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Conflict of Laws

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CONFLICT OF LAWS

FEDERAL VERSUS STATE LAW

The case of *Harris v. Pennsylvania Railroad*¹ is the latest example of the doctrine that in actions based on the Federal Employers' Liability Act,² the substantive law as laid down by the federal courts, and particularly by the Supreme Court of the United States, is controlling.

DIVORCE: JURISDICTION AND FOREIGN JUDGMENTS

In *Johnson v. Johnson*³ the court held that even though a married woman is a minor, she is capable of acquiring a domicile separate from that of her husband for the purpose of divorce jurisdiction. The court observed that the Ohio divorce laws do not contemplate that a person will be discriminated against by reason of minority.⁴

It is well settled that a state cannot exercise through its courts jurisdiction to dissolve a marriage when neither spouse is domiciled within the state.⁵ Likewise, the word "residence" in a divorce statute is generally interpreted to mean "domicile."⁶ It is therefore a bit unsettling to find the court in *Jackman v. Jackman*⁷ stating that the word "resident" in Ohio Revised Code section 3105.03, relating to jurisdiction for divorce, is not synonymous with "domiciliary." However, the decision actually turned on a pleading point, and the statement may fairly be called dictum.

The case of *Davis v. Davis*⁸ recognizes the validity of a Mexican divorce where the plaintiff in that action was domiciled in Mexico at the time of the divorce proceedings. The court bolstered its conclusion by pointing out that the present plaintiff, who was the defendant in the Mexican action, had known about the decree, and about her ex-husband's remarriage, for a period of about nineteen months before bringing the present action, and that avoidance of the Mexican decree would affect the legitimacy of an unborn child.

1. 168 Ohio St. 582, 156 N.E.2d 822 (1959).

2. 45 U.S.C. §§ 51-60 (1908).

3. 159 N.E.2d 820 (Ohio C.P. 1959). See also discussion in *Domestic Relations* section, p. 372 *infra*.

4. The court also discussed the question of the defendant-husband's domicile in connection with service by publication.

5. See RESTATEMENT, CONFLICT OF LAWS §§ 111 (1934), 113 (Supp. 1948).

6. *Id.* at § 9, comment *e* (1934).

7. 160 N.E.2d 387 (Ohio Ct. App. 1959).

8. 156 N.E.2d 494 (Ohio C.P. 1959). See also discussion in *Domestic Relations* section, p. 372 *infra*.

JURISDICTION TO DECREE ALIMONY OR SUPPORT

Except where there is property of the defendant before the court, jurisdiction to decree alimony or support depends upon personal jurisdiction over the defendant.⁹ The principle is upheld in two recent cases.¹⁰

CUSTODY JURISDICTION

The question of jurisdiction to decree custody of minor children is far from simple, and this Survey is not the proper place for an extended treatment. It is enough to give the current Ohio cases, leaving to the interested reader the task of following through on the topic as a whole.

In *Davis v. Davis*¹¹ the court held that the Mexican court lacked jurisdiction to award custody, as neither the mother nor the children were before the court. The court so held despite the fact that the father was domiciled in Mexico. The court based its decision upon *May v. Anderson*.¹²

In contrast, but distinguishable, is *Noble v. Noble*,¹³ holding that despite the absence of the father, the court had jurisdiction to grant custody. In this case all the parties were domiciled in Ohio, and the mother and children were present in Ohio, the husband's interest in the family group having apparently waned, as evidenced by his failure to come home week-ends from his out-of-state labors. The court referred to *May v. Anderson*¹⁴ as being distinguishable. Whether domicile or physical presence of the children was regarded as the more significant factor was not determined.

PROCEDURE: PRESUMPTIONS AND INFERENCES

*McDougall v. Glenn Cartage Company*¹⁵ reiterates the rule that matters of evidence and the inferences to be drawn therefrom are governed by the law of the forum. The case dealt with an accident in New York, and the question was whether, under the circumstances,

9. See RESTATEMENT, CONFLICT OF LAWS § 116, especially comment *d* (1934).

10. *Davis v. Davis*, 156 N.E.2d 494 (Ohio C.P. 1959) (alimony); *Noble v. Noble*, 160 N.E.2d 426 (Ohio C.P. 1959) (support).

11. *Supra* note 10.

12. 345 U.S. 528 (1953). See Andrews, *Conflict of Laws, Survey of Ohio Law — 1957*, 9 WEST. RES. L. REV. 270, 274 (1958); Andrews, *Conflict of Laws, Survey of Ohio Law — 1955*, 7 WEST. RES. L. REV. 250, 254 (1956); Andrews, *Conflict of Laws, Survey of Ohio Law — 1953*, 5 WEST. RES. L. REV. 247, 249 (1954); Andrews, *Conflict of Laws, Survey of Ohio Law — 1952*, 4 WEST. RES. L. REV. 210 (1953).

13. 160 N.E.2d 426 (Ohio C.P. 1959). See also discussion in *Domestic Relations* section, p. 374 *infra*.

14. 345 U.S. 528 (1953).

15. 169 Ohio St. 522, 160 N.E.2d 266 (1959). The decision of this case in the court of appeals was noted in Andrews, *Conflict of Laws, Survey of Ohio Law — 1958*, 10 WEST. RES. L. REV. 356, 359 (1959). See also discussion in *Evidence* section, p. 380 *infra*.