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Full Faith and Credit—Collateral Attack of Divorce Decree Rendered in A Sister State

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Where there has been an exception to the necessity for intent, it has accrued in statutes intended to maintain a public policy. Many instances are to be found in regulatory measures stemming from the exercise of the police power which emphasizes the achievement of some social betterment rather than the punishment of crime. *Shevrin Carpenter Co. v. Minnesota*, 218 U. S. 57 (1909). The crimes created primarily for the purpose of singling out wrongdoers for punishment or correction commonly require *mens rea*. Those punishable without it are mainly offenses which are regulatory in nature and involve light fines rather than imprisonment. Sayre, *Public Welfare Offenses*, 33 Col. Law Rev. 55 (1933).

The defendant's conviction was properly reversed. Ordinarily for there to be a felony conviction the defendant's physical act must be accompanied by *mens rea*. This is particularly true in the principal case where the statute's express words are "knowingly converts," and where the statute is a codification of the common law crime of larceny which had required a guilty mind.

Charles Ryan Desmond

FULL FAITH AND CREDIT—COLLATERAL ATTACK OF DIVORCE

DECREE RENDERED IN A SISTER STATE

This was an action brought by Arthur Cook, the Respondent, against Florence Cook, the Petitioner, to annul two marriages between the parties. Petitioner and Respondent were married in 1943. Respondent then learned that his wife was still married to her previous husband. The parties agreed that Petitioners should go to Florida and obtain a divorce. Shortly after the divorce Petitioner and Respondent were remarried. Marital difficulties followed. Respondent brought the present action in the Vermont courts, to have his two marriages to the Petitioner annulled. He alleged that at the time of his two marriages to Florence Cook, she was already married. The Supreme Court of Vermont granted the annulments on the grounds that full faith and credit need not be given to the Florida decree because Petitioner was not a bona fide domiciliary of Florida at the time of her divorce. *Cook v. Cook*, 116 Vt. 374, 76 A. 2d 593 (1950). In as much as the record does not show whether or not the husband was personally served or whether he appeared in the Florida proceedings, the United States Supreme Court remanded the cause for a determination of this issue before it would allow a collateral attack on the Florida decree. *Cook v. Cook*, 72 S. Ct. 157 (1951).

Prior to 1942, in order for a spouse to obtain a divorce which was entitled to full faith and credit, it was necessary that the suit be instituted at the matrimonial domicile, *Atherton v. Atherton* 181 U. S. 155, (1901); or there had to

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be personal service on the defendant spouse or an appearance by the defendant spouse in the divorce proceedings, *Cheever v. Wilson*, 9 Wall. 108, (1869). In *Haddock v. Haddock*, 201 U. S. 562, (1906), a divorce was obtained in Connecticut by a husband who had wrongfully left his wife. Connecticut was not the matrimonial domicile and there was neither personal service nor an appearance by the wife. It was held that the divorce was not entitled to full faith and credit, even though the husband was a bona fide domiciliary of Connecticut. The matrimonial domicile was said to have remained with the wife because the husband was the wrongful party.

In the first of the famous Williams cases, *Williams v. North Carolina*, 317 U. S. 278, (1942), the Supreme Court overruled the *Haddock* doctrine, and held that a divorce obtained at the bona fide domicile of either of the spouses was entitled to full faith and credit. In the second Williams case, *Williams v. North Carolina*, 325 U. S. 226, (1945), it was held that the forum could refuse to give full faith and credit if the plaintiff spouse in the divorce action had not obtained a bona fide domicile in the state where the divorce decree was granted. Domicile was said to be a jurisdictional fact which could be determined de novo by the forum. The question of what law (i.e. the law of the state of rendition, or the law of the forum) should be applied in determining if there was a bona fide domicile was not answered.

The issue of domicile can not be relitigated by the defendant spouse if he has made an appearance in the court of rendition and contested that issue, *Sherrer v. Sherrer*, 334 U. S. 343 (1947), nor may it be relitigated if the defendant spouse had merely appeared, and the issue of domicile could have been litigated. *Coe v. Coe*, 334 U. S. 378 (1948). In *Johnson v. Muelberger*, 340 U. S. 581 (1951), it was held that a third party could not collaterally attack a decree where the defendant spouse had appeared in the divorce proceeding. In each of the above situations collateral attack would not be allowed in a sister state, where the state of rendition would not allow the decree to be collaterally attacked in its own courts. *Sherrer v. Sherrer, supra*.

Thus under the rulings of the *Sherrer*, *Coe*, and *Johnson* Cases, the respondent in the principal case would be barred from collaterally attacking the divorce if the petitioner's husband had either appeared or had been served in the Florida proceeding because Florida does not allow collateral attack in its own courts.

The principal case adds little to the federal divorce laws. It is but a reaffirmation of the rules laid down in the Supreme Court decisions following the first *Williams* case. Collateral attack of a divorce decree is still allowed but there must be evidence that the defendant spouse did not appear, before a third party can relitigate the issue of domicile. The majority of the court held that where there

is no evidence whether the defendant spouse had or had not appeared the case must be remanded to determine that issue. Justice Frankfurter believed that where there is no such evidence it must be presumed that the defendant spouse failed to appear and that therefore the jurisdictional fact of domicile could be collaterally attacked.

Janet McFarland

WRONGFUL DEATH—ACTION BY WIFE'S ADMINISTRATOR ALLOWED
THOUGH WIFE COULD NOT HAVE BROUGHT ACTION HAD SHE LIVED

Plaintiff, administrator of the estate of a woman who was killed by her husband, sued the executor of the husband's estate under the Illinois Wrongful Death Statute. *Held*: Even though the wife could not have maintained an action in tort had she lived, because a wife cannot sue her husband in tort in Illinois, her administrator can sue her husband's executor for wrongful death. *Welch v. Davis*, 410 Ill. 130, 101 N. E. 2d 547 (1951).

At common law all civil actions for personal injuries abated with the death of either the injured party or the wrongdoer. *Baker v. Bolton*, 1 Camp. 493, 170 Eng. Rep. 1033 (K. B. 1808); *Putnam v. Savage*, 244 Mass. 83 at 84, 138 N. E. 808 at 809 (1923). In 1846 the English adopted a wrongful death statute known as Lord Campbell's Act (9 and 10 Vict., c. 93). It allowed an action for the death of a person whenever the person himself could have sued for the injury had he survived. Such a statute was enacted in New York. L. 1847 c. 450, now in N. Y. Decedent Estate Law §§130-134. Today every state has a similar statute. Wrongful death statutes are not survival statutes giving a right of action for a personal injury to the deceased. *Greco v. Kresge Co.*, 277 N. Y. 26 at 32, 12 N. E. 2d 557 at 560 (1938). The cause of action is one entirely independent from any that the deceased may have had. It is given to a representative of the decedent's estate as trustee to recover damages suffered by the surviving spouse and next of kin, because of the death of the deceased. *Greco v. Kresge Co.*, *supra*.

The first section of wrongful death acts usually provide for liability notwithstanding the death of the injured person. The second section of the act provides that the action shall be brought in the name of a personal representative of the deceased, and the amount recovered shall be for the exclusive benefit of the widow and next of kin of the deceased, and that the jury may give such damages and compensation as they deem fair. See, N. Y. Decedent Estate Law §130.

The provision limiting the death action to those cases when the deceased might have recovered damages had he lived is the crucial section in the instant