Washington and Lee Law Review

Volume 15 | Issue 2 Article 8

Fall 9-1-1958

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constitutional authority to accept exclusive jurisdiction,[81] it nevertheless does not have to require such as a condition precedent to the transfer of the lands.[82] Thus, it seems that that amount of jurisdiction which the state is willing to cede to the United States is acceptable, so long as it is sufficient to prevent substantial interference with the federal function or operation on the lands in question. Similarly, the problem appears to be fairly well settled from the state standpoint. Certainly, the state may reserve powers to itself in its cession statutes or so qualify its consent that only concurrent jurisdiction is transferred to the federal government. Perhaps it is not the retention of too much jurisdiction that might be bad, but rather the states' exercise of that jurisdiction to such an extent that it goes beyond the limit of not interfering substantially with the federal operation.[83]

But, the jurisdictional problem still obtains from the viewpoint of persons and property located within one of the federal enclaves. Where the state concerned has ceded exclusive jurisdiction, property within the enclave may or may not be subject to state taxation, depending upon whether the state looks to what was offered the national government, what that government accepted, or what restrictions of organic law remain applicable to the ceded territory.

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DOMICILE ABANDONED AS JURISDICTIONAL REQUISITE FOR DIVORCE

The concept of domicile as a jurisdictional fact for divorce is under attack again—this time on a new front by the simple device of a statute which creates jurisdiction to grant a divorce to servicemen on the basis of residence within the state.[1] The statute's soundness seems

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[81]Clause 17; Surplus Trading Co. v. Cook, 281 U.S. 647 (1930).

[82]James v. Dravo Contracting Co., 302 U.S. 134 (1937); 54 Stat. 19 (1940), 40 U.S.C. § 255 (1952).

[83]Cf. Committee Report, Pt. I, 14, 20, 21.

[1]"The plaintiff in action for the dissolution of the bonds of matrimony must have been an actual resident, in good faith, of the state for one (1) year next preceding the filing of his or her complaint; ... and Provided further, persons serving in any military branch of the United States government who have been continuously stationed in any military base or installation in the state of New Mexico for such period of one (1) year, shall for the purposes hereof, be deemed residents in good faith of the state and county where such military base or installation is located." N.M. Stat. Ann. § 22-7-4 (1953).

apparent, but, in view of the somewhat confusing situation which exists in the law of conflicts whenever divorces are granted by a state which is not the domicile of at least one of the parties, perhaps it should be examined more closely.

In applying this statute the New Mexico Supreme Court had previously stopped short of its present position by holding that compliance with the residence requirements of the statute created a conclusive presumption of domicile.[2] Now the court has met the issue squarely and in the recent case of *Wallace v. Wallace*[3] has explicitly held that domicile is not the only basis of jurisdiction for divorce proceedings. In the *Wallace* case the parties were married in Texas while the husband was in the service. They resided in Arkansas for two months after the expiration of his enlistment. The husband re-enlisted and the couple moved to New Mexico in January 1955 upon his transfer to a military installation there. They purchased a home in New Mexico in September 1955. After marital difficulties arose, the husband instituted a suit for divorce in Arkansas in February 1956, and one week later the wife sued for divorce in New Mexico. The parties became reconciled and agreed to dismiss the suits; however, the husband was awarded a decree of divorce in April. After this development the wife amended her complaint to ask that the Arkansas decree be set aside because it was obtained by fraud; the New Mexico court refused to recognize the Arkansas decree, finding it was obtained by fraud.[4] With the husband contesting all of the New Mexico proceedings, that court granted a divorce to the wife. The New Mexico Supreme Court affirmed the granting of this divorce and also the awarding of custody of the children, none of whom was present in the state.[5] The court rejected the husband's contention that it lacked jurisdiction to grant a divorce because neither he nor his wife was a domiciliary of New Mexico,[6] and held

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[2]Crownover v. Crownover, 58 N.M. 597, 274 P.2d 127 (1954). The court's approach was criticized in Notes, 23 Geo. Wash. L. Rev. 358 (1955); 27 Rocky Mt. L. Rev. 353 (1955); and the possible effects questioned in Note, 40 Minn. L. Rev. 77 (1955).

[3]63 N.M. 414, 320 P.2d 1020 (1958).

[4]The court reached the correct result in not recognizing the Arkansas decree, as that decree was obtained by extrinsic fraud. See Levin v. Gladstein, 142 N.C. 482, 55 S.E. 371 (1906). If the fraud had been intrinsic, a different question might have been presented. See Christmas v. Russell, 72 U.S. (5 Wall.) 290 (1866).

[5]A discussion of the court's decision as to custody of the children is beyond the scope of this comment. There seems to be authority for the action taken by the court. Sampsell v. Superior Court of Los Angeles, 32 Cal. 2d 763, 197 P.2d 739 (1948); Stafford v. Stafford, 287 Ky. 804, 155 S.W.2d 220 (1941); White v. Shalit, 136 Me. 65, 1 A.2d 765 (1938); Finlay v. Finlay, 240 N.Y. 429, 148 N.E. 625 (1925); Goldsmith v. Salkey, 131 Tex. 139, 112 S.W.2d 165 (1938).

[6]320 P.2d at 1022.

that this granting of jurisdiction was within the power of the legislature.

It would certainly seem that some court with jurisdiction to settle their marital troubles should be open to servicemen. Only a few states *explicitly* provide a divorce forum for their citizens who have entered the service and who are stationed in other states.[7] Under traditional concepts of domicile it is difficult for a serviceman stationed in a state other than the one from which he came to acquire a domicile of choice in the place where he is stationed.[8] As a result both the state from which a serviceman came and the state in which he is stationed may deny that it has jurisdiction to give him a divorce.

The New Mexico court indicates that the actual basis of jurisdiction for divorce proceedings—putting aside the statute, for the moment—is a certain relationship, such as extended residence, which gives the state a substantial, and thereby sufficient, interest in the domestic relations involved.[9] The court comments that the New Mexico statute gives jurisdiction over marital partners in whom the state has a greater interest than that of the "divorce mill" states[10] and, further, that the New Mexico statute will not create "forum shopping."[11]

In fact, the theory that there could be no basis of jurisdiction for divorce other than domicile is expressly rejected.[12] As the court points out, "the United States Supreme Court has never held that domicile of one of the parties is the only jurisdictional basis for divorce."[13] The carrousel[14] of cases from which the court drew this conclusion has at

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[7]Conn. Gen. Stat. § 7334 (1949); Ind. Ann. Stat. § 3-1203 (Supp. 1957); Tex. Rev. Civ. Stat. art. 4631 (1948); Vt. Stat. § 3214 (1947).

[8]Mohr v. Mohr, 206 Ark. 1094, 178 S.W.2d 502 (1944); Pendleton v. Pendleton, 109 Kan. 600, 201 Pac. 62 (1921) (this case suggests the difficulty in establishing domicile that might be encountered by a career serviceman whose family had been career servicemen for several generations); Hammerstein v. Hammerstein, 269 S.W.2d 591 (Tex. Civ. App. 1954) (reviewing a long line of Texas decisions).

If something more than mere presence in the state under military orders can be shown, then some states find residence requirements to be satisfield. Gipson v. Gipson, 151 Fla. 587, 10 So. 2d 82 (1942); Hawkins v. Winstead, 65 Idaho 12, 138 P.2d 972 (1943); St. John v. St. John, 291 Ky. 363, 163 S.W.2d 820 (1942). See Annot., 21 A.L.R.2d 1163 (1952), and cases cited. The need to provide a suitable forum for servicemen is discussed by the New Mexico court in Crownover v. Crownover, 58 N.M. 957, 274 P.2d 127, 131 (1954).

[9]320 P.2d at 1023. Such a suggestion has been made by a writer in this field. See Cook, The Logical and Legal Bases of the Conflict of Laws 467 (1942).

[10]320 P.2d at 1023.

[11]Id. at 1022.

[12]Ibid.

[13]Ibid.

[14]See dissenting opinion of Justice Rutledge in Williams v. North Carolina (II), 325 U.S. 226, 244 (1945).

times indicated that the Supreme Court felt that domicile was the basis of jurisdiction.[15] More particularly, there is Justice Frankfurter's somewhat curious statement in *Williams v. North Carolina (II)*[16] that "under our system of law, judicial power to grant a divorce—Jurisdiction, strictly speaking—is founded on domicile .... The framers of the Constitution were familiar with this jurisdictional prerequisite, and since 1789 neither this Court nor any other court in the English-speaking world has questioned it."[17] There has been valid criticism of this viewpoint on the ground that the concept of domicile was unknown at the time of the Constitution.[18]

In the tax field the Supreme Court has been reluctant to interfere in any way with an individual state's determination of domicile for inheritance tax purposes.[19] Although the cases in the field of domestic

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[15]Such would seem to be the obvious interpretation of Rice v. Rice, 336 U.S. 674 (1949); Williams v. North Carolina (II), 325 U.S. 226 (1945); Esenwein v. Commonwealth ex rel. Esenwein, 325 U.S. 279 (1945).

[16]325 U.S. 226 (1945).

[17]Id. at 229.

[18]In a scathing dissent Justice Rutledge stated, "The Constitution does not mention domicil .... Judges have imported it." Williams v. North Carolina (II), 325 U.S. 226, 255 (1945) (dissenting opinion). It was pointed out by Judge Hastie that the idea of domicile for divorce jurisdiction was first enunciated by Story in 1834 and that the English courts did not adopt it until the case of Le Mesurier v. Le Mesurier [1895] A.C. 517. Alton v. Alton, 207 F.2d 667, 681 (3d Cir. 1953) (dissenting opinion), cert. granted, 347 U.S. 911 (1954), case dismissed as moot, 347 U.S. 610 (1954). The Court of Appeals decision is noted in 11 Wash. & Lee L. Rev. 200 (1954). See Cook, Is Haddock v. Haddock Overruled?, 18 Ind. L.J. 165 (1943). In 1944, English courts were authorized to grant divorces to British wives who married non-domiciliaries during the years 1939-1950. Matrimonial Causes (War Marriages) Act, 1944, 7 & 8 Geo. 6, c. 43. However, this jurisdiction, which was granted on a basis other than domicile, has now been withdrawn. Matrimonial Causes Act, 1950, 14 Geo. 6, c. 25.

It seems that some courts in America prior to Williams (II) had questioned whether the sole basis of jurisdiction is domicile. Craig v. Craig, 143 Kan. 624, 56 P.2d 465 (1936) (applying a Kansas statute for servicemen which is similar to the New Mexico statute in the Wallace case). In Gould v. Gould, 235 N.Y. 14, 138 N.E. 490, 494 (1923), the New York Court of Appeals rather casually rejected the argument that divorce could not be granted without domicile. For a caustic reference to Justice Frankfurter's statement about "English-speaking courts," see David-Zieseniss v. Zieseniss, 205 Misc. 836, 129 N.Y.S.2d 649, 653 (1954), aff'd, 147 N.Y.S.2d 234 (1955), noted in 12 Wash. & Lee L. Rev. 75 (1955). However, the statement has been accepted without question by at least one court. Fletcher v. Fletcher, 134 A.2d 590 (D.C. Munic. App. 1957). For another unusual comparison see the quotation of Justice Frankfurter at note 19 infra.

[19]An outstanding example is In re Dorrance's Estate, 309 Pa. 151, 163 Atl. 303 (1932), which found the decedent to be a domiciliary of Pennsylvania. The finding resulted in a tax of more than ten million dollars. New Jersey sought to file an original bill against Pennsylvania, but the Supreme Court, without giving its reasons, denied leave to file the bill. New Jersey v. Pennsylvania, 287 U.S. 580 (1932). New Jersey then determined that the decedent had been domiciled in New Jersey.

relations indicate a similiar disposition to permit each state to decide the place of a person's domicile for itself,[20] there are indications that the Supreme Court would be receptive to a workable solution to the problem of jurisdiction which is based upon a concept—as yet undedeveloped—other than domicile.[21]

In the more usual case domicile provides an easy basis of determining jurisdiction. However, in a small percentage of cases the forum is not the place of "matrimonial domicile," and so the decisive jurisdictional fact is uncertain. A number of methods of dealing with the problem have been utilized or suggested: (1) the present policy of upholding a divorce if there is color of domicile plus jurisdiction over both parties,[22] and, if the divorce is ex parte, then each subsequent state that has cause to do so can examine the question of domicile in the decree-granting state;[23] (2) the method intimated by Judge Hastie, dissenting in *Alton v. Alton*,[24] under which the court of the forum would apply the law of the state having the strongest relationship with the parties; (3) the plan formulated by the Virgin Islands—until overturned by *Granville-Smith v. Granville-Smith*[25] as being beyond the

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In re Dorrance's Estate, 115 N.J. Eq. 268, 170 Atl. 601 (1934), aff'd, Dorrance v. Martin, 116 N.J.L. 362, 184 Atl. 743 (1936). The estate was then taxed nearly seventeen million dollars in New Jersey. The Supreme Court denied certiorari, 298 U.S. 678 (1936). The Court had earlier held that a federal district court had no jurisdiction to enjoin the New Jersey tax officials. Hill v. Martin, 296 U.S. 393 (1935).

On one occasion the Supreme Court did hear an original bill, but the fact situation was unusual in that the combined tax claims of the four states involved and the federal government amounted to more than the forty-two million dollar estate. Texas v. Florida, 306 U.S. 398 (1939). This action elicited a rather unusual statement from Justice Frankfurter, especially when compared with his statement in Williams (II), quoted in the text, "[T]he necessity of a single headquarters for all legal purposes, particularly for purposes of taxation, tends to be a less and less useful fiction. In the setting of modern circumstances, the inflexible doctrine of domicile—one man, one home—is in danger of becoming a social anachronism." Texas v. Florida, 306 U.S. 398, 429 (1939) (dissenting opinion).

[20]Rice v. Rice, 336 U.S. 674 (1949); Williams v. North Carolina (II), 325 U.S. 226 (1945); Esenwein v. Commonwealth ex rel. Esenwein, 325 U.S. 279 (1945).

[21]The clearest insight was given by Justice Jackson: "If there is a better concept than domicile, we have not yet hit upon it. Abandonment of this ancient doctrine would leave partial vacuums in many branches of the law." May v. Anderson, 345 U.S. 528, 539 (1953) (dissenting opinion). However, the patience of some members of the Court with domicile may be nearly exhausted. See the language of Justice Clark: "The only constitutional bugaboo is a judge-made one, domicile." Granville-Smith v. Granville-Smith, 349 U.S. 1, 27 (1955) (dissenting opinion).

[22]Sherrer v. Sherrer, 334 U.S. 343 (1948); Coe v. Coe, 334 U.S. 378 (1948).

[23]See note 20 supra.

[24]207 F.2d 667, 685 (3d Cir. 1953) (dissenting opinion).

[25]349 U.S. 1 (1955) (three justices dissenting).

power conferred by Congress in the Virgin Island's Organic Act—that the period of required residence was prima facie domicile and if the defendant appears, then the court has jurisdiction without asking for the "little white lie"[26] about intention to remain;[27] (4) the method seemingly employed by the New Mexico Supreme Court, allowing a legislature to create jurisdiction if there is a reasonable relationship between that state and the parties,[28] an approach which apparently extends the doctrine of *International Shoe Co. v. State of Washington*[29] into the area of divorce jurisdiction.

The contention that a divorce decree has no internal validity unless entitled to full faith and credit elsewhere was rejected by the New Mexico court because such a decision had never been made by the Supreme Court.[30] In cases where one state has been permitted to question the decree, the Supreme Court has repeatedly left unanswered the question whether the decree is valid in the state which granted it.[31] Since the husband contested the New Mexico proceedings, it would seem that he is effectively precluded from collaterally challenging the decree.[32] However, it may be possible for him to attack the decree

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[26]As Justice Clark succinctly and somewhat sarcastically put it: "The only vice of the Virgin Islands' statute, in an uncontested case like this, is that it makes unnecessary a choice between bigamy and perjury." Granville-Smith v. Granville-Smith, 349 U.S. 1, 28 (1955) (dissenting opinion).

[27]The constitutional question that seemed to be presented was not dealt with by the Supreme Court. From the tenor of both the majority and dissenting opinions and because of the narrow ground on which the majority struck down the Virgin Islands' divorce statute, it would seem that an identical statute passed by one of the forty-eight states might well be upheld by the Supreme Court.

[28]Wallace v. Wallace, 320 P.2d 1020 (N.M. 1958).

[29]326 U.S. 310 (1945).

[30]320 P.2d at 1023.

[31]Williams v. North Carolina (II), 325 U.S. 226 (1945). See particularly the language of Justice Rutledge. Id. at 246 (dissenting opinion). See also Rice v. Rice, 336 U.S. 674 (1949); Esenwein v. Commonwealth ex rel. Esenwein, 325 U.S. 279 (1945).

The lack of clear authority caused one circuit court to say: "We have searched the numerous cases decided by the Supreme Court of the United States on the subject of migratory divorce for a definitive holding as to the judicial status of such divorce in the state that decreed it. It appears to be assumed that the decree is valid and binding in the state where it is rendered." Sutton v. Leib, 188 F.2d 766, 768 (7th Cir. 1951), reversed on other grounds without deciding this problem, 342 U.S. 402 (1952). The Court of Appeals decision is noted in 9 Wash. & Lee L. Rev. 61 (1952). Also indicating that the decree is valid in the state which grants it, regardless of later treatment by a sister state, are statements by Justice Frankfurter in Williams v. North Carolina (I), 317 U.S. 287, 307 (1942) (concurring opinion); Justice Murphy in Williams v. North Carolina (II), 325 U.S. 226, 239 (1945) (concurring opinion); Justice Black in Williams v. North Carolina (II), 325 U.S. 226, 267 (1945) (dissenting opinion).

[32]Sherrer v. Sherrer, 334 U.S. 343 (1948); Coe v. Coe, 334 U.S. 378 (1948).

directly by appeal to the United States Supreme Court.[33] This would put the issue squarely before the Supreme Court and would necessitate a decision as to whether there is a basis of jurisdiction other than domicile. Obviously, if there is, then the New Mexico court had jurisdiction and the decree is valid everywhere. If no appeal is taken, the divorce is seemingly unassailable everywhere.

New Mexico is far from alone in recognizing by statute that jurisdiction for divorce may be conferred in some manner other than by simple domicile. Kansas has a similar statute[34] and has reached the same result, although by less sharply focused decisions[35] than those of New Mexico. Several other states have similar statutes; among them are Alabama, Kentucky, Oklahoma, and Virginia—which enacted its statute during the 1958 legislative session.[36] New York grants juricticton if the couple was married within the state,[37] and several other states have statutes to the effect that if adultery occurred in the state, then the state has jurisdiction whether or not the parties meet the usual residence requirements.[38] However, there seems to be little authority deciding the constitutionality of the statutes. At lease nine states, therefore, have created alternate bases of jurisdiction for divorce, and do not limit jurisdiction to cases where domicile is shown.

It seems that the New Mexico Supreme Court was on firm ground in deciding as it did. The theory that domicile is the only jurisdictional basis for divorce should be re-examined and expanded to include other bases of jurisdiction.[39] The statute underlying the *Wallace* decision is quite reasonable in its nature, and firm recognition should be granted by the courts to such statutes. A nation which has more citizens living in house trailers than in Detroit and a highly mobile population would seem to demand more bases of jurisdiction than are found under the rigid concept of domicile. In several states, none of which

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[33]At the time of writing, a search of The United States Law Week had not disclosed the filing of an appeal by Mr. Wallace. [Ed. note: A letter from counsel indicates there will be no appeal.]

[34]Kan. Gen. Stat. Ann. § 60-1502 (1949).

[35]Schaeffer v. Schaeffer, 175 Kan. 629, 266 P.2d 282 (1954); Craig v. Craig, 143 Kan. 624, 56 P.2d 464 (1936).

[36]Ala. Code tit. 7, § 96(1) (1940); Ky. Rev. Stat. Ann. § 403.035(1) (1955); Okla. Stat. tit. 12, § 1272 (1951); Va. Code Ann. § 20-97, as amended Va. Acts. 1958, c. 169. In the Canal Zone residence seems to be sufficient without permanent domicile, whether or not a seryiceman is involved. C.Z. Code tit. 3, § 108 (1934).

[37]N.Y. Civ. Prac. Act § 1147. David-Zieseniss v. Zieseniss, 205 Misc. 836, 129 N.Y.S.2d 649 (1954), aff'd, 147 N.Y.S.2d 234 (1955).

[38]Ky. Rev. Stat. Ann. § 403.035(2) (1955); Md. Ann. Code art. 16, § 30 (1957); Mo. Rev. Stat. § 452.050 (1949).

[39]See Cook, The Logical and Legal Bases of the Conflict of Laws 467 (1942).