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Conflict Of Laws—Choice of Law

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in *Garvin v. Garvin*.²⁸ The *Garvin* case was clear authority for the issuance of the injunction in *Hammer v. Hammer*, and was cited as such. It would appear that at least this portion of the New York law of divorce is now well settled.

Choice of Court

An employee of a large organization may find himself working at different times in different States. He may remain outside of his State of domicile or of employment for varying periods. When such an employee is injured on the job, what forum is to handle any claims which he might have against his employer? Such a problem was presented in *Craddock v. Hallen Co.*²⁹

Plaintiff, a resident of Pennsylvania, was employed as an apprentice steel-worker by a New York corporation. He was sent to Indiana, to remain there until the completion of a particular construction job. Sustaining personal injury, he sought workmen's compensation in New York, where an award was made and sustained on appeal to the Appellate Division.³⁰ The Court of Appeals, in disallowing the award, held that the New York Workmen's Compensation Board had no jurisdiction. The Court reasoned that such employment outside the State was not transitory or temporary but was at a fixed place; therefore, New York had but a remote concern with it.³¹

In this State, the solution to the above question is thus presented by a characterization of the work itself. The Court of Appeals has consistently withheld the State's facilities where the employment is, in any sense, "stationary"³²—distinguishing this type of work from that done by salesmen and others similarly situated.³³

Choice of Law

In conflict of laws, the "choice of law" contemplates the problems inherent in the determination of the particular local law applicable in a specific case. For example, when a testator de-

28. 302 N. Y. 96, 96 N. E. 2d 721 (1951).

29. 304 N. Y. 240, 107 N. E. 2d 11 (1952).

30. 279 App. Div. 679, 107 N. Y. S. 2d 874 (3rd Dep't 1951).

31. *Matter of Cameron v. Ellis Const. Co.*, 252 N. Y. 394, 169 N. E. 622 (1930).

32. *Matter of Roth v. A. C. Horn Co.*, 287 N. Y. 545, 38 N. E. 2d 221 (1941).

33. *Matter of Amaxis v. N. A. Vassilaros, Inc.*, 258 N. Y. 544, 180 N. E. 325 (1931); *Matter of Zeltoski v. Osborne Drilling Corp.*, 264 N. Y. 496, 191 N. E. 532 (1934).

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vises realty situated in more than one State, several questions are immediately raised.

The law of which jurisdiction will:

- (1) determine whether an equitable conversion has taken place, and if so, its effect in the conflicts situation?
- (2) regulate the construction of the will, including the testator's intent?

Further, does the determination of either, or both, of the previous questions by forum one estop forum two from making an independent investigation?

The case of *In re Good's Will*³⁴ presented all of these problems to the Court of Appeals. In 1913, the testator executed his will in the State of his domicile, New Jersey. In it he created three separate trusts providing for the payment, to specified persons, of the income from realty situated in New Jersey, Colorado, and New York. (Under the terms of the will, the trustees were given a discretionary power of sale over the property. No particular State law was specified as controlling.³⁵) The testator's daughter was named as life beneficiary in one of the trusts, which also provided a substitutional gift to "the surviving issue of my said daughter" in the event that she predeceased either the testator or his wife. Testator died, and the will was admitted to probate in New Jersey in 1915. The testamentary trusts having terminated, a construction of the will became necessary to determine who was entitled to share in the remainder created in the daughter's trust provision, *i. e.*, whether the word "issue" evinced an intent to pass the property *per stirpes* or *per capita*.

The Chancery Court of New Jersey³⁶ ruled that there had been an equitable conversion of the realty; and that the property passed *per stirpes*. On appeal, the New Jersey Supreme Court³⁷ reversed the Vice-Chancellor's construction, ruling that the property was

34. 304 N. Y. 110, 106 N. E. 2d 36 (1952).

35. Had the testator made it clear that the will was to be interpreted according to the laws of a specified jurisdiction, such intent would usually be effectuated by the New York courts. In *re Kadjar's Estate*, 200 Misc. 268, 102 N. Y. S. 2d 113 (Surr. Ct. (1950)); In *re Adriance's Estate*, 158 Misc. 857, 286 N. Y. Supp. 936 (Surr. Ct. 1936).

36. *Hoyt et al. v. Orcutt et al.*, 59 A. 2d 17 (1948). Under the applicable New Jersey law, the word "issue" alone raised a *per capita* presumption, unless a contrary intent clearly appeared. The Vice-Chancellor found such a clearly-expressed contrary intent.

37. *Hoyt et al. v. Orcutt et al.*, 1 N. J. 454, 64 A. 2d 212 (1949). The Supreme Court was unable to find the requisite intent.

to pass *per capita*. Both courts expressly excluded from their determination all of the property located without the State.³⁸

However, in construing the will as to the New York property involved, the Surrogate³⁹ held that there was no equitable conversion inasmuch as there was a discretionary power of sale in the trustees; and that the realty passed *per stirpes*. Both the Appellate Division⁴⁰ and the Court of Appeals sustained this determination.

The Court of Appeals presented the following general rule as the solution to all of the conflicts problems presented:

It is a principle firmly established that to the law of the State in which the land is situated we must look for the rules which govern its descent, alienation and transfer, and for the effect and construction of wills and other conveyances.⁴¹

New York thus possesses the power to determine whether or not there has been an equitable conversion⁴² as well as to construe the will,⁴³ nor will a previous determination of these questions by a sister State remove this authority through estoppel by judgment.⁴⁴ The question of greatest importance in the instant case goes one step farther, however. That is, although New York has the power to determine the testator's intent, will it be ascertained by the laws of the *situs* of the realty or the law of the testator's domicile at the time of the will's execution?

According to Prof. Beale,⁴⁵ there is a clear distinction between the effect of language used in a will⁴⁶ (*construction*) and the mean-

38. See generally, *Fidelity Union Trust Co. v. Ackerman*, 123 N. J. Eq. 556, 199 Atl. 379 (1938).

39. In re *Good's Estate*, 96 N. Y. S. 2d 798 (Surr. Ct. 1950). Since the testator had died before the enactment of DEC. EST. LAW §47-a (statutory presumption of *per stirpes*), the common-law rule (codified into DEC. EST. LAW §47) applied. This presumption, alike that of New Jersey, was *per capita*, the difference being in that New York held it to be rebuttable by "a very faint glimpse of a contrary intent". *Matter of Farmer's Loan & Trust Co.*, 213 N. Y. 168, 107 N. E. 340 (1914).

40. 278 App. Div. 806, 104 N. Y. S. 2d 804 (1st Dep't 1951).

41. *Clarke v. Clarke*, 178 U. S. 186, 191 (1900); and cases cited therein.

42. In re *Chapman's Estate*, 110 N. Y. S. 2d 26, 29 (Surr. Ct. 1951); *Fidelity Union Trust Co. v. Ackerman*, *supra* n. 38; DEC. EST. LAW, §47; RESTATEMENT CONFLICT OF LAWS §241.

43. *White et al. v. Howard et al.*, 46 N. Y. 144 (1871); *Peck v. Cary*, 27 N. Y. 9, 11 (1863). GOODRICH, CONFLICT OF LAWS, §166 (3rd ed. 1949).

44. *Monypeny v. Monypeny*, 202 N. Y. 90, 95 N. E. 1 (1911); *Putnam v. Lincoln Safe Deposit Co.*, 191 N. Y. 166, 83 N. E. 789 (1908).

45. 2. BEALE, THE CONFLICT OF LAWS (1st ed. 1935).

46. *Id.* §251.3.

ing of the words used in view of the circumstances of their use⁴⁷ (*interpretation*). The former determines the quantity and quality of the estates flowing from the testator's words. Definite rules of property law are applied, and the testator's intent becomes immaterial. The *lex loci rei sitae* controls in this area. The interpretative process, on the other hand, is primarily concerned with establishing the intent of the testator from the words used in the instrument. The meaning of such words can best be judged in the light of the law and usage controlling at the time and place of the will's execution.⁴⁸ Thus it would seem that the law of the testator's domicile should control in this area.⁴⁹

In a situation such as existed in the *Good* case, the natural presumptions would appear to be: *first*, that if the testator had any law in mind at the time of the will's execution, it was the law of his domicile; and, *second*, that he intended that all of his property was to pass in a uniform manner. However, the Court in the instant case applied the law of the *situs* in interpreting the will. If the results flowing from the above propositions are deemed desirable, the present decision is unfortunate in that it did violence both to the testator's intent and to a uniform passage of his property.

IV. CONTRACTS

Appellate review frequently brings forth a change or modification of the existing body of law. The work of the Court of Appeals in the area of contract law is without exception. Last term witnessed the first direct holding in New York that parties may effectively prohibit the assignment of contract rights. The one-year section of the Statute of Frauds also received considerable attention with somewhat less fortunate results. Still other cases tended to clarify or restate existing law.

Preliminary Negotiations

Frequently, parties plan to enter into a formal written agreement and have orally decided upon all the terms to be incorporated therein. The question is whether they have bound themselves prior to the execution of the formal document. In *Schwartz v.*

47. *Id.* § 251.2.

48. *Staigg v. Atkinson*, 144 Mass. 564, 12 N. E. 354 (1887).

49. RESTATEMENT, CONFLICT OF LAWS § 251 (3):

The meaning of words used in a devise of land which, by the law of the state where the land is . . . is, in the absence of controlling circumstances to the contrary, determined in accordance with usage at the domicile of the testator at the time the will was made.