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Conflict of Laws--The Migratory Divorce--Williams v. State of North Carolina

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CONFLICT OF LAWS—THE MIGRATORY DIVORCE—WILLIAMS V. STATE OF NORTH CAROLINA

O. B. Williams and Lillie Hendrix, each married and resident in North Carolina, left their respective spouses and went to Nevada in May, 1940, where each filed a divorce action on June 26, 1940, after a mere six weeks residence. The defendants in the divorce actions made no appearance and were not served with process in Nevada, the services on the absent spouses being made by publication. In one case a copy of the summons and complaint was mailed to the absent defendant; in the other, a North Carolina sheriff delivered a copy of the summons and complaint to the defendant. Both Mr. Williams and Mrs. Hendrix were issued divorce decrees, in each of which the Nevada court made a specific finding that "the plaintiff has been and is now a bona fide and continuous resident of Clark County, Nevada, and had been such resident for more than six weeks immediately preceding the commencement of this action in the manner prescribed by law."[1] They were then married to each other in Nevada, on October 4, 1940, the day the second divorce was granted, and returned to North Carolina. There they were indicted, tried and convicted of bigamous cohabitation. They offered the Nevada decrees in their defense. The North Carolina Supreme Court, in affirming the judgment of conviction,[2] held that North Carolina was not required to give full faith and credit to the Nevada decrees under the rule of *Haddock* v. *Haddock*.[3] The Supreme Court of the United States granted certiorari[4] and upon the assumption that the parties were legally domiciled in Nevada held that under such circumstances the decrees of divorce were entitled to full faith and credit, specifically overruling the decision in the *Haddock* case.

There were, unfortunately for the clarity of the issue, two very important omissions in the criminal proceedings in the state courts of North Carolina. First, the jury rendered a general verdict, which failed to disclose whether it was based

[1] NEV. COMP. LAWS (1931) sec. 9460.
[2] State v. Williams, 220 N. C. 445, 17 S. E. (2d) 769 (1942).
[3] 201 U. S. 562, 26 Sup. Ct. 525 (1906).
[4] Williams v. State of North Carolina, 317 U. S. 289, 63 Sup. Ct. 207 (1942).

on the supposed invalidity of the Nevada divorce decrees or on other grounds, and second, the State failed to question the bona fides of the Nevada domicile.

The decision in this case presents a fundamental problem which the Court must one day decide, namely, what kind of residence will satisfy the requirement of domicile. Domicile has been considered basic to divorce jurisdiction.[5] The Court did not see fit to decide whether North Carolina courts might have refused to recognize the Nevada decrees on the ground that the defendant did not establish a bona fide domicile in Nevada, because the State conceded that there probably was enough evidence in the record to require that defendants be considered to have been actually domiciled in Nevada.[6] The Court therefore dealt with the case as if domicile in Nevada had been established. Therefore, the decision could have no effect on the well-established doctrine that the full faith and credit clause does not preclude a sister state from an investigation of jurisdictional facts.

In 1869 the Supreme Court held that a divorce decree rendered by a court at the domicile of one of the parties, after personal service within the state upon the other spouse, is entitled to full faith and credit.[7] Several years later the Court held that a divorce granted by the legislature of the territory of Oregon to a domiciliary, who had deserted his wife in Ohio, was valid within the Oregon territory.[8] Whether the divorce decree was entitled to recognition elsewhere was not decided by the Court. In 1901 it was decided that a divorce granted either spouse at the matrimonial domicile, even if there was no personal service on the defendant within the state and no appearance, was entitled to full faith and credit in other states.[9] During the same year it was also held that a divorce granted on constructive service in a state where neither spouse was domi-

[5] Andrews v. Andrews, 188 U. S. 14 (1903); Streitwolf v. Streitwolf, 181 U. S. 179 (1901); Bell v. Bell, 181 U. S. 175 (1901); Atherton v. Atherton, 181 U. S. 155 (1901); Maynard v. Hill, 125 U. S. 190 (1887); Cheever v. Wilson, 9 Wall. 108 (1869); GOODRICH, CONFLICT OF LAWS (2d ed) 335; STRUMBERG, CONFLICT OF LAWS (1937) 268.

[6] Williams v. State of North Carolina, 317 U. S. 289, 291: "Moreover it (North Carolina) admits that there probably is enough evidence in the record to require that petitioners be considered to have been actually domiciled in Nevada."

[7] Cheever v. Wilson, 76 U. S. (9 Wall.) 108 (1869).

[8] Maynard v. Hill, 125 U. S. 190 (1887).

[9] Atherton v. Atherton, 181 U. S. 155 (1901); Thompson v. Thompson, 226 U. S. 551 (1903).

ciled was not entitled to compulsory recognition in any state.[10] The Court refused to compel recognition in *Andrews* v. *Andrews*,[11] to a decree rendered in a state where neither party was domiciled, even though the defendant personally appeared and consented to the jurisdiction. Then in *Haddock* v. *Haddock*[12] the Court held that a divorce decree rendered by a court at the domicile of one of the parties against a non-resident spouse who was not served within the state and did not appear in the action, need not be given full faith and credit. The reverberations resulting from this judicial bombshell continued to vibrate until stopped by the decision in the instant case, which specifically overruled it.

The question of whether or not the residence was bona fide in the instant case is not within the scope of the decision. The Court, speaking through Mr. Justice Douglas, says: "But the question for us is a limited one. In the first place, we repeat that in this case we must assume that petitioners had a bona fide domicile in Nevada, not that the Nevada domicile was a sham. . . . Nor do we reach here the question as to the power of North Carolina to refuse full faith and credit to Nevada divorce decrees because, contrary to the findings of the Nevada court, North Carolina finds no bona fide domicile was acquired in Nevada." This, of course, simplifies the case for the Court, but adds nothing toward clarifying the perplexing divorce—domicile—jurisdiction problem in the conflict of laws. Neither does it disturb any state's right to question whether the jurisdiction which the forum obtained was bona fide.

The net result of the decision appears to be that a foreign divorce granted to one who has a bona fide domicile (residence)[13] in the jurisdiction is entitled to full faith and credit by a sister state. To reach this result it was necessary to specifically overrule the case of *Haddock* v. *Haddock*.[14]

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[10] Streitwolf v. Streitwolf, 181 U. S. 179 (1901); Bell v. Bell, 181 U. S. 175 (1901).

[11] 188 U. S. 14 (1903).

[12] 201 U. S. 562 (1906).

[13] NEV. COMP. LAWS (1931) sec. 9460. "Divorce from the bonds of matrimony may be obtained by complaint,. . . . if plaintiff shall have *resided* six weeks in the state before suit is brought. . . ." (Italics are ours).

[14] *Supra* note 12.