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# Conflict of Laws--Full Faith and Credit--Lack of jurisdiction vs. Mistake of Law

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Whether we call it "proximate cause", "contributed proximately", or "substantial factor", it becomes largely a battle of words. What is needed is a separation between the issue of cause and the multitude of other issues. 60 YALE L.J. 761 (1951). This might not alter a single verdict, but it could not help but lighten the burden now placed upon the jury to apply the law which is rightly the duty of the court. Whatever the answer, if there is one, at least for the present it does not appear that the West Virginia court has made any drastic alteration in their definition of proximate cause.

*Robert William Burk, Jr.*

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**Conflict of Laws—Full Faith and Credit—Lack of  
Jurisdiction vs. Mistake of Law**

*P* was granted an absolute divorce in the State of Florida. The decree included a provision that in the event *H*, *P*'s former husband, should predecease *P*, the monthly alimony would become a charge upon his estate during her lifetime. *H* died while a resident of West Virginia. *P* brings this action against the heirs and administrator of *H* for the alimony unpaid since his death. The trial court ruled that the Florida court was without jurisdiction to award alimony against *H* which would be valid and enforceable against his estate after his death, and therefore, such judgment was not entitled to full faith and credit in the courts of this state. *Held*, affirmed. A court in this state may inquire into the proper jurisdiction of the court of another state. The lack of proper jurisdiction in the court of another state will render the judgment or decree of such state void and incapable of enforcement in a court of this state. Such void judgment is a nullity and may be attacked directly or collaterally in any court where that judgment is sought to be enforced. *Aldrich v. Aldrich*, 127 S.E.2d 385 (W. Va. 1962).

The principal case revolves on the question of whether the Florida court actually had jurisdiction to grant the decree in question, whether they may have exceeded their jurisdiction, or whether theirs was a mistake of law in exercising proper jurisdiction. If the error was merely a mistake of law, the issues are *res judicata* and the full faith and credit clause would apply. If the error is lack of jurisdiction or the exceeding of jurisdiction in granting the decree in question, the decree may be collaterally attacked as a void decree. The difference is often quite difficult to perceive. In fact, the difference between the concept of jurisdiction alone is often confused with the improper or erroneous exercise of jurisdiction by a court.

Article IV, section 1 of the United State Constitution, the full faith and credit clause, provides that the courts of a state must give the judgment of a sister state the same effect and validity that it would receive in the jurisdiction in which it was rendered. This clause establishes a useful means of ending litigation between adverse parties. *Riley v. New York Trust Co.*, 315 U.S. 343 (1941). In its essential aspects, the clause compels that controversies be settled, to the end that when a particular jurisdiction has before it the parties and control of the subject matter, "its judgment controls in other states to the same extent as it does in the state where rendered." *Kovacs v. Brewer*, 356 U.S. 604 (1958); *Riley v. New York Trust Co.*, *supra*; 64 W. VA. L. REV. 427 (1962). The successful cause of action which is merged into the judgment is discharged thereby. Thereafter, the judgment, whether considered as a debt or an obligation, is specifically protected and may not be contested save on the ground of lack of jurisdiction. *Williams v. North Carolina*, 317 U.S. 287 (1942); *Adams v. Saenger*, 303 U.S. 59 (1938). The above principle is recognized in numerous West Virginia cases and is cited in both the majority and minority opinions of the court in the principal case. *Gavenda Bros. v. Elkins Limestone Co.*, 145 W. Va. 732, 116 S.E.2d 910 (1960); *Gardner v. Gardner*, 144 W. Va. 630, 110 S.E.2d 495 (1959).

The basis upon which the principal case refuses to give full faith and credit to the decree of the Florida court is that since no agreement existed between the parties relating to the payment of alimony past the death of the husband, the Florida court did not have jurisdiction to award such alimony and therefore the decree was void to that extent. Florida law relative to such decrees has only recently begun to crystalize. In *Underwood v. Underwood*, 64 So.2d 281 (Fla. 1953), the Florida court declared that alimony is limited to the lifetime of the husband because of its very nature. In that case the court was considering the validity of a divorce decree which incorporated an agreement between the husband and wife whereby the husband agreed to pay a specified sum to the wife as long as she lived. The court said that "the legal effect of such payments are that they constitute property settlements and not alimony." The next important case on this same principle was *Johnson v. Every*, 93 So.2d 390 (Fla. 1957). Here the court continued the distinction established in the *Underwood* case in referring to the divorce decree which "embodied" the property settlement agreement. There the court stated that "where the divorce decree or property settlement agree-

ment" provided for continued payments until the death of the wife, the estate of the husband would remain liable as for any other valid obligation. (Emphasis added.) The disjunctive form used would seem to indicate that the divorce decree could embody a provision for the payment to the wife until her death without the necessity of a previous written agreement. However, this position becomes very vague, if not indeed untenable, in the light of a more recent decision by the District Court of Appeals of Florida in *Deigaard v. Deigaard*, 114 So.2d 516 (Fla. 1959). In this cast the court recognized the previous decisions relating to a divorced husband's liability for alimony generally terminating with his death. This case related to a divorce decree which provided for periodic payments of alimony and in addition a lump sum payment in lieu of post-demise alimony. The only statutory provision relative to alimony in Florida is as follows: "In any award of permanent alimony the court shall have jurisdiction to order periodic payments or payment in a lump sum." The court pointed out that a chancellor could not award periodic alimony payments as well as lump sum payments in the same decree and then held that, in the absence of an expressed contract or agreement between the parties, a decree ordering alimony which would continue beyond the life of the husband was without legal basis. Thus, the distinction drawn between alimony and property settlement in the previous cases seemed to be abandoned or ignored.

The decree of the Florida court in the principal case held that *D* was ordered to pay to *P* a specific sum "for her permanent alimony" and in the event *D* should predecease *P* the monthly sum would become "a charge upon his estate during her lifetime." If a great deal of imagination is employed, it might be suggested that from the language used by the decree the Florida court had intended to continue the distinction drawn by the earlier Florida cases between the monthly "alimony" payable to *P* and the monthly "sum" which would exist after the death of *D*, but such a suggestion is highly speculative.

The majority opinion admits that the Florida court had jurisdiction of the parties and of the subject matter in the principal case. The minority opinion contends that in view of these facts the error of the Florida court was one of law and not of jurisdiction and therefore not reviewable in a collateral proceeding. It has been held that a judgment entered by a court which has jurisdiction of the subject matter and of the parties would be merely erroneous rather than void. *Pruett v. Pruett's Adm'x*, 301 Ky. 568, 192 S.W.2d 722 (1946). Further, the Supreme Court, in *Swift & Co. v. United*

*States*, 276 U.S. 311 (1928), held that where a court has jurisdiction over the person and subject matter, no error in the exercise of such jurisdiction can make the judgment void. A necessary integral of the full faith and credit clause is the fact that a foreign judgment will not be impeached because of a mistake of fact or an error of law. *Ingenohl v. Olsen & Co.*, 273 U.S. 541 (1927). The mere fact that the prior judgment was erroneous is immaterial. The remedy for such error is by way of direct appeal, not collateral attack. *Chandler v. Pekety*, 297 U.S. 609 (1936). Finally, the West Virginia Supreme Court, in *Gaymont Fuel Co. v. Price*, 135 W. Va. 785, 65 S.E.2d 393 (1951), held that where a court has jurisdiction, it has a right to decide other questions arising in a cause and whether the decision is correct or otherwise, its judgment, until reversed, is binding in every other court.

Under the above principles a good argument could be raised that, since the Florida court had jurisdiction of the parties and of the subject matter, the decree was merely a mistake of law. In the light of *Gaymont Fuel Co. v. Price*, *supra*, the court had jurisdiction and the extent of its inquiry as to alimony and a property settlement was one of the questions necessarily arising from the cause.

On the other hand, it has also been held that if a court exceeds its jurisdiction in rendering a particular judgment such judgment is subject to collateral attack, even though the court had jurisdiction of the parties and of the subject matter. *West End Irrigation Co. v. Garvey*, 117 Colo. 109, 184 P.2d 476 (1947). A judgment entered by a court which transcends the limits of its authority is void. *Robertson v. Commonwealth*, 181 Va. 520, 25 S.E.2d 352 (1943). It is also contended by the majority that even though the Florida court had jurisdiction of the parties to begin with, it acted in excess of that jurisdiction in the decree which it granted. Excess of jurisdiction as distinguished from lack of jurisdiction means that an act, even though within the general power of the court, is void because the conditions which alone authorize the exercise of the particular power of a court are lacking. *Broom v. Douglass*, 175 Ala. 268, 57 So. 860 (1912). Thus, the key could be the lack of the agreement between the parties as to alimony (or any payments) to exist beyond the life of the husband as contemplated in *Diegaard v. Diegaard*, *supra*. The Florida court had jurisdiction to grant the divorce and alimony, but in granting the particular type of payments in the principal case without an expressed agreement to that effect, acted in excess of its jurisdiction.

A case somewhat analogous to the principal case was that of *Gardner v. Gardner, supra*. In that case a divorce was obtained in Tennessee through the perpetration of a fraud on the court by *P*. In the unanimous opinion, the court pointed out that this is clearly an instance where the full faith and credit clause does not apply to the decree of a sister state. The court in Tennessee had no jurisdiction over the parties because of the fraud and this would have been a valid defense to an appeal of the decision in a Tennessee court. This case illustrates a more readily available application of the jurisdiction test in order to validly refuse to grant full faith and credit to the judgment of a sister state.

A further point in the principal case meriting discussion, brought out by the dissenting opinion, is with regard to the doctrine of res judicata and the appearance of *D* in the Florida court. The doctrine of res judicata prevents a cause of action which has once been fairly litigated from ever being relitigated by the same parties or their privies. *Cromwell v. County of Sac*, 94 U.S. 351 (1876); *Williamson v. Columbia Gas & Electric Corp.*, 185 F.2d 464 (3rd Cir. 1950); RESTATEMENT, JUDGMENTS § 48 (1942). Assuming that the parties to a litigation are before the court, as they were in the principal case, the question arises as to whether jurisdictional issues become res judicata if they were not, but might have been, litigated. If this question can be answered in the affirmative, the very basis upon which the West Virginia Supreme Court decided the principal case should have been a moot question. The Restatement of Judgments declares that res judicata is applicable not only where the question of the jurisdiction of the court over the subject matter was actually litigated, but also it was not so litigated, the court and the parties assuming that it had jurisdiction. RESTATEMENT, JUDGMENTS § 10, comment c (1942). The Supreme Court has held that the principle of res judicata may be pleaded as a bar, not only as respects matters actually presented to sustain or defeat the right asserted in the earlier proceeding, but also as respects any other available matters which might have been litigated. *Morris v. Jones*, 329 U.S. 545 (1946); *Chicot County Drainage Dist. v. Baxter State Bank*, 308 U.S. 371 (1940). A judgment in a particular litigation is a bar forever to that cause of action, not only as to the issues actually presented, but also to every justiciable issue which might have been presented. *La Fontaine v. The G. M. McAllister*, 101 F. Supp. 826 (S.D.N.Y. 1951); *Wolfson v. Rubin*, 52 So.2d 344 (Fla. 1951); *Noel v. Noel*, 307 Ky. 132, 210 S.W.2d 142 (1947). The dissent in the principal case also notes that

respectable authority exists to the effect that the "full faith and credit clause will forbid one to question the jurisdiction of the court to render a judgment in a case in which he appeared and participated as a litigant." Citing *Davis v. Davis*, 305 U.S. 32 (1938); *Morrissey v. Morrissey*, 1 N.J. 448, 64 A.2d 209 (1949).

In conclusion, it would appear that the principal case could have been decided on the above basis as well as on the basis that the alimony under the Florida decree (if it was in fact alimony) which was chargeable to the estate of the husband could not create a lien on the real estate of the husband in West Virginia. However, in view of the apparent confusion existing in the Florida courts with regard to their position on the question of alimony existing beyond the death of the husband, the majority opinion in the principal case seems to lack the strength that is desired. It would appear that there are more than merely academic questions raised by the minority opinion.

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## ABSTRACTS

### Attorney and Client—Liability for Title Certification

*P*, title insurer, sued *D*, a title examining attorney, for damages sustained when various mortgages it had guaranteed as first mortgages, in reliance on *D*'s certification of clear title, proved to be subordinate to other mortgages. *D* gave a signed certificate of personal examination when, in fact, he had relied on information obtained from an abstract company. *D* argued that this was customary procedure in the area. Federal district court entered judgment for the insurer. *Held*, affirmed, and case remanded for redetermination of damages. An attorney cannot be absolved of responsibility on the basis of custom. *Gleason v. Title Guarantee Co.*, 300 F.2d 813 (5th Cir. 1962).

An attorney employed to examine the title to real property must exercise reasonable care and skill and the failure to do so is negligence. Annot., 5 A.L.R. 1389 (1920). The attorney is not a guarantor. He merely undertakes to bring reasonable skill and diligence to the discharge of his duty, and he is not liable for errors of judgment or for mistakes on doubtful questions of law. 5 AM. JUR. *Attorneys at Law* § 132 (1936).