v. Dormitzer, 192 U. S. 125, 24 Sup. Ct. 221 (1904); 1 BEALE, CONFLICT OF LAWS (1935) § 111.2. Theoretically we have long held that a person has only one domicil at a time. Practically, he may have as many as differing states choose to give him; each state holding to the rule of only one domicil at a time, but pronouncing that this one domicil is within its own borders. As yet, no finding of domicil

by the court of one state is final and binding upon the courts of another state. GOODRICH, CONFLICT OF LAWS (2nd ed. 1938) § 20. However, if defendant has appeared and contested the question of domicil of plaintiff, and has had his day in court, then a finding against defendant is binding and entitled to full faith and credit. Davis v. Davis, 305 U. S. 32, 59 Sup. Ct. 3 (1938). It is submitted, then, that the Williams case makes it no more legally easy than before for a wife at fault in the marital rift to acquire a separate domicil for nation-wide divorce purposes, at least so long as the courts of states which did not grant the divorce choose to treat the alleged domicil in the decree-granting state as a sham.

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TRAFFIC LAW ENFORCEMENT

Thru the kindness and co-operation of Thomas L. Degnan of Grand Forks, who is the State Chairman of the Junior Bar Conference of the American Bar Association, we give you a synopsis of the recommendations of the Traffic Court Committee of the Junior Bar Conference on Traffic Courts, and their procedure.

TRAFFIC LAWS

1. Traffic laws with inherent defects should be revised and those which are unenforceable or unnecessary should be repealed.

2. Traffic statutes should be founded upon the "Uniform Vehicle Code" and the "Model Traffic Ordinances" with only regulations purely local in nature left to local ordinance. However, an exception should be made where this would result in ousting local courts from jurisdiction to try traffic violations.

TRAFFIC COURTS

3. All courts should treat traffic cases apart from their other business.

4. Special courts for traffic cases are necessary when the number of cases reach 7,500 per year with a violations bureau in operation, and 15,000 cases per year when there is no bureau.

5. The ideal traffic court organization would be on a State basis with various district courts, and with circuits operating from each district.

6. Physical courtroom conditions should be improved as to facilities, arrangements, cleanliness, and appearance.

7. The taxing of courts costs as a separate penalty should be eliminated, and the fine assessed in one sum. If costs are included, they should be in a reasonable amount.

VIOLATIONS BUREAUS

8. Violations bureaus are to be used only when the number of traffic cases make it impossibel for the court to dispose properly of them.

9. The basis for all violations bureaus should be a signed plea of guilty and waiver of trial.

10. Schedules of fines charged at the violations bureau are not to be alterable.

11. The bureau should handle the least hazardous violations and should deal with moving offenses only when they respond to treatment