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INJUNCTIONS AGAINST OUT-OF-STATE DIVORCES:
DEVELOPMENT OF THE NEW YORK LAW

Each state has a legitimate interest in the marital status of its own domiciliaries. Its courts may restrain persons over whom it has in personam jurisdiction from instituting proceedings in foreign jurisdictions. The purpose of this comment is to examine the conditions under which New York will exercise this equity jurisdiction to restrain a spouse from prosecuting a divorce action in a foreign country or a sister state.

PRE-1940 PERIOD

As early as 1850 a New York court enjoined a resident spouse, attempting to circumvent the laws of New York, from prosecuting a divorce action in a sister state. The court reasoned that, even though New York would not recognize the divorce, it would be inequitable to put the wife, who was also a New York domiciliary, under the cloud of such a decree, or put her to the expense of the litigation necessary to avoid it. Once established, the power to enjoin a resident spouse was exercised liberally. It was said to be employed whenever the “usual” grounds for equitable interference existed. These grounds came to include: (1) evasion of the laws of the common matrimonial domicile; (2) fraud upon the foreign court; (3) hardship and inconvenience in defending against the foreign action; (4) prejudice to the property rights of the petitioning spouse; (5) subjection to the indignities of an unjustified divorce; and (6) priority of jurisdiction by the enjoining state to determine the same issues sought to be litigated in the foreign action. The courts in every instance assumed that the sister-state divorce would be void in New York.

Consistent with the underlying logic of the cases cited, a New York court in 1926 enjoined a spouse seeking a Mexican “mail-order” divorce. The objection of the defendant, that an injunction was unnecessary, since his Mexican decree, if obtained, would be void in New York, was rejected. Whether the defendant sought a divorce based on sham domicile in a sister state or in a foreign country made no difference so long as the defendant was a resident of New York. It was said that the plaintiff should not be exposed to the doubt as to her marital status which could be raised, should the other spouse contract a second marriage which might have validity, at least in Mexico. She should not, moreover, be put to the expense of a proceeding to invalidate the foreign judgment.

It is plain that until 1940 New York dealt strictly with a fugitive from

1. 28 Am. Jur., Injunctions § 204 (1940); 19 C.J., Divorce § 263 (1920); Restatement, Conflict of Laws § 96 (1934).
matrimony looking for an easy foreign or sister-state divorce. Social dignity, property interests, and enforcement of the laws of the matrimonial domicile relating to marital responsibilities were but a few of the commanding incentives for granting the injunction.

THE GOLDSTEIN CASE

This liberal view was, however, discountenanced in the controversial case of Goldstein v. Goldstein. There the plaintiff-wife sought to restrain her husband from prosecuting a Florida divorce. The allegations stated that both parties were residents of New York, the state where the marriage had been contracted; that both had lived there for the past twelve years; and specifically, that the husband was not a resident of Florida. The court refused the injunction. It reasoned that the Florida court would be wholly without jurisdiction to render a valid divorce decree against the plaintiff. Plaintiff, therefore, had nothing to fear from the foreign action, since she could incur no injury. Equity will not restrain conduct merely because it is offensive to one's feelings or may cause mental anguish. Dissenting, Judge Conway argued that since the foreign decree would allow the defendant to remarry, his second wife's financial demands would jeopardize the amount of support which the plaintiff might obtain. It would seem that in the Goldstein decision the court abandoned the century of equitable considerations which the courts had applied under similar circumstances. The decision did not escape criticism.

THE GARVIN CASE

Before 1942, in assuming that sister-state decrees would be void, New York courts relied on Haddock v. Haddock, which was then accepted law. In the Haddock case New York was the matrimonial domicile of the husband and wife. The husband abandoned his wife without cause, became a domiciliary of Connecticut, and there obtained a divorce. The question presented was whether New York was required, under the full faith and credit clause, to

5. 283 N.Y. 146, 27 N.E.2d 969 (1940).
6. The court relied on Baumann v. Baumann, 250 N.Y. 382, 165 N.E. 819 (1929), in which it was held that a wife was not entitled to an injunction to prevent a woman from using the surname of her husband where her husband had obtained a void Mexican divorce, and, on the strength thereof, had married the woman against whom the injunction was prayed.
7. "[I]t would seem that the majority of the court took a point of view which is opposed to essential considerations of natural justice, particularly within the domain of equity. It is universally conceded that a court of equity may issue an injunction in order to prevent oppression, fraud, embarrassment and the like." Wormser, Injunction Against Prosecution of Divorce Actions in Other States, 9 Fordham L. Rev. 376, 378 (1940). "Both as a matter of sound equity jurisprudence and of enlightened public policy, it would appear that the courts of this State are not without power to exercise their sound discretion in order to enjoin the commission of what everyone must admit to be wrong." Id. at 379.
8. 201 U.S. 562 (1906).
recognize the Connecticut decree, when the wife, who remained in New York, was not personally served and did not appear in the Connecticut proceeding. The United States Supreme Court concluded that the divorce, though valid in Connecticut, could be refused recognition in New York. The divorce decree of the Connecticut court was, therefore, not entitled to full faith and credit. Thus it was possible to have a spouse married in one jurisdiction, but not in another. It was this complexity which the courts before the Goldstein case sought to obviate by way of injunctive relief.

In 1942 the Supreme Court expressly overruled the Haddock case in the first of the Williams v. North Carolina cases. There it was recognized that a divorce granted by one state must be granted recognition by all states if either party was a domiciliary of the granting state. The second Williams case added that the finding of domicile by the granting state would not be conclusive but could be successfully attacked in a sister state. The finding of domicile by the foreign court, however, raises a presumption in the attacking state which might be difficult to rebut. As Justice Frankfurter, speaking for the majority, emphasized: "The burden of undermining the verity which the . . . decrees import rests heavily upon the assailant."

The Williams case, in overruling the Haddock case, negatived the major premise upon which the Goldstein decision was predicated, namely, that the party seeking the injunction had nothing to fear in New York because New York would not recognize the foreign divorce. Now that the foreign court's finding of domicile was prima facie valid, could the reasoning of the Goldstein case be any longer logically employed? Lower courts expressed doubt as to whether the Goldstein decision was still valid precedent and, therefore, granted injunctions.

In 1951 the New York Court of Appeals in Garvin v. Garvin unanimously approved these lower court holdings, indicating that the Goldstein case was no longer controlling, at least as to decrees involving the full faith and credit doctrine. In the Garvin case a wife instituted an action for separation in New York in which the husband made an appearance. During the pendency of the separation suit the husband went to the Virgin Islands where he instituted divorce proceedings. The wife then moved to enjoin him from proceeding with the divorce, alleging that the husband's residence in the Virgin Islands was a sham. The court granted an injunction pendente lite. It was held that the

12. 325 U.S. at 233-34.
Goldstein case was not controlling because under the Williams doctrine full faith and credit must be given to the judgments of courts of United States territories and possessions as well as to those of the several states. Therefore, the wife should be spared the heavy burden of striking down the prima facie effect of the foreign court's finding of domicile. The decision in effect reasserted the right of a court of equity to restrain a spouse who seeks fraudulently to obtain a divorce in a sister state, but without suggesting that the ex parte action would violate some legal right of the innocent spouse. The court apparently felt that the increased burden of proof constituted sufficient injury to the wife.

In brief, under the Garvin rule, New York will enjoin a defendant from obtaining a foreign divorce decree if such decree would be entitled to full faith and credit even though, under the facts of the case, it could ultimately be avoided on jurisdictional grounds.

Foreign Country Divorces

What effect, if any, has the Williams case had on the Goldstein decision in the area of foreign country, ex parte divorce actions, which are beyond the protection of the full faith and credit clause? Lower courts favored the proposition that the Goldstein case was still controlling because foreign country divorces are not entitled to prima facie validity. This view was approved in 1955 by the Court of Appeals in Rosenbaum v. Rosenbaum. In that case...
the plaintiff-wife alleged that both parties were residents of New York; that
the husband, after she had obtained a New York separation, went to Mexico,
instituted an action for divorce and remained there twenty-four hours; and that
she was not personally served in Mexico. The allegations of the complaint
were not denied. The court held that the motion to dismiss the complaint was
properly granted since there was no threatened injury to the wife's marital
status or property rights that could not be avoided by means of a declaratory
judgment. The court said that the Mexican divorce decree, secured without
a bona fide domicile, would be utterly void, and would not carry prima facie
validity, even though it may have included on its face a recitation of duly-
attained jurisdiction. The court expressly reaffirmed the Goldstein case as
precedent insofar as injunctions against foreign country divorces were con-
cerned.

The language of the court lends itself to two possible interpretations: first,
an injunction will not lie against any foreign country divorce; or, second, an
injunction will not lie when the defendant is seeking an admittedly invalid
foreign country divorce decree. The latter interpretation is supported by the
following language of the court: "... the question as to whether an injunction
may issue to restrain defendant from prosecuting this Mexican divorce action
—a clear legal nullity under the allegations ... and of no more validity than
a so-called mail-order divorce . . . is controlled by valid precedent . . . ."

If this interpretation is correct, it would follow that injunctions against other
types of foreign country ex parte divorces, those with some color of jurisdic-
tion, are not necessarily barred by the Rosenbaum case. The question of
whether injunctive relief would lie against this type of divorce action would
seem to be left open, since the resultant decrees would not be granted full
faith and credit, but could be recognized on grounds of comity.20

However, the court also employed language which supports the conclusion
that an injunction will not lie against any foreign country ex parte divorce.
The court distinguished between the state divorces and their prima facie

1957] COMMENTS 331

136 N.Y.S.2d 734 (Sup. Ct. 1954), the appellate division reversed in a 3 to 2 decision,
235 App. Div. 427, 138 N.Y.S.2d 885 (1st Dep't 1955), and the Court of Appeals by a 4
to 3 vote reversed the appellate division and reinstated the special term decision. It is
interesting to note that out of 13 judges who considered the case, 7 were of the view
that the Goldstein case should be followed while 6 thought that the Goldstein decision was not
good law.

19. 309 N.Y. at 376, 130 N.E.2d at 904. "The rationale of Rosenbaum v. Rosenbaum
. . . is that an injunction against foreign proceedings will be granted if the foreign
judgment would be more than 'a complete nullity'. . . ." Aghnides v. Aghnides, — Misc.

20. "[A] decree confirming or dissolving a marriage, is recognized as valid in every
country, unless contrary to the policy of its own law." Hilton v. Guyot, 159 U.S. 113,
167 (1895); Caldwell v. Caldwell, 298 N.Y. 146, 81 N.E.2d 60 (1948). Where the action
for divorce has been instituted by "mail order" through a power of attorney granted to
a lawyer in Mexico, the decree has been held null and void upon the ground that the
court did not have the slightest semblance of jurisdiction. Querze v. Querze, 290 N.Y.
13, 47 N.E.2d 423 (1943); Vose v. Vose, 280 N.Y. 779, 21 N.E.2d 616 (1939).
validity on one side, and the foreign country divorces which are not entitled to prima facie validity on the other. The court's language indicated that it did not have in mind the varying degrees of proof which may be required between decrees of various foreign countries, but rather it would appear that the court distinguished only the burden of proof necessary to invalidate a sister-state decree as opposed to any foreign country decree. The court cited the Garvin case to point up this difference. This interpretation of the Rosenbaum case is further strengthened by the fact that the court, in refusing the injunction, referred to the availability of a remedy at law, a declaratory judgment. That remedy, although also available, is not referred to in sister-state divorce decree situations.

**Criticism of the Rosenbaum Case**

No matter which interpretation of the Rosenbaum opinion is correct, the decision has basic difficulties.

**Liberal Interpretation**

If the case is taken to mean that an injunction should not issue against any foreign country divorce on the ground that foreign country ex parte divorce decrees are not entitled to prima facie validity, the weakness of the court's reasoning lies in using the Goldstein case as a still valid precedent. The Goldstein rule was the law when Haddock was the law. Under the Haddock rule the New York courts were not compelled to and did not as a matter of policy recognize an ex parte divorce decree. The Williams case, however, overruled the Haddock case and ignored fault as a relevant element affecting the right of the offending spouse to acquire a foreign domicile. Today, therefore, a migratory spouse, regardless of fault, who becomes a domiciliary of a foreign jurisdiction confers on the foreign court power to grant a valid ex parte divorce. A state's policy is subordinated to and is bound by the sister-state decree. The state's policy is not similarly subordinated in the case of foreign
country divorces. New York has, however, changed its policy and will recognize a foreign country ex parte divorce decree when one party has established valid domicile there, whereas previously, under the Haddock rule, it would not recognize such decrees. Therefore, does not present New York law impose, if not exactly the same, almost the same burden of proof on the party attacking it? To apply, then, a different norm in determining the propriety of equitable relief is logically inconsistent. Except for the prima facie validity, the situation is identical with that of the sister state. It is difficult to understand why a nominal difference in the proof necessary to show lack of domicile should be decisive on the question of whether or not to grant an injunction, if the plaintiff in fact sustains that burden and establishes the defendant's lack of domicile in the foreign country.

The refusal to grant equitable relief and the assignment of a difference in the burden of proof as the reason for such refusal is based on purely technical considerations. Should not a court of equity be guided by the equitable merits, such as were considered by the courts prior to the Goldstein decision? A state's refusal to aid its own citizen where he or she proves that the defendant's domicile in the foreign country is a sham, is a solution that requires that actual harm must first occur. This solution aids no one since the defendant is free to entangle himself in further marital difficulties, and the plaintiff must wait until the other spouse procures the void decree in order to show that the decree is based on sham domicile. Without doubt the determination in advance of the lack of bona fide domicile and the granting of injunctive relief would in most cases forestall the necessity of subsequent litigation.

**Strict Interpretation**

The Rosenbaum decision would appear weak even if restricted to its facts, that is, that an injunction will not lie when the plaintiff is seeking a Mexican


27. "Neither our statutes nor our judicial decisions bar recognition of a foreign decree of divorce where the foreign court was competent to act by reason of it having acquired jurisdiction under its laws. ... No reason appears for the public policy of our State to differently regard the resort of the parties to a foreign country." In the Matter of Fleischer, 192 Misc. 777, 781-82, 80 N.Y.S.2d 543, 547 (Surr. Ct. 1948). "With the exception of such right to examine into the bona fides of the foreign residence ... Williams v. North Carolina ... settled the other issues. ... Within the limitations referred to above, the validity of decrees of the foreign country in question, as distinguished from those of a sister state which are given full faith and credit, ... are accepted in our courts as a matter of comity." Caswell v. Caswell, 111 N.Y.S.2d 875, 876 (Sup. Ct. 1952).

28. Judgment obtained in a foreign country is conclusive, so far as to preclude a retrial upon the merits. It is not conclusive, however, and it can be impeached by proof that the court had no jurisdiction. Lazier v. Westcott, 26 N.Y. 146 (1852). "The grounds, then, for overturning a foreign country judgment are the same as those for overturning the judgment of a sister State. ... [T]he burden of proving lack of jurisdiction, is on the plaintiff. ..." Rosenbaum v. Rosenbaum, 309 N.Y. at 380-381, 130 N.E.2d at 937 (1955) (dissenting opinion).

29. See note 3 supra.
ex parte divorce which is admittedly a legal nullity. The reason for the refusal
to grant an injunction against the procurement of such a divorce is based on
the grounds that "no rights of any kind" could result from such decree and
that, therefore, no harm can be done to the plaintiff-wife. Such view is not in
accord with the development of the law in the matrimonial field. Since the
decision of Krause v. Krause,80 for example, a husband who in reliance on a
void foreign country decree has remarried and has returned with his second
"wife" to New York, would, in an action for separation and support by her, be
estopped from denying that she is his legal wife. He may be compelled to
support two wives, a result which might well diminish the property rights of
the first wife, since the court would be forced to consider the new demands
on the husband's resources. This was the plausible argument offered by Chief
Judge Conway in his dissent in the Goldstein case.81

Furthermore, under a statutory provision, the second "wife" can be awarded
alimony against her "husband" even in an action to annul the second mar-
riage.82 Notwithstanding that such a Mexican ex parte decree is void in New
York, it is valid in Mexico, and thus alters the marital status in that juris-
diction. If the husband remarries, the marriage will be valid, at least in
Mexico.83 Once such a situation develops, it is the breeding ground for further
litigation between the husband and his first wife, and frequently results in
litigation between the two wives after the death of the husband.84

30. 282 N.Y. 355, 26 N.E.2d 290 (1940), where it was held that the husband must
support his second "wife." He was precluded from denying the validity of his admittedly
void divorce from his first wife since he was the one who procured it. Although the case
involved a divorce obtained in a sister state, its reasoning appears to extend to divorces
granted in foreign countries as well. For an interesting application of the doctrine of this
case, see Ritter v. Ritter, 175 Misc. 84, 22 N.Y.2d 749 (Sup. Ct. 1940).
31. 283 N.Y. at 149-56, 27 N.E.2d at 970-73 (1940) (dissenting opinion).
32. N.Y. Civ. Prac. Act § 1140-a provides: "When an action is brought to annul a
marriage or to declare the nullity of a void marriage, the court may give such direction
for support of the wife by the husband as justice requires. . . . This section shall apply
to any action brought by either the husband or the wife. . . ." In Gaines v. Jacobsen, 308
N.Y. 218, 25, 124 N.E.2d 290, 294-95 (1954), the court said: "By writing section 1140-a
into the law, the legislature has chosen, without regard to whether the marriage is void
or voidable, to attach to annulled marriages sufficient validity and significance to support an
award of alimony, in other words, to serve, the same as any valid marriage would, as the
foundation of a continuing duty to support the wife after the marriage is terminated." Necessarily, the statute also covers void marriages contracted after obtaining a Mexican
Dep't 1953); Payne v. Payne, 205 Misc. 802, 129 N.Y.2d 769 (Sup. Ct. 1954).
33. Alfaro v. Alfaro, 142 N.Y.2d 865, 865 (Sup. Ct. 1955); cf. Johnson v. Johnson,
146 Misc. 93, 261 N.Y. Supp. 523 (Sup. Ct. 1933).
34. See 40 Colum. L. Rev. 1255 (1940). See also Imbrioscia v. Quayle, 197 Misc.
1049, 96 N.Y.2d 635 (Sup. Ct. 1950), rev'd, 728 App. Div. 144, 103 N.Y.2d 593 (1st
Dep't 1951), aff'd, 303 N.Y. 841, 104 N.E.2d 378 (1952); In the Matter of Vogel, 251
App. Div. 741, 295 N.Y. Supp. 913 (2d Dep't 1937); In the Matter of Green, 155 Misc.
Furthermore, it is specious reasoning to refuse to enjoin the procuring of a void Mexican *ex parte* decree on the grounds that the innocent spouse has an adequate remedy at law in the form of a declaratory judgment. A declaratory judgment in a divorce case is not an adequate remedy. It cannot, for example, restore the plaintiff to her previous social position. More importantly, it cannot divest all the rights vested in others who acted in reliance on the divorce decree. At any rate such remedy is equally available in the sister-state situation. Yet injunctions are granted and a declaratory judgment is apparently not regarded, and properly so, as an adequate remedy sufficient to deny equitable relief. The weakness in ascribing this remedy as a reason for the refusal to grant an injunction against Mexican divorces is implied in the court's failure even to suggest its applicability in the case of a sister-state divorce and their hesitancy to assign any reason for the distinction between the two.

It is clear that a Mexican divorce decree, even if an absolute legal nullity in New York, still constitutes a clear threat to the resident wife's property rights, and creates a situation in which a court of equity should protect citizens who seek its aid.

**CONCLUSION**

New York recognizes foreign *ex parte* divorces, both of sister states and foreign countries, if the party establishes domicile in the granting jurisdiction. Since the courts readily grant injunctive relief against sister-state divorces, there is no reason why the courts should not do the same in foreign country situations. In considering an injunction against foreign country *ex parte* divorces based on sham domicile, in light of the present law, the test of whether or not the plaintiff will be harmed should not be the degree of the invalidity of the decree, or the difference, if any, of the burden of proof necessary to show lack of jurisdiction in the foreign court, or whether a declaratory judgment is available. The test should be the actual likelihood of the innocent spouse being harmed by the invalid divorce decree, determined not by impersonal legalistic factors but rather by those traditional equitable considerations which the courts freely applied prior to the *Goldstein* decision. An invalid foreign country divorce decree is almost invariably a threat to the innocent spouse's property interests. Hence equity should not hesitate, upon application, to act and to prevent such an invalid divorce decree from coming into existence.

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35. See notes 3, 31 supra.
36. See note 3 supra.