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sued for drivers' examinations¹⁰ still propounds the major rule of right-hand right of way, with no hint of exceptions.

In the interest of simplicity, certainty, and intelligibility, Ohio's definition of right of way should be rewritten without the complicating phrase, and the intersection rule should be augmented by words to the effect that the driver on the left must yield despite the other driver's intent to turn or to proceed straight through the intersection.

CHARLES J. CONSIGLIO

FULL FAITH AND CREDIT — DOMICILE IN DIVORCE ACTIONS

The plaintiff and defendant were married in New York in 1953, and subsequently travelled to Florida on January 8, 1958, where the defendant engaged in extensive business dealings. On February 5, the defendant filed a declaration of domicile and citizenship stating that he had been a bona fide resident of the State of Florida since January 1, 1958. In April of the same year the plaintiff returned to New York, and thereafter, on June 4, the defendant, having remained in Florida, instituted an ultimately successful divorce action in that state.

In the present action,¹ the plaintiff sued in New York for separation, and for a declaration that the defendant's *ex parte* foreign divorce decree was void on the ground that the defendant did not comply with the Florida statutory requirement of six months' residence.² In defense, the defendant argued that since he was domiciled in Florida when the complaint was filed (which fact is undisputed), the Florida court had jurisdiction to grant a valid divorce, and having granted a divorce, the New York court could not go behind the Florida decree and inquire into the length of residence question.

The New York trial court disposed of the defendant's contention that full faith and credit must be given to the Florida decree by holding that the six months' residency requirement, as interpreted by the Florida courts, is a jurisdictional fact,³ and that, therefore, there was no jurisdiction over the subject matter unless the necessary residence were shown. Since an *ex parte* decree entered without proof of this fact is void⁴ and subject to collateral attack in Florida, and because under the full faith and credit clause of the United States Constitution,⁵ a collateral attack is permitted in the forum when such attack would have been permitted in the rendering state,⁶ the New York court held that it could inquire into the jurisdictional requisite of residence.

The court decided that since there was no corroborated proof of

10. OHIO DEP'T OF HIGHWAY SAFETY, DIGEST OF MOTOR VEHICLE LAWS 5 (1959).

the defendant's residence, the Florida court had no jurisdiction over the subject matter and, therefore, its decree was void and no defense to this action for separation.⁷

This decision is unique because the court held that even though the defendant was domiciled in the decree rendering state (Florida), New York was not obligated to grant full faith and credit to the Florida decision. Such a finding is inconsistent with the weight of authority which holds that domicile alone is a sufficient requirement for jurisdiction in divorce actions, and that an *ex parte* divorce granted to a plaintiff who has a bona fide domicile in the rendering state is binding upon the courts of sister states.⁸

Although domicile is considered the necessary element which confers upon the court the power to exercise jurisdiction over the marital status (*res*), the statutes which give particular courts the power to grant divorces often require that one party must have resided within the state for a certain period of time before commencing the divorce action.⁹ It is normally held that such a stipulation does "not affect the international requirement for jurisdiction, which is based on domicile,"¹⁰ but is an addition to it, and that non-compliance with the requirement does not render a divorce decree void if the plaintiff had a bona fide domicile within the state when the suit was commenced.¹¹ These courts take the position that the time of residence merely prescribes a condition or fact that the plaintiff must prove to entitle him to a divorce. However, if he fails to establish this fact the court's jurisdiction is not affected — the judgment may be erroneous, but it is not void.¹²

It now becomes apparent that there are two firmly established

1. *Camp v. Camp*, 189 N.Y.S.2d 561 (Sup. Ct. 1959).
2. FLA. STAT. ANN. § 65.02 (Supp. 1957) states in part that "the complainant must have resided for six (6) months in the state before the filing of the bill of complaint."
3. *Rollins v. Rollins*, 155 Fla. 83, 19 So. 2d 562 (1944); *Aldrich v. Aldrich*, 153 Fla. 856, 16 So. 2d 47 (1943).
4. *Chisolm v. Chisolm*, 98 Fla. 1196, 125 So. 694 (1929).
5. U.S. CONST. art. IV, § 1. "Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State."
6. *Cook v. Cook*, 342 U.S. 126 (1951); *Halvey v. Halvey*, 330 U.S. 610 (1947).
7. *Camp v. Camp*, 189 N.Y.S.2d 561 (Sup. Ct. 1959).
8. *Williams v. North Carolina*, 317 U.S. 287 (1942).
9. See FLA. STAT. ANN. § 65.02 (Supp. 1957).
10. GOODRICH, CONFLICT OF LAWS 404 (3d ed. 1949); *accord*, RESTATEMENT, CONFLICT OF LAWS § 110 (1934).
11. See Annot., 2 A.L.R.2d 291 (1948); *Hamblin v. Superior Ct.*, 195 Cal. 364, 233 Pac. 337 (1925).
12. *Thurston v. Thurston*, 58 Minn. 279, 59 N.W. 1017 (1894), where the court held that where plaintiff lied as to his length of residence, the court of the rendering state, nevertheless, had jurisdiction, for such judgment is on the same footing as any other judgment based upon false testimony; *Sleeper v. Sleeper*, 129 N. J. Eq. 94, 18 A.2d 1 (1941); *Hammond v. Hammond*, 45 Wash. 2d 855, 278 P.2d 387 (1954), where an Idaho decree was attacked in Washington.

rules in conflict. If the rule is applied that once domicile is established a court has jurisdiction over the subject matter, enabling it to render a valid divorce decree which must be recognized by sister states, the New York court's decision not to grant full faith and credit to the Florida decree is clearly erroneous. However, the decision can be supported if the rule is applied that a decree may be attacked collaterally in a sister state, if it can be attacked collaterally in the rendering state.

The United States Supreme Court has not yet decided whether constitutional protection would be given to a state requirement other than, or in addition to, domicile, which is used as a jurisdictional basis for divorce.¹³ It has stated *only* that domicile is a sufficient requirement for jurisdiction in divorce cases, because domicile creates a situation over which the state can exercise control. In *Williams v. North Carolina*,¹⁴ the Supreme Court upheld a divorce decree rendered in a state which based jurisdiction in divorce actions on domicile. The Court set forth the rule that once it is established that the plaintiff is domiciled in the rendering state, sister states must grant full faith and credit to the foreign decree. If this were not so, and the decrees of states altering the marital status of persons domiciled therein were not recognized as valid throughout the union, disaster would clearly result to innocent persons.¹⁵ One could easily find himself in the untenable position of being married in one state and single in another. However, it has been logically stated that "a husband without a wife or a wife without a husband is unknown to the law."¹⁶

It is clear that the Supreme Court, in expounding this view, placed great emphasis upon the desire for a rule which would lend finality to litigation in divorce cases.¹⁷ This goal is not only desirable, but necessary, if our judicial system is to operate effectively.

It is this writer's opinion that if and when a case testing the validity of a jurisdictional requirement in addition to domicile comes before the Supreme Court, the Court will reiterate the view that domicile is the only prerequisite for jurisdiction. The strong dissenting opinions registered in the second *Williams v. North Carolina*¹⁸ case seem to support this view. These dissenting opinions declared that the majority's decision that the jurisdictional fact of domicile may be inquired into and impeached by sister states, leads to the result that every *ex parte* divorce decree is now subject to collateral attack on the domicile question, which means that one's status after a divorce

13. Snow, *Recognition of Sister State Divorce — Its Compulsory Aspect*, 25 BROOKLYN L. REV. 278 (1959).

14. 317 U.S. 287 (1942).

15. *Williams v. North Carolina*, 317 U.S. 287, 301 (1942).

16. *Atherton v. Atherton*, 181 U.S. 155 (1901).

17. *Williams v. North Carolina*, 317 U.S. 287 (1942).

18. 325 U.S. 226 (1945). The Supreme Court allowed the Nevada court's finding as to domicile to be collaterally attacked in a prosecution by a state for bigamy.