Constitutional Law -- Case or Controversy -- Dismissal for Mootness

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NOTES AND COMMENTS

Community which sets the standard should be the community where the harm will be manifested. Such considerations are the foundation of the rule that problems of tort law should be governed by the law of the place of the wrong. These same considerations should also determine the scope of the rule’s application.

Therefore, in determining whether the rule should apply to such a problem as that of allowing a law suit between members of a family, it should be asked whether this is primarily a problem of shifting loss or one of regulating the relations between the members of a family. Since the two reasons most often advanced for the common law rule of family immunity are the ancient concept the husband and wife constitute in law but one person, and that to permit such suits will create family discord and disrupt family harmony, it would appear that for problems of this kind the most appropriate law is that of the family domicile.

In light of these considerations this writer suggests that North Carolina amend G.S. § 52-10.1 to provide that a husband and wife domiciled in North Carolina have a cause of action against each other to recover for injuries, wherever sustained, as if they were unmarried.

SAMUEL S. WOODLEY, JR.

Constitutional Law—Case or Controversy—Dismissal for Mootness

Where a decision in a case at bar will have no effect because of some intervening fact which has rendered the case moot, the United

18 Ford, supra note 7, at 398, sets out the historical background and reasons for disallowing suits between spouses.

Johnson v. People's First Nat'l Bank & Trust Co., 394 Pa. 116, 145 A.2d 716 (1958), held that the doctrine of intrafamily immunity from suit by a member of the family expires upon the death of the person protected and does not extend to a decedent's estate for the reason that death terminates the family relationship and there is no longer a relationship in which the state or public policy has an interest.

19 The court in the principal case also dismissed plaintiff's plea for recovery under North Carolina’s Motor Vehicle Financial Responsibility Act of 1957 by pointing out that liability insurance protects against claims legally asserted, but does not itself produce liability. Plaintiff, however, did not contend that the presence of liability insurance should create liability, but rather contended with some merit that by allowing defendant immunity, the public policy of the state, as expressed by the vehicle responsibility act, for protecting its citizens who are injured in automobile accidents would be contravened. In North Carolina a wife who is injured by her husband's negligent operation of an automobile will have the protection of the insurance required under this act, but by denying plaintiff the same protection, because she happened to incur her injury across the state line, the insurance company is given a fortuitous windfall.
States Supreme Court will order the case dismissed.\(^1\) That the Court will summarily dismiss a mooted case has long been one of the basic principles in its disposition of cases. But the question of whether or not a case is moot is not so easily disposed of. Where a decision by the Court would affect the parties, the Court will decide the case on its merits.\(^2\) Even where one issue of the case has become moot, the Court will decide the case if there are other issues involved which remain alive.\(^3\)

The events which can occur to render a case moot are legion. A case will be dismissed as moot if the relief sought has already been granted,\(^4\) as where the parties have settled pending appeal,\(^5\) or defendant has paid plaintiff the amount contested;\(^6\) if a statute has been passed which renders the action unnecessary;\(^7\) if one seeking admission to a school has passed school age;\(^8\) if, in an election dispute, those elected have already been seated by Congress;\(^9\) or if the act sought to be enjoined has already been completed by the time the Court hears the case.\(^10\) The latter result is unaffected by the


\(^2\) In Eagles v. United States ex rel. Samuels, 329 U.S. 304 (1946), petitioner had contested being drafted. The circuit court ordered him released from service. On appeal to the Supreme Court he contended the case was moot. The Court held that it was not moot because a reversal would necessitate his re-induction into the Army.

\(^3\) In Wilson v. United States, 232 U.S. 563 (1914), petitioner reached the Supreme Court only by asserting that the White Slave Act was unconstitutional. By the time the Court heard this case, the constitutional issue had been settled by another case. Held, that having taken jurisdiction on the constitutional point, the Court would retain jurisdiction to decide the rest of the case, though the constitutional question was moot. Accord, Michigan Cent. R.R. v. Vreeland, 227 U.S. 59 (1913).

\(^4\) Taylor v. McElroy, 360 U.S. 709 (1959) (petitioner had been re-instated in his job); Gray v. Board of Trustees, 342 U.S. 517 (1952) (Negro petitioners had been admitted to previously segregated school).


\(^10\) Gray v. Board of Trustees, 342 U.S. 517 (1952); Security Mut. Life Ins. Co. v. Prewitt, 200 U.S. 446 (1906) (disputed permit to do business had expired); Mills v. Green, 159 U.S. 651 (1895) (disputed delegates to constitutional convention had been seated).
fact that a damage remedy is still available. The Court twice dismissed cases where alleged anti-trust violations had been halted because of World War I.

In an unusual context, the Supreme Court has substantially changed the law on mootness. In *Robinson v. California* the Court reversed defendant's conviction and held that a California statute making the status of dope addiction a crime was unconstitutional. Afterward, the state of California filed an alternate petition for rehearing and for an abatement of the judgment on the ground that defendant had died before the Court decided the case. In a memorandum decision the Court denied the petition for rehearing. Justice Clark, with whom Justices Harlan and Stewart joined, wrote a dissenting opinion. Justice Clark called the decision of the Court a "meaningless gesture utterly useless in the disposition of the case—the appellant being dead—and, as I read our cases, is contrary to the general policy this Court has always followed . . . ."

For over a century, the Court has consistently held that the death of an appealing defendant renders the case moot. In fact, the usual statement has been that upon the happening of defendant's death, the case is treated as having abated altogether. Every circuit court ruling on the matter has held that the action is void ab initio, and that a fine levied on the defendant in the trial court cannot now be recovered from his personal representative. From this

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12 United States v. American-Asiatic S.S. Co., 242 U.S. 537 (1917); United States v. Hamburg-Amerikanische Packetfahrtactien Gesellschaft, 239 U.S. 466 (1916). These cases involved alleged anti-trust violations between American, British, and German steamship companies. The companies had of necessity ceased doing business together because of World War I, and the Court held that this rendered the case moot. United States v. W.T. Grant Co., 345 U.S. 629 (1953) is distinguishable. There the Court held that the case was not moot simply because defendant had filed an affidavit stating that he would resign his positions which had brought about Clayton Act interlocking directorate prosecution. The Court stated that defendant would still be free to resume his former practices if a decision were not reached.
15 Id. at 905.
17 Daniel v. United States, 268 F.2d 849 (5th Cir. 1959); Howard v. Wilbur, 166 F.2d 884 (6th Cir. 1948); United States v. Mook, 125 F.2d 706 (2d Cir. 1942); Baldwin v. United States, 72 F.2d 810 (9th Cir. 1934); Rossi v. United States, 21 F.2d 747 (8th Cir. 1927); Pino v. United States, 278 Fed. 479 (7th Cir. 1921); United States v. Theurer, 213 Fed. 964 (5th Cir. 1914); Dyar v. United States, 186 Fed. 614 (5th Cir. 1911); United States v. Dunne, 173 Fed. 254 (9th Cir. 1909).
it necessarily appears that Robinson must stand for a drastic change in the Court's policy on mootness cases, despite the relatively narrow context of the denial of a petition for rehearing.

The dissenters in Robinson, in citing Stewart v. Southern Ry.,\(^{18}\) outlined the procedure usually followed by the Court in such cases. There, the Court had already decided the case on appeal, not knowing that the parties had previously settled. On petition for rehearing this fact was pointed out to the Court, and as a result the Court granted the petition, vacated the former judgment and remanded to the district court with directions to dismiss the suit as moot.\(^{19}\)

A line of decisions separate from the Robinson case may indicate a trend toward finding cases not moot. In these cases the defendant had been released from prison pending the appeal; hence, they are distinguishable from the principal case in which defendant had died pending the appeal. In the first two cases in this series the Court merely dismissed the appeal as moot.\(^{20}\) Then, in Lewis v. United States,\(^{21}\) there was a suggestion that if the defendant could have been tried again for the offense (it was nol prossed below), the case might not have been moot. Next came the landmark case of St. Pierre v. United States.\(^{22}\) This case differed little from the earlier cases in its actual holding—a dismissal of the case as moot—but was important for the incidental hint it contained which was adopted by the Court in later decisions. The Court stated: "Nor has petitioner shown that under either state or federal law further penalties or disabilities can be imposed on him as a result of the judgment which has now been satisfied."\(^{23}\) Finally, in Fiswick v. United States,\(^{24}\) the budding theory blossomed as the Court unanimously held the case not moot although the defendant had already been released from prison. The Court pointed out that the defendant was an alien and was liable to be deported for conviction of this crime, that a conviction might harm any naturalization plans the defendant had, and that he might also suffer the loss of certain civil rights. On

\(^{18}\) 315 U.S. 784 (1942).
\(^{19}\) See Little v. Bowers, 134 U.S. 547 (1890). In Cahill v. New York, N.H. & H.R.R., 351 U.S. 183 (1956), the Court had already decided the case and had denied a petition for rehearing, but on defendant's motion to recall, the case was re-opened in the interest of fairness.
\(^{21}\) 216 U.S. 611 (1910).
\(^{22}\) 319 U.S. 41 (1943).
\(^{23}\) Id. at 43.
\(^{24}\) 329 U.S. 211 (1946).
these grounds the case was distinguished from *St. Pierre*. Thus the doctrine of "collateral consequences," first mentioned in *St. Pierre*, was actually applied in *Fiswick*.

In *United States v. Morgan* the doctrine's growth continued, the Court holding in a five to four decision that the case was not moot although defendant had been released from prison, since he had already been convicted of another crime in a state court and was subject to a longer sentence as a second offender. In *Pollard v. United States* the doctrine reached its fullest development. The Court, although divided five to four on the merits, was unanimous in holding that the case was not moot. The Court said: "We think that petitioner's reference to the above cases (*Morgan and Fiswick*) sufficiently satisfies the requirement that review in this Court will be allowed only when its judgment will have some material effect. The possibility of consequences collateral to the imposition of sentence is sufficiently substantial to justify our dealing with the merits." It is significant to note that there were no unusual consequences in this case, such as possible deportation or second offender conviction, as were present in prior cases. Here the Court was talking only about the normal consequences of conviction of a felony—moral stigma, loss of certain civil rights, etc.

The onrush of the doctrine of collateral consequences came to an abrupt halt in *Parker v. Ellis*. The majority in a per curiam decision held that since the petitioner had been released pending a hearing in the Court on his habeas corpus writ, and since the writ could not issue if there were no detention, the case was moot. The majority said that *Pollard* was poorly considered and probably overruled by *Heflin v. United States*. The Chief Justice, joined by Justices Douglas, Black and Brennan, dissented. The dissenters argued that *Pollard* should control this case and that the Court had never overruled *Pollard* either directly or by implication. Both the Chief Justice and Justice Douglas, in a separate dissenting opinion, pointed out the collateral consequences involved and said that the harm done defendant below should be undone.

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28 *Id.* at 358.
29 362 U.S. 574 (1960).
30 358 U.S. 415 (1959). The Court did not cite *Pollard*.
31 Chief Justice Warren stated: "Conviction of a felony imposes a *status* upon a person which not only makes him vulnerable to future sanctions through new civil disability statutes, but which also seriously affects his
Just how much effect the *Parker* case will have on the collateral consequences doctrine is highly debatable, for it is at least inferable that *Robinson* represents a swing back in the other direction. Whether *Robinson* represents such a swing or not, there can be little doubt that the companion case of *Wetzel v. Ohio*\(^3\) does so indicate. In that case the defendant died pending the appeal and his wife as administratrix filed a motion to be substituted as a party. The state filed a motion to dismiss the appeal. In a per curiam decision, the Court granted the wife's motion. It also granted the state's motion to dismiss the appeal for want of a substantial federal question. The case is significant in that the Court, by allowing the wife's motion, necessarily decided that the case was not moot, and reached a determination on the merits.

Justice Douglas' concurring opinion in *Wetzel*, which sheds the only light upon the reasoning of the majority, was based mainly upon the collateral consequences involved in the case. In Ohio the costs in a criminal case are charged personally to the defendant and his property may be sold in enforcement of this.\(^2\) The Ohio Court of Appeals has held that the death of a defendant did not abate the cause, but merely left the judgment as it stood before the appeal.\(^8\) However, in the same case that court said that it did not decide the question of whether defendant's estate was liable for the payment of costs. But Justice Douglas said that Ohio law is apparently to the effect that costs can be collected from a deceased's estate. Justice Douglas cited and relied on *Pollard*, the key case in the "collateral consequences" line of decisions. He specifically refused to pass upon whether decedent's family's interest in his good name satisfied the case or controversy requirement, but his mentioning it at all may indicate a possible future trend.\(^3\)

Justice Clark, joined by Justices Harlan and Stewart, dissented on the ground that the Court had on numerous times held that the existence of a judgment taxing costs in such cases cannot alone

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\(^{24}\) In *United States v. Mook*, 125 F.2d 706 (2d Cir. 1942), the court stated in a per curiam decision: "Nevertheless, we think it may not be amiss to say that it seems to us that the next-of-kin of a convicted person who dies pending an appeal have an interest in clearing his good name, which Congress might well believe would justify a change in the law."
prevent dismissal. There is indeed a long line of cases supporting the proposition that no appeal lies from a mere decree respecting costs.\footnote{3}

It seems clear that the Robinson and Wetzel cases establish some new rules in the field of mootness. Whether or not they will be followed is of course not known. But it appears that the Court has applied the collateral consequences line of cases, previously limited to situations where the defendant had been released from prison, to cases where the defendant has died. It also appears that the doctrine, which was under attack in Parker, has been revived, and that Pollard still stands. It is not here intended to argue whether the Court is right or wrong in these decisions, but it is hoped that the Court in future cases will make clear to the public and to the bar what its position is on this matter, preferably with a full decision squarely discussing the problem.

LAWRENCE T. HAMMOND, JR.

Constitutional Law—Financial Responsibility Act—Liability of Insurer Without Notice

In Lane v. Iowa Mut. Ins. Co.\footnote{1} the North Carolina Supreme Court recently affirmed a trial court decision imposing liability on a defendant who had absolutely no notice or opportunity to be heard before his liability became irrevocably fixed.

The plaintiff was injured in an automobile accident as a result of the negligence of an “assigned risk” whom the defendant insured.\footnote{2} The insured did not stop at the scene of the accident and did not file an accident report.\footnote{3} Consequently, neither the plaintiff nor the

\footnote{1} 258 N.C. 318, 128 S.E.2d 398 (1962).
\footnote{2} N.C. GEN. STAT. § 20-279.34 (Supp. 1961), provides that the Commissioner of Insurance shall equitably apportion among insurance carriers “those applicants for motor vehicle policies who are required to file proof of financial responsibility . . . but who are unable to secure such insurance through ordinary methods.”
\footnote{3} N.C. GEN. STAT. §§ 20-166, to -182 (Supp. 1961) provide that a wilful failure to stop is punishable by imprisonment for up to five years and/or a fine of $500. Failure to file an accident report as required by N.C. GEN. STAT. § 20-166.1 (Supp. 1961) is a misdemeanor.