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Conflict of Laws

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CONFLICT OF LAWS

DOMICILE AND RESIDENCE

The meaning of the word "residence" or a similar word or phrase in a statute has given rise to some difficulty. Ordinarily the question is whether the legislature meant domicile or merely residence.[1]

In *Board of Education v. Dille*[2] the court, in dealing with Ohio Revised Code section 3313.64, relating to free schooling for residents of the city or school district, held that the statutory word "resident" refers to residence rather than domicile. However, the decision is weakened by the fact that the court said that the residence and domicile of the person involved were one and the same. Likewise, the case did not concern two states, but merely two school districts within the same state.

Hamilton v. Dillon[3] was concerned with the question whether a certain person had acquired a legal residence in another state, where she had gone for the purpose of getting a divorce. Without saying that legal residence and domicile were synonymous in the particular setting, the court, in reaching its decision, invoked tests peculiar to domicile, rather than residence.

DIVORCE: FULL FAITH AND CREDIT

The case of *Hamilton v. Dillon*[4] also involved the question of re-examining the matter of residence after the granting of a divorce in another state. The husband (or ex-husband) brought an action of habeas corpus against the superintendent of a state mental hospital, contending that he was restrained unlawfully because the person who signed the affidavit (his wife or ex-wife) was a "resident" of Florida, where she had obtained the divorce, and not of Ohio, as required by the statute. In her divorce action she had alleged that Florida was her residence. Because of her participation in the Florida proceedings, the question of her residence was res judicata as to her.[5] But the court held, on the authority of the fourth syllabus paragraph in *Williams v. North Carolina*,[6] that the question of residence could be re-examined, inasmuch as the State of Ohio, through the superintendent of the hospital, was the party raising

1. See RESTATEMENT, CONFLICT OF LAWS § 9, comment *e* (1934); GOODRICH, CONFLICT OF LAWS §§ 19, 20 (3d ed. 1949).

2. 109 Ohio App. 344, 165 N.E.2d 807 (1959).

3. 110 Ohio App. 489, 167 N.E.2d 356 (1959). See also discussion in *Domestic Relations* section, p. 507 *infra*.

4. *Supra* note 3.

5. Sherrer v. Sherrer, 334 U.S. 343 (1948); Coe v. Coe, 334 U.S. 378 (1948).

6. 325 U.S. 226 (1945).

the issue, and had not been a party to the Florida action. Thus, the full faith and credit clause was not applicable.

RECIPROCAL ENFORCEMENT OF SUPPORT ACT

The constitutionality of the act relating to reciprocal enforcement of support[7] was upheld in an opinion by Judge Zimmerman in *Levi v. Levi*,[8] against the argument of lack of due process for want of personal service in the proceedings in North Carolina, the initiating state. The opinion gives an excellent picture of the operation of the statute. However, the syllabus rests the decision solely on the ground that the complaining party "came to life" too late to challenge the constitutionality; thus, technically speaking, Judge Zimmerman's remarks about constitutionality do not constitute part of the decision of the court.

PROCEDURE: CHATTEL MORTGAGES: SUIT FOR DEFICIENCY

It is well settled that matters of procedure are governed by the law of the forum.[9] But it is not always easy to decide what is procedural and what is substantive. In *Mohawk National Bank v. Candler*,[10] defendant bought a car in New York from plaintiff, and gave plaintiff a chattel mortgage on it. Later, in Ohio, plaintiff repossessed the car and had it taken back to New York, where he sold it at public auction. He then sued in Ohio for the deficiency. Ohio Revised Code section 1319.07 prohibits a chattel mortgagee from collecting any deficiency unless he has given at least ten days notice of the sale and unless the notice includes the minimum price for which the property will be sold. Plaintiff gave only a seven day notice, which did not state the minimum price. Nothing was said in the opinion about the law of New York. Upon the ground that plaintiff did not comply with the Ohio statute, the court entered judgment for the defendant. The court held that remedies are governed by the law of the state where suit is brought, as a consequence of which the giving of the notice about the sale of the automobile was governed by the law of the forum, which was Ohio. This application of the general principle puts quite a burden on the plaintiff, who might follow precisely the notice provisions required by the law of the place of sale, only to find that later, when he sues the defendant in another state, he is out of court because of the local requirements.

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7. OHIO REV. CODE ch. 3115.

8. 170 Ohio St. 533, 166 N.E.2d 744 (1960). See also discussion in *Domestic Relations* section, p. 507 *infra*.

9. See RESTATEMENT, CONFLICT OF LAWS § 585 (1934); GOODRICH, CONFLICT OF LAWS § 80 (3d ed. 1949).

10. 166 N.E.2d 540 (Ohio C.P. 1960).