Maryland Law Review

Volume 11 | Issue 2 Article 8

Book Review

Book Review

HANDBOOK OF THE CONFLICT OF LAWS, Third Edition. By Herbert F. Goodrich, assisted by Paul A. Wolkin, St. Paul: West Publishing Company, 1949. Pp. XIX, 729. $6.50.

The third edition of this hornbook follows the general lines of the earlier ones. There are many sections which are very nearly verbatim copies of the 1938 edition and, in fact, the black type section headings have suffered surprisingly little alteration. The main revisions center about the chapters dealing with those fields where constitutional law and the conflict of laws overlap, in particular, taxation, divorce, *res judicata,* and Workmen's Compensation.

Because there have been so many marked developments in the field of conflict of laws since publication of the second edition in 1938, the third edition of Judge Goodrich's text fills a very present need. Only several of such modifications will be mentioned.

Perhaps the beginning of one of the more important developments took place in 1938 when Mr. Justice Brandeis handed down the now famous decision of *Erie R. R. Co. v. Tompkins.*[1] For the previous ninety-six years before the *coup de grace* of *Swift v. Tyson*[2] a federal court had been free to apply, in a diversity case, its own conception of common law. Then, in the same year as the publication of the second edition of the work being reviewed, the established rule was reversed by the *Erie* case. The author in the 1938 edition recognized the abolition of the earlier doctrine and in a short paragraph commented thereupon, saying, "Thus, today the federal courts have no independent rules of common law and therefore Conflict of Laws, but must follow the rules established in the state courts of their district."[3] This was truly a prophetic interpretation of the meaning of the *Erie* case.

Of course the opinion had stated, "Except in matters governed by the Federal Constitution or by Acts of Congress, the law to be applied in any case is the law of the State."[4] However, the Court had then remanded the case

[1] 304 U. S. 64, 114 A. L. R. 1487 (1938).
[2] 16 Pet. 1 (U. S. 1842).
[3] Text, 2d ed., 24.
[4] *Supra,* n. 1, 78.

to the federal court sitting in New York where the Pennsylvania law (*lex loci delicti*) was applied. If this was an application by the federal court of the conflict of laws rule of New York, it was not recognized as such. Indeed the author's prediction of the effect of *Erie* as applied to conflict of laws was not conclusively fulfilled until three years later.[5]

The present edition contains an enlarged and able discussion of the *Erie* rule. The author describes the development of the doctrine as it has been extended to include conflict of laws,[6] burden of proof,[7] limitations[8] and, in fact, any rule of the state which, if not applied by the federal court sitting therein, would bring about an important difference in the result.[9]

Well accented in this portion of the text is the underlying policy of *Erie*, viz. statewide uniformity of result, whether a case be decided by the court of a state or a federal court sitting therein.

Another area of conflict of laws litigation in which the passage of a dozen years has brought about considerable change is that of jurisdiction for divorce and "full faith and credit" of a decree rendered at the domicil of one spouse. *Haddock*[10] and its predecessor, *Atherton*,[11] though causing confusion and evoking criticism in the legal periodicals, were the rule in 1938 and were ably described and explained in the second edition.[12] But with the first *Williams* case[13] decided in 1942, the rules of the *Haddock* doctrine became outmoded. No longer would matrimonial domicil have an exalted importance and no longer in the 1938 edition might there be found much present value in the ten pages of text material,[14] the eight citations to *Haddock*, and the four citations to *Atherton*.

In the present and third edition, the author has, of course, revised the section pertaining to the problem. The question of single domicil divorces is developed through *Haddock* and *Williams* and indeed the discussion includes

[5] Klaxon v. Stentor Electric Mfg. Co., 313 U. S. 487 (1941) and Griffin v. McCoach, 313 U. S. 498 (1941), both noted, *State Conflict Of Laws Rules In The Federal Courts*, 6 Md. L. Rev. 160 (1942).

[6] *Ibid.*

[7] Palmer v. Hoffman, 318 U. S. 109 (1943).

[8] Guaranty Trust Co. v. York, 326 U. S. 99 (1945).

[9] Angel v. Bullington, 330 U. S. 183 (1947).

[10] Haddock v. Haddock, 201 U. S. 562 (1906), dicussed in Strahorn, *A Rationale of the Haddock Case*, 32 Ill. L. R. 796 (1938).

[11] Atherton v. Atherton, 181 U. S. 155 (1901).

[12] Text, 2d ed., 341, *et seq.*

[13] Williams v. North Carolina, 317 U. S. 287 (1942).

[14] *Supra*, n. 12.

the recent important and fascinating "divisible divorce" cases of *Estin*[15] and *Kreiger*.[16]

A third change of some importance concerns the application of *res judicata* to the jurisdiction of a court over the subject matter. The departure began with *Davis v. Davis*,[17] a case also decided in 1938, the publication year of the second and earlier edition. The decision, however, apparently was handed down by the Supreme Court too late for inclusion in the text. The second edition therefore, declares what was then thought to be the rule, *viz.*, ". . . when a court's authority depends upon jurisdiction over status or subject matter, it has long been said that no *res judicata* effect could be given to a finding by the court that it has jurisdiction."[18]

This rule was superseded by *Davis*, at least in so far as a party is barred from collaterally attacking the jurisdiction of a court to grant a divorce when the question of jurisdiction had been actually litigated in that court. A companion case, *Stoll v. Gottlieb*[19] substantiated the changed rule, holding that jurisdiction over the *res*, once litigated, may not be collaterally attacked. These cases and their meaning have been incorporated in the present edition and furthermore the increased scope of the *Davis* doctrine brought about by the recent cases of *Sherrer*[20] and *Coe*[21] has been recognized and commented upon.[22]

It might be noted that the author unqualifiedly states that the principle of these latter cases is not applicable to bar a criminal action by public authorities for bigamy or adultery.[23] The categorical comment appears somewhat incautious in view of the "full faith and credit" idiom which is found throughout the *Sherrer* and *Coe* opinions.

It is interesting to note the author's evident shift from advocacy or at least a general acceptance of the "vested rights" theory which was obvious in the earlier editions to the "local law" theory. A quotation from the second and third editions will suffice to show the apparent change of

---

[15] Estin v. Estin, 334 U. S. 541 (1948), noted, *And Now That You Have Your Divorce, Where Do You Stand?* 10 Md. L. R. 256 (1949).
[16] Krieger v. Krieger, 334 U. S. 555 (1948), noted, *ibid.*
[17] 305 U. S. 32 (1938).
[18] Text, 2d ed., 33, 555.
[19] 305 U. S. 165 (1938).
[20] Sherrer v. Sherrer, 334 U. S. 343 (1948), noted, *Res Judicata And Interstate Divorce*, 11 Md. L. R. 143 (1950).
[21] Coe v. Coe, 334 U. S. 378 (1948), noted, *ibid.*
[22] Text, 3d ed. 56, 400.
[23] Text, 3d ed., 401.

attitude. Whereas in the second edition Judge Goodrich states,

> ". . . It is a principle of civilized law that rights once vested under the law continue until destroyed or cut off by law, and that such rights are recognized and enforced in one state though they have come into being in another, unless such enforcement, is for good reason, thought contrary to the public policy of the jurisdiction where enforcement is sought."[24]

yet in the third edition the language is changed to read,

> ". . . it is a principle of civilized law that a court will not resolve a dispute before it which involves foreign elements as if it were deciding a case all of the facts of which occurred in its own state. It will, instead, look to the law of the other state or states involved, and consonant with other considerations that may be of concern, seek a result conforming to that law."[25]

The reason for the change in approach is not easily discernable. Perhaps a hint may be found in the preface of the third edition where Judge Goodrich declares, "As years go by, however, there seems to me less compulsion about conflict of laws rules except as the Constitution provides the compulsion."[26]

Whatever be Judge Goodrich's theory of conflict of laws, the Handbook of the Conflict of Laws is a necessary addition to any legal library. The busy practitioner as well as the cloistered student of law can profit by this up-to-date single volume work.

L. WHITING FARINHOLT, JR.*

---

[24] Text, 2d ed., 11.
[25] Text, 3d ed., 14.
[26] Preface, 3d ed., V.
* Professor of Law, University of Maryland School of Law.