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CIVIL PROCEDURE—JURISDICTIONAL REQUIREMENTS FOR DIVORCE
AND SEPARATION ACTIONS IN LOUISIANA

Jurisdictional requirements for divorce and separation from bed and board proceedings are found in Article 10(7) of the Louisiana Code of Civil Procedure:¹ a competent court² has jurisdiction over these proceedings if either spouse is domiciled in Louisiana, "and, except as otherwise provided by law," the grounds for the action either were committed or occurred in Louisiana, or, if elsewhere, while the matrimonial domicile was in Louisiana.³

Recently in *Thomas v. Thomas*,⁴ the Fourth Circuit Court of Appeal held an action for divorce grounded on R.S. 9:301⁵ must be brought either by or against a Louisiana domiciliary, even though the last matrimonial domicile was in Louisiana.⁶ In so holding, the court made it certain that domicile is necessary for jurisdiction, Article 10(7)'s "except as otherwise provided by law" qualifying the conditions under which grounds must exist, and not the domicile requirement.⁷ It is submitted that Article

1. LA. CODE OF CIVIL PROCEDURE art. 10 (1960): "A court which is otherwise competent under the laws of this state has jurisdiction of the following actions or proceedings only under the following conditions: . . . (7) An action of divorce, or of separation from bed and board, if one or both of the spouses are domiciled in this state and, except as otherwise provided by law, the grounds therefor were committed or occurred in this state, or while the matrimonial domicile was in this state."

2. *Id.* art. 5251(4) (competent court defined).

3. The latter part of Article 10(7) sets forth the conditions with which the grounds for such actions as set forth in R.S. 9:301 and Articles 138 and 139 of the Louisiana Civil Code must comply. Article 142 of the Civil Code is an exception to the requirement of the latter part of Article 10(7). See note 15 (2d ¶) *infra*.

4. 144 So.2d 612 (La. App. 4th Cir. 1962).

5. LA. R.S. 9:301 (1950), as amended, La. Acts 1960, No. 31, § 1: "When the spouses have been living separate and apart continuously for a period of two years or more, either spouse may sue for and obtain a judgment of absolute divorce."

6. A New York domiciliary brought the action against his wife, not a domiciliary of Louisiana, the grounds having occurred in Louisiana while the parties were previously domiciled here. *Thomas v. Thomas*, 144 So.2d 612 (La. App. 4th Cir. 1962).

7. "The words of this article 'except as otherwise provided by law' do not refer to the domiciliary requirement but rather [qualify] the general rule that 'the grounds therefor [divorce or separation from bed and board] were committed or occurred in this state, or while the matrimonial domicile was in this state' . . . There is no exception to the requirement of domicile of either the plaintiff or the defendant for the courts of this state to acquire jurisdiction *ratione materiae* in an action for divorce or separation from bed and board." *Id.* at 614. The court added weight to its conclusion by recognizing that "traditionally, at least one of the parties . . . must be domiciled in this state, at the time the action is brought, for our courts to have jurisdiction," and that Article 10(7)

10(7) lends itself to no other interpretation than given by the court; it appears to make domicile of either spouse in Louisiana an indispensable requirement for jurisdiction, and additionally to set forth conditions of locale under which the grounds for the action must have occurred, "except as otherwise provided by law," in order that jurisdiction be exercised. An opposite result in the *Thomas* case would have violated a federal constitutional requirement⁸ that domicile of one of the parties is necessary to vest a state with jurisdiction to render a divorce or separation decree.⁹

A more difficult problem, and one not susceptible of resolution on federal constitutional grounds, is presented by the situation in which one spouse only is domiciled in Louisiana and seeks divorce under R.S. 9:301 less than two years after ac-

is a "restatement of this jurisprudential rule." *Id.* at 613.

The court further stated that venue is governed exclusively by Article 3941 of the Code of Civil Procedure so that a decree of divorce or separation rendered by a court neither in the parish of either party's domicile, nor in the last matrimonial domicile is an absolute nullity, venue being non-waivable. *Ibid.*

LA. CODE OF CIVIL PROCEDURE art. 3941 (1960): "An action for an annulment of marriage, for a separation from bed and board, or for a divorce shall be brought in a parish where either party is domiciled, or in the parish of the last matrimonial domicile.

"The venue provided in this article may not be waived, and a judgment rendered in any of these actions by a court of improper venue is an absolute nullity."

8. *Williams v. North Carolina* [II], 325 U.S. 226, 229 (1945) ("Under our system of law, judicial power to grant a divorce — jurisdiction, strictly speaking — is founded on domicil. *Bell v. Bell*, 181 U.S. 175 [1901] . . . ; *Andrews v. Andrews*, 188 U.S. 14 [1903] Domicil implies a nexus between person and place of such permanence as to control the creation of legal relations and responsibilities of the utmost significance. The domicil of one spouse within a State gives power to that State, we have held, to dissolve a marriage wheresoever contracted. In view of *Williams v. North Carolina* [I], *supra*, 317 U.S. 287 [1942] the jurisdictional requirement of domicil is freed from confusing refinements about 'matrimonial domicil,' see *Davis v. Davis*, 305 U.S. 32, 41 . . . , and the like."); *Streitwolf v. Streitwolf*, 181 U.S. 179 (1901) (nullifying divorce decree rendered by court of state not domicil of either party); *Bell v. Bell*, 181 U.S. 175 (1901) (same).

Louisiana jurisprudence: *Navarrette v. Loughlin*, 209 La. 417, 423, 24 So. 2d 672, 674 (1946) ("the judicial power to grant a divorce is founded on domicil"); *Zinko v. Zinko*, 204 La. 478, 15 So. 2d 859 (1943); *Plitt v. Plitt*, 190 La. 59, 181 So. 857 (1938); *Blake v. Blake*, 111 La. 1096, 36 So. 203 (1904); *D'Auvilliers v. Her Husband*, 32 La. Ann. 605 (1880).

Thomas v. Thomas, 144 So. 2d 612 (La. App. 4th Cir. 1962) recognized that it has always been traditional in Louisiana that at least one of the parties had to be a Louisiana domiciliary in order for a court of this state to render a divorce decree. See note 7 *supra*.

9. Louisiana's requirement that the cause or ground for divorce or separation shall have been committed or have occurred in this state, or while the matrimonial domicile was here is narrower than the rule of *Williams v. North Carolina* [I], 317 U.S. 287 (1942), permitting a plaintiff to bring suit for divorce in his state of domicil, although the grounds for divorce did not occur there.

quiring the Louisiana domicile.¹⁰ This situation brings into bold relief the question whether the ground for divorce in R.S. 9:301 — continuously living separate and apart for two years or more — must satisfy the restrictive conditions of locale with which grounds must comply before there is jurisdiction under Article 10(7).¹¹

Contemporaneously with enactment of Article 10(7),¹² R.S. 9:301 was amended to read: "When the spouses have been living separate and apart continuously for a period of two years or more, either spouse may sue for and obtain a judgment of absolute divorce."¹³ Although the statute does not expressly require that the plaintiff have resided two years in Louisiana, as did its precursor, the unofficial Explanatory Note to the amended R.S. 9:301 points out that nothing in the amended statute provides that the cause prescribed therein may occur under any other conditions than those required by Article 10(7).¹⁴ The Note further indicates an attempt to amend R.S. 9:301 "so as Official Revision Comment following Article 10(7) states that Louisiana jurisprudence has generally required that the cause for divorce or separation occur in this state, or while the parties were domiciled here, in order that a court have jurisdiction

10. Neither party to the action was a Louisiana domiciliary in the *Thomas* case. See note 6 *supra*.

11. *E.g.*, a couple marry in Jackson, Mississippi, separate there, and live separate and apart for two years in their Mississippi matrimonial domicile. Then one of the spouses becomes domiciled in Louisiana and brings a suit for divorce under R.S. 9:301 after having been in Louisiana for less than two years.

12. The *Louisiana Code of Civil Procedure* was enacted by La. Acts 1960, No. 15.

13. La. Acts 1960, No. 31, § 1. Prior to this amendment the statute read: "When married persons have been living separate and apart for a period of two years or more, either party to the marriage contract may sue, in the courts of his or her residence within this state, provided such residence shall have been continuous for the period of two years, for an absolute divorce, which shall be granted on proof of the continuous living separate and apart of the spouses, during the period of two years or more." LA. R.S. 9:301 (1950).

It is obvious that before amendment, R.S. 9:301 was a self-contained ground, venue, and jurisdiction statute. The amendment deleted the venue and jurisdiction provisions.

14. *Explanatory Note*, LA. R.S. 9:301 (1950), as amended, La. Acts 1960, No. 31, § 1: "Under Art. 10(7), LSA-Code of Civil Procedure the courts of this state have no jurisdiction to grant a divorce unless one or both of the spouses are domiciled in this state, and 'except as otherwise provided by law, the grounds therefor were committed or occurred in this state, or while the matrimonial domicile was in this state.' *Nothing in the amended statute provides the contrary.*" (Emphasis added.)

The Note further points out: "The language of Comment (i) of Art. 10, LSA-Code of Civil Procedure, that the 'exceptions referred to in Art. 10(7) are those sanctioned by Civil Code Art. 142 and R.S. 9:301' was not intended to indicate a contrary view [to that presented in the first paragraph of this footnote] by the Law Institute. This language was used to indicate that no change in the

to render a divorce or separation decree.¹⁵ The Explanatory to require expressly that one of the spouses be domiciled in Louisiana during the two year separation" failed in a House of Representatives committee, apparently because the amendment was considered unnecessary.¹⁶ Consequently, R.S. 9:301 is silent with respect to the question whether the ground for divorce established thereby is subject to the conditions of a locale enumerated in 10(7). It is submitted that the silence of the statute should preclude any contention that it "otherwise provides" that its ground for divorce may occur outside the state. The exception of Article 10(7) seems to embrace only the situation governed by Article 142 of the Civil Code,¹⁷ which does "otherwise provide" conditions under which the grounds therein may exist for jurisdiction: under certain conditions, a wife may obtain a separation though Louisiana was never the matrimonial domicile and the ground occurred elsewhere. Thus, it seems in suits

law was intended in those cases where the plaintiff lived for more than two years in Louisiana, and the other spouse lived in another state during this period; and was intended to preclude any possible argument that the living separate and apart did not occur in this state, or occurred as much in the other state as it did in Louisiana.

"Even assuming, however, a conflict between this language of the comment and that of the code provision, the latter must prevail; and under it, the Louisiana courts would have no jurisdiction to grant a divorce if, at the time of the two-year separation, both of the spouses were domiciled in another state." *Ibid.*

15. LA. CODE OF CIVIL PROCEDURE art. 10(7), comment (i) (1960): "For years, Louisiana courts have generally limited their jurisdiction to grant a divorce or separation to causes of action which occurred in this state, or while the parties were domiciled in this state. . . . The Louisiana courts, however, have exercised jurisdiction to grant a divorce or separation from bed and board on grounds which occurred elsewhere, but while the parties were domiciled in Louisiana."

In comment (i) R.S. 9:301 is referred to as an exception to 10(7)'s conditions of locale. But see note 14 (2d ¶) *supra*, wherein an argument is presented which indicates that it was not intended the ground for divorce provided in R.S. 9:301 need not occur in Louisiana.

LA. CIVIL CODE art. 142 (1870) presents one exception to the general limitation on the occurrence of grounds as provided by Article 10(7). Under conditions set forth in Article 142, a Louisiana domiciliary wife may obtain a separation from her husband though the spouses had never established a matrimonial domicile in Louisiana, and the grounds occurred elsewhere.

16. *Explanatory Note*, LA. R.S. 9:301 (1950), as amended, La. Acts 1960, No. 31, § 1: "By a divided vote, the Council of the Louisiana State Law Institute on April 28, 1961, recommended to the Legislature that this statutory section be amended so as to require expressly that one of the spouses be domiciled in Louisiana during the two year separation. A substantial minority of the members of the Council were of the opinion that such a change was unnecessary. The recommended amendment was included in House Bill No. 178 of 1961, but in House Committee on the Judiciary, Section 'B', the bill was amended and this proposed amendment stricken. The Committee recommitted the matter to the Law Institute for further consideration, and for the resubmission of its recommendation to the Legislature in 1962, if the amendment of this statutory section was still believed to be necessary."

17. LA. CIVIL CODE art. 142 (1870).

for divorce under R.S. 9:301 one of the parties must have lived continuously separate and apart for at least two years *in Louisiana* before jurisdiction to hear the proceeding will vest in a court of this state.

The jurisdictional requirement of domicile and the venue requirement for separation and divorce are mandatory and unequivocal;¹⁸ only the conditions of locale with which the grounds must comply may be otherwise provided for in the statute authorizing such grounds.¹⁹ Thus, grounds prescribed by any law which does not itself "otherwise provide" must comply with the general conditions of locale of Article 10(7). This interpretation prevents divorce-minded spouses in other states from taking advantage of what would be an otherwise liberal jurisdiction provision, and abrogates the need for further amendment to R.S. 9:301 to require expressly that the ground for divorce created thereby occur in Louisiana. In summary, a party desiring a divorce or separation in Louisiana must: (1) have grounds prescribed by a general divorce or separation statute that either satisfy the conditions for existence of jurisdiction found in Article 10(7), or conform to other conditions expressly prescribed in the statute establishing the grounds; (2) be either a Louisiana domiciliary or bring suit against one; and (3) institute suit in the proper forum provided by Article 3941 of the Code of Civil Procedure.

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CRIMINAL LAW — THE LOUISIANA OBSCENITY STATUTE AND FREEDOM OF SPEECH AND PRESS

Respectable authorities agree serious dangers lurk in the apparent widespread dissemination of obscene and pornographic materials throughout the United States.¹ Obscenity statutes exist

18. Constitutionally and jurisprudentially, see note 8 *supra*, and accompanying text; statutorily, see note 1 *supra*, and accompanying text; as to venue, see note 7 *supra*.

19. LA. CODE OF CIVIL PROCEDURE art. 10(7) (1960). See note 7 *supra*.

1. An increased sex-crime rate among juveniles in the United States which parallels the increased exposure to American produced pornography has been cited as a primary danger. Moreover, communist subversion has also been blamed for the attempted demoralization of youth through dissemination of such materials. Joint Committee on Continuing Legal Education of ALI and ABA, *The Problems of Drafting an Obscenity Statute*, No. 9, 67, 68 (1961), and authorities cited therein.