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Obligatory Interstate Recognition of Divorce Decrees–A New Trend?

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COMMENTS

OBLIGATORY INTERSTATE RECOGNITION OF DIVORCE DECREES—A NEW TREND?

The case of *Davis v. Davis*,[1] decided by the Supreme Court of the United States on November 7, 1938, adds two important doctrines to the law concerning the obligatory interstate recognition of divorce decrees and very materially obviates the need of a uniform divorce recognition act. It holds that a decree of divorce obtained in Virginia on the ground of desertion by a husband whose domicil was determined by the Virginia court to be in that Commonwealth, but which State was not the last matrimonial domicil of the couple, is entitled to obligatory recognition against a wife domiciled in the District of Columbia, where she was not served personally with the jurisdiction of the Virginia court but had submitted herself to the jurisdiction of that court by reason of her special appearance and conduct.

The first of these doctrines is that a defendant even though not served personally within the jurisdiction of the court and though merely appearing specially for the sole purpose of contesting jurisdiction may by his or her conduct submit to the jurisdiction of the court for an adjudication on the merits. These matters of conduct are revealed where the court said:

"The recital in the decree of reference, that the cause came on for hearing upon, *inter alia,* argument of counsel, suggests that both parties were heard. The stipulation of counsel that the commissioner should only ascertain the facts raised by her plea shows action by both parties relating to merits, at least to the extent that it withdrew the case from the commissioner. The record discloses no challenge by respondent to the statement, in the decree overruling her exceptions, that the court had jurisdiction of the subject matter and of the parties. The grant of time within which to answer implies application to that end. A motion for such an order relates to merits. Hupfeld v. Automaton Piano Co., (C. C.) 66 F. 788, 789. The service of notice of taking depositions upon respondent in the District of Columbia and upon her counsel in Virginia implies that petitioner's counsel understood that respondent had standing to appear and cross-examine. Plainly her plea and conduct in the Virginia court cannot be regarded as special appearance merely to challenge jurisdiction. Considered in its entirety, the record shows that she submitted herself to the jurisdiction of the Virginia court and is bound by its determination that it had jurisdiction of the subject matter and of the parties. Cf. Andrews v. Andrews, supra (188 U. S. 40, 47 L. ed. 372, 23 S. Ct. 237)."[2]

Previous cases on this subject have used the expression "subject to the jurisdiction" of the court rendering the decree[3] but heretofore this has been construed to mean that the defendant was personally served or had generally appeared at the forum. In the *Davis* case appears the first application by the Supreme Court to the field of divorce recognition of the doctrine which was applied by the Supreme Court for the first time in any kind of case in *Baldwin v. Iowa State Traveling Men's Asso.*,[4] namely, that a special appearance plus conduct

1. 59 Sup. Ct. 3, 83 L. Ed. 52 (1938).
2. See *id.* at 7, 83 L. Ed., at 57.
3. Haddock v. Haddock, 201 U. S. 562 (1906).
4. Baldwin v. Iowa State Travelling Men's Ass'n, 283 U. S. 522, 525 *et seq.* (1931).

such as occurred in the *Davis* case will constitute or be the equivalent of a general appearance.

The minimum requirements of the Supreme Court for a decree of obligatory interstate recognition of divorce decrees must therefore now be stated as follows: (1) where both parties were domiciled in the State rendering the decree and there was notice to the defendant, regardless of personal service upon or appearance by the defendant at the forum;[5] (2) where the court rendering the decree had jurisdiction over the last matrimonial domicil of the couple and the actual domicil of the husband when he sued for divorce against a deserting wife, if there was notice to the defendant, but regardless of personal service upon or appearance by the defendant at the forum;[6] and (3) where only the plaintiff was domiciled at the forum if the defendant was served personally within the jurisdiction of the court rendering the decree or appeared generally there,[7] or otherwise personally submitted to such jurisdiction through special appearance and conduct.[8]

The second of these doctrines, which the Supreme Court specifically states for the first time with regard to this subject, is that the finding of a court that the plaintiff is a bona fide resident of the State within which that court is situated is binding upon the defendant in the courts of the place where he or she resides concerning both the facts of domicil and of fraud in its acquisition where the defendant appeared specially in the court of instance, put in issue the plaintiff's allegation as to domicil, alleged fraud in the acquisition thereof, introduced evidence to show that the domicil was false, took exceptions to the commission's report in that regard, and sought to have the court sustain them and uphold her plea.[9] In view of the manner in which some State courts, in which recognition of foreign decrees was sought, have treated the determination of the presence of domicil and the absence of fraud by the court of instance, the clear enunciation of this doctrine by the Supreme Court was badly needed in the interest of social order. Presumably such a finding would also be binding upon the defendant where he or she had been personally served at the forum or had appeared generally there but had not actively contested these matters, under the rule that in such circumstances there is an estoppel by judgment concerning any defense which might have been made.

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5. See Haddock v. Haddock, 201 U. S. 562 (1906) *semble*.

6. Atherton v. Atherton, 181 U. S. 155 (1901); see Thompson v. Thompson, 226 U. S. 551, 562 (1913).

7. Cheever v. Wilson, 9 Wall. 108 (U. S. 1869).

8. Davis v. Davis, 59 Sup. Ct. 3, 83 L. Ed. 52 (1938).

9. See *id.* at 5, 83 L. Ed., at 56.

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THE AMERICAN MEDICAL ASSOCIATION AND THE ANTITRUST LAWS.*

Is the American Medical Association, or the subsidiary Medical Society of the District of Columbia, violating the antitrust laws in their opposition to the Group Health Association? It will be very helpful in discussing the matter, to briefly outline the salient facts leading up to this problem.

On February 24, 1937, the Group Health Association, Inc., was granted a charter[1] in Washington as a so-called "Co-operative Health" corporation. Through a staff of hired physicians it offered to render most types of medical and surgical treatments[2] at a stated annual cost;[3] and offered such services only to Federal employees and their families. The Medical Society of the District of Columbia opposed this new scheme as contravening the best interests both of the public, and of the physicians, and as violative of its own code of ethics, as well as the Principles and Ethics of the American Medical Association which represents some 110,000 physicians[4] in this country.

The members of the Medical Society of the District of Columbia knew the above facts; but several of them, nevertheless, became affiliated with that new organization. One member[5] was finally expelled after charges were brought against him in accordance with the rules and regulations of his society. Several other physicians resigned from the Group Health Association rather than risk society expulsion.

The newspapers[6] took up the issues, pro and con, so that they gradually became national in their scope; and the discussion finally invaded Congress early in 1938.[7] Representative Scott[8] offered a resolution to investigate the

*This article is an analysis of the statement of the Department of Justice, released to the press August 1, 1938, wherein it was contended that the American Medical Association and its affiliate, the Medical Society of the District of Columbia, were attempting to prevent the Group Health Association, of the District of Columbia, from functioning in violation of the antitrust laws. The views expressed herein are the views of the author. [Editorial Note.]

1. QUESTIONS AND ANSWERS ABOUT GROUP HEALTH (1937) § 3, (pamphlet prepared by Group Health Association, Inc.).

2. By-laws of the Group Health Association (Revised Oct. 25, 1937). Art. X, §§ 1, 4. To the same effect, see QUESTIONS AND ANSWERS ABOUT GROUP HEALTH (1937) § 4.

3. The latest charges are as follows: (a) An application fee of $5 plus $1 for each dependent. (b) A $10 membership fee, if admitted. (c) Monthly dues of single members or head of family $2.20; husband or wife $1.80; child dependents under 18, $1; child dependents 18-21 years (each) $1.00; adult dependents over 21 years (each) $2.20. A man in a family of four people would therefore have to pay $78.00 during the first year, and $60.00 *per annum* thereafter. Besides these charges there is a $25 maternity charge; a $1.00 house charge for the first visit; there also is a fifty cent additional charge per visit for treatment of venereal diseases. See QUESTIONS AND ANSWERS ABOUT GROUP HEALTH §§ 10-14. See also membership blank of Group Health Association.

4. (1938) 111 J. AM. MED. ASS'N 1194.

5. Washington Post, March 27, 1938, Magazine Section.

6. *Ibid.* Also newspapers throughout the country have had numerous discussions pro and con during the past year.

7. Hon. Jed Johnson, 83 CONG. REC., Feb. 16, 1938, at p. 2803.

8. Hon. Byron Scott, 83 CONG. REC., May 3, 1938, at p. 8101.