Fordham Law Review

Volume 33 | Issue 3 Article 4

1965

Mexican Divorce - A Survey

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Recommended Citation
Mexican Divorce - A Survey, 33 Fordham L. Rev. 449 (1965).
Available at: https://ir.lawnet.fordham.edu/flr/vol33/iss3/4

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COMMENTS

MEXICAN DIVORCE—A SURVEY

I. INTRODUCTION

In 1806, when Nancy Jackson asked a New York court to enforce a Vermont alimony decree, the case[1] touched off a spate of oratory by opposing counsel which has a strangely modern ring. The alimony decree was part of a divorce obtained by Nancy during a sojourn in Vermont. Her husband had apppeared by counsel. Her attorney contended: "The *domicil* of the parties is immaterial. It is sufficient that they were within the jurisdiction of the court . . . ."[2] His adversary declared: "Here is a *conflictio legum*, and it remains to be decided, whether, in a matter of so much consequence to the morality and happiness of the people, we are to be governed by the laws of another state, or by those of our own."[3]

The court refused to enforce the alimony decree noting that the plaintiff, a domiciliary of New York, had obtained a divorce on grounds not allowed in New York (ill treatment and bad temper), and that since she had acted "with a view of evading our laws, it would be attended with pernicious consequences to aid this attempt to elude them."[4]

One hundred and fifty-nine years later, New York retains its solitary divorce ground.[5] But, under its own decisions,[6] and because of the policy laid down by the Supreme Court of the United States, a New York court would today recognize the Vermont decree as prima facie valid and Nancy's husband, because of his appearance, would be precluded from attacking it.[7] Thus, it might seem that the questions raised in the case are of merely historical

1. Jackson v. Jackson, 1 Johns. R. 424 (N.Y. Sup. Ct. 1806). This case has been called the "first instance recorded in American reports of what has come to be a frequent conflict between the claim of the individual to be freed from a marriage tie which, to him or to her, has become intolerable, and the claim of the state, acting within the powers reserved to it, to control the circumstances and the procedure affecting the termination of the marital status of its domiciliaries." Merrill, The Utility of Divorce Recognition Statutes in Dealing with the Problem of Migratory Divorce, 27 Texas L. Rev. 291-92 (1949).

2. Jackson v. Jackson, supra note 1, at 430.

3. Id. at 425-26.

4. Id. at 432. It has been pointed out that the court in Jackson was careful not to base its decision on jurisdictional grounds and that the validity of the Vermont divorce was not the point in issue. The explanation offered is that the doctrine of domicile as forming the jurisdictional base for the dissolution of marriage had not yet been formulated and that general policy considerations were more important to the court than the jurisdictional ones. Howe, The Recognition of Foreign Divorce Decrees in New York State, 40 Colum. L. Rev. 373, 382-83 (1940).

5. N.Y. Dom. Rel. Law § 170.

6. See, e.g., Kinnier v. Kinnier, 45 N.Y. 535 (1871), in which the Jackson decision was expressly disapproved.

7. Sherrer v. Sherrer, 334 U.S. 343 (1948).

interest. However, substitution of "Mexico" for "Vermont" in the arguments of counsel gives the case vitality and points up a conflict currently of more than passing interest to many.[8]

In New York, the state's highest court is only now being called upon to decide the effect of a Mexican decree in an action in which one party appeared physically and the other by counsel. In three other states,[9] this type of divorce has been held invalid. And in many other states the question has never been squarely put to the courts.

It is still possible to ask: Is domicile material when viewing the effect of a divorce obtained in a foreign country where jurisdictional concepts are totally different from ours?

II. General Considerations

Traditional notions of jurisdiction in matrimonial actions in this country are based on the idea that the marriage status is a *res* over which the state has a special interest and control.[10] Thus, a suit for divorce is a three-party action in which the state is always involved.[11]

Jurisdiction of the subject matter in a divorce action is generally considered to be twofold. Not only must the court be empowered to hear the type of question presented, but it also must have jurisdiction over the marital status of the persons involved, a jurisdiction which is completely separate and distinct from jurisdiction over the persons themselves.[12] Though the twofold nature of subject matter jurisdiction is the orthodox and by far most generally accepted theory, it is by no means unanimously followed.[13]

The traditional statutory requisite for jurisdiction over a marital status

8. According to the New York Times, an estimated 200,000 New Yorkers alone have obtained Mexican divorces. N.Y. Times, July 8, 1964, p. 34, col. 2.

9. New Jersey, New Mexico, Ohio.

10. See 2 Bishop, New Commentaries on Marriage, Divorce & Separation § 489 (4th ed. 1891); 11 Am. Jur. Conflict of Laws § 16 (1937).

11. People v. Dawell, 25 Mich. 247, 257, 12 Am. Rep. 260, 268 (1872): "[T]here are three parties to every divorce proceeding—the husband, the wife, and the State; the first two parties representing their respective interests as individuals; the State concerned to guard the morals of its citizens, by taking care that neither by collusion nor otherwise, shall divorce be allowed under such circumstances as to reduce marriage to a mere temporary arrangement of conscience or passion."

12. One textwriter phrases the test for jurisdiction this way: "Has the particular court power to entertain and adjudicate actions and controversies of the particular kind or type? *and* . . . does such residence or domicile exist within its territorial jurisdiction as to meet statutory requirements in this respect?" 2A Nelson, Divorce & Annulment § 21.01, at 294 (2d ed. 1961). (Emphasis added.)

13. Ibid. For a discussion of the development of the status theory of marriage, see Howe, supra note 4, at 390-93. The author points out that there were at least two other theories which influenced the development of the law of divorce: the contract theory, whereby the state in which the marriage was performed was deemed to be the one qualified to dissolve it; and the penal theory, under which the place where the wrong against the marriage was committed was deemed the proper forum for dissolution.

has been domicile.[14] As the law moved away from the idea that a wife could not have a domicile separate from that of her husband,[15] the plaintiff in a divorce action was deemed to carry the status of both parties so that it could be acted upon by the state of his (or her) domicile.[16] As distinguished from residence, domicile encompasses the intent to make that place a permanent abode.[17] Even where statutes use the word "residence" to describe the jurisdictional requisite for suit, the word generally is construed to embrace the concept of permanence.[18]

In a frequently quoted dictum,[19] Mr. Justice Frankfurter restated the rule that domicile is the predicate for jurisdiction of the subject matter in a matrimonial action: "Under our system of law, judicial power to grant a divorce—jurisdiction, strictly speaking—is founded on domicile . . . . The framers of the Constitution were familiar with this jurisdictional prerequisite, and since 1789 neither this Court nor any other court in the English-speaking world has questioned it."[20] It is generally agreed that where domicile is not the basis of a court's assumption of jurisdiction no divorce can validly be granted[21] and furthermore, that parties cannot artificially create a domicile for divorce purposes "by voluntarily submitting their marital tie for dissolution."[22]

14. Domicile has been defined as "that place where a man has his true, fixed, and permanent home and principal establishment, and to which whenever he is absent he has the intention of returning." Black, Law Dictionary (4th ed. 1951).

15. See Cheever v. Wilson, 76 U.S. 108, 124 (1869).

16. See 2 Bishop, op. cit. supra note 10, § 121.

17. In Wheat v. Wheat, 229 Ark. 842, 318 S.W.2d 793 (1958), the Supreme Court of Arkansas, passing on the constitutionality of a 1957 statute in which "residence" for three months prior to suit was deemed domicile for the purposes of the laws of divorce, said: "[T]he legislature has substituted the simple requirement of three months residence, which can be proved with certainty, for the nebulous concept of domicile, which usually cannot be proved. We concede that the period of residence might be shortened so unreasonably . . . as to indicate that the state has no reasonable basis for exercising jurisdiction over the marriage." Id. at 850, 318 S.W.2d at 797. The court noted further that divorces granted pursuant to this statute, albeit constitutional in Arkansas, might well be refused recognition by sister states despite the full faith and credit clause.

18. Restatement, Conflict of Laws § 9, comment e (1934).

19. Williams v. North Carolina, 325 U.S. 226 (1945).

20. Id. at 229. In addition to the dissents in this case which most seriously questioned the "ghost of unitary domicile," particularly the dissent of Mr. Justice Rutledge, id. at 244, other commentators have urged the adoption of a jurisdictional predicate based on the physical presence of the plaintiff in the divorcing forum. See Stimson, Jurisdiction in Divorce Cases: The Unsoundness of the Domiciliary Theory, 42 A.B.A.J. 222 (1956). For a discussion of domicile in other parts of the "English-speaking world," see Mountbatten v. Mountbatten, [1959] 1 All E.R. 99 (Ch.), in which a bilateral Mexican decree was held to be invalid in England.

21. 1 Beale, Conflict of Laws 468 (1935); Goodrich, Handbook of the Conflict of Laws 396 (3d ed. 1949); Restatement, Conflict of Laws § 111 (1934). But see N.Y. Dom. Rel. Law § 170 (2) which states that a New York court has jurisdiction over the marital status if the parties were married in New York.

22. 2A Nelson, op. cit. supra note 12, § 21.09, at 307. See also Jennings v. Jennings, 251

These ideas are the basis for Supreme Court decisions forming the policy governing sister-state decrees. According to these decisions, an ex parte divorce decree from a sister state is prima facie valid[23] though there may be inquiry into jurisdictional facts.[24] The burden of attacking such a decree, however, "rests heavily on the assailant."[25] Participation by a party in the action, either by appearance[26] or entrance of a cross-petition,[27] will preclude him from attacking the decree. Third parties also will be precluded where those through whom they claim are precluded or where an attack would be barred in the rendering state.[28] The overriding consideration of the Court, especially in cases where both parties have taken part, has been uniformity of recognition of divorce decrees throughout the United States.[29]

III. Mexican Divorce Generally

The full faith and credit clause of the Constitution governs the recognition of sister-state decrees. Under principles of comity,[30] recognition of decrees granted by courts of other countries is considered to be less a rule of law than a rule of practice "carrying with it no implication of relinquishment of sovereignty."[31] Most states, however, regard Mexican[32] divorces in the same light as those of sister states. All are in agreement that mail-order decrees[33] are

Ala. 73, 74, 36 So. 2d 236, 237-38 (1948), where the court said: "[I]t is recognized that unless one of the parties has a residence or domicile within the state, the parties cannot even by consent confer jurisdiction on the courts of that state to grant a divorce."

23. Williams v. North Carolina, 317 U.S. 287 (1942).

24. Williams v. North Carolina, 325 U.S. 226 (1945).

25. Id. at 234.

26. Sherrer v. Sherrer, 334 U.S. 343 (1948).

27. Coe v. Coe, 334 U.S. 378 (1948).

28. Johnson v. Muelberger, 340 U.S. 581 (1951).

29. See majority opinion of Mr. Justice Douglas in Williams v. North Carolina, 317 U.S. 287, 301 (1942).

30. Comity has been defined as "that body of rules which states observe towards one another from courtesy or mutual convenience . . . ." Black, Law Dictionary (4th ed. 1951).

31. 15 C.J.S. Conflict of Laws § 3, at 837-38 (1939).

32. Since Mexico is a Republic composed of twenty-nine states, several territories, and a Federal District, each of which has its own laws, it is more proper to refer directly to the place in Mexico where the divorce was granted. Like the United States, Mexico has its "liberal" jurisdictions, and it is to these states that most Americans flock for their migratory divorces. Most popular among them is Chihuahua, which a person can enter by crossing the International Bridge from El Paso, Texas. The majority of New York cases deal with Chihuahua divorces. Other states which attract the quickie-divorce seeker are Campeche, Sonora, Tlaxcala, and Morelos. For purposes of simplification they will be referred to here at times as "Mexican" divorces, though this practice has caused comment in Mexico. See Siqueiros, Los Conflictos de Leyes en el Sistema Constitucional Mexicano 80 (1957).

33. I.e., granted in an action in which neither party appears physically and both submit to the jurisdiction of the court.

legal nullities.[34] It is clearly offensive to the policy of all states to recognize a decree granted by a forum in which neither party has ever been present and in which no tie with the marriage has ever been acquired.

Similarly, Mexican ex parte decrees are uniformly subjected to scrutiny on the question of domicile. Where a sufficient basis for a finding of domicile is demonstrated, the decrees are upheld.[35] Where this jurisdictional requisite is missing, the decrees are denied effect.[36]

The point of departure among the states comes with the so-called bilateral decree.[37] Only four states[38] have had the validity of a bilateral Mexican divorce put squarely before their courts. New York forms a minority of one in consistently upholding the validity of such a divorce, although neither party was domiciled in Mexico, so long as the Mexican court has acquired personal jurisdiction over the parties.

IV. The Majority View

Each of the three states[39] forming the "majority" view regarding bilateral Mexican divorces has only one such reported case. In each instance the court found the divorce offensive to its public policy, and this consideration outweighed both the deference due a foreign court's decree under principles of comity and the principles of estoppel[40] which could have been raised.[41]

34. See, e.g., Christopher v. Christopher, 198 Ga. 361, 31 S.E.2d 818 (1944); Bergeron v. Bergeron, 287 Mass. 524, 192 N.E. 86 (1934); Tonti v. Chadwick, 1 N.J. 531, 64 A.2d 436 (1949); Caldwell v. Caldwell, 298 N.Y. 146, 81 N.E.2d 60 (1948); Smith v. Smith, 50 N.E.2d 889 (Ohio Ct. App. 1943). It should be noted that in certain cases mail-order decrees have had some limited effect. See, e.g., Sears v. Sears, 293 F.2d 884 (D.C. Cir. 1961); Unruh v. Industrial Comm'n, 81 Ariz. 118, 301 P.2d 1029 (1956); In the Matter of Rathscheck, 300 N.Y. 346, 90 N.E.2d 887 (1950); Harlan v. Harlan, 70 Cal. App. 2d 657, 161 P.2d 490 (Dist. Ct. App. 1945). In Harlan and Sears, invalid mail-order divorces could not be impeached by a party to the original suit.

35. Scott v. Scott, 51 Cal. 2d 249, 331 P.2d 641 (1958); De Young v. De Young, 27 Cal. 2d 521, 165 P.2d 457 (1946); Imbrioscia v. Quayle, 197 Misc. 1049, 96 N.Y.S.2d 635 (Sup. Ct. 1950), rev'd on other grounds, 278 App. Div. 144, 103 N.Y.S.2d 593 (1st Dep't 1951).

36. Harrison v. Harrison, 214 F.2d 571 (4th Cir. 1954); Bethune v. Bethune, 192 Ark. 811, 94 S.W.2d 1043 (1936); Estate of Edgett, 10 Cal. Rptr. 552 (Dist. Ct. App. 1961); Bonner v. Reandrew, 203 Iowa 1355, 214 N.W. 536 (1927); Rosenbaum v. Rosenbaum, 309 N.Y. 371, 130 N.E.2d 902 (1955); Davis v. Davis, 156 N.E.2d 494 (C.P. Ohio 1959).

37. Here, either both parties are before the court, or one party is physically present and the other appears by counsel. See Ploscowe, Mexican Divorces—When Are They Valid? 36 N.Y.S.B.J. 201 (1964).

38. New Jersey, New Mexico, New York, Ohio.

39. New Jersey, New Mexico, Ohio.

40. No attempt will be made here to discuss the tangential area of the application of estoppel in matrimonial actions. This is an area about which a great deal has been written and which remains "in a confused and unsettled state." Rosenstiel v. Rosenstiel, 21 App. Div. 2d 635, 639, 253 N.Y.S.2d 206, 210 (1st Dep't 1964) (Valente, J., concurring). For a discussion of estoppel in divorces obtained without domicile, see Note, 61 Harv. L. Rev. 326 (1948).

41. In each case, a party in the original action was allowed to impeach the validity of the divorce.

The first of these cases was *Golden v. Golden*,[42] decided by the New Mexico Supreme Court in 1937. There, husband and wife drove from Tucumcari, New Mexico, to El Paso, Texas, left their car on the American side of the International Bridge, and walked into Ciudad Juarez, State of Chihuahua. After a brief visit with a lawyer, they signed some papers, and later that same day were handed their divorce papers. Neither their physical presence in Mexico nor their submission to the Chihuahua court's jurisdiction impressed the New Mexico court. It declared: "Neither of the parties had established a 'residence' in Juarez, under any known definition of residence. They went to Juarez, Mex., for one sole purpose, to secure a decree of divorce, and then depart . . . . They might just as well have transacted the entire proceedings by phone or mail from Tucumcari, N. Mex., and have saved the all night drive, in so far as the efficacy of their efforts amounted to the establishment of a residence in Mexico for the purpose of securing a divorce."[43]

Quoting with approval a statement in a California mail-order case,[44] the court pointed out that regardless of whether the requirements of Mexican law were met, the lack of domicile in the divorcing forum meant lack of jurisdiction to grant a decree that would be recognized in New Mexico: "[T]he state of Chihuahua and the Republic of Mexico have the undoubted right to make such laws for the government of their own inhabitants as they may deem proper, and the courts of that state have the right to render judgments and decrees pursuant to such laws, fixing the rights, relations, and status of their citizens, but when such judgments or decrees, which affect or purport to determine the marital status and rights of citizens of this state, are contrary to the public policy of this state, our courts will determine for themselves the jurisdiction of that court to render such a decree . . . ."[45]

A few years later, an Ohio court spoke in much the same terms in allowing a wife who had appealed a Mexican decree in the Mexican courts to impeach the validity of the divorce in her home state. In *Bobala v. Bobala*,[46] husband, after starting an action for divorce in Ohio, began a proceeding in Chihuahua. In spite of a restraining order from the Ohio court, he continued his Mexican action and subsequently obtained a divorce. His wife, through counsel, prosecuted an appeal in Mexico which was denied, and then brought suit for divorce in Ohio. Although the alleged fraud perpetrated on the Ohio court by the husband in flaunting its jurisdiction undoubtedly played a part in the decision of the court of appeals, the court made a special point of the jurisdictional aspect of the case. It stated: "Jurisdiction is prescribed by law and can not be increased or diminished by the consent of the parties, and where there is want of jurisdiction of the subject matter a judgment without jurisdiction is void . . . and it cannot be doubted that if the Mexican

42. 41 N.M. 356, 68 P.2d 928 (1937).
43. Id. at 364, 68 P.2d at 933.
44. Ryder v. Ryder, 2 Cal. App. 2d 426, 37 P.2d 1069 (1934).
45. 41 N.M. at 368, 68 P.2d at 935.
46. 68 Ohio App. 63, 33 N.E.2d 845 (1940).

court had no jurisdiction due to non-residence of appellant the decree could in no case affect the marriage status of these parties in Ohio."[47] Noting that the lower court had entertained the wife's divorce action in spite of her participation in the Mexican divorce proceedings, the court of appeals stated clearly that the lower court "was fully justified in its refusal to respect the decree in Mexico *due to the fact that appellant had not acquired a bona fide residence in Mexico.*"[48]

The most recent decision of this type was handed down in New Jersey in 1963. In *Warrender v. Warrender*,[49] the plaintiff was not estopped from attacking a Chihuahua divorce obtained by her in a suit in which her husband had appeared by counsel. Calling the decree "absolutely void on its face"[50] the court noted that there was not even a pretense of either residence or domicile in the decree. It cited a number of mail-order cases[51] in support of the proposition that the public policy of the state was offended by such a decree. Like the court in *Golden*, it refused to recognize a difference between the bilateral decree and a mail-order divorce, despite the acquisition by the Mexican court of personal jurisdiction over the parties.

Each of these decisions stands today as the law of its state. Each reflects the attitude of the majority of states concerning the role of the state in governing marriage and its dissolution—a role which precludes recognition of a patently collusive decree based on fleeting contacts with a divorcing forum that has no interest in the marriage status of foreigners.

V. The Minority View—New York

New York's attitude, on the other hand, is one of indifference to the jurisdictional elements which so offend its sister states.[52] So long as the decree recites that the jurisdictional requirements of the forum have been met and so long as the court had personal jurisdiction over the parties, New York has, since 1938, consistently refused to look behind the decree to determine whether bona fide residence or domicile existed. It has been suggested that the status theory of marriage, with its corresponding jurisdictional requirement based on domicile, has never fully been accepted in New York.[53] This theory would seem to be borne out by the cases construing Mexican bilateral divorces.

47. Id. at 71, 33 N.E.2d at 849.

48. Id. at 72, 33 N.E.2d at 849. (Emphasis added.) Here, as is generally the case, the court used the word "residence" in the sense of domicile.

49. 79 N.J. Super. 114, 190 A.2d 684 (App. Div. 1963), aff'd, 42 N.J. 287, 200 A.2d 123 (1964).

50. Id. at 118, 190 A.2d at 686.

51. State v. De Meo, 20 N.J. 1, 118 A.2d 1 (1955); State v. Najjar, 2 N.J. 208, 66 A.2d 37 (1949) (per curiam); Tonti v. Chadwick, 1 N.J. 531, 64 A.2d 436 (1949); Flammia v. Maller, 66 N.J. Super. 440, 169 A.2d 488 (App. Div. 1961).

52. See Rosenstiel v. Rosenstiel, 21 App. Div. 2d 635, 253 N.Y.S.2d 206 (1st Dep't 1964).

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

In the first of these cases, *Leviton v. Leviton*,[54] both parties to the Mexican divorce were physically present in Chihuahua, defendant was personally served there, and the judgment recited that they were Mexican domiciliaries (though the entire transaction took less than twenty-four hours). In upholding the validity of the divorce[55] the court said: "The Mexican law respecting residence has been followed. The establishment of a domicile or residence in the strict sense is a question both of intent and act. The parties acted; we *must* accept the Mexican court's conclusion upon their intent."[56] Refusing to find a difference between this decree and one granted in Nevada, the court declared: "We may disagree with the law of Mexico or Nevada establishing rules for residence. We may even disapprove them as expressing theories repugnant to our own standards, as applied to corresponding litigation initiated within this state. It does not follow that we should disturb a decree entered either in Nevada or Mexico if it complies with the requirements of their statutes, for we then say that the court had jurisdiction of the subject matter and the parties, and thus was competent to act."[57] This treatment of a divorce action, in much the same manner as though it were an ordinary contract suit, transitory in nature,[58] in substance followed earlier divorce cases involving sister states.[59]

In *Matter of Fleischer*[60] the court spoke in terms of the marital *res*, but adopted the *Leviton* reasoning. "Essentially, the facts here, as in the *Leviton* case . . . present a situation where one of the parties to a marriage, with the consent of the other expressed by voluntary appearance, took the marital *res* out of this State to invoke a foreign jurisdiction. The jurisdictional fact of domicile . . . is not open to attack unless the public policy of our State intervenes to deny recognition to the decree of a foreign country which followed upon the submission of both parties to that jurisdiction."[61] The court noted

54. 6 N.Y.S.2d 535 (Sup. Ct.), aff'd & modified mem. 254 App. Div. 670, 4 N.Y.S.2d 992 (1st Dep't 1938).

55. Strictly speaking, the New York court upheld a divorce of Mexican domiciliaries, since it refused to relitigate the question of whether the parties had the requisite intent for domicile and accepted the Mexican court's characterization of the parties.

56. 6 N.Y.S.2d at 537. (Emphasis added.)

57. Id. at 538.

58. The orthodox view is that a suit for divorce is local in nature. "The subject-matter of a divorce suit is just as much local as the subject-matter of a suit in ejectment. It is the status of the parties, permitted, regulated and controlled by the law of their domicile, which is to be passed upon and determined; and the appearance of the parties in a foreign jurisdiction does nothing whatever toward transferring this subject-matter." People v. Dawell, 25 Mich. 247, 264, 12 Am. Rep. 260, 273 (1872).

59. Gould v. Gould, 235 N.Y. 14, 138 N.E. 490 (1923), which stated that a divorce not based on domicile could be recognized in comity if it were not offensive to the state's public policy; Glaser v. Glaser, 276 N.Y. 296, 12 N.E.2d 305 (1938), which declared that leaving the state for the purpose of obtaining a divorce was not offensive to the public policy of the state.

60. 192 Misc. 777, 80 N.Y.S.2d 543 (Surr. Ct. 1948).

61. Id. at 781, 80 N.Y.S.2d at 546.

that the public policy of the state was *not* offended by the fact that the parties left New York for the purpose of obtaining a divorce.[62]

In contrast to the single decisions standing in the three other states,[63] New York courts have been called upon to decide the validity of dozens of Mexican divorces. In many of these cases the jurisdictional question is not discussed at all or is accepted flatly on the basis of comity.[64] It is interesting to note that estoppel is rarely an issue in the New York cases,[65] mainly because the courts do not reach the question. Where the issue is raised, it is often summarily dismissed, as in *Laff v. Laff*,[66] where the court stated: "While plaintiff's active participation in this matter and the conduct of the parties with respect to the defendant's Mexican divorce action does not commend itself to the court, the plaintiff's conduct would not estop him from obtaining the annulment he seeks if, in fact, the Mexican decree were invalid."[67]

Before 1963, only two cases held bilateral Mexican divorces invalid, both because defendants lacked adequate representation by counsel. In *Molnar v. Molnar*,[68] the husband, who was the defendant in the Mexican divorce proceeding, signed a power of attorney in the office of his wife's lawyer. The court held that he did not have the benefit of disinterested legal advice and further, "did not understand the nature and effect of the power of attorney which he signed . . . ."[69] Thus, he never voluntarily appeared in the Mexican court. To this extent, the decision is consistent with the others following *Leviton*. However, the court in dictum took pains to state what, in effect, is the majority view: "Even if the power of attorney were valid, I would still hold that the Mexican divorce decree was invalid. I can see no distinction between this case and . . . a Mexican 'mail-order' divorce. Neither of these parties ever had even a colorable residence in Mexico and the divorce decree

62. Id. at 782, 80 N.Y.S.2d at 547.

63. See note 38 supra.

64. See, e.g., Weibel v. Weibel, 37 Misc. 2d 162, 234 N.Y.S.2d 298 (Sup. Ct. 1962); Heine v. Heine, 231 N.Y.S.2d 239 (Sup. Ct. 1962), aff'd mem. 19 App. Div. 2d 695, 242 N.Y.S.2d 705 (2d Dep't 1963); Skolnick v. Skolnick, 24 Misc. 2d 1077, 204 N.Y.S.2d 63 (Sup. Ct. 1960); Fricke v. Bechtold, 8 Misc. 2d 844, 168 N.Y.S.2d 197 (Sup. Ct. 1957); Costi v. Costi, 133 N.Y.S.2d 447 (Sup. Ct. 1954).

65. But see Mountain v. Mountain, 109 N.Y.S.2d 828 (Sup. Ct. 1951), where a subsequent spouse was precluded from attacking his wife's prior Mexican divorce because he was aware of the facts surrounding it before his own marriage.

66. 5 Misc. 2d 554, 160 N.Y.S.2d 933, aff'd mem. 4 App. Div. 2d 874, 166 N.Y.S.2d 678 (2d Dep't 1957).

67. 5 Misc. 2d at 556, 160 N.Y.S.2d at 935. In contrast to the New York approach, California tends to apply a broad theory of estoppel. Thus, even though admitting that the divorce in question is invalid per se, it often will not allow an attack to be made on it. See, e.g., Harlan v. Harlan, 70 Cal. App. 2d 657, 161 P.2d 490 (Dist. Ct. App. 1945). For a discussion of the California courts' approach to estoppel in foreign divorce, see Note, 16 Hastings L.J. 121 (1964).

68. 131 N.Y.S.2d 120 (Sup. Ct.), aff'd mem. 284 App. Div. 948, 135 N.Y.S.2d 623 (1st Dep't 1954).

69. Id. at 121.

is patently invalid. If we were to permit a divorce decree such as this to stand, we might just as well permit dissolution of the marriage by agreement of the parties."[70] Two years later, in *MacPherson v. MacPherson*,[71] a bilateral decree was struck down where it was found that although the wife signed a paper authorizing her husband to get an attorney and "defend" for her in Mexico, he never communicated to her the name of the attorney who, in fact, did not defend but merely confessed judgment.

The two decisions, however, that caused considerable comment in New York, came in cases having somewhat similar fact patterns resulting in similar holdings by two New York supreme court judges. Both decisions were based, not on the usual recital of presumption of jurisdiction by the Mexican court plus an acknowledgment that both parties were represented by counsel, but surprisingly, on the traditional view that since in neither case had there in fact been any sort of residence, much less domicile, the Mexican decrees were void. In *Wood v. Wood*[72] the Mexican divorce was admittedly obtained under a section of the Chihuahua law which based the jurisdiction of the court on the submission of the parties.[73] Though granting that the divorce was valid in Mexico,[74] Judge Coleman declared that such a decree was contrary to New York's public policy: "The State must have 'jurisdiction' before it can act; it cannot be 'given jurisdiction'; and domiciliaries of our State cannot 'renounce' our laws and our control over them. To permit them to do so 'would be contrary to our public policy in the protection of marriage and morality' of citizens of our State . . . ."[75] Although Judge Coleman did not insist upon domicile as the basis for the court's jurisdiction, he did insist upon a link of some permanence, actual or prospective, between the spouses and the sovereignty which assumes to exercise power over them in relation to the marital status: "Questions of jurisdiction of the foreign country . . . are always open to examination, and we must find that there was a link."[76] Without that link, no principle of comity could validate a clearly void judgment.

Judge Coleman's views were relied on in part to declare invalid another Mexican divorce only a few months later. In *Rosenstiel v. Rosenstiel*[77] the divorce before the court had been obtained under an alternative provision of the Chihuahua law in which "residence" was deemed proven by the signing of a Municipal Register. In spite of this color of jurisdiction, the court in *Rosen-*

70. Id. at 121-22.

71. 1 Misc. 2d 1049, 149 N.Y.S.2d 525 (Sup. Ct. 1956).

72. 41 Misc. 2d 95, 245 N.Y.S.2d 800 (Sup. Ct. 1963).

73. See discussion of Mexican law infra pp. 462-64.

74. 41 Misc. 2d at 100, 245 N.Y.S.2d at 807.

75. Id. at 102, 245 N.Y.S.2d at 809.

76. Id. at 101, 245 N.Y.S.2d at 808. This opinion gave rise to a flow of comment. See, e.g., Berke, The Present Status of Mexican Divorces, 36 N.Y.S.B.J. 111 (1964); Ploscowe, Mexican Divorces—When Are They Valid? 36 N.Y.S.B.J. 201 (1964); 32 Fordham L. Rev. 581 (1964); 77 Harv. L. Rev. 1531 (1964); 38 St. John's L. Rev. 164 (1963); 15 Syracuse L. Rev. 765 (1964).

77. 43 Misc. 2d 462, 251 N.Y.S.2d 565 (Sup. Ct. 1964).

stiel conformed completely to the orthodox position: "Domicile as the *sine qua non* requisite for jurisdiction to grant a divorce is rooted in the basic concept of social rights and obligations in the marital *res*. The marriage contract creates not only personal rights and obligations, but transcending these, there arises a social—the State's interest in the marriage."[78]

On appeal, both cases were reversed by New York's Appellate Division. In *Rosenstiel*,[79] the appellate court pointed out that lack of domicile was not fatal to a decree and that the public policy of the state as enunciated in *Gould v. Gould*,[80] *Glaser v. Glaser*[81] and in *Matter of Rhinelander*[82] was not offended by it. The appellate division was unanimous in its reversal of the lower court's decision in *Rosenstiel*. One judge dissented in *Wood*,[83] equating a divorce based on the submission of the parties to the court's jurisdiction with a mail-order decree. He said: "This is abhorrent to our public policy requiring jurisdiction of the marital *res* as a condition of giving effect to a foreign divorce decree."[84] It should be noted that the only difference between the two divorces was that in *Rosenstiel* plaintiff signed a register, an act which took several minutes, while in *Wood* the parties simply invoked an equally valid provision of the Chihuahua law of divorce which makes signing of a register unnecessary.

The incongruity of the recognition of these divorces in a state with a highly restrictive domestic divorce policy was apparently not lost on the court in *Rosenstiel*. It took pains to point out that decisions for more than a quarter of a century indicated that these divorces were not offensive to the state's public policy. And, it said, "it is significant that despite the continuing awareness of those decisions in the field of law and in the community, the Legislature has never sought to limit their doctrine."[85] It appears that if a different

78. Id. at 469-70, 251 N.Y.S.2d at 573.

79. 21 App. Div. 2d 635, 253 N.Y.S.2d 206 (1st Dep't 1964). Both cases were heard the same day and were decided together.

80. 235 N.Y. 14, 138 N.E. 490 (1923).

81. 276 N.Y. 296, 12 N.E.2d 305 (1938).

82. 290 N.Y. 31, 47 N.E.2d 681 (1943), which restated the New York rule: "It is no part of the public policy of this State to refuse recognition to divorce decrees of foreign states when rendered on the appearance of both parties, even when the parties go from this State to the foreign state for the purpose of obtaining the decree and do obtain it on grounds not recognized here." Id. at 36-37, 47 N.E.2d at 694. As Justice Coleman pointed out in Wood, these decisions all dealt with situations which were distinguishable: Glaser and Rhinelander were Nevada divorce cases; Gould involved a French divorce granted after protracted residence by the parties in France.

83. 22 App. Div. 2d 660, 253 N.Y.S.2d 204 (1st Dep't 1964) (per curiam).

84. Id. at 660, 253 N.Y.S.2d at 205 (dissenting opinion).

85. 21 App. Div. 2d at 638, 253 N.Y.S.2d at 209. For an indication that there has been some concern in legislative circles over the problem of migratory divorce, see Report of Joint Legislative Committee on Matrimonial and Family Laws, N.Y. Leg. Doc. No. 19, p. 147 (1961), which reproduced a study entitled: "Gresham's Law of Domestic Relations: The Alabama Quickie"; and N.Y. Leg. Doc. No. 32, p. 21 (1957).

approach is ever to be taken in New York, it would have to be by way of legislation.

VI. The Uniform Divorce Recognition Act

The problem of recognition of extrastate divorces has been handled in a number of states by non-recognition statutes. The Massachusetts statute dates from 1836.[86] New Jersey, Maine and Wisconsin also legislated early to guarantee their control over the marriage status of their citizens.[87] Following the *Williams* decisions, the National Conference of Commissioners on Uniform State Laws drafted a uniform statute which was proposed for adoption by the states in 1948. Called the Uniform Divorce Recognition Act,[88] it purported to reflect the "public dissatisfaction which has arisen over the practice of 'migratory divorce' . . . ."[89] The rationale of the Commissioners was "that it is desirable to discourage rather than to encourage migration in pursuit of a divorce; that specific statutory refusal to recognize extra-state divorces obtained by domiciliaries of the state enacting the statute will reduce tourist divorce-seeking . . . and that recognition to extrastate divorces obtained by domiciliaries should be refused except as specifically required by the Constitution of the United States . . . ."[90]

86. See Mass. Ann. Laws, ch. 208, § 39 (1955): "A divorce decreed in another jurisdiction according to the laws thereof by a court having jurisdiction of the cause and of both the parties shall be valid and effectual in this commonwealth; but if an inhabitant of this commonwealth goes into another jurisdiction to obtain a divorce for a cause occurring here while the parties resided here, or for a cause which would not authorize a divorce by the laws of this commonwealth, a divorce so obtained shall be of no force or effect in this commonwealth."

87. For a discussion of these statutes, see Merrill, The Utility of Divorce Recognition Statutes in Dealing with the Problem of Migratory Divorce, 27 Texas L. Rev. 291, 301-03 (1949).

88. 9A U.L.A. 278. Currently nine states incorporate the act in their statutes with some minor variations in the text. They are California, Montana, Nebraska, New Hampshire, North Dakota, Rhode Island, South Carolina, Washington, and Wisconsin. Uniform Divorce Recognition Act, 9A U.L.A. 178 (Supp. 1964). Louisiana, which adopted the act in 1952, has since repealed it. La. Acts 1954, No. 616, § 1. Section 1 of the uniform act states: "A divorce from the bonds of matrimony obtained in another jurisdiction shall be of no force or effect in this state, if both parties to the marriage were domiciled in this state at the time the proceeding for the divorce was commenced." 9A U.L.A. 278. Section 2 states: "Proof that a person obtaining a divorce from the bonds of matrimony in another jurisdiction was (a) domiciled in this state within 12 months prior to the commencement of the proceeding therefor, and resumed residence in this state within 18 months after the date of his departure therefrom, or (b) at all times after his departure from this state and until his return maintained a place of residence within this state, shall be prima facie evidence that the person was domiciled in this state when the divorce proceeding was commenced." 9A U.L.A. 284.

89. Commissioners' Note, 9A U.L.A. 275.

90. Id. at 276.

The act was no sooner adopted by the state of Washington in 1949[91] than commentators were urging its repeal.[92] It was suggested that since under the act no divorce granted in another jurisdiction would have "any force or effect" in the state of domicile, anyone could attack a migratory divorce "regardless of how inequitable it may be to permit him to do so."[93]

However, the history of the act since its adoption does not bear out the fears of the author of that statement.[94] In California, where the act has been invoked most frequently, the doctrine of estoppel has been applied in a number of cases to preclude an attack on an otherwise patently invalid divorce.[95] It is a rare case where the act has been invoked to invalidate a divorce obtained in a foreign country. Thus, since the courts are dealing mostly with sister-state decrees which automatically entail the requirements of full faith and credit, their tendency is to hold that in the case before them the act has no application,[96] and is in fact, superfluous. The Nebraska Supreme Court, in *Zenker v. Zenker*,[97] passing on the act's constitutionality, and sustaining the statute, commented on the United States Supreme Court decisions and confined them strictly to the narrow facts of each case.[98] So, in *Zenker*, where the husband claimed that his wife had obtained personal service upon him in Colorado by fraudulently enticing him into the state, the Nebraska court held that since the wife had no bona fide domicile in Colorado, and the personal jurisdiction over defendant husband was obtained by fraud, Nebraska did not have to give full faith and credit to the Colorado decree.[99]

It has been suggested that the act's impact in California has been "practically nil" since the same result is being reached under it as under the common law.[100] In *Nevin v. Nevin*,[101] the Rhode Island court has intimated that the act may have no application except to ex parte decrees.[102] Montana, the last state to adopt the act (1963),[103] uses the words "ex parte" in the text, though the

91. Wash. Rev. Code Ann. §§ 26.08.200—.210 (1961).

92. See Marsh, The Uniform Divorce Recognition Act: Sections 20 and 21 of the Divorce Act of 1949, 24 Wash. L. Rev. 259 (1949).

93. Id. at 270.

94. See 43 Calif. L. Rev. 881 (1955).

95. See, e.g., Dietrich v. Dietrich, 41 Cal. 2d 497, 261 P.2d 269 (1953); Solley v. Solley, 227 Adv. Cal. App. 572, 38 Cal. Rptr. 802 (Dist. Ct. App. 1964); Estate of Vinson, 212 Cal. App. 2d 543, 28 Cal. Rptr. 94 (Dist. Ct. App. 1963).

96. See, e.g., Estate of Vinson, supra note 95, at 548, 28 Cal. Rptr. at 98.

97. 161 Neb. 200, 72 N.W.2d 809 (1955).

98. Id. at 216, 72 N.W.2d at 819.

99. Id. at 217, 72 N.W.2d at 819.

100. Note, 16 Hastings L.J. 121, 129 (1964).

101. 88 R.I. 426, 149 A.2d 722 (1959).

102. Id. at 435, 149 A.2d at 726. The second section of the Rhode Island statute is captioned "Ex parte divorce in another state between parties resident in this state." R.I. Gen. Laws Ann. §§ 15-6-1 to -4 (1956). The court here was considering section 3 of the Act.

103. Mont. Rev. Codes Ann. § 21-150 (Supp. 1963).

uniform version does not. In these instances, the act is merely a codification of case law though it was undoubtedly with a view toward deterring the attempt to obtain a foreign divorce that the act was adopted.[104]

VII. The Mexican Law

It would be presumptuous to attempt an exhaustive review of "Mexican" law here. But if the status theory of divorce has any validity at all in this country, questions are inevitably raised when a divorce is granted in a forum whose theory of jurisdiction is not even remotely similar to ours. As stated by Judge Coleman in *Wood v. Wood*,[105] the right of Mexican courts to act in any way they deem proper upon the status of their own citizens is not denied. But, in his view, their attempt to adjudicate the status of a foreign citizen was outside their power. It has been pointed out that under principles of private international law a man's status is always governed by the law of his nationality.[106] Thus it would appear that under these principles, unless there exists a jurisdictional tie to the divorcing forum similar to that which would be required at his domicile, his status could not be altered in a foreign forum.

Mexico, like the United States, is a federation of states, each with its own laws, but subject to a federal constitution. The Mexican Constitution has a full faith and credit clause,[107] which requires that each state give effect to the decrees of its sisters. Unlike the United States, however, the determination of a constitutional question brought by an aggrieved party will be effective only as to him.[108] Not until a question is passed on five times by the Supreme Court of Mexico will it become *jurisprudencia* and become binding on all courts in Mexico.[109] This is a particularly interesting factor in appraising the situation in Mexico with regard to "quickie divorces" which are available to Mexicans and foreigners alike in its more liberal jurisdictions.[110]

Historically, Mexico rejected the idea of absolute divorce. It was not until the enactment of the Law of Family Relations in 1917 that this concept was introduced. From the outset its application was more "liberal" than that of any of the states of North America.[111] The Civil Code for the Federal District

104. See Stumberg, The Migratory Divorce, 33 Wash. L. Rev. 331, 341 (1958).

105. 41 Misc. 2d 95, 100, 245 N.Y.S.2d 800, 807 (Sup. Ct. 1963) (dissenting opinion).

106. See Franco, The Rosenstiel Case, N.Y.L.J., June 19, 1964, p. 1, col. 5.

107. Constitucion Politica de los Estados Unidos Mexicanos art. 121.

108. This proceeding is called an "amparo." For a discussion of the different approaches of Mexico and the United States to judicial review, see Cabrera & Headrick, Notes on Judicial Review in Mexico and the United States, 5 Inter-American L. Rev. 253, 255 (1963).

109. Stern, Mexican Divorces—The Mexican Law, 7 Prac. Law., May 1961, p. 78, at 81.

110. E.g., Campeche, Chihuahua, Tlaxcala, Morelos, and Sonora.

111. For a discussion of the historical development of divorce legislation in Mexico, see Ireland & Galindez, Divorce in the Americas 192-94 (1947). The authors note that the divorce of a Mexican obtained abroad will be valid if the spouse actually resided in

and Territories (the divorce provisions of which have been adopted by a number of states)[112] provides for two types of divorce: *voluntario* and *contencioso*. In a contested divorce for a given cause, the action may be brought by the innocent spouse within six months of learning of the cause.[113] If there has been pardon or condonation by the plaintiff, he may not bring the suit.[114] Express provision is made for reconciliation[115] and the plaintiff may stop the action at any time and oblige his spouse to reunite with him.[116]

Though divorce by mutual consent is listed as one of seventeen grounds for divorce in the Code,[117] special procedural provisions apply to it. If there are no children of the marriage, a simple method is available which has been compared to the Soviet system. The parties establish by certificate that they are of full age and that they have disposed of their conjugal property; manifest their wish to be divorced before an official of the Civil Registry; and fifteen days later, having ratified the divorce petition, are declared divorced. This procedure is not available unless the marriage has existed for one year prior to the petition for divorce.[118]

It should be noted that the concept of domicile exists in Mexico and is defined in much the same terms as it is in the United States.[119] The divorce law of Chihuahua,[120] however, completely bypasses the concept of domicile in setting up its own separate and distinct procedural requirements for divorce. That law sets up alternative provisions for fixing the "competence" of the court to grant a divorce. Article 23 states that express or tacit submission to the court with a clear renunciation of the parties' own forum fixes the competence of the court. Article 22 declares that the judge competent to take cognizance of the divorce is the one of the place of residence of the plaintiff and, according to Article 24, such "residence" shall be proved by the signing

the country when the divorce was obtained. Id. at 205. See also Summers, The Divorce Laws of Mexico, 2 Law & Contemp. Prob. 310-12 (1935).

112. Baja California, Coahuila, Colima, Chiapas, Guerrero, Nayarit, Nuevo León, Querétaro, San Luis Potosí, Sinaloa, Tabasco, Veracruz. See Aguilar Gutiérrez & Dérbez Muro, Panorama de la Legislación Civil de Mexico 33 (1960).

113. Nuevo Código Civil para el Distrito y Territorios Federales art. 278 (Andrade, 10th ed. 1952) (Mex.).

114. Nuevo Código Civil para el Distrito y Territorios Federales art. 279 (Andrade, 10th ed. 1952) (Mex.).

115. Nuevo Código Civil para el Distrito y Territorios Federales art. 280 (Andrade, 10th ed. 1952) (Mex.).

116. Nuevo Código Civil para el Distrito y Territorios Federales art. 281 (Andrade, 10th ed. 1952) (Mex.).

117. Nuevo Código Civil para el Distrito y Territorios Federales art. 267 (Andrade, 10th ed. 1952) (Mex.).

118. Ireland & Galindez, op. cit. supra note 111, at 199.

119. See, e.g., Nuevo Código Civil para el Distrito y Territorios Federales art. 29 (Andrade, 10th ed. 1952) (Mex.).

120. Ley de Divorcio para el E.L. y S. de Chihuahua (1933), Colección de Leyes Mexicanas, Serie: Leyes del Estado de Chihuahua 259-67 (Cajica 1955).

of the Municipal Register.[121] Another provision, obviously designed to appeal to foreigners, is the article which provides that the woman may resume the use of her maiden name after the decree is granted.[122] Since in Mexico a woman always retains her maiden name (to which she adds the name of her husband) this provision is meaningless to a Mexican. The effect of the liberal divorce laws in Mexico has been to increase the coffers of the state since fees are charged for each of the steps, and to bring forth anguished cries from responsible jurists.[123]

It has been suggested that no state in Mexico has jurisdiction over the status of foreigners, by virtue of Article 50 of the Law of Immigration and Nationality which requires that their status be dealt with according to the law of the Federal District.[124] Only one case has been reported in which a proceeding was brought on those grounds.[125] There, the Supreme Court held a Yucatan divorce invalid under this section. This decision, however, under rules of *jurisprudencia*, is not binding on other courts. It also has been pointed out[126] that the court in that case noted that participation in a state proceeding by a party would amount to a waiver of his right to later question the decree.[127]

VIII. Conclusion

Though it appears that most state courts are "likely to refuse recognition to any extranational divorce not founded on the plaintiff's domicile,"[128] regardless of the appearance of both parties, there is much to be said for a strong public policy expressed by the legislature against migratory divorce. The paucity of cases involving Mexican divorces in states where the Uniform Divorce Recognition Act has been adopted may indicate, not that the act's impact has been nil,[129] but that the statement of policy has had the desired deterrent effect.

121. It has been suggested that under Mexican Supreme Court decisions founding jurisdiction on domicile "this provision of the law of Chihuahua would seem to be unconstitutional and violative of due process." Stern, supra note 109, at 82.

122. Ley de Divorcio para el E.L. y S. de Chihuahua art. 10 (1933), Colección de Leyes Mexicanas, Serie: Leyes del Estado de Chihuahua 261 (Cajica 1955).

123. See, e.g., Siqueiros, Los Conflictos de Leyes en el Sistema Constitucional Mexicano 80 (1957).

124. de Vries, International Recognition of Migratory Divorce, N.Y.L.J., April 21, 1964, p. 1, col. 4.

125. Amparo Frieda Tauchnitz Ermuthe Johanna, 50 Semanario Judicial de la Federación, Part I, 554 (Oct. 22, 1936).

126. de Vries, supra note 124, at 1, col. 5.

127. Were it not for the factor of waiver in this type of situation, it might well be that New York is giving effect to divorces which have no validity in their own country. Not only are the most minimal North American standards being disregarded, but the Mexican law, itself, is being ignored.

128. Ehrenzweig, Conflict of Laws 243 (1959).

129. But see Note, 16 Hastings L.J. 121, 129 (1964); note 100 supra and accompanying text.

The adoption of the Uniform Divorce Recognition Act, with emphasis on extranational, rather than sister-state divorces, would be beneficial for states that do not now have a non-recognition statute. For states that have consistently denied effect to these divorces, the act would be a codification and reaffirmation of case law. If properly worded—to specifically deny effect to a decree where there was no jurisdiction of the marital status—such a statute would preclude a problem for the courts where personal jurisdiction was pressed as a substitute for jurisdiction of the marriage.

For a state like New York, adoption of such a statute would be a reversal of judicial policy, which, though consistent with precedent, has permitted an "evasion of our laws" which so concerned the court in *Jackson v. Jackson*.[130] It has been pointed out that "the easier it is made for those who through affluence are able to exercise disproportionately large influence on legislation, to obtain migratory divorces, the less likely it is that the divorce laws of their home States will be liberalized, insofar as that is deemed desirable, so as to affect all."[131]

If, as has been suggested, a liberal judicial policy of recognition of Mexican decrees is the "compensating factor" which makes New York's ancient and highly restrictive divorce policy tolerable,[132] surely the courts are facilitating evasion of the law by abetting such escape. If a remedy to what is regarded by some as intolerable is to be found, should it not be made available to every citizen rather than only to those who can afford the round-trip fare to Mexico? It is submitted that the disrespect for state law that is fostered by a policy of allowing that law to be judicially circumvented is an evil in itself.

If New York were to adopt a non-recognition statute, a primary consideration would undoubtedly be its retroactivity. Such a statute should be prospective to avoid the inevitable multiplicity of suits to determine legitimacy of children or the status of parties to a prior Mexican divorce. To avoid the anomaly of a "marriage at will" as noted in *Rosenstiel*,[133] parties to such a decree could be estopped to deny its validity in an appropriate case.[134]

The primary goal of the non-recognition laws is the assurance that the divorcing forum has some legitimate interest in the marriage status before assuming to act upon it.[135] Whether that interest be expressed in terms of

130. 1 Johns. R. 424, 432 (N.Y. Sup. Ct. 1806).

131. Sherrer v. Sherrer, 334 U.S. 343, 370 n.18 (1948) (Frankfurter, J., dissenting).

132. Foster, New York's Divorce Laws—A Re-evaluation May Now Be in Order, N.Y.L.J., June 24, 1964, p. 4, col. 1.

133. 21 App. Div. 2d 635, 639, 253 N.Y.S.2d 206, 210 (1st Dep't 1964) (concurring opinion).

134. See Note, Enforcement by Estoppel of Divorces Without Domicil: Toward a Uniform Divorce Recognition Act, 61 Harv. L. Rev. 326 (1948).

135. Indications are that "pure" domicile may not be the prerequisite. See Scott v. Scott, 51 Cal. 2d 249, 254, 331 P.2d 641, 644 (1958) (Traynor, J., concurring). Justice Traynor stated: "This court has never expressly ruled on the question whether a finding of domicile is prerequisite to the recognition in this state of a divorce decree rendered