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# Conflict of Laws, Constitutional Law, Elections

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## CONFLICT OF LAWS

With increased mobility in our population, there will inevitably result an increase in the number of cases involving Conflict of Law problems. This fact is demonstrated by a pronounced increase in the Conflict of Law cases before the Colorado Supreme Court during the past year. The principal issues which may be classified under the heading, Conflict of Laws, are three in number: (1) When may a court in a given state exercise jurisdiction in a particular action? (2) What effect must a court in a given state give to a judicial determination from another state? And (3) What law will a court in a given state apply to a controversy which has its roots in some other state?

The conflicts cases which will be reviewed herein deal with the first and third of these problems, that is, jurisdiction and choice of law. The cases falling within the first category present questions of jurisdiction to grant a divorce decree, jurisdiction in a personal action based on defendants' domicile, jurisdiction to grant an annulment decree, jurisdiction to enter a judgment for past due installments for child support, and jurisdiction to issue letters of administration. The choice of law cases deal with the law governing the validity of chattel mortgages and the applicability of foreign statutes of limitations. Consideration will first be given to the subject of jurisdiction.

### *Jurisdiction for Divorce*

The United States Supreme Court has, in the famous *Williams* [1] cases, laid down the rule that no state will have jurisdiction to empower its courts to decree a divorce unless one of the parties has his domicile in that state. In Colorado, by statute, that party must be the plaintiff, and the plaintiff must have resided within the state for one year immediately preceding the filing of the petition. In *Lawson v. Lawson*,[2] the plaintiff in the divorce action was the wife, a wife who had lived in this state all her life prior to the fateful day, May 18, 1951, when she left this state to go to Indiana for the sole purpose of marrying the defendant, a resident of St. Joseph, Missouri, who was a soldier stationed in Indiana at a military post. After the ceremony, the newly married couple journeyed by way of Dayton, Ohio, to Kansas City where the plaintiff alone took air passage for Denver. The evidence showed that the defendant did

[1] Williams v. North Carolina, 317 U. S. 287 (1942); Williams v. North Carolina, 325 U. S. 226 (1945).

[2] .....Colo....., 261 P. 2d 167, 1952-53 6 C.B.A. Adv. Sh. No. 1.

not make a home for his wife, he did not attempt to do so, nor did he have any thought of doing so. On May 19, 1952, which was one year and a day after the plaintiff had left Colorado on this matrimonial venture, this action for divorce was filed by the wife in Denver.

The District Court, which was affirmed by the Supreme Court, concluded that it did not have jurisdiction in the divorce action by reason of plaintiff's failure to establish residence in Colorado for a period of one year prior to filing the action, and the action was dismissed.

This decision is apparently based on the presumption that the domicile of the wife changes to that of her husband by virtue of marriage. It would seem that very little evidence should be needed at the present time to overcome this presumption. The common law view, that the wife could not have a domicile separate from that of her husband, has been pretty well discarded, and a recent amendment to the Restatement of Conflicts [3] provides that a wife who lives apart from her husband may establish a separate domicile.

*Jurisdiction for Action in Personam*

Since the leading case of *Milliken v. Meyer*,[4] it has been recognized that the fact the defendant is domiciled within the state is, standing alone, sufficient to empower a state to authorize its court to enter a personal judgment, providing the service used is reasonably calculated to give defendant actual notice of the action. Rule 4 (f) (1) of the Colo. R.C.P. authorizes personal service outside the state in such cases.

In *Kellner v. District Court*,[5] the plaintiff sought cancellation of a contract and damages from a defendant who had admittedly resided in Denver until he sold his house to plaintiff. Defendant thereafter, and before this complaint was filed, moved from this state and went to California where he was personally served a summons issuing from the Denver District Court. The principal issue in the case was whether defendant's domicile had changed to California at the time the action was commenced.

The evidence offered on behalf of defendant to establish defendant's intention to change domicile was abundant. He had secured employment in California, he had bought California automobile license plates, he had registered to vote in California, and he had bought town lots there. The Colorado court held that defendant's domicile had changed to California by the time this action was commenced, and the District Court therefore had no jurisdiction. The court placed particular emphasis on the fact that defendant had become a registered voter in California which was a criminal offense in that state if the registrant hadn't truthfully "pledged allegiance" to the state of California.

[3] Sec. 28 (1948 amendment).
[4] 311 U. S. 457 (1940).
[5] .....Colo....., 256 P. 2d 887, 1952-53 C.B.A. Adv. Sh. No. 12.

*Jurisdiction for Annulment*

*Owen v. Owen*[6] is a case which has caused considerable comment among lawyers in this state. The plaintiff and defendant went through a marriage ceremony in Texas in 1946, and the husband (defendant) was at all times a resident of Texas. The plaintiff brought the action in the Denver District Court to annul the marriage on the ground that the defendant was mentally incompetent at the time of the ceremony. Service of the summons was made on the defendant in person in Dallas, Texas. A motion by the defendant to quash the summons and dismiss the complaint had been sustained by the trial court.

Under Rule 4 (f) (2), the type of service here used would be sufficient in an action affecting specific statutes or in a proceeding *in rem.* The court stated that the state of the domicile of one of the parties is generally recognized as having jurisdiction for an annulment of a marriage entered into elsewhere, but that such jurisdiction may not be exercised on a constructive service upon the non-resident defendant by publication or personally without the state. The Colorado court said that a divorce action unquestionably is an action *in rem.*[7] While there was little discussion in the case as to whether an annulment action did affect specific status under our rules, the effect of the decision seems to be to deny that an annulment action does so affect ones status, and for jurisdictional purposes, the annulment action is to be treated as an action *in personam.*

If personal service within the State is to be regarded as essential in an annulment action, then such service would seem to be jurisdictional, and the jurisdiction requirements in an annulment action would thus be twofold. One of the parties must have a domicile in the State, and the defendant must be personally served *within the state.* These jurisdictional requirements are then more exacting than those in the usual action *in personam* where out-of-state service is permissible where it is reasonably calculated to give the defendant actual notice of the action pending against him. It is noted that the 1953 Tentative Draft of Amendments to the Restatement of Conflict Laws, section 115, reaffirms the position that "a state has judicial jurisdiction to nullify a marriage from its beginning under the same circumstances which would enable it to dissolve the marriage by divorce."

*Jurisdiction to Enter Judgment for Past Due Child Support*

In the case of *Burke v. Burke,*[8] a wife had obtained a Colorado divorce from her husband in 1935, a decree for custody, and an

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[6] .....Colo....., 257 P. 2d 581, 1952-53 C.B.A. Adv. Sh. No. 19.

[7] In the first *Williams* case, *supra,* the Supreme Court said, "We likewise agree that it does not aid in the solution of the problem presented in this case to label the proceedings as proceedings *in rem.* Such a suit, however, is not a mere *in personam* action. . . . They involve the *marital status* of the parties."

[8] .....Colo....., 255 P. 2d 740, 1952-53 C.B.A. Adv. Sh. No. 16.

order for $30 per month child support. By August 1951, after the husband had established a residence in California (and the husband had paid $520 under decree), the husband was $4,305 in arrears. The wife at that time applied to the Denver District Court to reduce the amount of arrears to a judgment, *without notice to husband.* A judgment in favor of the plaintiff for the amount in arrears was sustained, the court pointing out that since each installment which matures under the decree becomes a final judgment debt upon which execution may be issued, the judgment entered below amounted to nothing more than merely a rotation of record of the amount then due under the original decree. It was a simple matter of judicial addition, and the husband was not entitled to any notice.

*Jurisdiction for Administration*

*Wheat v. Delahay*[9] presents an interesting problem in jurisdiction to grant letters of administration. In that case two Camp Carson soldiers were involved in an automibile accident and both died. An administrator for the estate of Albert, one of the deceased soldiers, was appointed by the court of his domicile in Georgia. The widow of Leonard, the other deceased soldier, though she had a claim for relief against Albert's estate for wrongful death, the problem was to find jurisdiction in Colorado for the appointment of a local administrator of Albert's estate so the action could be maintained in Colorado against such administrator. Such jurisdiction would have been present if Albert had assets in Colorado at the time of his death. The district court quashed the appointment of the administrator which had been made by the county court, and the action was dismissed

While the action might have been disposed of on the ground that the application for appointment of an administrator was made more than one year after the death of the decedent, the supreme court gave an additional ground for affirming the district court's opinion in that the decedent, Albert, had no assets in Colorado to justify an appointment of an administrator at the time of Albert's death. His wrecked automobile was in this state and it was also claimed by the plaintiff that the decedent Albert's right of exoneration under his indemnity insurance policy constituted assets in this state in that the insurance company was amenable to process in Colorado.

As to the wrecked automobile, the court disposed of that by saying that when the Georgia administrator for Albert's estate disposed of the automobile, it was thus out of the reach of Colorado creditors. One might question whether the Court's decision on this point was satisfactory in view of the usual rule that jurisdiction to grant letters of administration is based on the existence

[9] .....Colo....., 261 P. 2d 493, 1952-53 C.B.A. Adv. Sh. No. 28.

of assets within the state either at the time of death or at the time of appointment.[10]

In holding that the indemnity policy did not constitute sufficient assets, the county court cited with a approval a Kansas case wherein the Kansas court said that if such rights constitute assets, the situs of such assets is at the domicile of the non-resident. Of course, such assets being intangible, they do not have a "situs" at all. Under decision of the United States Supreme Court the debt may be reached by approximate process whereby the debtor (here the insurance company) may be personally served.[11] It would seem that the court should adopt a liberal policy in granting letters of administration for the protection and convenience of creditors within this state. The decision of the court in this case is directly contrary to that of a well-known Massachusetts case of *Gordon v. Shea*,[12] wherein, the Massachusetts court said, "When a creditor is concerned, administration may be granted where a *prima facie* case is made out to authorize the granting of administration within the state. "The object of appointing an administrator is not to determine the rights of parties interested in that estate, but to have a legal representative of the estate of the deceased within the Commonwealth, against whom or through whom those rights may be asserted."

*Law Governing Validity of Chattel Mortgages*

While the validity of a chattel mortgage as creating interests in personal property is usually governed by the law of the situs of the chattel at the time of the execution of the mortgage, in the case of *Trans America Corporation v. Merrion & Wilkins*,[13] there arose a question as to the validity of a mortgage which had been executed in Oregon, where the chattels, lambs, were located, and the Colorado court said that the mortgage was valid because it was valid "under the laws of Oregon and Colorado and the generally recognized rule." It may be assumed that the law with which the court concerned itself was the law of Oregon, and although Colorado cases on this point as well as upon the question of a subsequent waiver of the mortgage lien would seem to have no application, several cases were cited and relied upon.

A second chattel mortgage case involved the interpretation of Colorado's rather new Certificate of Title Act for Motor Vehicles. This was the case of *Bank of Ogallala v. Chuck Lowen, Inc.*[14] Among other things, this Act provides that no mortgage on a motor vehicle which has been recorded in any other state shall be recognized as valid and enforceable against subsequent purchasers, creditors, or mortgagees having no actual notice thereof, except where the certificate of title bears some notation thereon

[10] Restatement of Conflicts, sec. 467 (a).
[11] Harris v. Balk, 198 U. S. 215 (1904).
[12] 300 Mass. 95, 14 N.E. 2d 105 (1938).
[13] .....Colo.....,255 P. 2d 391, 1952-53 C.B.A. Adv. Sh. No. 11.
[14] .....Colo....., 261 P. 2d 158, 1952-53 C.B.A. Adv. Sh. No. 28.

of the outstanding security interest. The Act also provides that no person shall sell a vehicle without delivering to the purchaser a certificate of title, and that no purchaser shall acquire any right, title, or interest in a vehicle unless he obtains a certificate of title. An exception to this latter provision exists where a dealer, licensed in Colorado, sells a new car. Such dealer may transfer title by bill of sale.

In the *Bank of Ogallala* case, a Nebraska dealer, after receiving a manufacturer's certificate of origin for a Packard, mortgaged the car to the Nebraska bank, delivering to the bank the certificate of origin. This mortgage was not recorded, but under Nebraska law recording was not necessary to protect the interest of the mortgagee who had received and retained the certificate of origin. The Nebraska dealer subsequently sold the Packard to Chuck Lowen, Inc., stating that the car was free of encumbrances, and giving Lowen an ordinary bill of sale. Lowen thereafter, sold the car to a Colorado purchaser giving a dealer's bill of sale. This action was commenced by the Nebraska bank against Chuck Lowen for conversion, the bank contending that as Chuck Lowen acquired no interest in the car, his sale to the purchaser was a conversion. A summary judgment for defendant in the trial court was reversed.

The Supreme Court held that, under the Colorado statute, Chuck Lowen acquired no title to the car, having obtained no certificate of title from the Nebraska dealer, and that the exception permitting use of a bill of sale when a car is obtained from a dealer did not apply here, because a "dealer" within the meaning of this exception is a dealer licensed in Colorado.

The court further held that the interest of the Nebraska bank as mortgagee would be recognized in this state, even though the mortgage had not been recorded in Nebraska. The court said that it was not the recording in Nebraska that would affect the validity of the mortgage, but the existence of a notation of the mortgage on the certificate of title. Here there was no such notation, in fact, Lowen did not receive a certificate of title, therefore, the interests of the Nebraska mortgage should be recognized in this state as a matter of comity.

*Applicability of Foreign Statutes of Limitation*

There were two conflict cases decided during the year involving the application of statutes of limitation of other states. Of course, the statutes of limitations of other states will have no operation in Colorado courts in most instances, since they are usually procedural. However, in those circumstances where the foreign limitation is substantive, it will bar an action in any state. Also, even procedural limitations of other states may be applicable in Colorado by virtue of our borrowing statute,[15] which provides that an

[15] C.S.A., c. 102, Sec. 17.

action arising in another state shall not be maintained in this state if it could not be maintained in the state wherein it arose. The two cases previously referred to involve an application of this borrowing statute.

In *Trans America Corp. v. Merrion & Wilkins,*[16] an Oregon mortgagor had contracted to sell a number of mortgaged lambs to the defendant, without first having obtained permission from the mortgagee, in whose shoes the present plaintiff stood. Pursuant to this contract with defendant, the lambs were delivered by the mortgagor to a carrier in Meacham, Oregon, f.o.b., for shipment to defendants in Ogden, Utah. Emphasis was placed on the fact that all freight charges were paid by the defendant. The lambs were delivered to the carrier August 8, 1940, and received by defendants at Ogden, Utah, on August 10. Plaintiff, as mortgagee, brought this present action for conversion of the lambs. Defendant pleaded a three year statute of limitations of the State of Utah.

The court held that the conversion took place in Oregon and not Utah, for the delivery of the lambs to the carrier in Oregon was delivery to the agent of defendant. The cause of action having accrued in Oregon, the Utah statute of limitations would have no application. No Oregon statute of limitations was mentioned in the opinion.

It should be noted that even had the conversion taken place in Utah, the Utah statute of limitations, being procedural, would not by its own force be controlling in a Colorado court, but only by virtue of the Colorado borrowing statute, and this Colorado statute was nowhere mentioned in the opinion.

The second case involving statutes of limitations is *Smith v. Kent Oil Co.*[17] An action had been commenced in the Denver District Court in February, 1946, on a note executed and payable in Kansas more than six years earlier. The defendant pleaded the statute of limitations apparently without designating which statute or which limitation he was relying upon.

The court affirmed a judgment in favor of the plaintiff, holding that sec. 17, Colorado's borrowing statute, would not aid the defendant, for there was no plea nor proof of any bar by the laws of Kansas where the claim arose, and the court could not take judicial notice of Kansas statutes or presume that they were the same as Colorado statutes.

The most difficult problem for the court to dispose of was whether a local statute of limitations of Colorado barred the action. Section 18 provides a six year limitation for actions commenced in Colorado courts and which arose outside the state. However, the court said that this section must be construed together with our tolling statute, section 27, and that the six year period

[16] *Supra,* n. 13.

[17] .....Colo....., 261 P. 2d 149, 1952-53 C.B.A. Adv. Sh. No. 27.

described in section 18 did not commence to run until the defendant came into the state.

It wasn't shown in this case when defendant came into the state; however, there was evidence that he was still in Kansas within four years of the commencement of the action in Colorado. Consequently, the defendant had not brought himself within any permissible limitation.

CONSTITUTIONAL LAW

The case of *Prouty v. Heron*[18] presents the question of the power of the legislature to place limitations on the profession of an engineer by classifying him as a civil engineer after he had previously been licensed as an engineer without such restriction. The case also involves the validity of a statute empowering a state board to make such classifications.

The court held that the legislature has no power by statute to abridge the valuable property right, of one who has qualified for admittance and license to practice engineering without restriction, "in any manner except for cause and after due notice and a fair and impartial hearing before an unbiased tribunal." The Court here used rather strong language. It would seem that an abridgement of such property right could conceivably be a legitimate exercise of the state's police power. At least the case will bear careful scrutiny by attorneys who have been asked and may be asked in the future to subscribe to a program of compulsory bar integration.

It appears, however, that the court's strong language on the subject of the legislative power was unnecessary to the decision of the case, for the court further held the statute in question unconstitutional, because of an illegal delegation of legislative power to the state board. The statute contained no definition of any particular branch of engineering and fixed no standards by which the classifications were to be made. The entire basis for classification was left by the statute to the board's own discretion.

In *Hazlet v. Gaunt*,[19] the plaintiffs, citizens and taxpayers, challenged the validity of the 1949 School District Reorganization Act contending (1) that, as the Act permitted existing districts to be dissolved and incorporated into larger, newly formed districts against the wishes of the majority of citizens in the old district, there was a violation of the right of due process of law; and (2) that the Act contained an illegal delegation of legislative power.

As to the first contention, the court held that consent of neither the districts nor the inhabitants thereof is a prerequisite to changing the boundaries or dissolution of school districts, or to the transfer of assets from an existing district to a new and larger

[18] .....Colo....., 255 P. 2d 755, 1952-53 C.B.A. Adv. Sh. No. 14.
[19] 126 Colo. 385, 250 P. 2d 188 (1952).

district. The control of school districts and school property is in the state, and individual taxpayers have no such property interests in school assets as is protected by the U. S. Constitution against deprivation thereof without due process of law.

In so far as the alleged unlawful delegation of powers is concerned, the court found that section 12 of the Act set up sufficient standards for the guidance of those authorized to administer the law and that due to the fact that the legislature has almost unlimited power under our constitution over such districts, it could delegate broad discretionary powers to administrative bodies to be exercised under the conditions and in agreement with the type of standards here set forth.

*Sovereign Immunity*

Two cases presented the question of immunity of the State Highway Department from suit in controversies arising out of contracts to which the Highway Department was a party. The first was *Boxberger v. State Highway Department,*[20] where the plaintiff, after executing a deed to the Highway Department of access rights to and from a portion of his farm brought an action to cancel the deed and for a declaration that it was void because of alleged misrepresentations and mutual mistake. A motion to dismiss on grounds of sovereign immunity was granted by the trial court, but the Supreme Court reversed, saying that plaintiff's claim was founded upon his constitutional right not to be deprived of his property without due process of law or without just compensation; that the courts are open to afford that protection to citizens whether their rights have been invaded by individuals or any branch of government; that the doctrine of sovereign immunity is not applicable in such case; and the action can be maintained.

In the second case, *State Highway v. Dawson,*[21] the plaintiff brought an action against the department to recover the agreed price for gravel taken from plaintiff's land. Funds had been appropriated and "ear marked" for the particular project, and the principle contention of the state was immunity from suit. The court felt that its opinion in the *Boxberger* case disposed of this contention and that neither the state nor any of its departments should be allowed to have its cake and eat it too.

*Statutes*

A decision of particular interest to attorneys is that concerning *Interrogatories from the House of Representatives*[22] relative to the validity of legislation enacting the Colorado Revised Statutes of 1953 as the statutory law of the state and repealing all statutes

[20] 126 Colo. 438, 250 P. 2d 1007 (1952).
[21] 126 Colo. 490, 253 P. 2d 593 (1952).
[22] .....Colo....., 254 P. 2d 853 (1952-53), C.B.A. Adv. Sh. No. 13.

of a general nature not included therein.

The most serious doubts on the part of legislators related to the constitutional requirement that no bill shall be passed containing more than one subject which shall be clearly expressed in its title. The court disposed of this matter by saying that such constitutional limitations were designed for the enactment of new laws and the repeal or amendment of existing laws and have no application to general revisions of existing law.

The effect of the new statutes then will be not merely evidence of the law, but the law itself. So for the first time in Colorado history, the practicing attorney will be safe in disposing of his 19th century session laws.

*Pari-Mutuel Racing*

In *Ginsberg v. Centennial Turf Club*,[23] the Supreme Court upheld the validiity of the pari-mutuel racing statute of 1949 against a contention that it was a violation of section 2, Article XVIII of the Colorado Constitution which prohibits lotteries or gift enterprises. The court recognized that both lotteries and pari-mutuel betting are forms of gambling, but took the position that pari-mutuel betting was not itself a lottery. The distinction drawn between the two was that a lottery was based entirely upon chance whereas a patron of the tracks might make a more or less informed selection of his animal. For those whose experience is such that this distinction fails to convince, the court points to the rule that all doubts are resolved in favor of the validity of a legislative act.

*Elections*

In *Swanson v. Prout*,[24] the court held that the activities which take place at a meeting of the electors of school districts in voting on a proposed consolidation of school districts do not constitute an "election" within the meaning of statutes governing election contests. Consequently, the county court, being a court of limited jurisdiction, has no authoritiy to hear a case involving the resolution of the voting at such meeting. Such controversy is not an election contest.

*Cox v. Starkweather* [25] deals with the eligibility of a person elected as County Commissioner to hold such office. Section 10, Article XIV, of the Colorado Constitution provides that no person shall be eligible for any county office unless he shall be a qualified elector. To be a qualified elector the statutes require, among other things, that the person must have resided in the ward or precinct for 15 days. A fair inference to be drawn from other statutes is that the County Commissioners must reside within the district which they represent.

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[23] 126 Colo. 471, 251 P. 2d 926 (1952).
[24] .....Colo....., 259 P. 2d 280, 1952-53 C.B.A. Adv. Sh. No. 24.
[25] .....Colo....., 260 P. 2d 587, 1952-53 C.B.A. Adv. Sh. No. 27.

This case presents the problem of whether a candidate for the office of County Commissioner must be a qualified elector in the district which he seeks to represent at the time of the election or whether it is sufficient that he be a qualified elector in such district at the time he takes office. The court held that eligibility was to be determined at the later time and whether or not the candidate was qualified at the time of election was immaterial.

The case of *People v. Proposed Toll Gate Sanitation District,*[26] decided June 1, 1953, presents a problem of interpretation of a confusion in the legislation relating to the formation of sanitation districts. The court found the 1949 statute quite inadequate in that it purported to repeal former legislation and re-enact parts of the former statutes. Apparently the newer statute left out a great many of the procedural steps in organizing such districts. The organization of the Toll Gate Sanitation District was challenged on various grounds relating to the conduct of the election which proported to give rise to it. The court held that the election was improper and that the order of the District Court establishing the district should be set aside, holding that under the 1949 Act no elector is qualified to vote in such election unless he resides in the district, and the fact that the elector paid taxes on the property within the district was not sufficient.

The court further held that an elector was not qualified to vote in such election merely because his or her spouse paid taxes on property within the district. And, finally the court held that printed ballots used in the election which were designated as "Official Ballots" were improper in that the statute contained no nomination procedure and that the legislation apparently contemplated the use of a blank ballot.

From the language which the court used in discussing the confused state of legislation, it is apparent that there is definite need for legislative clarification on this problem.

[26] .....Colo....., 261 P. 2d 152, 1952-53 C.B.A. Adv. Sh. No. 23.

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