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Conflict of Laws

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"It is a settled policy in Oklahoma that the courts will not uphold any shift or device by which the lender may receive more than ten per cent per annum for the use or forbearance of money. It makes no difference whether the excess received be called a bonus or commission. . . ."

Since the dealings between the parties litigant in the principal case had extended over a period of years and were apparently confined to loans made by the plaintiff to the defendant, it would seem that the circumstances justified close scrutiny into the facts and that the trial court might well have found sufficient evidence to support the defense of usury. The attitude of the courts generally is aptly expressed in *Lawrence v. Griffin*:⁴

"Courts come short of their duty where they permit so transparent a fraud upon the law as this case presents to go unrebuked. It is their duty to penetrate beneath the lawful semblance which the transaction wears and to condemn the unlawful thing which seeks concealment."

However, inasmuch as the evidence was conflicting and since the trial court was sitting as a jury, the supreme court was apparently correct in upholding the lower court's findings. Clearly, the burden was upon the defendant to show by a preponderance of the evidence that the transaction was in fact usurious, and whether or not there was usury was a question of fact to be determined by the court sitting as a jury.⁵

Wellington Y. Chew.

CONFLICT OF LAWS

Arkansas, Louisiana. Two recent cases in the Southwest have reiterated the rule in the United States as regards the domicile of members of the armed forces. In American jurisdictions, in order to acquire a domicile of choice, two elements must concur: (1) bodily presence within a new locality and (2) no present

⁴ 30 Tex. 400, 402 (1867).

⁵ *Forman v. Needles et al.*, 78 Okla. 105, 188 Pac. 1087 (1920); *Porter v. Rott*, 116 Okla. 3, 243 Pac. 160 (1926).

intention to remove therefrom.¹ The rule as to members of the armed forces, prisoners, and individuals who are not in a position voluntarily to choose a domicile is somewhat different. The rule has been formulated that a member of the armed forces retains as his domicile that which he possessed at the time of his entry into the service and that he cannot acquire a new domicile of choice unless an extremely clear showing of intention can be made.² The additional element of presence, of course, must exist.

The Arkansas case of *Plough v. Plough*³ recognizes the prevailing rule that a soldier's domicile at the time of entering the service is considered his domicile for all purposes while in the service. This case involved an inductee from South Carolina suing for a divorce in Arkansas while stationed at Camp Chaffee, Arkansas, pursuant to military orders. The only evidence offered to establish domicile in Arkansas was his presence at Camp Chaffee and his testimony, "I am figuring on remarrying and making this my home." It appeared that he intended to marry a South Carolina girl if his divorce suit was successful. The court's requirement was "that the intention to remain in this State must be manifested by overt acts."⁴ The court, therefore, held that "this bare assertion, unaccompanied by voluntary conduct, fails to establish the element of permanence that distinguishes domicile from simple presence within the jurisdiction",⁵ and found a lack of jurisdiction to render a divorce.

Reaching a contrary result, but clearly distinguishable on the facts, is the Louisiana case of *Walsh v. Walsh*,⁶ which aptly illustrates the qualifying clause in the general rule, *i. e.*, unless a clear

¹ This undisputed principle is amply annotated in the following authorities: 1 BEALE, A TREATISE ON THE CONFLICT OF LAWS (1935) 133 n. 1; GOODRICH, CONFLICT OF LAWS (3d ed. 1949) 60 n. 51; STUMBERG, PRINCIPLES OF CONFLICT OF LAWS (1937) 18; RESTATEMENT, CONFLICT OF LAWS (1934) § 15, Comment a.

² STUMBERG, PRINCIPLES OF CONFLICT OF LAWS (1937) 41; see Note, 148 A.L.R. 1413 (1944).

³ —Ark.—, 219 S. W. 2d. 947 (1949).

⁴ 219 S. W. 2d. at 947.

⁵ *Ibid.*

⁶ —La.—, 42 So. 2d 860 (1949), *rehearing denied.*

intention of establishing a new domicile of choice can be shown. In this case a soldier of some twenty-seven years service had divorced a wife in Louisiana and remarried. He was subsequently killed in an accident, and his former wife brought this action to set aside the divorce judgment principally on the ground of lack of jurisdiction. The court found that the deceased, although having been stationed in many places throughout the world, had lived longer at Barksdale Field, Louisiana, than at any other post. In addition to his having lived some seven years in Louisiana, testimony of relatives and friends to the effect that the deceased considered Barksdale Field his home was put in evidence. Deceased kept all of his property, consisting principally of bonds and insurance policies, in the local bank at nearby Bossier City, Louisiana; his checking account was kept in the same bank, and the testimony of a disinterested bank cashier that deceased, on numerous occasions, had told her that he considered Barksdale Field his home, was introduced. The court, finding that the evidence rebutted the presumption of continued domicile where inducted, held that the deceased had in fact established a domicile in Bossier Parish, Louisiana, and upheld the divorce decree.

It is apparent from these two decisions that the courts have made a distinction between inductees and the so-called "professional soldier." They seem to recognize, and rightly so, that the inductee, being in service for only a short time, has, in most cases, actually no intention of making any particular place to which he is sent his permanent residence. On the other hand, a "professional soldier" may certainly, during his years of service, form a definite attachment to a particular locality where he has been stationed with the intention of making it his domicile both while in and upon leaving the service.

These decisions in no way change the well established law on the subject, but rather emphasize the requirements necessary for a serviceman to acquire a domicile of choice.

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