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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.[1] 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.[2] 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.[3] 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.[4] 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).

2. Forrest v. Forrest, 2 Edm. Sel. Cas. 180 (N.Y. 1850).

3. Greenberg v. Greenberg, 218 App. Div. 104, 218 N.Y. Supp. 87 (1st Dep't 1926); Gwathmey v. Gwathmey, 116 Misc. 85, 190 N.Y. Supp. 199 (Sup. Ct. 1921), aff'd, 201 App. Div. 843, 193 N.Y. Supp. 935 (1st Dep't 1922); 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).

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

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*.[5] 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.[6] 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.[7]

THE GARVIN CASE

Before 1942, in assuming that sister-state decrees would be void, New York courts relied on *Haddock v. Haddock*,[8] 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,[9] 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).

9. U.S. Const. art. IV, § 1.

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.[10] 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[11] 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."[12]

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.[13]

In 1951 the New York Court of Appeals in *Garvin v. Garvin*[14] 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

10. 317 U.S. 287 (1942).

11. 325 U.S. 226 (1945). See also Cook v. Cook, 342 U.S. 126 (1951).

12. 325 U.S. at 233-34.

13. Pereira v. Pereira, 272 App. Div. 281, 70 N.Y.S.2d 763 (1st Dep't 1947); Sullivan v. Sullivan, 271 App. Div. 1016, 68 N.Y.S.2d 394 (2d Dep't 1947); Palmer v. Palmer, 268 App. Div. 1010, 52 N.Y.S.2d 383 (3d Dep't 1944); Allan v. Allan, 63 N.Y.S.2d 924 (Sup. Ct. 1946); Maloney v. Maloney, 51 N.Y.S.2d 4 (Sup. Ct. 1944); Ciacco v. Ciacco, 50 N.Y.S.2d 398 (Sup. Ct. 1944). "Unquestionably some doubt has been cast upon the decision in Goldstein v. Goldstein . . . by the United States Supreme Court. That doubt can only be determined by a decision of our Court of Appeals. . . ." Adams v. Adams, 180 Misc. 578, 579, 42 N.Y.S.2d 266, 267 (Sup. Ct. 1943).

14. 302 N.Y. 96, 96 N.E.2d 721 (1951).

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.[15] 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.[16]

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.[17] This view was approved in 1955 by the Court of Appeals in *Rosenbaum v. Rosenbaum*.[18] In that case

15. 28 U.S.C.A. § 1738 (1950); Stoll v. Gottlieb, 305 U.S. 165, 170 (1938); Davis v. Davis, 305 U.S. 32 (1938); Loughran v. Loughran, 292 U.S. 216 (1934).

16. Before a New York court will grant such an injunction it must be shown that: (a) New York has in personam jurisdiction over the defendant. Robinson v. Robinson, 254 App. Div. 696, 3 N.Y.S.2d 882 (2d Dep't), aff'd, 279 N.Y. 582, 17 N.E.2d 448 (1938); Evans v. Evans, 273 App. Div. 895, 77 N.Y.S.2d 320 (2d Dep't 1948). (b) The foreign divorce action is pending or some affirmative steps have been taken. Boston v. Boston, 205 Misc. 561, 129 N.Y.S.2d 580 (Sup. Ct. 1954). The divorce decrees must not yet have been granted. Philipson v. Philipson, 191 Misc. 913, 80 N.Y.S.2d 581 (Sup. Ct. 1948). (c) The defendant does not have a bona fide domicile in the foreign jurisdiction and he is, specifically, a resident of New York. Sivakoff v. Sivakoff, 280 App. Div. 106, 111 N.Y.S.2d 864 (1st Dep't 1952); McDonald v. McDonald, 182 Misc. 1006, 52 N.Y.S.2d 385 (Sup. Ct. 1944). But this requisite is not necessary where a temporary injunction pendente lite is sought as an incident to a matrimonial action, and where it appears that the foreign decree would render the judgment in the main action ineffective. N.Y. Civ. Prac. Act § 878(1). However, if the spouse seeking the temporary injunction pendente lite is the defendant in the main action, then the plaintiff may be enjoined only if the defendant counterclaims in the main action and could obtain judgment on the counterclaim. Eddel v. Eddel, 284 App. Div. 758, 134 N.Y.S.2d 758 (4th Dep't 1954); Bedient v. Bedient, 190 Misc. 480, 74 N.Y.S.2d 456 (Sup. Ct. 1947). (d) The foreign action would subject the complainant spouse to inconvenience and would endanger the marital status of the complainant. Pereira v. Pereira, 272 App. Div. 281, 70 N.Y.S.2d 763 (1st Dep't 1947).

17. Fromer v. Fromer, 138 N.Y.S.2d 883 (Sup. Ct. 1955); Sanguinetti v. Sanguinetti, 138 N.Y.S.2d 312 (Sup. Ct. 1953); Borax v. Borax, 136 N.Y.S.2d 164 (Sup. Ct. 1952); Winikoff v. Winikoff, 136 N.Y.S.2d 161 (Sup. Ct. 1950).

18. 309 N.Y. 371, 130 N.E.2d 902 (1955). Special term dismissed the complaint in

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 concerned.

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 . . . ."[19] If this interpretation is correct, it would follow that injunctions against other types of foreign country *ex parte* divorces, those with some color of jurisdiction, 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

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136 N.Y.S.2d 734 (Sup. Ct. 1954), the appellate division reversed in a 3 to 2 decision, 285 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 dismissal. 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. 2d —, —, 159 N.Y.S.2d 343, 350 (Sup. Ct. 1957) (dictum).

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.[21] 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.[22] That remedy, although also available, is not referred to in sister-state divorce decree situations.[23]

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.[24] 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.[25] 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.[26] The state's policy is not similarly subordinated in the case of foreign

21. "Judgments of courts of foreign countries . . . 'differ from judgments of courts of our sister States to which . . . full faith and credit must be given. . . .'" 309 N.Y. at 375, 130 N.E.2d at 903. "There is thus no . . . basis for treating sister State and foreign country divorce judgments as identical. . . . defendant is attempting to prosecute a divorce which would not be entitled to 'full faith and credit' in this State. . . ." Id. at 376, 130 N.E.2d at 904.

22. "A simple action for declaratory judgment . . . is at all times available. . . . Since plaintiff thus has an adequate remedy . . . equity should refrain from granting the drastic relief of injunction." 309 N.Y. at 377, 130 N.E.2d at 904.

23. See Garvin v. Garvin, 302 N.Y. 96, 96 N.E.2d 721 (1951).

24. See Howe, The Recognition of Foreign Divorce Decrees in New York State, 40 Colum. L. Rev. 373 (1940).

25. Pereira v. Pereira, 272 App. Div. 281, 70 N.Y.S.2d 763 (1st Dep't 1947); Howard v. Howard, 187 Misc. 16, 63 N.Y.S.2d 857 (Sup. Ct. 1946).

26. "[W]hen a court of one state acting in accord with the requirements of procedural due process alters the marital status of one domiciled in that state by granting him a divorce from his absent spouse, we cannot say its decree should be excepted from the full faith and credit clause merely because its enforcement or recognition in another state

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.[27] Therefore, does not present New York law impose, if not exactly the same, almost the same burden of proof on the party attacking it?[28] 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?[29] 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 shame 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

would conflict with the policy of the latter." Williams v. North Carolina, 317 U.S. 287, 303 (1942).

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 (1862). "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 380-81, 130 N.E.2d at 907 (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*,[30] 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.[31]

Furthermore, under a statutory provision, the second "wife" can be awarded alimony against her "husband" even in an action to annul the second marriage.[32] 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 jurisdiction. If the husband remarries, the marriage will be valid, at least in Mexico.[33] 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.[34]

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 Ridder v. Ridder, 175 Misc. 84, 22 N.Y.S.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, 225, 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 "mail-order" divorce decree. Brown v. Brown, 282 App. Div. 726, 122 N.Y.S.2d 411 (2d Dep't 1953); Payne v. Payne, 205 Misc. 802, 129 N.Y.S.2d 769 (Sup. Ct. 1954).

33. Alfaro v. Alfaro, 142 N.Y.S.2d 863, 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.S.2d 635 (Sup. Ct. 1950), rev'd, 278 App. Div. 144, 103 N.Y.S.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. 641, 280 N.Y. Supp. 692 (Surr. Ct.), aff'd, 246 App. Div. 583, 284 N.Y. Supp. 370 (1st Dep't 1935); In the Matter of Sitkin, 151 Misc. 448, 271 N.Y. Supp. 688 (Surr. Ct. 1934).

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.[35] 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.[36] 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.

35. See notes 3, 31 supra.

36. See note 3 supra.