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COMMENTS

INJUNCTION AGAINST PROSECUTION OF DIVORCE ACTIONS IN OTHER STATES

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A recent decision of the Court of Appeals of this State in the case of *Goldstein v. Goldstein*[1] seems to run contrary to the expanding trend of modern courts of equity.[2] In that case, plaintiff-wife and defendant-husband were married in New York, resided here and at all times maintained their matrimonial domicile here. At the time of the commencement of the action, both of them were residents of this State. Defendant's place of business is here. Defendant deserted plaintiff and thereafter on various occasions sought to induce her to bring an action against him for absolute divorce, stating that he desired to be free from matrimonial bonds. Plaintiff refused to comply with his requests. Thereafter, plaintiff received through the mails official notice that defendant had instituted an action for absolute divorce against her in Florida, and that her failure to appear therein and answer would be treated as a confession by her of the allegations of his complaint in the Florida action. The defendant had no residence or domicile in Florida. Plaintiff was without means to defend the Florida action, so that she would be under compulsion to allow the notice of the Florida court to pass unnoticed. Defendant was a man of considerable means and income. She, on the other hand, was unable to stand the expenses of the Florida action, including bringing witnesses there from New York. All of the acts alleged by defendant in his Florida action necessarily must have occurred in New York. These were the essential facts alleged by the wife in her complaint in an action instituted in the Supreme Court of this State in which the wife sought to restrain the prosecution of the action for divorce brought by defendant against her in the State of Florida. In her complaint, she alleged that she "will be irreparably damaged and will be apparently deposed of her status as the wife of the defendant herein and of her property rights if the defendant be permitted to prosecute the action for divorce instituted by him in the State of Florida."

The Special Term of the Supreme Court denied a motion by defendant for a dismissal of the complaint and made an order granting the motion by plaintiff to restrain the prosecution of the Florida action by defendant. The Appellate Division of the Supreme Court, First Department, unanimously affirmed on appeal,[3] but allowed a further appeal to the Court of Appeals upon the following certified question, which constituted the sole proposition of law before

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1. 283 N. Y. 146, 27 N. E. (2d) 969 (1940).

2. Pound, *Equitable Relief Against Defamation and Injuries to Personality* (1916) 29 HARV. L. REV. 640; Crafee, *The Progress of the Law 1919-1920* (1921) 34 HARV. L. REV. 388, 407; 5 POMEROY, EQUITY JURISPRUDENCE (4th ed. 1918) § 2091.

3. 258 App. Div. 211, 15 N. Y. S. (2d) 782 (1st Dep't 1939).

the Court of Appeals: "Does the complaint herein state facts sufficient to constitute a cause of action for injunctive relief?"[4]

The majority of the Court of Appeals held that the order granting the temporary injunction restraining the prosecution of the action in Florida should be reversed and the complaint dismissed; that, upon the state of facts alleged in the complaint, the Florida courts were without jurisdiction to render a valid decree of divorce against the plaintiff; that a judgment entered in such an action would be a nullity; and that the "annoyance" which the husband's Florida action might cause plaintiff was not sufficient ground to warrant the interposition of the equity powers of the Supreme Court. Two judges dissented, each writing a separate opinion.

The majority of the court leaned heavily upon the decision in *Baumann v. Baumann*,[5] in which it was held that a wife was not entitled to an injunction to prevent another 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. Two judges dissented, each with separate opinions, and in the dissenting opinion of Judge Crane, it was said:

"Why should a court of equity be impotent in the face of what all parties to this litigation concede to be wrong? I heartily agree that courts of equity should not seek to make people better by injunction, but I do consider it as much their business to protect a wife and mother in her status before the public, as in her property."[6]

The *Baumann* case is readily distinguishable because the complaint did not allege the plaintiff's property rights were affected in any way. In fact, there had been a separation agreement predicated upon which the wife had released her dower rights. In the *Goldstein* case, not only was there no separation agreement or provision for the wife's support, but, in addition, the wife affirmatively pleaded in her complaint that her property rights would be injured if her husband was permitted to continue to prosecute "his false Florida suit".[7] Furthermore, in the *Baumann* case, the void divorce decree had already been entered. The wrong had been consummated, at least to that extent. In the *Goldstein* case, the plaintiff was seeking to prevent the threatened wrong and to thwart its consummation, with the resultant cloud upon her title and status as a wife.

Since the time of the decision of the *Baumann* case, the Court of Appeals decided *Krause v Krause*,[8] upon which Professor Frederick L. Kane commented in these columns.[9] In the *Krause* case, the defendant-husband was sued by the plaintiff-wife in this State for a separation. He set up as a

4. 258 App. Div. 944, 17 N. Y. S. (2d) 867 (1st Dep't 1940).
5. 250 N. Y. 382, 165 N. E. 819 (1929).
6. 250 N. Y. 382, 391, 165 N. E. 819, 822 (1929).
7. 283 N. Y. 146, 150, 27 N. E. (2d) 969, 970 (1940).
8. 282 N. Y. 355, 26 N. E. (2d) 290 (1940).
9. Comment (1940) 9 FORDHAM L. REV. 242.

defense that his marriage with her was void because of his incapacity. He had been previously married, and although he maintained his residence here, went to Nevada and obtained a Nevada decree of divorce on merely constructive service. Thereafter, he married plaintiff and lived and cohabited with her for several years. The majority of the court held that the husband's defense was not valid since he was precluded from challenging the validity of the Nevada decree secured by himself. The husband accordingly would be obligated to pay counsel fees and alimony. In the light of the decision in the *Krause* case, much more, therefore, than a mere annoyance is caused to the plaintiff-wife in the *Goldstein* case, because if her husband should remarry after securing his Florida divorce, and return with his second wife, if such she might be called, to this State, and if he were thereafter sued here by the second wife, he would not be allowed to deny that she is his wife, by reason of the fact that he sought and obtained the Florida decree and would not be permitted to challenge its validity as against her. Such is the effect of the decision in the *Krause* case. Consequently, he would be under a duty to maintain and support two wives, which would result in affecting the amount of support for plaintiff, his first wife. The complaint in the *Goldstein* case squarely alleged an injury to the property rights of plaintiff. In the light of the decision in the *Krause* case, more consideration, accordingly, should have been accorded to the plaintiff's claim that her financial rights were materially and tangibly affected.

Apart from any question of property rights, it 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.[10] This doctrine has been applied even in commercial cases, where the foreign suit is stamped with such features.[11] Particularly is this so where the defense of the foreign action would subject defendant therein to inconvenience, hardship, trouble and expense. "A resident ought not to be subjected to the detriment and injury of a worthless judgment in a foreign court before our courts declare its worthlessness."[12] Whatever view may be taken of the application of this doctrine to commercial litigation, the matrimonial cases, it is submitted, present far more potent reasons why the courts should grant relief. First, there is the injury to the status of the wife. Second, the intolerable situation is created that the public in general may assume that there is one wife in this State and another wife in Florida. Third, the issuance of the divorce in Florida would create doubt, at least on the part of the layman, as to the conduct and virtue of the plaintiff wife. Fourth, humiliation to an extent far more than mere annoyance is caused to the wife as a result of the Florida judgment of

10. Cole v. Cunningham, 133 U. S. 107 (1890); Kern v. Cleveland, 204 Ind. 595, 185 N. E. 446 (1933); (1939) 8 FORDHAM L. REV. 428, and cases there cited.

11. Kern v. Cleveland, 204 Ind. 595, 185 N. E. 446 (1933); (1939) 8 FORDHAM L. REV. 428, 431, n. 17.

12. (1939) 8 FORDHAM L. REV. 428, 432.

divorce against her, even though it be legally invalid here. Fifth, "There are many conceivable uses to which such a judgment of divorce could be put, causing plaintiff expense, litigation, worry, annoyance and misrepresentation".[13]

If, in reply to these considerations, it is urged that the wife would succeed in this State against any assault made upon her under the Florida judgment, then, as was well said by Justice Dowling in *Greenberg v. Greenberg*,[14]

"The true answer is, that as a citizen of this State she is entitled to the aid of its courts to prevent the commission of a threatened wrong by her husband, also a citizen of this State, by his obtaining a decree of divorce in another jurisdiction, in evasion of the laws of this State, in violation of her rights and in consummation of a patent fraud."

In the *Greenberg* case,[15] to which reference has been made, and which has been frequently cited and followed,[16] the plaintiff-wife, a resident of this State, sought to restrain the defendant-husband, also a resident of this State, from prosecuting a Mexican action for divorce against her. The complaint, quite similar to that in the *Goldstein* case, alleged that the wife would be required to bring witnesses from New York and maintain them in Mexico, to undergo heavy expenses for such witnesses and for counsel, and that the Mexican Court possessed no jurisdiction over her. The Special Term of the Supreme Court, New York County, denied an injunction order to the wife. The Appellate Division, First Department, reversed and unanimously granted her an injunction. In the *Greenberg* case, the decision is placed fundamentally upon the points of public policy and good conscience, but other cases of a similar type have placed the decision upon the further ground that relief should be given against the prospective judgment of a foreign court which has no jurisdiction over the wife.[17]

It is true that the courts of this State should not too readily interfere with litigations in other States or countries. On the other hand, due heed must be given, not to the mere annoyance, but to the very positive oppression, embarrassment, hardship and injustice caused to the wife by such misconduct and wrong on the part of the husband.

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.

13. Greenberg v. Greenberg, 218 App. Div. 104, 218 N. Y. Supp. 87 (1st Dep't 1926).

14. *Ibid.*

15. *Ibid.*

16. Jeffe v. Jeffe, 168 Misc. 123, 4 N. Y. S. (2d) 628 (Sup. Ct. 1938); Dublin v. Dublin, 150 Misc. 694, 270 N. Y. Supp. 22 (Sup. Ct. 1934); Johnson v. Johnson, 146 Misc. 93, 261 N. Y. Supp. 523 (Sup. Ct. 1933); *Cf.* Paramount Pictures Inc. v. Blumenthal, 256 App. Div. 756, 11 N. Y. S. (2d) 768 (1st Dep't 1939), appeal dismissed 281 N. Y. 682, 23 N. E. (2d) 15 (1939).

17. Gwathmey v. Gwathmey, 116 Misc. 85, 190 N. Y. Supp. 199 (Sup. Ct. 1921), *aff'd without opinion*, 201 App. Div. 843, 193 N. Y. Supp. 935 (1st Dep't 1922); Kempson v. Kempson, 58 N. J. Eq. 94, 43 Atl. 97 (1899).