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Conflict of Laws - Divorce Jurisdiction- Validity of Divorce Jurisdiction Statute

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Notes

CONFLICT OF LAWS—DIVORCE JURISDICTION—VALIDITY OF DIVORCE JURISDICTION STATUTE

Plaintiff left her home in Connecticut and went to the Virgin Islands. She remained there continuously for six weeks and one day, and then filed a suit for divorce. Her husband entered a general appearance but did not contest the allegations of the complaint. A statute of the Virgin Islands provides that a plaintiff's being in the Virgin Islands at the time of and continuously for six weeks prior to filing a divorce suit constitutes *prima facie* evidence of domicile. The statute further provides that if the defendant is served personally within the Virgin Islands, or enters a general appearance in the action, the court shall have jurisdiction without reference to domicile. Plaintiff offered no evidence tending to prove domicile in the Virgin Islands other than the fact that she had resided there continuously for more than six weeks prior to filing suit and resided there at that time. The trial court dismissed the suit for lack of jurisdiction. The court of appeals affirmed its action and held that the divorce jurisdiction statute of the Virgin Islands was unconstitutional. *Alton v. Alton*, 207 F.2d 667 (3d Cir. 1953).*

Prior to 1953, the Virgin Islands' divorce jurisdiction statute permitted divorces to be granted to "inhabitants" of the Virgin Islands who had "resided" there for more than six weeks.[1] In *Burch v. Burch*,[2] the court of appeals interpreted this as permitting divorces to be granted to domiciliaries only. In early 1953 a bill was passed by the legislature which made residence the equivalent of domicile for divorce purposes.[3] This bill was vetoed by the Governor. Thereafter the statute which the court held invalid in the instant case was enacted. This act provided:

> "[I]f the plaintiff is within the district at the time of the filing of the complaint and has been continuously for six

* Question declared moot and court of appeals decision vacated on appeal to the United States Supreme Court, Mr. Justice Black dissenting. 22 U.S.L. WEEK 4279 (U.S. June 1, 1954).

1. DIVORCE LAW OF THE VIRGIN ISLANDS § 9 (Dec. 29, 1944).
2. 195 F.2d 799 (3d Cir. 1952).
3. Alton v. Alton, 207 F.2d 667, 673, n. 17 (3d Cir. 1953).

> weeks immediately prior thereto, this shall be prima facie evidence of domicile, and where the defendant has been personally served within the district or enters a general appearance in the action, then the Court shall have jurisdiction of the action and of the parties thereto without further reference to domicile or to the place where the marriage was solemnized or the cause of action arose."[4]

Judge Goodrich, writing the opinion of the court, first considered the provision of the statute making six weeks' residence *prima facie* evidence of domicile. He cited the rule of *Mobile, J. & K.C.R.R. v. Turnipseed*,[5] that a presumption must be based upon a reasonable or rational relation between the known fact and the fact presumed in order to afford due process of law. After observing that a presumption which creates domicile, and thereby jurisdiction, should be even more rational than ordinary presumptions as to substantive matters, Judge Goodrich concluded that a presumption of domicile based on the fact of six weeks' residence did not satisfy this requirement because a finding of domicile based upon such a presumption would most often be contrary to the facts; thus the suit for divorce in effect would be converted into a transitory action.

Judge Hastie, dissenting, said that the fact of six weeks' residence was sufficiently indicative of domicile to make the presumption valid, and cited cases in which apparently less rational presumptions had been upheld by the Supreme Court. He further argued that "it is more likely to be harmful to use a statutory presumption to establish the merits of a claim . . . than to determine whether one professionally competent tribunal or another is to hear the suit."[6] He ignored the fact that domicile is the factor which determines which law is to be applied as well as where the divorce suit will be tried. Judge Hastie also argued that the presumption would not substitute six weeks' residence for domicile, since the court would base a finding of domicile on the fact of six weeks' residence only if the defendant failed to rebut the presumption of domicile.

Both Judge Goodrich's position that the presumption is unreasonable and irrational[7] and Judge Hastie's position that the

4. Virgin Islands Laws, 17th Legislative Assembly (May 29, 1953).
5. 219 U.S. 35 (1910).
6. Alton v. Alton, 207 F.2d 667, 680 (3d Cir. 1953).
7. See, *e.g.*, Tot v. United States, 319 U.S. 463 (1943) (presumption that the receipt of firearms occurred subsequent to the effective date of the statute

presumption is reasonable and rational[8] could be supported by many Supreme Court decisions. From standards as abstract as "rationality" and "reasonableness" disagreement is to be expected. However, Judge Hastie's assertion that presumptions as to the basis of jurisdiction are less likely to be harmful to parties to the action than presumptions as to substantive matters seems unsound. Although, as Judge Goodrich points out, the Supreme Court has never attached any importance to the fact that a presumption was the basis of jurisdiction,[9] it could be maintained that such a presumption deserves special consideration. Before a presumption as to a substantive matter can come into operation, the state first must have jurisdiction to try the case. Thereafter it can justify its determination of which party must go forward with the evidence, or, within reasonable limits, the weight to be given to that evidence. When a state has not established its right to hear a case, its right to regulate such matters must be less certain. By what right can it compel a non-domiciliary to appear and present evidence? If the proposition were carried to its logical limit, a state could base a presumption of domicile of the defendant on any convenient fact, say ownership of property within the state, give the defendant actual notice of the pending suit, and thus have *prima facie* personal jurisdiction over him.

The meaning of the term *prima facie* varies in different jurisdictions.[10] If Judge Hastie's interpretation of the term is accepted, this presumption of domicile would vanish upon the introduction of rebuttal evidence. Judge Hastie admits, however, that in all uncontested actions the court could not inquire into the fact of domicile, but would be forced by the statute to accept all divorce actions in which the plaintiff could prove six weeks' residence. This would in fact eliminate the requirement of domicile. If domicile is to be retained as the basis of jurisdiction in divorce suits, this kind of presumption cannot be accepted. The basic issue presented by the presumption then is the same as that presented by the second portion of the statute which openly

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and presumption that the firearms had been transported in interstate commerce, which presumptions arose from the fact of possession of firearms by one who had been convicted of a crime of violence, held invalid).

8. See, *e.g.*, Yee Hem v. United States, 268 U.S. 178 (1925) (presumption of illegal importation of opium subsequent to the effective date of the statute which arose from the possession of opium held valid).

9. See cases cited notes 7 and 8 *supra*.

10. 9 WIGMORE, EVIDENCE 2494 (1940).

eliminated the requirement of domicile when both parties were subject to the jurisdiction of the Virgin Islands.

Turning to the second provision of the statute, Judge Goodrich cited *Restatement* Article 42, which provides that a state may not create an interest where it does not have jurisdiction, and held that, since a state does not have jurisdiction to divorce non-domiciliaries, a statute which attempts to confer such jurisdiction violates due process. Since in support of this holding Judge Goodrich calls the statute a violation of proper choice of law rules, he apparently interpreted the statute as requiring the application of Virgin Islands law.

Judge Hastie argued that jurisdiction to try a divorce suit can exist in a state other than the state of the litigants' domicile. He conceded, however, that if the Virgin Islands chose to grant divorces to non-domiciliaries, a question as to which state's law should be applied would arise. Since under his interpretation the statute did not require the application of Virgin Islands law, but merely gave the Virgin Islands the authority to try divorce suits between non-domiciliaries, he argued that it violated no constitutional provision.

The defendant did not make an appearance on appeal; nevertheless the court raised the issue of due process. Although the Supreme Court has permitted the parties in a controversy to urge the invalidity of state action because it resulted in a denial of constitutional rights of persons not parties to the controversy,[11] it has never held that a court could raise the issue of its own motion. If a party not deprived of a constitutional right can prevent action which would result in a denial of the rights of others, it is not unreasonable to assume that a court can raise the issue of its own accord. Here, however, Judge Goodrich did not identify the class of persons who would have been denied due process by the statute.

If Judge Goodrich was correct in his assumption that the non-domiciliary divorce proceedings were to be governed by Virgin Islands substantive law, he could have held that both the presumption of domicile and the elimination of domicile denied full faith and credit to the laws of other states and found the statute to be invalid for that reason. The decisions inter-

11. Barrows v. Jackson, 346 U.S. 249 (1953); Pierce v. Society of Sisters, 268 U.S. 510 (1925).

preting the Full Faith and Credit Clause are not harmonious. The Supreme Court has been fairly consistent in holding that failure to afford recognition to judgments of sister states is a denial of full faith and credit to those judgments.[12] It has sometimes held that a judgment based upon an improper choice of laws is a denial of full faith and credit to the laws which should have been chosen;[13] but it has not required the same degree of recognition for statutes that it has required for judgments. The Court has been liberal in permitting a state to refuse to apply the law of another state when the forum state considered its public policy opposed to the application of the foreign statute.[14] Since the undisputed assumption is that only the state of domicile has jurisdiction to divorce, it seems doubtful that a state which chose to divorce non-domiciliaries could urge validly that its public policy was opposed to the application of the laws of the parties' domicile.

If, as was urged by Judge Hastie, the statute did not require the application of Virgin Islands law, an entirely different problem is presented. Judge Hastie argued that the notion that only the courts of the state of domicile have jurisdiction to try divorce suits is not so imbedded in Anglo-American tradition that a departure from it would constitute a denial of due process. He apparently felt that a state can assume judicial competence to divorce any time it has personal jurisdiction over both parties, provided it recognizes the exclusive legislative competence of the state of domicile.

If such a procedure is to protect fully the interest both of the parties and of the state in which they are domiciled, however, the Full Faith and Credit Clause will have to be interpreted more strictly. If a state were permitted to assume judicial jurisdiction to divorce non-domiciliaries, and yet place its public policy above the foreign divorce law, the interests of the state of domicile would receive no protection. Even if a state were willing to apply the law of another state in divorce actions, the determination of the correct law would be difficult. In other types of actions the party who would be benefited by the application of a foreign law can be relied upon to bring the correct law to the attention of the court. In divorce actions, however, frequently

12. See, *e.g.*, Williams v. North Carolina I, 317 U.S. 287 (1942).
13. See, *e.g.*, Order of Travelers v. Wolf, 331 U.S. 586 (1947); John Hancock Ins. Co. v. Yates, 299 U.S. 178 (1936).
14. See, *e.g.*, Alaska Packers Ass'n v. Comm'n, 294 U.S. 532 (1935).

both parties desire the divorce; neither party would be likely to urge a law less favorable to the granting of the divorce than the law of the forum.

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FAMILY LAW—CAN THE CIVIL OBLIGATION TO SUPPORT AN ILLEGITIMATE CHILD BE ESTABLISHED IN A PROCEEDING FOR CRIMINAL NEGLECT OF A CHILD?

The accused was convicted under Criminal Code Article 74, as amended by Act 368 of 1952,[1] of criminal neglect of a child found, on the basis of evidence introduced at the trial, to be his illegitimate offspring. The Supreme Court reversed the conviction and *held*, according to the interpretation of the writer, that under Article 74 of the Criminal Code, as amended, it is criminal for a parent to refuse to provide support for an illegitimate child only if it has been established in a civil proceeding that he is the parent of the child. *State v. Mack*, 71 So.2d 315 (La. 1954).

Article 74 of the Louisiana Criminal Code originally provided: "Criminal neglect of family is the desertion or intentional non-support: . . . (2) By either parent of his minor child who is in destitute or necessitous circumstances. . . ." Apparently there was some doubt as to illegitimate children being included within this article, for by Act 164 of 1950 the phrase "whether legitimate or illegitimate" was inserted after the word "child." In three decisions[2] in 1951 and 1952, the Supreme Court held (1) that it was impossible to convict a person of criminal neglect of family unless at the time of the alleged neglect he was under a civil obligation to support the person whom he is charged with neglecting; (2) that Article 74 of the Criminal Code as amended in 1950 did not establish a civil obligation; and (3) that the obligation to support an illegitimate child arises only upon the establishment of illegitimate filiation under the articles of the Civil Code, that is, by a voluntary formal acknowledgment by the parent or

1. LA. R.S. § 14:74 (Supp. 1952).

2. State v. Love, 220 La. 562, 57 So.2d 187 (1952); State v. Sims, 220 La. 532, 57 So.2d 177 (1952); State v. Jones, 220 La. 381, 56 So.2d 724 (1951). Strong dissents were filed in these cases.