

whose restricted province is an inquiry into the jurisdiction of the court, and the legal form of the court's proceedings. *Hamilton v. Harwood*, 113 Ill. 154 (1885); *People v. Lindblom*, 182 Ill. 241, 55 N.E. 358 (1899); *White v. Wagar*, 185 Ill. 195, 57 N.E. 26 (1900); *Joyce v. Chicago*, 216 Ill. 466, 75 N.E. 184 (1905); *Carroll v. Houston*, 341 Ill. 531, 173 N.E. 657 (1930); *Crocker v. Abel*, 348 Ill. 269, 180 N.E. 852 (1932); *Ellfeldt v. Chicago*, 189 Ill. App. 610 (1914); *People ex rel. Aeberly v. Chicago*, 240 Ill. App. 208 (1926).

Even conceding that the court felt the need for a more efficacious writ, the order of the Medical Committee might well have been affirmed. The record contained specific findings of facts made by a group of medical practitioners. If these facts were sufficient to justify the finding of gross malpractice by applying the lowest conceivable standard to the medical profession, then the conclusion should have been upheld and the application of the erroneous standard considered as harmless error. Though an improper finding of law may be made, if the findings of fact are in accordance with the proper construction of the law, then the specific finding of law which is erroneous is mere surplusage.

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Conflict of Laws—Extraterritorial Effect of Custody Decree—[Minnesota].—The plaintiff and defendant were divorced in Iowa, the court awarding custody of an infant child alternately to each parent for six months of the year, and providing, for a readjudication of the question of custody in three years. The plaintiff later became domiciled in Minnesota. At the end of one of the six-month periods, plaintiff surrendered custody of the child to the defendant; but before defendant could return to Iowa, the plaintiff sued out a writ of *habeas corpus* challenging his right to the child's custody. The lower court awarded custody of the child to the plaintiff until further order, and the defendant appealed, principally on the ground that the Minnesota court lacked jurisdiction to make a decree affecting the child's custody. *Held*, the child was domiciled in Minnesota and the Minnesota court had jurisdiction to determine the child's custody, not being bound by the full faith and credit clause of the Federal Constitution to give effect to the Iowa decree. *State ex rel. Larson v. Larson*, 252 N.W. 329 (Minn. 1934).

Since a decree of custody of a child is an adjudication of a domestic status and alters substantially the relationship of parent and child, only the state of the child's domicile should have jurisdiction to award such a decree. *People ex rel. Wagner v. Torrence*, 27 P. (2d) 1038 (Colo. 1933); *Brandon v. Brandon*, 154 Ga. 661, 115 S.E. 115 (1922); *Weber v. Redding*, 200 Ind. 448, 163 N.E. 269 (1928); *In re Volk*, 254 Mich. 25, 235 N.W. 854 (1931); *Sanders v. Sanders*, 224 Mo. App. 1107, 14 S.W. (2d) 458 (1931); *In re Erving*, 109 N.J. Eq. 294, 157 Atl. 161 (1931); *Griffin v. Griffin*, 95 Ore. 78, 187 Pac. 598 (1920); Goodrich, *Conflict of Laws* (1st ed. 1927), § 131; Beale, *The Status of The Child and the Conflict of Laws*, 1 Univ. Chi. L. Rev. 13, 21 (1933); Beale, *The Progress of the Law*, 34 Harv. L. Rev. 50, 57 (1920); Goodrich, *Custody of Children in Divorce Suits*, 7 Corn. L. Quar. 1 (1921). Cf. *Minick v. Minick*, 149 So. 483 (Fla. 1933).

If a court decreeing custody of a child to one parent has adequate jurisdiction, the preponderance of authority holds that the decree is *res judicata* as to all matters prior to the time of its rendition, and the right of the parent to custody of the child will be recognized in another state. *Wakefield v. Ives*, 35 Ia. 238 (1872); *State ex rel. Nipp v.*

Dist. Ct., 46 Mont. 425, 128 Pac. 590 (1912); *Chapman v. Walker*, 144 Okla. 83, 289 Pac. 740 (1930); *In Re Penner*, 161 Wash. 479, 297 Pac. 757 (1931); *Groves v. Barto*, 109 Wash. 112, 186 Pac. 300 (1919). But it is generally held that such a decree has no controlling effect in another state as to facts arising subsequent to the date of the decree. *People ex rel. Stockham v. Schaedel*, 340 Ill. 560, 173 N.E. 172 (1930); *In re Leu*, 240 Mich. 240, 215 N.W. 384 (1927); *Mylius v. Cargill*, 19 N.M. 278, 142 Pac. 918 (1914); *Gaunt v. Gaunt*, 160 Okla. 195, 16 P. (2d) 579 (1932); 20 A.L.R. 815 (1922); Beale, *The Status of The Child and the Conflict of Laws*, 1 Univ. Chi. L. Rev. 13, 24 (1933); 26 Mich. L. Rev. 570 (1928). The ease with which a court may find "changed circumstances" has tended to reduce the importance of a foreign custody decree, although the burden is put upon the person seeking to disturb the *status quo* to show that new circumstances have arisen. *Morrill v. Morrill*, 83 Conn. 479, 77 Atl. 1 (1910); *Turner v. Turner*, 169 Atl. 873 (N.H. 1934); *Mylius v. Cargill*, 19 N.M. 278, 142 Pac. 918 (1914).

A few courts, however, refuse to give any recognition to foreign custody decrees, on the ground that it is to the best interests of the child to have the entire matter re-litigated by the court of the forum. *In re Bort*, 25 Kan. 308 (1881); *Avery v. Avery*, 33 Kan. 1, 5 Pac. 418 (1885); *In re Alderman*, 157 N.C. 507, 73 S.E. 126 (1911); *Friendly v. Friendly*, 137 Ore. 180, 2 P. (2d) 1 (1931); 20 A.L.R. 817. These cases are distinctly in the minority. Goodrich, *Custody of Children in Divorce Suits*, 7 Corn. L. Quar. 1 (1921); 27 Mich. L. Rev. 339 (1929); 13 Minn. L. Rev. 261 (1929).

A more difficult problem arises when custody of a child is awarded to one parent, subject to further order of court; and, subsequently, after parent and child have become domiciled in another state, the decree is modified. Most courts hold that when the person to whom the custody was given becomes domiciled in another state, the jurisdiction of the first State is ended, and the second state alone may affect the child's custody, since the child's domicile changes with that of the parent in whose custody he has been placed. *People ex rel. Wagner v. Torrence*, 27 P. (2d) 1038 (Colo. 1933); *In re Alderman*, 157 N.C. 507, 73 S.E. 126 (1911); *Gaunt v. Gaunt*, 160 Okla. 195, 16 P. (2d) 579 (1932); *Griffin v. Griffin*, 95 Ore. 78, 187 Pac. 598 (1920); *Barnes v. Lee*, 128 Ore. 655, 275 Pac. 661 (1929); *Groves v. Barto*, 109 Wash. 112, 186 Pac. 300 (1919); Beale, *The Status of The Child and the Conflict of Laws*, 1 Univ. Chi. L. Rev. 13, 22 (1933). The present case aligns itself with this group.

On the other hand, a number of courts take the view that the first court retains jurisdiction of questions as to the custody of the child, in spite of the removal of the child and the custodian parent from the state. *Wakefield v. Ives*, 35 Ia. 238 (1872); *In re Krauthoff*, 191 Mo. App. 149, 177 S.W. 1112 (1915); *State ex rel. Nipp v. Dist. Ct.*, 46 Mont. 425, 128 Pac. 590 (1912); Goodrich, *Custody of Children in Divorce Suits*, 7 Corn. L. Quar. 1 (1921). See *Stetson v. Stetson*, 80 Me. 483, 15 Atl. 60 (1888). If the child and both parents leave the state in which the custody decree was granted, it seems possible that all courts might agree that the jurisdiction of the first state has terminated.

There is much to be said for the minority view that the first state retains control of questions of custody. The welfare of the child should be the paramount consideration in the award of custody, and the determination of the child's domicile, which is only a means to that further end, should be governed thereby. In the majority of cases it would seem that the state in which the divorce is secured is best fitted to provide for the child's future welfare. In the present case the Iowa court had granted perhaps the

most equitable of custody decrees; care of the child was awarded to each parent, alternately, for equal periods of time, and provision was made for modification in the future. Yet the majority view, and the present case, permit a custodian to evade that type of decree by removing the child to another jurisdiction.

Since cases like the present one do represent the modern view, however, perhaps the only solution is to have the court awarding custody place strong economic pressure upon the custodian of the child to secure obedience to modifications of the original decree. It will do little good for the first court to threaten the custodian with punishment for contempt if the child is removed from the court's jurisdiction, since full faith and credit will not be given to modifications of the custody decree while parent and child are outside the state. *People ex rel. Wagner v. Torrence*, 27 P. (2d) 1038 (Colo. 1933). But the first state might require a bond conditioned upon full obedience to future orders of the court as a condition precedent to securing custody of the child. *Mattox v. Mattox*, 129 Okla. 301, 264 Pac. 898 (1928).

NATHAN WOLFBERG

Corporate Reorganization—Premature Receivership—"Upset Price" Doctrine—[Federal].—The current financial position of the National Radiator Corporation, judged by the ratio of liquid assets to current liabilities, was excellent; however, the corporation had sustained heavy operating losses in each year since its organization in 1927, and the officers and directors believed that some readjustment of the capital structure, consisting in the main of a large issue of debentures, was necessary to escape ultimate insolvency. A plan of reorganization involving an exchange of securities was proposed, and eventually accepted by ninety-five per cent of the debenture holders. Pursuant to the plan, interest payments on the debentures were defaulted. Thereupon certain dissenting debenture holders sued to collect the interest past due; to frustrate their action and effectuate the reorganization, a suit in the nature of a creditor's bill was brought by the bondholders' committee, the prior suit enjoined, and a receiver appointed. The court set an upset price about ten per cent in excess of the liquid assets of the corporation, relying entirely on figures compiled by the bondholders' committee, a nominee of which became the purchaser at the receiver's sale at a sum slightly above the upset price. At the hearing on confirmation of the sale, two groups of creditors objected, the first on the theory that the court lacked equity jurisdiction of the suit, and the second on the ground that the sale price was inadequate. *Held*, the first group was entitled to payment of its claims in full because the receivership and sale was fraudulent in law, since it had hindered and delayed the collection of these claims while the corporation was solvent; and the second group was entitled to that sum in cash which they would have received if the property had been sold at a proper price. *First National Bank v. Flershem*, 290 U.S. 504, 54 Sup. Ct. 298 (1934), rehearing denied Feb. 5, 1934.

Since the sanction given the friendly receivership in *Re Metropolitan Railway Receivership*, 208 U.S. 90, 28 Sup. Ct. 219, 52 L. Ed. 403 (1908), the Supreme Court has shown a gradual though decided reversal of feeling toward this device to accomplish corporate readjustment. See *Harkin v. Brundage*, 276 U.S. 36, 48 Sup. Ct. 268, 72 L. Ed. 457 (1928), noted in 41 Harv. L. Rev. 804 (1928); *Riehle v. Margolies*, 279 U.S. 218, 49 Sup. Ct. 310, 73 L. Ed. 669 (1929), *Shapiro v. Wilgus*, 287 U.S. 348, 53 Sup. Ct. 142, 77 L. Ed. 355 (1932), noted in 81 Univ. Pa. L. Rev. 642 (1933); cf. *May Ho-*