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# Conflict of Laws--Interstate Status of Divorce

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Statute of Limitations, and prosecution is barred after one year from the date when the cause arose. *State v. Locke*, 73 W. Va. 713, 81 S.E. 401 (1914). See also Constitution and By-Laws of The West Virginia State Bar, Art. VI, § 23.

Where an attorney has misused or refused payment of funds to his client, the West Virginia court has been quick to inform the attorney that he is entitled to no compensation for services rendered. Thus, where *D* refused without legal excuse to give to *P* money received by him for *P* in settlement of a judgment, it was held that by his conduct *D* disentitled himself to compensation; he could not deduct it from the damages owed to *P*. *Bailey Lumber Co. v. Dunn*, 109 W. Va. 725, 156 S.E. 79 (1930).

Manifestly, the importance of good faith and fairness cannot be too strongly stressed in the attorney-client relationship, especially where money and other property of the client are held by the attorney. To violate the principles controlling the relationship will result in attorney discipline, and possible criminal prosecution, disturbed feelings by and hardships on clients, bad public relations on the part of the Bar, and discredit to the Bar generally.

F. L. D., Jr.

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CONFLICT OF LAWS—INTERSTATE STATUS OF DIVORCE.—*H* instituted suit in West Virginia for an annulment of his marriage to *W*<sup>2</sup> on the grounds of a prior subsisting marriage. Prior to the institution of this suit *H* had obtained a divorce in Tennessee from *W*<sup>1</sup> on constructive service. The trial court entered judgment annulling the second marriage and *W*<sup>2</sup> appealed. *Held*, the courts of this state are not required to give full faith and credit to a judgment or decree of a sister state if that state was without jurisdiction to enter such judgment or decree. Nor, is the party who obtained such divorce precluded by estoppel or the "clean hands" doctrine from asserting the invalidity of such divorce in a suit in this state to annul a subsequent marriage. *Gardner v. Gardner*, 110 S.E.2d 495 (W. Va. 1959).

"... [A]ll marriages which are prohibited by law on account of either of the parties having a former wife or husband then living; . . . shall be void from the time they are so declared by a decree of nullity." W. VA. CODE ch. 48, art. 2 § 1 (Michie, 1955). Application of this provision to the instant case "necessarily implies an

adjudication that the Tennessee divorce was void," from the very fact that the grounds for granting the annulment was a prior subsisting marriage on the part of the husband.

It also seems clear that the equitable doctrine of "clean hands" was not a bar to the husband's suit for an annulment in that W. VA. CODE ch. 48, art. 2 § 3 (Michie, 1955), specifically enumerates those instances in which a suit for annulment may not be instituted by the guilty party or by one who has, by his conduct, affirmed the marriage. The right of one to annul a subsequent marriage on the ground of a prior subsisting marriage is not one of those excluded by this provision.

However, the significant point of this case, at least from the academic point of view, is not the doctrine represented by the decision of the case, but the presentation, at the outset, of the conflicting interests of the state and the federal government, which, as will appear, have made the development of this branch of the law difficult to formulate and define. The traditional view that marriage is unique and permanent and that society, as represented by the state of domicile of the spouses, has an interest in its preservation, has been reflected in the doctrine that domicile is a requisite for divorce jurisdiction. *Sutton v. Sutton*, 128 W. Va. 290, 36 S.E.2d 608 (1945). As a minor proposition, in West Virginia and generally, residence as used in the divorce statutes is treated as the equivalent of domicile. *Taylor v. Taylor*, 128 W. Va. 198, 36 S.E.2d 601 (1945); *Boos v. Boos*, 93 W. Va. 727, 117 S.E. 616 (1923).

The crux of the enigma is illustrated by the principal case wherein a divorce has been granted by the court of one state and the problem arises as to whether it is entitled to out-of-state recognition. This is a problem that directly concerns the federal government under the full faith and credit clause. "Full faith and credit shall be given in each state to the public acts, records, and judicial proceedings of every other State. . . ." U.S. CONST. art. IV, § 1.

In an attempt to reconcile the divergent interests of the state and federal governments, the courts have recognized and faced the issues squarely. "But there are few areas of the law in black and white. The greys are dominant and even among them the shades are innumerable. For the external problem of the law is one of making accommodations between conflicting interests. This is why most legal problems end as questions of degree. That is true of the

present problem under the full faith and credit clause." *Estin v. Estin*, 334 U.S. 541 (1948).

In cases which have arisen involving these divergent interests, the Supreme Court of the United States has laid down the following rules in past cases. Historically, the two leading decisions which dominated early speculation in the field of American constitutional theory as to jurisdiction in divorce were *Haddock v. Haddock*, 201 U.S. 562 (1906); and *Atherton v. Atherton*, 181 U.S. 155 (1901). Both of these cases involved the situation where the divorce state was the domicile of only one spouse. In the *Atherton* case, a divorce granted to the husband in the state of matrimonial domicile was held entitled to full faith and credit and thus to constitute a bar to an action for separation brought by a wife in a second state. But in the *Haddock* case a divorce granted to the husband in a state where he was then domiciled, but which was not the state of matrimonial domicile, was denied constitutional protection in the second state where the wife brought a suit for separation and alimony. In neither case did the divorce granting state have personal jurisdiction over both parties.

The policy in West Virginia up to and following *Haddock v. Haddock*, *supra*, is represented by the case of *Caswell v. Caswell*, 84 W. Va. 575, 100 S.E. 482 (1919). In that case it was held that in the absence of any showing of fraud upon the court, or lack of jurisdiction, a decree of divorce rendered by a court of competent jurisdiction in another state or territory of the United States, upon constructive service, is entitled to the same faith and credit in the courts of this state as in the state or territory wherein rendered. The court distinguished the case of *Haddock v. Haddock*, *supra*, upon the basis of policy, holding that it is the policy of West Virginia to recognize divorces based on constructive service of process whereas the *Haddock* case recognized the right of the State of New York to refuse, on the basis of its particular policy, to give full faith and credit to a decree based on constructive service of process, even though the moving party had acquired domicile in the divorce granting state. Thus it is clear that at this point in the development of constitutional theory as related to interstate recognition of divorce decrees, the sovereignty of the several states took precedence to the unifying force of the full faith and credit clause. The dissenting opinion of Mr. Justice Brown in the *Haddock* case should be noted as foreshadowing the subsequent interpretation of the full faith and credit clause. "I regret that the court in this case has taken

what seems to me a step backward in American jurisprudence, and has virtually returned to the old doctrine of comity, which it was the very object of the full faith and credit clause of the constitution to supersede."

After the decision in the *Caswell* case, *supra*, the next instance where the court of West Virginia faced the problem was in *State v. Goudy*, 94 W. Va. 542, 119 S.E. 685 (1923). There, after deciding that domicile was established thus conferring upon the state of Colorado jurisdiction of the suit, it was held; "the decree not being open to collateral attack there, it is not open to collateral attack here, and is entitled to the same faith and credit in the courts of this state as it is entitled to in the courts of Colorado."

As the *Haddock* case, *supra*, was still the prevailing interpretation of the full faith and credit clause at that time, it seems clear that West Virginia was not bound to recognize the Colorado decree, where the divorce was granted on constructive service of process. Hence, any recognition accorded by this state to a decree of another state based on constructive service at the time the *Goudy* case, *supra*, was decided, would have been upon the principle of comity, and thus recognition might have been constitutionally refused where to do otherwise would have frustrated some public policy.

In a case subsequent to the *Goudy* case it was held that, "no valid divorce from the bond of matrimony can be decreed on constructive service by the courts of a state in which neither party is domiciled and a divorce so obtained is not entitled to the protection of the full faith and credit clause." *Ward v. Ward*, 115 W. Va. 429, 176 S.E. 708 (1934). Whether this case considered the ex parte decree as void by the law of the foreign state and thus subject to a collateral attack here or whether it represented a limitation of the view taken in the *Goudy* and *Caswell* cases, *supra*, and permitted a collateral attack in this state regardless of the rule in the foreign state appears to be a matter of conjecture.

For 35 years the case of *Haddock v. Haddock*, *supra*, was the leading authority regarding constitutional theory as to jurisdiction in divorce. In 1942 once again the status of the ex parte divorce decree was raised in the first case of *Williams v. North Carolina*, 317 U.S. 287 (1942). This decision expressly overruled the *Haddock* case in holding that the purpose of the full faith and credit clause was to alter the status of the several states as independent foreign sovereigns, each free to ignore obligations created under the laws

or by the judicial proceedings of the other, and to make them integral parts of a single sovereign. Hence the conclusion that a divorce decree granted by a state to one of its domiciliaries is entitled to full faith and credit in a bigamy prosecution brought in another state, even though the other spouse was given notice of the divorce proceeding only through constructive service.

The record in the first *Williams* case, *supra*, did not present the question whether the domiciliary state had the power to refuse full faith and credit to a divorce decree of a foreign state because, contrary to the findings of the foreign state, the domiciliary state found that no bona fide domicile was acquired in the foreign state. However, this was the precise issue in question in the second *Williams* case. *Williams v. North Carolina*, 325 U.S. 226 (1945). There it was held that while a finding of domicile by the divorce granting state is entitled to prima facie weight, it is not conclusive in the domiciliary state but might be relitigated there and if full appreciation and application is given to the full faith and credit clause, then the finding of a foreign state may be overturned by cogent evidence.

In *Bennett v. Bennett*, 137 W. Va. 179, 70 S.E.2d 894 (1952), the court of this state recognized that the jurisdiction of the court granting the decree is open to inquiry, and if a bona fide domicile is lacking the decree will be jurisdictionally defective for purposes of out-of-state recognition and therefore full faith and credit will not be mandatory.

It is significant to note that the right to such collateral attack is denied any party who actually litigated the question of jurisdiction in the first forum. *Davis v. Davis*, 305 U.S. 32 (1938). In that case the wife made a special appearance in the divorce granting state to contest husband's allegations as to domicile. The divorce was granted. In subsequent litigation, the domiciliary state refused to recognize the divorce on the grounds of lack of jurisdiction. On appeal the case was reversed. "Both parties having appeared and the domicile question having been fully argued, the decision of the divorce granting state is res judicata. The right to such collateral attack is further limited by *Sherrer v. Sherrer*, 334 U.S. 343 (1948); *Coe v. Coe*, 334 U.S. 378 (1948).

It now appears that the Supreme Court has evolved the policy of subordinating state interests to the unifying force of the full faith and credit clause. Yet, the second *Williams* case, *supra*, recognizes

the interest of the state in the family relationship and allows the domiciliary state to attack the validity of a foreign divorce decree which would seem to effect a check upon those states which are lax in the enforcement of jurisdictional requirements. The decision in the principal case would seem to be in line with the modern authority of the second Williams case which gives the domiciliary state the right to make inquiry into the jurisdiction of the divorce granting state.

H. S. S., Jr.

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CRIMINAL LAW—PLEA OF GUILTY—"JURISDICTIONAL FACTS."—*D* was indicted for violation of the Federal Bank Robbery Act. Upon arraignment *D* entered a valid plea of guilty to the offense charged in the indictment, and judgment was entered by which he was incarcerated in the penitentiary. *D* filed a motion to vacate this judgment which was denied. *Held*, denial of motion to vacate judgment affirmed. A plea of guilty admits all essential allegations, thus relieving the government of the burden of proof, and a court which has jurisdiction of the subject matter and of the defendant has power to enter on such plea a judgment unassailable by collateral attack without conducting an independent inquiry to determine so-called jurisdictional facts. *United States v. Hoyland*, 264 F.2d 346 (7th Cir. 1959).

The principal case expressly states that it overrules an earlier decision by the same court in *La Fever v. United States*, 257 F.2d 271 (7th Cir. 1958). The facts of this case, insofar as applicable to this discussion, are similar to those of the principal case, as both cases involved an appeal from a denial of a motion to vacate judgment based on a plea of guilty. The *La Fever* case held that a plea of guilty admits all non-jurisdictional facts contained in an indictment, but does not admit or waive jurisdictional facts.

These cases present a problem which has plagued courts for years. The decision of the principal case along with that of the *La Fever* case illustrates a situation which causes considerable confusion and may lead to possible misapplication of justice.

Simply stated, the problem is that courts misuse the term "jurisdictional facts" by failing to recognize that there are two distinct categories of facts pertaining to jurisdiction. Generally, as commonly used the term merely refers to facts of a jurisdictional nature. This definition, however, is incomplete and misleading since the