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I. General Principles

The language of the typical state statute is general and unlimited in terms, as, "*a* contract," "*any* tort," "*every* will," as if the statute should be applied to all cases involving such a matter in the courts of the state. Ordinarily, statutes originate and are drafted with thought only to matters within the state. When the matter in issue occurs wholly or partly in another state, it would be an error to determine the reach and application of the statute merely from the generality of its language. In the absence of specific direction this should be determined in the light of the principles of conflict of laws, which themselves take into account the policy of the local law. This was pointed out in *Bearman v. Camatsos*, which involved the effect of the foreign probate of a will and which is discussed below.[1]

II. The Jurisdiction of Courts

The Tennessee Law Revision Commission has announced that a subject of its study and report to the 1965 General Assembly is jurisdiction over foreign corporations. The ensuing legislation as well as the report and its supporting study will be of great importance.

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1. 385 S.W.2d 91 (Tenn. 1964).

III. JUDGMENTS

A. *Divisible Divorce and Matrimonial Domicile*

Beginning in 1942 with the first case of *Williams v. North Carolina*,[2] the Supreme Court of the United States has remade the law on sister state divorce decrees. A case in the Court of Appeals of Tennessee, *Burton v. Burton*,[3] involved the question whether the decree of the state of matrimonial domicile is to be given special effect. There, a Tennessee woman married a Texas man and went to live in Texas. Some years later she was turned out of the house by him, so she alleges, and returned to Tennessee to live. The husband obtained a divorce in Texas, apparently without personal jurisdiction over the wife or participation by her in the proceedings. The divorced wife brought the present suit in Tennessee for separate maintenance, and the husband set up the Texas divorce as a bar. The first *Williams* case[4] made clear that the state of the domicile of one spouse can grant a divorce which must be given full faith and credit in its effect of ending the personal relation between the spouses, even though there was no personal jurisdiction over the respondent spouse. Other cases have made equally clear that such a divorce, though good in ending the personal aspects of the marital relationship, may not be good enough to end the economic relationships as well. As Mr. Justice Douglas put it in the leading case of *Estin v. Estin*,[5] "The result in this situation is to make the divorce divisible—to give effect to the Nevada decree insofar as it affects marital status and to make it ineffective on the issue of alimony."[6] The principle that the economic relationship may have continuing protection despite the good sister state divorce began with a case in which the wife had secured a decree of alimony in the state of matrimonial domicile of the spouses before the foreign divorce decree was granted.[7] It has been extended to protect the wife in the award of a decree for support awarded after the divorce decree, as in *Vanderbilt v. Vanderbilt*,[8] where the Supreme Court of the United States stated:

> Since the wife was not subject to its jurisdiction, the Nevada divorce court had no power to extinguish any right which she had under the law of New York to financial support from her husband. It has long been the constitutional rule that a court cannot adjudicate a personal claim or obligation unless it has jurisdiction over the person of the defendant [citing *Pennoyer*

2. 317 U.S. 387 (1942).
3. 376 S.W.2d 504 (Tenn. App. W.S. 1963).
4. *Supra* note 2.
5. Estin v. Estin, 334 U.S. 541 (1948).
6. *Id.* at 549.
7. *Supra* note 5.
8. 354 U.S. 416 (1957), *affirming* 1 N.Y.2d 342, 135 N.E.2d 553 (1956).

> *v. Neff*[9]] . . . . Therefore, the Nevada decree, to the extent it purported to affect the wife's right to support, was void.[10]

Many years earlier the Supreme Court of Tennessee had made a similar distinction in the leading case of *Toncray v. Toncray*,[11] in which it awarded alimony to a Tennessee woman whose husband had been granted a divorce in Virginia.

In the *Burton* case[12] the court of appeals, in denying protection to the divorced wife's economic interest, relied on the fact that the divorce was granted in the state of matrimonial domicile. Should and does the matrimonial domicile have special power in divorce proceedings? It was long the rule that it did have greater power in granting a divorce and that the full faith and credit clause would protect its decree ending the personal relationship. The first *Williams* case,[13] however, denied to it any special power: "[S]o far as state power is concerned, no distinction between a matrimonial domicil and a domicil later acquired has been suggested or is apparent."[14]

It seems doubtful that the matrimonial domicile should have any special power in ending the economic relationship of the spouses. The state with the most important interest in the continued support of the wife is not the state of matrimonial domicile, but the state in which she later resides and which will have to carry the burden of her support if it is not borne by the divorcing husband. In the *Burton* case Tennessee was her old home to which she returned after the divorce.

B. *Custody of Children*

In custody cases problems of judicial jurisdiction and of full faith and credit to judgments frequently become intertwined. The Supreme Court of the United States has not spoken clearly on these matters, as the Supreme Court of Tennessee pointed out in *Coury v. State*.[15] This case involved prolonged litigation first in Oklahoma and then in Tennessee over the custody of children, who had been allowed by an order of the Oklahoma court to move to Tennessee and there live with their mother. The Supreme Court of Tennessee held that the Circuit Court of Tennessee had jurisdiction in proceedings for custody of the children, since the domicile of the children had followed the domicile of their mother; that a second order of the Oklahoma court made after the children had moved to Tennessee was not controlling;

9. 95 U.S. 714, 726-27 (1877).
10. 354 U.S. at 418-19.
11. 123 Tenn. 482, 131 S.W. 977 (1910).
12. *Supra* note 3.
13. *Supra* note 2.
14. *Id.* at 301.
15. 213 Tenn. 454, 374 S.W.2d 397 (1964).

and that the circuit court should determine custody "according to the best interest of the minors."

Strube v. Strube[16] was a still more complicated case. A Georgia court had awarded custody of children to the mother. The mother moved to Florida taking the children with her, and the father moved first to New Jersey and later to Tennessee. The father obtained possession of the children in Tennessee and the mother brought habeas corpus proceedings to regain possession of them. The court of appeals affirmed the trial court in giving continuing effect to the Georgia decree in favor of the mother. Relying on *Kenner v. Kenner*[17] and other cases, Mr. Justice Bejach stated that the Georgia decree should be deemed res adjudicata as between the parents, though change of circumstances and the interests of the children might lead to a change in custody.

C. *A Foreign Decree of Probate*

Bearman v. Camatson[18] involved a contest for probate over two sets of testamentary instruments of a deceased Tennessee domiciliary. The first was a will duly executed in Tennessee, which was offered as in an original proceeding for probate at the domicile. The second consisted of two instruments originating in Greece, one of which was a revocation of the Tennessee will, the other a new will. The offer for probate of the Greek will was supported only by a certified copy of it and of proceedings in Greece which there "probated" it. The proponents of the Greek will and probate proceedings relied on section 32-503 of the Tennessee Code. The Supreme Court of Tennessee conceded that the wording of the code section ("If . . . it appears . . . that *the* will has been duly . . . admitted to probate *outside* of the state. . . ."),[19] if read literally, would support the proponents of the Greek will. Speaking through Chief Justice Burnett it held, however, that the statute should not be read literally and did not require acceptance of the Greek probate. The decision seems right. There are two grounds for giving effect to a foreign probate.[20] One is the principle of res judicata, protected in interstate cases by the full faith and credit clause. The second ground is the principle that the disposition of a decedent's movables is governed by the law of his domicile at death; and a determination by a court of the domicile in granting probate of a will of the decedent should not be controverted, as it is a specific application of its law by the court of

16. 379 S.W.2d 44 (Tenn. App. W.S. 1963).
17. 139 Tenn. 211, 201 S.W. 779 (1918).
18. 385 S.W.2d 91 (Tenn. 1964).
19. TENN. CODE ANN. § 32-503 (Supp. 1964).
20. See RESTATEMENT, CONFLICT OF LAWS § 470 (1934).

the domicile to the issue in question. The first principle, res judicata, was inapplicable in the principal case, for an essential to it is that the first tribunal had jurisdiction over the parties to the controversy or else over the thing involved. The Greek tribunal had neither basis of jurisdiction. The second ground—following a specific application of its law by a court of the domicile—was also lacking, since Greece was not the domicile of the decedent.[21] It is worth noting that counsel and the Supreme Court seemed to assume that the Tennessee statute gives effect to probate proceedings in another country as well as to those in another state of the Union. It is wise in these days of expanding international commerce and relations that an American court start with the inclination to use the same principles for international as for interstate matters. It is important, however, for the court to assure itself that the parallel is justified. The parallel may not hold in the present case, for the methods of dealing with estates of decedents in other countries differ widely from those in our own.[22] It is at best doubtful that the so called "probate" proceedings in Greece measured up to the formalities and opportunities to be heard in the kind of probate proceedings contemplated in the Tennessee statute.[23]

D. *Action on a Sister State Verdict*

A matter apparently of first impression was raised in a federal court: is a verdict of a jury in one state, on which no judgment has been entered, the basis of an action in a second state? The facts were that in a Georgia state court an action was brought for damages for personal injuries, and when the defendants failed to appear the jury gave the plaintiff a large verdict. The present action was then brought in a federal court in Tennessee against the Georgia defendants' insurance companies to recover the amount of the verdict against the insured. The plaintiff pleaded and had certified the Georgia verdict but failed to plead judgment on the verdict. The federal judge, Judge Darr, *sua sponte* dismissed the complaint for want of jurisdiction.[24] In doing so, the Judge took judicial notice of the law of Georgia which led him to the view that the Georgia proceedings were not final until there was a judgment. The full faith and credit statute and the implementing statute grant their protection

21. The parties had stipulated that the decedent's "last residence" was in Tennessee, and the court took this to mean domicile.

22. See Rheinstein, *European Methods for the Liquidation of the Debts of Deceased Persons*, 20 IOWA L. REV. 431 (1935).

23. See EHRENZWEIG, FRAGISTAS & YIANNOPOULOS, AMERICAN-GREEK PRIVATE INTERNATIONAL LAW (1957); 4 RABEL, THE CONFLICT OF LAWS, A COMPARATIVE STUDY § 73 (1958).

24. Frazier v. Allstate Ins. Co., 229 F. Supp. 412 (E.D. Tenn. 1964).

to "judicial proceedings" broadly. As Justice Jackson put it in a concurring opinion in a case involving the enforcement of a North Carolina alimony decree in Tennessee:[25]

> Neither the full faith and credit clause of the Constitution nor the Act of Congress implementing it says anything about final judgments or, for that matter, about any judgments. Both require that full faitb and credit shall be given 'judicial proceedings' without limitation as to finality.[26]

Yet Judge Darr's decision seems wise. The Georgia court was composed of the judge as well as the jury. Georgia law, which was judicially noticed may allow the opening of a default after verdict and before judgment, and the legal controversy had not been determined in the Georgia court by the verdict alone. Until determined there by a judgment, another court should not be asked to give effect to the Georgia proceedings. The form of the decree of the federal court, which dismissed the complaint "for want of jurisdiction," may be open to question. Apparently, the court had jurisdiction in every sense over the parties and the action. The plaintiff had simply failed to prove a cause of action.

IV. TORTS

A case in the United States District Court for the Middle District of Tennessee[27] acutely distinguished three problems of coordination or choice of laws: federal law and state law, the laws of two states, and two parts of the law of the same state.

A. *Problems of Coordination or Choice of Laws*

A railroad trainman who resided in Tennessee was killed in a railroad accident in Georgia. His marital relations were tangled. While he left a lawful wife and their two legitimate minor children, at the time of his death he was living with another woman and their three minor illegitimate children whom he was supporting. The lawful wife was appointed administratrix of the employee's estate. She made a settlement with the railroad company without court approval, though the scope of the release she executed was not clear. Shortly afterward a second administratrix of the decedent was appointed in another county, and she brought the present action against the railroad company under the Federal Employers' Liability Act (FELA).[28] The action was on behalf of the illegitimate dependent

25. Barber v. Barber, 323 U.S. 77 (1944).
26. *Id.* at 87 (concurring opinion).
27. Tune v. Lonisville & Nashville R.R., 223 F. Supp. 928 (M.D. Tenn. 1963).
28. 53 Stat. 1404 (1939), 45 U.S.C. § 51 (1958).

children as well as of the legitimate children and the widow. The railroad company, relying on the release, moved for summary judgment. The question whether the illegitimate children were to be included as beneficiaries turned on the source looked to for the meaning of the word "children" in the FELA which gives a right of action for death "to his [employee's] personal representative, for the benefit of the surviving widow . . . and *children* of such employee."[29]

The first problem was whether the meaning of "children" is to be determined as a matter of federal law or of state law. The Supreme Court of the United States has not passed on the question, and Judge Miller found it was unnecessary to do so in this case, since under his view the word would have the same meaning whether the law of a state or an independent federal law was used. Ultimately the problem seems to be one of federal law, as it is a federal statute that is being applied. But federal law may, instead of having its own distinctive and self-contained meaning, borrow the meaning from the law of a state.[30]

If a distinctive federal law meaning was not to be used, the second problem arose: to which state's law should the court look; to Georgia, the place of the fatal accident, or to Tennessee, the home of the decedent and his two families? Assuming that for the purpose of choice of law as to negligence in an interstate conflicts case, the law of the place of the accident would be looked to, the court held that for the purpose of determining who were the protected beneficiaries the state of dominant interests was Tennessee.

> The predominant consideration here is the legal relationship between these children and their putative father. The burden of caring for them will fall on the state in which they reside. . . . In this respect the state of Georgia has no interest or concern. . . . Since the FELA is national in its scope, the fact that the employee was killed in Georgia should not require a result different from that which would have obtained had the decedent been killed in Tennessee.[31]

This interpretation of the term of a national law is analogous to the present trend in conflict of laws of the states which looks to the place of dominant interest as to the particular aspect of the alleged tort.[32]

The last question was "what part of the law of Tennessee should

29. *Ibid.*

30. See Friendly, *In Praise of Erie and of the New Federal Common Law*, 19 THE RECORD 64 (1964); Miskkin, *The Variousness of Federal Law: Competence and Discretion in the Choice of National and State Rules of Decision*, 105 U. PA. L. REV. 797 (1957).

31. 223 F. Supp. at 931.

32. See Babcock v. Jackson, 12 N.Y.2d 473, 191 N.E.2d 279 (1963).

be considered controlling." The Tennessee Wrongful Death Act,[33] as the court found, is a statute of survival which gives "to the beneficiaries the same right which had belonged to the deceased prior to his death"[34] regardless of whether they were his dependents. The Tennessee Workmen's Compensation Act is not a statute of survival and gives a new and independent right for the benefit of dependents. The Tennessee Wrongful Death Act does not extend its benefits to illegitimate children of the deceased; the Workmen's Compensation Act does so as a part of its purpose to protect his dependents. The FELA is similar to the latter statute both in its formal character as creating a new right and in its substantial purpose to protect dependents. Because of the similarity the court accepted the meaning of "children" given by the Tennessee Workmen's Compensation Act and held the illegitimate children were protected. The effect of the release on the claims of any of the beneficiaries and its validity against an attack of fraud in procurement were reserved for consideration until the hearing on the merits.

V. CONTRACTS

The choice of law to govern the defense of usury in a bank loan and the rights of one guarantor against his fellow guarantors was presented in the United States District Court in Nashville.[35] Eight men, several of them Tennesseans, agreed to guarantee a loan made by a Texas bank to a Texas corporation in aid of its mining operations there. The bank made the loan, the borrower corporation was unable to repay it, and one of the guarantors paid the loan and took an assignment to himself of the bank's claims. This guarantor pressed the present action against a co-guarantor in the federal court. The choice of the governing law was involved as to both a defense of usury and the scope of the rights of one co-guarantor against another. The settled principle was followed that the federal court uses the conflicts rule of the state in which it sits. The Tennessee rule of choice of law, so the court found, is that the law intended by the parties will govern, with a presumption they intended to use the law of the place of making. In the *Tennessee Survey* article of last year[36] it was suggested that the adoption of the Uniform Commercial Code would thereafter lead to the use throughout the field of contracts of the principle set out in the code's principal provision on conflict of laws. Under the code, as under the Tennessee case the court relied

33. TENN. CODE ANN. § 20-607 (Supp. 1964).
34. 223 F. Supp. at 933.
35. Moody v. Kirkpatrick, 234 F. Supp. 537 (M.D. Tenn. 1964).
36. 17 VAND. L. REV. 937, 938 (1964).

on, the Texas law would govern in the matter of usury. Similarly, Texas law was followed in denying a right to the plaintiff to maintain an action on the note and guaranty and on the guaranty itself, but in allowing him to maintain a suit for contribution against his co-obligor. On the scope of recovery in contribution the federal court stated this is a matter of remedy to be governed by the law of the forum. This view of the scope of liability may be open to question; but the court's conclusion that on a matter of this importance the federal court in Tennessee should do what the Tennessee state court would do seems clearly right, for as the judge stated:

> the outcome in the federal court should not be materially different from that which would prevail in the courts of the state regardless of whether the issue is one of substantive or procedural law.[37]

37. 234 F. Supp. at 542, citing Guaranty Trust Co. v. York, 326 U.S. 99 (1945).