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Courts--Jurisdiction to Annul Local Marriage of Non-Residents

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if docketed, would bind the property restored to the reinstated corporation. Complications may arise, however, as to third parties under the recording act, but the point is plain as between the plaintiff and the reinstated corporation. Might plaintiff have sued the reinstated corporation? It has been held in a rather recent case[7] that one so situated may do so.

The analogy to successor corporations, whether it be a case of merger, consolidation[8] or a sale of all the corporate assets,[9] is not perfect. In those situations the old corporation has disappeared entirely and, at least for present purposes, the surviving corporation is deemed its juristic successor.[10] Where a corporation succeeds a partnership the individuals and their legal responsibility survive. It is true, in fact, that there is continuity in the business from which the tort arose but not a legal continuity. In the principal case, however, the reinstatement was more or less automatic and it seems desirable to permit suit against the reinstated corporation.

—MORRIS S. FUNT.

COURTS — JURISDICTION TO ANNUL LOCAL MARRIAGE OF NON-RESIDENTS. — A bill praying for the annulment of a marriage alleged that both plaintiff and defendant were residents of P state; that both were eighteen years of age at the time of the marriage and that neither had the consent of a parent to the marriage. It was further alleged that the matrimonial relationship was never intended, nor consummated, and that they had never cohabited together as man and wife. The defendant filed a plea challenging the jurisdiction of the court on the ground that both parties at the time of the issuance of the writ were residents of P state, were not and never have been residents of West Virginia, and that plaintiff and defendant did at the time of the marriage reside in

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[7] Jones v. Francis, 70 Wash. 676, 127 Pac. 307 (1912). Plaintiff, an employee was injured through the alleged negligence of the corporation after it had been dissolved by the Secretary of State for non-payment of license tax. Plaintiff sued defendants, who had continued to do business as a corporation, as trustees. Shortly after the plaintiff's injury, the corporation was reinstated by *ex parte* proceedings brought by the defendants. The court in holding the new corporation and the trustees liable declared it would be overtechnical to deny liability.

[8] Louisville Ry. Co. v. Biddell, 112 Ky. 494, 66 S. W. 34 (1902).

[9] Wolff v. Shreveport Gas, Electric Light and Power Co., 138 La. 743, 70 So. 789, L. R. A. 1916D, 1138 (1916).

[10] See, 8 THOMPSON, CORPORATIONS (3d ed. 1928), 148, citing cases.

and have ever since resided in P state. The court overruled a demurrer to the plea which ruling was certified for review. *Held,* the legislature has the power to prescribe the manner in which non-residents may invoke the jurisdiction of the courts; the law which created the marriage may annul it. The ruling of the lower court was reversed and the case remanded. *Titus v. Titus.*[1]

In a number of states it is established that a court has jurisdiction of annulment proceedings only if the domicil of one or both of the parties is within the territorial limits of the court.[2] This view is adopted by the Restatement.[3] It was the rule in West Virginia before the adoption of the 1931 Revised Code.[4] Great uncertainty and confusion has arisen in the law of annulment and divorce. Some states have ignored decrees of annulment and divorce obtained by parties who did not have domicils as required for jurisdiction, or by parties who did not conform to the law of the domicil.[5] An eminent authority contends that annulment decrees, which are effective from the time of the marriage should be granted by the law creating the marriage.[6] In annulment effective from the time of decree and in divorce which also is effective from the time of the decree the requirements of jurisdiction are in some states made common by statute.[7] In West Virginia the annulment decree was always effective from the time of the decree and one or both parties had to be domiciled within the territorial limits of the courts to give it jurisdiction.[8]

The West Virginia Code of 1931, contains an innovation on the requirement of domicil for jurisdiction. One or both parties must still be domiciled within the state, but an exception is made for non-resident parties who are married in West Virginia but have not established a marital domicil elsewhere.[9] The West Virginia Supreme Court of Appeals in construing the statute decided in the principal case that the state courts could avail themselves of this jurisdiction bestowed on them by the legislature. The court

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[1] 174 S. E. 874 (W. Va. 1934).
[2] Andrews v. Andrews, 188 U. S. 14 (1903); Cunningham v. Cunningham, 206 N. Y. 341, 99 N. E. 845 (1912); Frazier v. Frazier, 61 F. (2d) 920 (App. D. C. 1932).
[3] RESTATEMENT, CONFLICT OF LAWS (1934) §§ 113, 115.
[4] W. VA. CODE ANN. (Barnes, 1923) c. 64, § 7.
[5] Goodrich, *Jurisdiction to Annul a Marriage* (1919) 32 HARV. L. REV. 806, 815.
[6] Goodrich, *op. cit. supra* n. 5; GOODRICH, CONFLICT OF LAWS (1927) 301.
[7] Goodrich, *op. cit. supra* n. 5, at 823.
[8] W. VA. CODE ANN. (Barnes, 1923) c. 64, § 7. See W. VA. CODE (1870) c. 44, § 1.
[9] W. VA. REV. CODE (1931) c. 48, art. 2, § 7.

had no alternative but to follow the mandate of the statute. It intimated that it was not concerned with what recognition other courts may give the decree in the principal case.

It is submitted that the validity of the decree and recognition other courts may give the decree is of grave importance. The better rule, as recognized by the Restatement, is that domicil within the territorial limits is essential to the jurisdiction of the court. This the West Virginia statute disregards. The situation would become more confused should a court of P state declare the parties married despite the West Virginia decree.

—JOHN L. DETCH.

CRIMINAL LAW — DESCRIPTION OF MONEY IN A ROBBERY INDICTMENT. — Defendants were convicted of robbery and brought error, alleging that the indictment insufficiently described the subject matter of the crime as, "certain bank notes, the description and denomination thereof being unknown to said grand jurors, of the value of eight hundred dollars." The indictment was sustained and the conviction affirmed. *State v. Fulks.*[1]

This decision reaches a very practical and desirable result.[2] It means that the defendant cannot defeat justice on a mere technicality, which does not infringe on his privilege of being, "fully and plainly informed of the character and cause of the accusation."[3] The same court has recently said that an indictment should be sufficiently descriptive to enable the court to determine that the property is the subject of larceny, to advise the defendant with reasonable certainty of the charge against him, and to enable the accused to plead the judgment rendered thereon in bar of a later prosecution.[4] As a practical matter, the description in the present case clearly fulfills all the requirements of the rule.

Under the cases, moreover, the decision is strengthened by the averment that a more particular description was unknown to the grand jury. There is a general rule, founded on necessity, that

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[1] 173 S. E. 888 (W. Va. 1934).

[2] Wood v. State, 98 Fla. 703, 124 So. 44 (1929). A similar result is frequently reached by statute. Roach v. State, 46 Okla. Crim. 85, 287 Pac. 1095 (1930); Criglow v. State, 183 Ark. 407, 36 S. W. (2d) 400 (1931); Rowan v. People, 93 Colo. 473, 26 Pac. (2d) 1066 (1933), followed by Carson v. People, 93 Colo. 478, 26 Pac. (2d) 1068 (1933). Note (1911) 34 L. R. A. (N. S.) 301.

[3] W. Va. Const., art. 3, § 14.

[4] State v. Robinson, 106 W. Va. 276, 145 S. E. 383 (1928).