

Burbank Vs. Ernst

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Court : US Supreme Court

Decided On : Jan-26-1914

Appeal No. : 232 U.S. 162

Appellant : Burbank

Respondent : Ernst

Judgement :

Burbank v. Ernst - 232 U.S. 162 (1914)

U.S. Supreme Court Burbank v. Ernst, 232 U.S. 162 (1914)

Burbank v. Ernst

No. 151

Argued .January 15, 16, 1914

Decided January 26, 1914

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ERROR TO THE SUPREME COURT

OF THE STATE OF LOUISIANA

SYLLABUS

Where the jurisdiction of the court rendering the judgment depends upon domicile, that question is open to reexamination in the court of another state asked to give the judgment full faith and credit as required by the federal Constitution. *Andrews v. Andrews*, [188 U. S. 14](#) .

Where the evidence as to domicile of the deceased is conflicting and the state court is warranted in finding that the court of probate of another state did not have jurisdiction to probate a will because the domicile of deceased was not in that state, this Court will not retry the facts, and under the facts, as found in this case, the decree of probate is not entitled to full faith and credit in another state.

Where the headnote of a decision of a state court is not given special

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force by statute or rule of court, the opinion is to be looked to for original and authentic grounds of the decision.

129 La. 528 affirmed.

The facts, which involve the validity of a judgment of the Supreme Court of the Louisiana, and the determination whether that court was required to give full faith and credit to a judgment of the probate court of Texas, are stated in the opinion.

MR. JUSTICE HOLMES delivered the opinion of the Court.

This case arises in the matter of the succession of T. Scott Burbank. He died in Texas on May 10, 1910, leaving a will dated March 22, 1910, which was admitted to probate there. The executors sought to have the will registered in Louisiana, but the tutrix of Burbank's minor daughter and sole heir filed in the succession record a direct action to annul the will on the ground that the testator died domiciled in Louisiana and that, by the laws of that state, the will was void. The Supreme Court of Louisiana gave judgment against the will, and ordered the application for registry to be dismissed "as of nonsuit." 129 La. 528. The error assigned is that full

faith and credit were not given to the Texas decree.

Of course, the jurisdiction of the Texas court depended upon the domicil of Burbank, which therefore was open to reexamination. *Andrews v. Andrews*, [188 U. S. 14](#) . The objection urged is that the Louisiana court attributed conclusive effect to Burbank's conduct in Louisiana, taken

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in connection with the laws there, instead of recognizing that no statute of that state could prevent his acquiring a domicil wherever he actually might be, elsewhere, and instead of treating the question as one of intent and fact. Burbank was one of the executors under his father's will, and as such, on April 8, 1909, at that time being a resident of New Orleans, declared before a notary that, then being about to absent himself temporarily from Louisiana, and in order to comply with the law, especially Article 1154 of the Revised Civil Code, he constituted one Billings his attorney. If he left the state permanently, his duty, we are told by the supreme court, was to surrender his trust, render an account, and pay over any balance due. It is true that, in his Texas will, he declared that Texas was his permanent home, and that he made similar declarations orally and in writing; but, on the other hand, it is found that his agent continued to represent him, and it seems that he continued to act, as an executor temporarily absent. He had made a will in Louisiana just before leaving, but, ten days before making the Texas will, he had consulted a lawyer as to making a will that would be valid by the law of Texas, which law allowed dispositions not valid by the law of Louisiana, where most of his property was. The supreme court not unnaturally suspected, from the declaration of domicil in the will and the circumstances, that Burbank was making up a fictitious case in the hope of avoiding the restrictions of his real domicil before he killed himself, as it is said that he did, in May, and found that the Texas declarations were more than counterbalanced by his declaration of record and his official acts as executor resident in Louisiana. There can be no question that the evidence was conflicting and that the court was warranted in finding as it did.

It is not for us to retry the facts. The ground of the argument here is a statement in the opinion of the court that the recital in the notarial act was conclusive evidence

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that Burbank left the state with the intention of returning; but that does not import a failure to recognize, as the court clearly did recognize, that he might change his mind. Reliance also is placed upon the headnote of the decision. which states that the intent to leave only temporarily is conclusively presumed to continue until the notarial procurement is recalled, and that the executors are concluded from asserting a change of domicil. But the headnote is given no special force by statute or rule of court, as in some states. It inaccurately represents the reasoning of the judgment. In 129 La., it is said to have been made by the court. However that may be, we look to the opinion for the original and authentic statement of the grounds of decision. It may be that, in fact, the conduct of the testator in Louisiana was given greater weight, because of the statutes of the state, than others might give it, but no error of law appears that would warrant a reversal of the judgment below. *German Savings & Loan Society v. Dormitzer*, [192 U. S. 125](#) , [192 U. S. 128](#) .

Judgment affirmed.

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