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Conflict of Laws--Divorce--Recognition of Foreign Decree

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RECENT CASE COMMENTS

CONFLICT OF LAWS — DIVORCE — RECOGNITION OF FOREIGN DECREE. — In a suit by the wife for a limited divorce, the husband, by way of answer, set up a Nevada decree of absolute divorce. The parties were married in West Virginia and lived in the state as man and wife until a few months prior to the defendant's departure for Reno, where he remained the statutory period of six weeks before commencing proceedings. The plaintiff failing to respond to constructive service of process, the divorce was granted. Shortly thereafter the defendant returned to this state and filed answer to the bill. From an adverse decree of the trial court, the plaintiff appealed. *Held,* "No valid divorce from the bonds of matrimony can be decreed on constructive service by the courts of a state in which neither party is domiciled." *Ward v. Ward.*[1]

After the case of *Caswell v. Caswell,*[2] in which the Supreme Court of Appeals repudiated the doctrine of *Haddock v. Haddock,*[3] and held that a foreign decree was not subject to collateral attack for want of jurisdiction unless it affirmatively appeared on the record, the principle decision might be viewed as a trend in the other direction. In the later case of *State v. Goudy,*[4] in connection with the local full faith and credit statute,[5] it was said that by this provision a Colorado decree not subject to collateral attack in that state could not be so questioned here and was, therefore, entitled to recognition. Despite this construction foreign divorces granted upon constructive service by a state wherein only one of the parties is domiciled, such state not being the matrimonial domicile and the other party not having lost his or her right through consent or wrongful act to object to such separate home, are not entitled to full faith and credit.[6] Obviously, then, any recognition accorded by this state to the decree of another state wherein neither party is domiciled would be upon the principle of comity and thus, as in the *Ward* case, recognition may be justifiably refused where to do otherwise would be contrary to public policy.

As an expression of policy the principal decision is unmistakably clear. It is, however, unsatisfactory in that the basis for

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[1] 176 S. E. 708 (W. Va. 1934).
[2] 84 W. Va. 575, 100 S. E. 482 (1919).
[3] 201 U. S. 562, 26 S. Ct. 525 (1906).
[4] 94 W. Va. 542, 119 S. E. 685 (1923); *cf.* Woodford v. Woodford, 111 W. Va. 116, 161 S. E. 3 (1931), where it appeared by the record that an Ohio decree was rendered prematurely.
[5] W. VA. REV. CODE (1931) c. 56, art. 1, § 12.
[6] Haddock v. Haddock, *supra* n. 3.

denying recognition is not definite. Whether the court considered the Nevada decree as void by the law of that state and thus subject to collateral attack here, or whether the court has abandoned its position taken in the *Goudy* and *Caswell* cases and will permit a collateral attack in this state regardless of the rule in Nevada, remains a matter of conjecture. While the position taken by the West Virginia court in this instance may seem extreme and wholly undesirable other jurisdictions taking a similar position are: California, Connecticut, Georgia, Maryland, Massachusetts, New Jersey, New York, North Carolina, Pennsylvania, South Carolina, Vermont, and the Distruct of Columbia.[7] As to the desirability of such a policy much might be said on either side. If such decrees are freely recognized the result would be that one state would determine the status of the citizens of another. On the other hand the refusal to give effect to divorces granted in another state results in adulterous or bigamous subsequent marriages and the bastardization of the children of such unions.[8] The fault, however, would seem to lie with those states having too lax divorce requirements, and the solution in uniform divorc legislation.

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CHATTEL MORTGAGES — RECORDATION — EFFECT OF FAILURE TO INDEX. — A deed was executed between A and B, which gave the latter a lien on after-acquired property taken on the granted premises. This instrument, although recorded, was spread upon the deed book and not placed in either the trust deed or chattel mortgage books.[1] Plaintiff thereafter claimed a laborer's lien on such after-acquired property. *Held,* such recordation was sufficient to give the mortgage priority over the later acquired laborer's lien. ". . . . the paper is recorded as soon as it is properly lodged

[7] Warren v. Warren, 127 Cal. App. 231, 15 Pac. (2d) 556 (1932); State v. Cooke, 110 Conn. 348, 148 Atl. 385 (1930); Cochran v. Cochran, 173 Ga. 856, 162 S. E. 99 (1931); Walker v. Walker, 125 Md. 649, 94 Atl. 346 (1910); MASS. GEN. LAWS (1921) c. 208, § 39, construed in Andrews v. Andrews, 188 U. S. 104, 23 S. Ct. 265 (1903); Perleman v. Perleman, 113 N. J. Eq. 3, 165 Atl. 646 (1933); Fischer v. Fischer, 245 N. Y. 463, 173 N. E. 680 (1930); Pridgen v. Pridgen, 203 N. C. 533, 166 S. E. 591 (1932); Duncan v. Duncan, 265 Pa. 464, 109 Atl. 220 (1920); State v. Duncan, 110 S. C. 253, 96 S. E. 294 (1918); Blondin v. Brooks, 83 Vt. 472, 76 Atl. 184 (1910); Frazier v. Frazier, 60 F. (2d) 920 (App. D. C. 1932).

[8] Freet v. Holdorf, 205 Iowa 1081, 216 N. W. 619 (1927).

[1] The record does not show whether the instrument was indexed.