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Divorce-Jurisdiction over Subject Matter-Res Judicata

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DIVORCE—JURISDICTION OVER SUBJECT MATTER—RES JUDICATA.—Plaintiff husband, after obtaining in the District of Columbia a divorce *a mensa et thoro* from his wife on the ground of cruelty, made a claim that he had established his domicil in Virginia and there sought an absolute divorce for desertion, grounds not recognized by the District of Columbia. The defendant wife made an asserted special appearance only for the purpose of establishing the plaintiff's lack of domicil as required by Virginia law for divorce. The Virginia court found that the husband had acquired a domicil within the state and entered a decree of absolute divorce. There was no appeal taken from the decree holding that the court had jurisdiction of the subject matter and of the parties. The plaintiff then sought recognition of the absolute divorce in the District court; this was refused on the ground that the Virginia court did not have jurisdiction of the parties or of the marriage status. Held on appeal, reversed. The Virginia court's determination of its own jurisdiction over the subject matter is *res judicata* and entitled to full faith and credit in all other jurisdictions in this country. *Davis v. Davis* (1938), 59 S. Ct. 3.

²¹ The courts which criticize the doctrine most consistently are found in Colo., Minn., Kans., Texas and U. S. 1 C. J. S. p. 541.

²² For a discussion of the abolition of the requirement of consideration in contracts generally see note in 23 Va. L. Rev. 446 (1936); Wright, *Ought the Doctrine of Consideration to be Abolished from the Common Law?*, 49 H. L. R. 1225 (1936); 3 U. of Chi. L. Rev. 312 (1935); 21 Ill. L. Rev. 185 (1926); 1 Ill. Law Bull. 65, 174 (1917).

²³ Burns Ind. St. Ann. (1933), § 2-1601. Mason's Minn. Gen. St. (1927) § 6933.

Two factors complicate the uniform recognition of foreign divorce decrees—divergent views as to what constitutes jurisdiction for divorce and differences of opinion as to the nature of divorce proceedings.¹ Generally domicile of one spouse in the state will confer jurisdiction over the marriage status if there is either a voluntary appearance and submission to jurisdiction, or the absent spouse has consented or by misconduct ceased to have a right to object to the acquisition of a separate domicile, or the state is the last matrimonial domicile.² In the famous Haddock case³ the United States Supreme Court avoided settlement of the divorce recognition problem by refusing to extend in all cases full faith and credit to foreign divorce decrees obtained against non-resident defendants. As distinguished from the principal case, there was in the Haddock case no appearance by the defendant but only a default judgment.

On the theory of waiver of jurisdiction over the person the conflict above cited has been eliminated where the non-resident party has put in a general appearance and had his day in court.⁴ As a matter of academic theory, jurisdiction over subject matter cannot be waived or created by consent but it is properly recognized that the cases reach an incongruous result.⁵ The American Law Institute by caveat explicitly refused in the Restatement of Conflict of Laws, to express an opinion as to whether a party appearing may attack subsequent to judgment the court's jurisdiction over the subject matter.⁶ This controversial question has now apparently been settled. It was previously held that every court in rendering a judgment tacitly, if not expressly, asserts its jurisdiction over both the parties and the subject matter,⁷ and where the jurisdiction is explicitly contested and decided there can be no subsequent collateral attack. The principal case unequivocally establishes as *res judicata* the adjudication of jurisdiction over the marriage status where the non-resident defendant appears to challenge the domicile of the plaintiff. In a still later case the United States Supreme Court has held as *res judicata* in state courts the determination of jurisdiction by a federal bankruptcy court to decree cancellation of a guaranty in reorganization proceedings.⁸

In reaching its decision the Court has acted in accordance with substantial precedent and sound logic. Jurisdiction may be waived⁹ or estoppel may

¹ Jones, "Conflict of Laws in Divorce Cases", 10 Notre Dame Lawyer 11.

² Restatement, Conflict of Laws, Sec. 113.

³ Haddock v. Haddock (1906), 201 U. S. 562, 26 S. Ct. 525, 50 L. Ed. 867.

⁴ Jones v. Andrews (1870), 77 U. S. 327, 19 L. Ed. 935. Note: Waiver applies only in the case of general appearance, not in case of special appearance for the express purpose of challenging jurisdiction unless the right to special appearance has been taken away by statute. Western Life Indemnity Co. of Illinois v. Rupp (1914), 235 U. S. 261, 35 S. Ct. 37, 59 L. Ed. 220.

⁵ Gavitt, "Jurisdiction of the Subject Matter and Res Judicata", 80 U. of Pa. L. R. 386.

⁶ Restatement, Conflict of Laws, Sec. 451.

⁷ Chicago Life Insurance Co. v. Cherry (1916), 244 U. S. 25, 37 S. Ct. 492, 61 L. Ed. 966.

⁸ Stoll v. Gottlieb (1938), 59 S. Ct. 134.

⁹ German Bank v. American Fire Insurance Co. (1891), 83 Iowa 491, 50 N. W. 53, 32 Am. St. Rep. 316; also see Harper, "The Validity of Void Divorces", 79 U. of Pa. L. R. 158.

prevent an assertion of lack of jurisdiction,¹⁰ the theory being that jurisdiction over the subject matter is not created by the conduct of the litigants but that attack on the decree of jurisdiction is precluded by such conduct. Though generally held that the jurisdiction of a court rendering judgment is always open to inquiry in another state on a collateral question,¹¹ yet many state courts have recognized the adjudication of jurisdiction by sister states as *res judicata*.¹² The federal Supreme Court in the instant case has adopted this view. Appearance to contest the issue of domicile results in a conclusive finding as to domicile. By plea and by conduct taken together the non-resident spouse submitted to the Virginia court's jurisdiction for all purposes, despite the assertion of only special appearance. With jurisdiction over the person and a finding of domicile, the Virginia court properly assumed jurisdiction over the subject matter, which assumption must be recognized as binding on all courts. Full faith and credit must be accorded to a judgment by a court of competent jurisdiction. The question of competency may be determined by the court involved.¹³

The result of the principal case is undeniably desirable. Since the question of jurisdiction is judicial, certainly there can be no objection to the court exercising the power to determine its own jurisdiction especially since the controversy must be ended at some point. No reason presents itself why a party who has enjoyed due process should be permitted to retry the issue of jurisdiction previously determined; rather a finding of the fact of jurisdiction should possess the quality of finality. There is no reason to suppose that a second decision will be more satisfactory than the first. Even though the Virginia court may have erred in its assumption of jurisdiction its determination is conclusive and may not be questioned by either party collaterally or otherwise than on writ of error or appeal from the original adjudication. Having litigated the question in one competent tribunal and been defeated, the same question may not be litigated in another tribunal acting independently and without appellate jurisdiction.

J. W. C.

EVIDENCE: INFERENCE UPON AN INFERENCE.—Plaintiff, the beneficiary of a policy issued by appellee upon the life of one Leo J. Orey, brought suit to recover double indemnity for the death of the insured. Recovery was conditioned upon showing that "death had come as a direct result of bodily injury effected solely through external, violent, and accidental means . . . evidenced by a visible contusion or wound on the exterior of the body."

Deceased was a truck driver and was last seen driving his truck through a small village. Later he was seen on the ground in the rear of the truck, looking under it. After a short time, weaving and vomiting, he staggered into the village store and collapsed. He was suffering from a severe rupture

¹⁰ *Bruguiere v. Bruguiere* (1916), 172 Cal. 199, 155 Pac. 988; also see Restatement, Conflict of Laws, Sec. 112; I Freeman, Judgments (5th ed. 1925), Sec. 320.

¹¹ *Old Wayne Mutual Life Assoc. of Indianapolis v. McDonough* (1907), 204 U. S. 8, 27 S. Ct. 236, 51 L. Ed. 345, I Black, Judgments, Sec. 289.

¹² *Northwestern Casualty & Surety Co. v. Conaway* (1930), 210 Iowa 126, 230 N. W. 548. *Degge v. Baxter* (1917), 69 Colo. 122, 169 Pac. 580. *Contra: Marshall v. Owen & Co.* (1912), 171 Mich. 232, 137 N. W. 204.

¹³ I Freeman, Judgments (5th ed. 1925), Sec. 350.