Volume 2
Issue 2 *Survey of Texas Law for the Year 1947*

Article 6

1948

Conflict of Laws

CONFLICT OF LAWS

MATRIMONIAL PROPERTY

IN the case of *King v. Bruce*,[1] decided by the Texas Supreme Court in 1947, a husband and wife, domiciled in Texas, transferred five thousand, eight hundred dollars of community property to a New York bank. They divided the amount physically, by cash and checks, into two parts, placing each in a separate container. Then, pursuant to a written contract between husband and wife, they exchanged the two containers, with the declared purpose of converting the contents of the wife's container into her separate property. Thereafter, the wife deposited her share in a bank in Fort Worth, Texas, where it was immediately garnished by a judgment creditor of the husband. The husband set up the New York contract to defeat the garnishment.

The Court, in holding that the property was not the separate property of the wife, and was subject to the garnishment, made the following statement:

> ". . . under the law of Texas, Mrs. Bruce did not acquire title to the two thousand, nine hundred dollars, under the laws of New York in virtue of the contract made there; that it was not thereby changed into another class of property from what it was when acquired in this state *(Arnold v. Leonard, 114 Tex. 535, 273 S .W. 799)*: that it was not her separate property when deposited in the garnishee bank, and that it remained, after deposit, the community property of both spouses. . . . The segregation of the community was made with a view to its being enjoyed by Mrs. Bruce in this state. . .
>
> "The rule just stated does not militate against the rule, generally speaking, that the validity of contracts is controlled by the law of the state where made and performed. *The rule of the domicile predominates as between the spouses.*"[2] (Italics supplied.)

The Court then goes on to say, in support of its decision, that the general rule will not be,

---

[1] 145 Tex. 647, 201 S. W. (2d) 803 (1947).

[2] *Id.* at 657.

"... observed and applied when to enforce a foreign contract according to the provisions of foreign laws, will contravene some established rule of public policy of the state of the forum...."[3]

citing *Union Trust Company v. Grosman.*[4]

Though the decision in the case obtains a result consistent with that reached in the majority of cases involving the enforceability of foreign contracts in a forum whose public policy is violated by the contract,[5] it is submitted that the language employed by the Court would seem to indicate a departure from the rationale of this line of decisions.

Did the Court intend to say that the contract, though valid at the place of making and performance, is unenforceable in Texas because contrary to the public policy of this state, or did it intend to announce the rule that the contract was invalid in the first instance because, "the rule of the domicile predominates as between the spouses"? If the latter, then it would seem that a new doctrine has been introduced into the Texas Conflict of Laws rules.[6] If the former, it would appear that the decision would have been made stronger by citing the *Grosman* case as in direct support of the holding, rather than inserting it somewhat parenthetically, as supporting the decision indirectly, and upon an additional ground to that which actually decided the issue.

W. M. S.

---

[3] *Ibid.*

[4] 245 U. S. 412 (1918).

[5] *E. g.*, Bond v. Hume, 243 U. S. 15 (1917); Griffin v. McCoach, 313 U. S. 498 (1941); Massie v. Parker, 128 F. (2d) 99 (C. C. A. 6th, 1942); Meinsen v. Order of United Commercial Travelers of America, 43 F. Supp. 756 (W. D., Mo., 1942).

[6] GOODRICH ON CONFLICT OF LAWS, § 122 (1938).