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Conflict of Laws

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CONFLICT OF LAWS

by

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I. CHOICE OF LAW

Torts. The functional approach to solving conflict of laws was put squarely before the Texas appellate courts during 1967 in *Marmon v. Mustang Aviation, Inc.*[1] The question of whether or not to adopt this approach has now been left to the Texas Supreme Court for a final determination. An airplane crash in Colorado caused the death of Texas residents who had chartered a plane owned and operated by Mustang Aviation, a Dallas company. Under the traditional vested rights philosophy found in the *Restatement of Conflicts*,[2] which has long been applied in Texas,[3] the law of the place of the tort would apply to this suit. Lately, however, the simple and predictable rule of the *Restatement* has been rejected by scholars,[4] and by a line of landmark cases.

Objections have focused on the arbitrariness of the *lex loci delicti*,[5] the unnecessary conflicts created by the *Restatement* system,[6] an awareness that the laws of the society which are most intimately involved with an event should govern it,[7] and doubts about the constitutional propriety of an indiscriminate application of the law of the place of the tort.[8]

Aviation cases exactly like *Marmon* have been instrumental in causing abandonment of the *lex loci delicti* rule because application of the traditional doctrine to crashes involving planes which may spend only a few minutes in a state's airspace appears particularly unsound. As a background against which to view *Marmon v. Mustang Aviation* it is useful to study the landmark case, *Kilberg v. Northeast Airlines*,[9] which resulted from the crash of a Northeast Airlines plane at Nantucket, Massachusetts. The New York state court permitted the claimant to base his cause of action on the Massachusetts wrongful death statute, but refused to apply the Massachusetts maximum limit on recovery, since a strong New York public policy against limits in wrongful death actions is expressed in the

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[1] 416 S.W.2d 58 (Tex. Civ. App. 1967) *error granted.*

[2] RESTATEMENT OF CONFLICT OF LAWS § 377 (1934).

[3] Jones v. Louisiana W. Ry., 243 S.W. 976 (Tex. Comm'n App. 1922).

[4] B. CURRIE, SELECTED ESSAYS ON THE CONFLICT OF LAWS 3-77 (1963); A. EHRENZWEIG, CONFLICT OF LAWS 555 (1962); G. STUMBERG, PRINCIPLES OF CONFLICT OF LAWS 212 (3d ed. 1963); Weintraub, *A Method for Solving Conflict Problems—Torts*, 48 CORNELL L.Q. 215 (1963).

[5] G. STUMBERG, *supra* note 4, at 212.

[6] A. VON MEHREN & D. TRAUTMAN, THE LAW OF MULTISTATE PROBLEMS 327-28 (1965).

[7] RESTATEMENT (SECOND) OF CONFLICT OF LAWS § 379 (Tent. Draft No. 8, 1963).

[8] B. CURRIE, *supra* note 4, at 283, 526.

[9] 9 N.Y.2d 34, 172 N.E.2d 526, 211 N.Y.S.2d 133 (1961).

New York constitution.[10] Another claim, *Pearson v. Northeast Airlines*,[11] arising from the same accident, was brought in federal court for a decision of whether New York had to give full faith and credit to the entire Massachusetts wrongful death statute or whether New York under the Federal Constitution could split the cause of action and apply New York law on limitation of recovery. The Second Circuit held that "a state with substantial ties to a transaction in dispute has a legitimate constitutional interest in the application of its own rules of law," and, furthermore, "that New York may examine each issue in the litigation . . . and, by weighing the contacts of various states with the transaction, New York may, without interfering with the Constitution, shape its rules controlling the litigation."[12] The court also found no violation of the due process clause because that would imply that Northeast Airlines had a vested right to application of Massachusetts law in New York.

The vested rights system was also abandoned by the Pennsylvania Supreme Court in *Griffith v. United Air Lines, Inc.*[13] This case, like the Texas case under consideration, involved the Colorado wrongful death statute. Application of the statute was brought into issue by the Denver crash of a United Air Lines plane carrying the decedent, Hambrecht, a Pennsylvania domiciliary, who had purchased a round trip ticket in Philadelphia for Phoenix, Arizona, via Denver. Hambrecht had no relationship with Colorado except that the plane had a scheduled stop there. On a functional analysis, the court applied Pennsylvania law exclusively.

In *Marmon v. Mustang Aviation*,[14] then, the Texas court of civil appeals had three alternatives: (1) to apply the law of the place of the tort as had been the past trend in Texas, (2) to follow *Kilberg* by applying the law of the place of the tort, but applying Texas law to those issues in litigation with which Texas had "substantial ties," or, (3) to follow *Griffith* by applying the Texas wrongful death statute *in toto*. The civil appeals court praised the functional approach to conflicts law, saying, "We find much merit in the doctrine, and, if free to act in a case of first impression, we would be inclined to explore the doctrine fully with a view to consideration of adoption."[15] However, the court decided not to hold contrary to the past trend of Texas Supreme Court holdings.[16]

If the court had been "inclined to explore the doctrine fully," it could have adopted the new trend in conflicts law for any of the following reasons: (1) The case before the court was not a conflicts case; it was a "false" conflicts case because basically only Texas, and not Colorado, was concerned with this event; the parties were Texas domiciliaries; the inter-

[10] N.Y. CONST. art. I, § 16, states that in wrongful death actions recovery "shall not be subject to any statutory limit," causing the court to conclude that, "For our courts to be limited by this damage ceiling (at least as to our own domiciliaries) is so completely contrary to our public policy that we should refuse to apply that part of the Massachusetts law." 172 N.E.2d at 528.

[11] 309 F.2d 553 (2d Cir. 1962).

[12] *Id.* at 559, 561.

[13] 203 A.2d 796 (Pa. 1964).

[14] 416 S.W.2d 58 (Tex. Civ. App. 1967) *error granted.*

[15] *Id.* at 63.

[16] *Id.*

est in protection of the relatives of victims is therefore a Texas interest, not a Colorado interest; the contract for the flight was concluded in Texas; insurance was purchased in Texas; and since Colorado did not have a legally "significant relationship"[17] with this event, its laws ought not be applied to it. Under this theory, application of foreign law is not an issue before the court.[18] (2) Use of Colorado law is a violation of due process because it is not the proper law governing this situation. Forum law should be applied to a tort suit by one Texan against another in a Texas court when the event giving rise to the suit only affects forum relationships. It is a violation of due process to apply an arbitrary law such as the Colorado law.[19] (3) It is a violation of the equal protection clause for the Texas forum to apply the Texas wrongful death statute to accidents of its citizens within Texas, but to refuse to apply the Texas statute to their accidents happening outside of the state border. All Texans, those outside of the state as well as those inside it, have equal rights to benefit from the Texas wrongful death statute.[20] It is therefore a violation of the equal protection clause to deny Texans the benefit of unlimited recovery under the Texas wrongful death statute.[21] Nevertheless, under prior holdings the court felt constrained to leave any change to the supreme court.

Contracts. While the Texas courts refuse to apply the functional approach to torts, they are willing to apply it in contracts. The parties in *Alexander v. Ling-Temco-Vought*[22] stipulated in the contract that Georgia law should apply. The subject of the contract was a housetrailer manufactured in Texas and sold on a conditional sales contract by the manufacturer to a Georgia dealer. The trailer never reached Georgia but was sold to a dealer in Louisiana who in turn sold it to another Louisiana domiciliary. The latter, at his purchase, found no record of the manufacturer's interest in the trailer. Georgia at the time of sale in 1961 did not guarantee the rights of creditors' unrecorded interests, as does the Texas Certificate of Title Act,[23] so that the manufacturer's chattel mortgage would be unprotected if Georgia law applied. However, the Texarkana court of civil appeals decided to apply Texas law because the transaction had a closer relationship with Texas than with Georgia, particularly since the trailer never entered Georgia. The court expressed that, "In this in-

[17] RESTATEMENT (SECOND) OF CONFLICT OF LAWS § 379 (Tent. Draft No. 8, 1963).

[18] *See* B. CURRIE, *supra* note 4, at 189; A. VON MEHREN & D. TRAUTMAN, *supra* note 6, at 76-79, 327-29; Weintraub, *supra* note 4.

[19] Home Ins. Co. v. Dick, 281 U.S. 397 (1930). *See also* B. CURRIE, *supra* note 4, at 283; Weintraub, *Due Process and Full Faith and Credit Limitations on a State's Choice of Law*, 44 IOWA L. REV. 449 (1959).

[20] B. CURRIE, *supra* note 4, at 526.

[21] For recent developments in products liability, see Weintraub, *Choice of Law for Products Liability: The Impact of the Uniform Commercial Code and Recent Developments in Conflicts Analysis*, 44 TEXAS L. REV. 1429 (1966).

[22] 406 S.W.2d 919 (Tex. Civ. App. 1966) *error ref. n.r.e.*

[23] TEX. PEN. CODE ANN. art. 1436-1 (1967). *Compare with* UNIFORM COMMERCIAL CODE §§ 1-105, 9-103. The Georgia Motor Vehicle Certificate of Title Act went into effect July 1, 1962. GA. CODE ANN. § 68-401a (1961).

stance the State of Georgia has not had actual jurisdictional contact with the property or the contract or the parties to this litigation; the absence of such contacts strengthens the reason for concluding that the law of the situs governs."[24] It is noteworthy that *Alexander v. Ling-Temco-Vought* is an expression of a Texas public policy in favor of supporting the rights of creditors with security interests over bona fide purchasers.[25]

Such a decision causes this writer to speculate whether the Texas courts may proceed like the New York courts which first used the functional approach in a contracts case, *Auten v. Auten*,[26] and then later used *Auten* to bolster their defense for the use of this approach in the famous *Babcock v. Jackson*[27] torts case. This way of proceeding is of course entirely in order since the functional approach makes no real distinction between torts and contracts and thus tends to eliminate the characterization.

Two other cases in the contracts area are noteworthy. In an action in Texas for services performed in New York while the defendant was still a New York resident (plaintiffs were tax accountants and also New York residents), the court of civil appeals held that New York law governed the issue of whether the services constituted an illegal practice of law.[28] As to whether the plaintiffs could obtain attorney's fees, the court applied Texas law which permitted such recovery.[29] In deciding the latter issue the court relied on the wording of the Texas statute which permits recovery by any person for services performed anywhere. This ruling might well cause such creditors to go to Texas (New York does not allow the tax accountant recovery of attorney's fees).

The other contract case concerned a joint bank account opened by Texans in a Canadian bank.[30] On the death of one joint owner, the other sought to withdraw the money unencumbered by Canadian estate and succession taxes. The Fifth Circuit applied Texas conflicts law and held that the relationship with the Canadian bank was a contractual one to be performed in Canada and thus the account was subject to Canadian law. Only if the agreement with the bank had expressly stipulated performance at a place other than Canada could the account escape application of Canadian law.

It is pertinent here to describe how the Uniform Commercial Code, which Texas adopted effective July 1, 1966, affects contracts law in a positive way. The parties to a contract involving out-of-state elements may in the contract itself choose which law shall be applied to a contract as long as there is a reasonable contractual relationship with the state whose law is chosen. If the contracting parties do no agree on the law to be applied to the contract, then the Uniform Commercial Code governs,[31] which, in

[24] Alexander v. Ling-Temco-Vought, 406 S.W.2d 919, 923-24 (Tex. Civ. App. 1966) *error ref. n.r.e.*
[25] Bank of Atlanta v. Fretz, 148 Tex. 551, 226 S.W.2d 843 (1950).
[26] 308 N.Y. 155, 124 N.E.2d 99 (1954).
[27] 12 N.Y.2d 473, 191 N.E.2d 279, 240 N.Y.S.2d 743 (1963).
[28] Grace v. Allen, 407 S.W.2d 321 (Tex. Civ. App. 1966).
[29] TEX. REV. CIV. STAT. ANN. art. 2226 (1953).
[30] Dunn v. Bank of Nova Scotia, 374 F.2d 876 (5th Cir. 1967).
[31] UNIFORM COMMERCIAL CODE § 1-105.

effect, means that if a contract involves states which have not adopted the Uniform Commercial Code, then the Texas forum will apply its own law.

Bank liability is regulated by the Uniform Commercial Code. It provides that the law of the place where the bank is located shall govern liability for "any item handled by it for purposes of presentment, payment or collection."[32] Where a branch office is involved, the law of the situs of the branch is applicable.[33] This provision rejects the rule of *Weisman v. Banque de Bruxelles*[34] that the "law of the situs of the property governs the creation and transfer of interests in tangible chattels . . . ."[35]

Property. Personal property has become extensively subject to the Uniform Commercial Code regulation of interstate conflicts. If personal property is brought into another state, the security interests in the property remain in effect and are governed by the law of the state where the property was located when it became subject to the security interest. It should be noted that this means that the conflicts law of the state where the property was located also becomes applicable. The Uniform Commercial Code provides that foreign security interests remain intact in Texas for four months after the property was moved into the state. After this period a recording of the security interest in Texas is required.[36]

Since the Uniform Commercial Code permits parties to choose their own law,[37] party intention will become an important issue in conditional sales contracts subject to the Code. Of course, it is no understatement that legal regulation of property and contracts is tending to merge under the Code, thereby de-emphasizing the need for a characterization process.

An involved Texas-Colorado conflict tested the ingenuity of a federal district court in Colorado.[38] The action was brought to remove cloud on title to 1,600 acres in Colorado. The original owners gave an unexecuted and unrecorded deed involving a one-third interest to a Texan, Kilgore, who was to make certain improvements in preparation for sale of the land in five acre lots. Kilgore, without authority, conveyed the one-third interest as security to Givens in El Paso. Givens immediately recorded the deed of trust.

Although Colorado land was involved, the court correctly applied Texas law to the sufficiency of consideration issue for the deed of trust since it was executed in Texas as security for a Texas debt. The court found that the pre-existing liability was sufficient consideration under Texas law. However, the judge looked to the law of the situs of the land to determine the issue of whether Givens was a bona fide purchaser. It found that under Colorado law Givens could be a bona fide purchaser although he received

[32] *Id.* § 4-102(2).
[33] *Id.*
[34] 173 N.E. 835 (N.Y. 1930).
[35] *Id.* at 836.
[36] UNIFORM COMMERCIAL CODE § 9-103. For application see Churchill Motors v. Lohman, 16 App. Div. 2d 560, 229 N.Y.2d 570 (1962).
[37] UNIFORM COMMERCIAL CODE § 1-105.
[38] Jaramillo v. McLoy, 263 F. Supp. 870 (D. Colo. 1967).

the deed of trust in exchange for an antecedent debt. But in the end the creditor failed. Under the application of Colorado law, he was held to have been put on inquiry notice of infirmities in Kilgore's title. Thus he could reasonably be expected to have found out about Kilgore's lack of authority to convey; therefore, Kilgore conveyed nothing to Givens.

This case expresses the prevailing rules regarding conveyance of real property: the law of the situs governs. Situs law also governs mortgages on real property, unless a mortgage secures a debt incurred in a state other than that of the situs, where its validity would be governed by the law of that other state.

Workmen's Compensation. Workmen's compensation law is an area which could provide greater security to the claimant if there were more uniformity in state regulation. For example, a Fifth Circuit decision[39] dealt with four employees of a well servicing company who were killed in a collision with the Panhandle and Santa Fe Railroad, as the men were returning from Texas to Oklahoma. Claims for compensation were filed for and awarded under the Oklahoma workmen's compensation laws, and the employer's insurance company paid; it then claimed a right of subrogation which existed under Texas workmen's compensation law but not under that of Oklahoma. The Fifth Circuit in a per curiam opinion denied subrogation since the insurer had paid in accordance with the Oklahoma law.

II. Federal Regulation of Conflicts Law

Federal Law. A claim of an insured against a Texas life insurance company brought the much disputed *Banco Nacional de Cuba v. Sabbatino*[40] and the act of state doctrine into issue through a federal court decision. A Texas and a Louisiana life insurance company in *Pan-American Life Insurance Co. v. Blanco*[41] had sold policies to Cubans before Castro's revolution. The policy holders presented their claims upon maturity of their policies after the Cuban government had nationalized the Cuban assets of two insurance companies. The insureds were in exile in the United States when they presented their claims. The life insurance companies refused to pay since their assets in Cuba had been seized and they alleged that the Cuban government had succeeded to their rights and obligations. The *Sabbatino* case held that since Cuba was recognized by the United States, the United States Supreme Court would not question the propriety of Cuban nationalization decrees affecting American property located in Cuba. However, after the *Sabbatino* decision, Congress enacted a federal law providing that "no court in the United States shall decline on the ground of the federal act of state doctrine to make a determination on the merits giving effect to the principles of international law" in foreign expropriations which violate international law.[42] Certain exceptions not

[39] Argonaut Ins. Co. v. Panhandle & S.F.R.R., 367 F.2d 564 (5th Cir. 1966).
[40] 376 U.S. 398 (1964).
[41] 362 F.2d 167 (5th Cir. 1966).
[42] 22 U.S.C.A. § 2370(e)(2) (1964).

here in issue were listed.[43] Consequently, the Fifth Circuit decided that the law of the state in which the federal court was situated should apply;[44] this was held to mean that the law of the place of performance of the insurance policies applied; only one of the policies was payable in Texas.

Federal law was again in issue when the Fifth Circuit had to decide which state statute of limitations applied in *Baron Tube Co. v. Transport Insurance Co.*[45] Since a statute of limitations is a substantive matter within the meaning of *Erie Railroad v. Tompkins*,[46] federal courts look to the conflicts law of the state in which they are sitting, in this case Georgia. That law provided that the law of the forum regulated statute of limitation issues. The applicable Georgia statute of limitations was two years and it began to run when the cause of action accrued. However, the court had to look to Texas law to determine when the cause of action accrued, and it concluded that the claimant insurance company had obtained its cause of action when it had been adjudged liable for a Texas workmen's compensation claim. Thus it was held that the statute of limitations had not run.[47]

An interesting federal issue in the same case concerned the propriety of a claimant's argument for damages for pain and suffering in terms of "units of time."[48] Following *Byrd v. Blue Ridge Rural Electric Co.*[49] the court held that "the propriety of the argument is a federal question,"[50] and proceeded to use federal trial procedure in its solution. The argument was thus deemed proper.[51]

Use of Treaty Power. Increasing communication and commerce among nations makes international uniformity of law more and more important. Naturally, when the United States decides to become a party to a treaty which creates international uniformity of law, it binds the states to observe the international rules. Such an international treaty is the 1929 Warsaw Convention,[52] which provides for uniformity of documents used in international air carriage and establishes a liability system whereby the carriers are presumed to be negligent, but their liability in international carriage is limited to $8,300. International carriage is defined as carriage which has an agreed stopping place outside of a party to the treaty, or carriage between two contracting states both of which are parties. During 1966 the United States retracted its notice to denounce this treaty. The notice was caused

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[43] *Id.*

[44] *Cf.* Klaxton Co. v. Stentor Co., 313 U.S. 487 (1941).

[45] 365 F.2d 858 (5th Cir. 1966).

[46] 304 U.S. 64 (1938).

[47] For a recent discussion of the application of state law in federal court, see Agata, *Delaney, Diversity and Delay: Abstention or Abdication?*, 4 HOUS. L. REV. 422 (1966).

[48] *Cf.* Johnson v. Colglazier, 348 F.2d 420 (5th Cir. 1965). *See also* Note, *The Unit of Time Argument—Inherently Prejudicial?*, 20 SW. L.J. 208 (1966).

[49] 356 U.S. 525 (1958).

[50] Baron Tube Co. v. Transport Ins. Co., 365 F.2d 858, 862 (5th Cir. 1966).

[51] The federal courts' powers under the Federal Rules of Civil Procedure continue to be a lively issue in view of Hanna v. Plummer, 380 U.S. 460 (1965), which upheld the federal courts' power to regulate service of process under the Federal Rules of Civil Procedure. *See* Stason, *Choice of Law Within the Federal System: Erie Versus Hanna*, 52 CORNELL L.Q. 377 (1967).

[52] Convention for the Unification of Certain Rules Relating to International Transportation by Air (Warsaw Convention), Oct. 12, 1929, 49 Stat. 3000, T.S. No. 876 (1929).

by American inability to get the approximately one hundred member party states to agree on a higher limit on liability. The condition for retraction of the notice was an agreement by all major carriers to subject themselves to a $75,000 limit on liability as well as a strict liability system in regard to air carriage to, from, or with an agreed stopping place in, the United States. This compromise is now known as the Montreal Agreement.[53] Its effect is less uniformity because air passengers now are subject to two international liability systems: the Montreal Agreement if their carriage is to, from, or has an agreed stopping place in, the United States; otherwise the Warsaw Convention is applicable among the party states.[54]

A recent decision by the Fifth Circuit, *Block v. Compagnie Nationale Air France*,[55] has for the time being clarified a thorny issue by deciding that the Warsaw Convention applies to air charter. The Atlanta Art Association chartered an Air France jet for a trip to Paris. The plane crashed on take-off from Paris, causing death of 122 passengers. Since air charter was hardly known in 1929 when the Warsaw Convention was negotiated, much dissension has arisen about its applicability to air charter. However, Judge Wisdom, in a long, scholarly opinion digging deeply into the legislative history, held that the Convention was sufficiently elastic to include this type of air carriage. Judge Jones dissented. Consequently the recovery of the relatives was limited to $8,300 for each victim. (The crash took place in 1962, before the Montreal Agreement.)

The decision immediately causes this writer to reflect on the desirability of causing all charter carriers to sign the Montreal Agreement, which so far has been signed only by the major scheduled and supplementary carriers, but not by small operators who might be chartered for trips into Mexico or Canada. Unless the small charter operators are caused to sign the Agreement, their passengers will only be able to recover up to the $8,300 limit of the Warsaw Convention instead of the $75,000 limit of the Montreal Agreement.

III. Family Law

Migratory divorces continue to cause the courts difficulty. When a Connecticut couple parted, the wife brought suit in Connecticut for separation. The husband was duly served and the court ordered him to pay monthly alimony of $1,650. The husband left Connecticut and subsequently established residence in Texas and moved his property there. He then sued for divorce in Dallas and the wife was duly served in Connecticut. The Texas trial court proceeded to grant divorce and issued an order regarding the parties' property rights. The wife objected, not on grounds of full faith and credit, but on the old but seldom used theory of comity, on the basis of which she maintained that the Texas court should give precedence

[53] Dept. of State Press Release No. 110 (May 13, 1966), 32 J. Air L. & Com. 247 (1966).

[54] Some headway towards clarification of this rather confused situation was made at an international conference held at Southern Methodist University in August 1967. The proceedings of the conference appear in 33 J. Air L. & Com. 385 (1967).

[55] Block v. Compagnie Nationale Air France, No. 21609 (5th Cir., Nov. 8, 1967), 10 Av. Cas. 17,518 (5th Cir. 1967).

to the Connecticut separation and alimony decree. The Texas Court of Civil Appeals upheld the Dallas trial court's decree, saying that comity imposes no obligation on the Texas court to consider Connecticut decrees.[56] The Dallas suit for divorce did not involve the same issues as the Connecticut suit for separation; so, the wife was unable to have the Texas divorce abated. The unanswered question is: what effect does the Texas decree have on the Connecticut court? The latter court is of course free to consider whether it should grant full faith and credit to the Texas decree.[57]

Several appellate decisions on family law concerned support. The civil appeals court refused to apply the Panama Canal Zone code to a Dallas support action by a woman whose child had been conceived in the Canal Zone but was born in Texas where both the parties were domiciled at the time of the suit.[58] Modification of an existing New Jersey child support decree was requested in another action[59] where the divorced husband objected to the Dallas court's increase of support payments, alleging that he was not a Texas resident and thus not subject to the powers of the Texas court. However, the court declared its ability to modify this relationship between two non-Texans on the basis of article 2338,[60] which permits the court to make separate decisions regarding support. The civil appeals court held that since this was an in personam action and since both spouses were before the court it could decide the issue of support although the child was neither a Texas resident nor before the court. In fact, the Texas court granted an entirely new support decree in the higher amount requested by the wife and decided to throw the burden on the New Jersey court now to give full faith and credit to the Texas decree. This appears to be a desirable decision. The divorced husband's employer was moving him around the country and had kept him away from New Jersey for thirteen months, thereby making it difficult for the New Jersey courts to reach him.

Extradition for non-support under the Uniform Criminal Extradition Act[61] was the issue of two appellate decisions. One held that extradition will be permitted regardless of whether failure to support is a felony or a misdemeanor.[62] The seriousness of the offense is a matter for the requisitioning state to determine. However, another extradition failed when the defendant showed that although non-support was a crime in California, it was not a crime in Texas. It is noteworthy that the defendant would have been extradited if he had not raised this point because, "If regular upon its face, the introduction of the Governor's Warrant makes out a prima facie case authorizing extradition."[63]

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[56] Nowell v. Nowell, 408 S.W.2d 550 (Tex. Civ. App. 1966).

[57] *See* Williams v. North Carolina, 325 U.S. 226 (1945); Williams v. North Carolina, 317 U.S. 287 (1942).

[58] Moore v. Bramlett, 415 S.W.2d 526 (Tex. Civ. App. 1967) *error ref. n.r.e.* For further discussion, see Harding, *Contracts*, this *Survey*, at footnote 30.

[59] Pelej v. Winans, 413 S.W.2d 772 (Tex. Civ. App. 1967).

[60] TEX. REV. CIV. STAT. ANN. art. 2338-9 (1959).

[61] TEX. CODE CRIM. PROC. ANN. art. 51.13 (1965). *See* Moses, *Interstate Extradition To Answer Criminal Chrages*, 9 So. TEX. L.J. 166 (1967).

[62] *Ex parte* Mendoza, 408 S.W.2d 926 (Tex. Crim. App. 1966).

[63] *Ex parte* Juarez, 410 S.W.2d 444, 445 (Tex. Crim. App. 1967).

IV. JURISDICTION

A New Jersey corporation alleged that the Texas courts could not exercise jurisdiction over it because it was not present in the state of Texas. Interestingly, the court of civil appeals held that the burden was on the New Jersey corporation to prove that it was not subject to the court's jurisdiction when, during the period under scrutiny, it had maintained a warehouse, collected debts, and entered into a contract in Texas. The court held that when the corporation had become subject to the jurisdiction of Texas courts, their jurisdictional power did not cease when the corporation ceased its activity in Texas, and that "traditional notions of fair play and substantial justice" had not been offended by Texas courts in assuming jurisdiction. Consequently, service upon the Texas Secretary of State was held to be properly made.[64]

[64] Crothers v. Midland Prods. Co., 410 S.W.2d 499 (Tex. Civ. App. 1967). For recent Texas writing in this area, see Comment, *How Minimum is "Minimum Contact"? An Examination of "Long Arm" Jurisdiction*, 9 So. TEX. L.J. 184 (1967). For further discussion, see VanDercreek, *Texas Civil Procedure*, this *Survey*, at footnotes 3 and 12.

PART III: PUBLIC LAW