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Warren B. Rosenbaum

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result would be the denial of trial by jury where jury trials are presently made available. Thus, the effect of the present case could have been contraction rather than an expansion of the right to jury trial. Related with this is the fact that were the line drawn at one year, the pressure upon criminal courts to reform for the sake of more efficient administration to that extent would have been diminished. The logic is simple. It is easier and less expensive to try more criminal offenses to the bench than to add more judges and expand facilities, in order to cope with problems of backlog and caseload. Thus, in drawing the line as it has, the Court has not ignored the practical problems of administering criminal justice in our cities. Implicit in *Baldwin* is an admonition to those charged with the administration of such systems, that while the problems are real, the solution is not infringement upon constitutional rights and privileges.⁸⁹

PAUL A. BATTAGLIA

DIVORCE LAW—DEFECTIVE MEXICAN DIVORCE DECREE ACCORDED NEW YORK RECOGNITION DUE TO SUBSEQUENT APPEARANCE, THROUGH AN ATTORNEY, OF PARTY ABSENT FROM THE MEXICAN ACTION

Plaintiff and defendant were married in 1938 in the State of New York and continued to reside there until 1950 when the defendant abandoned their residence. The defendant obtained a Mexican divorce decree in 1960 by personally appearing before a civil court in Juarez, Mexico. The plaintiff did not appear in that proceeding, nor did she receive service of process.¹ In 1962 the plaintiff signed a document styled, "Defendant's Special Power of Attorney,"² which empowered a Mexican attorney to appear in plain-

89. The Court in *Baldwin* rather summarily dismissed the proposed three judge panel provided for by § 40 of the N.Y.C. CRIM. CT. ACT as a sufficient substitute for the constitutional guarantee of jury trial. The Court suggested that the "primary purpose of the jury is to prevent the possibility of oppression by the government." Thus, they concluded, the proposed panel "can hardly serve as a substitute for a jury trial." *Baldwin v. New York*, 399 U.S. 66, 72 n.20 (1970).

1. New York will not recognize a Mexican decree in which one of the parties thereto is neither present, nor served with process. *Rosenbaum v. Rosenbaum*, 309 N.Y. 371, 130 N.E.2d 902 (1955); *Caldwell v. Caldwell*, 298 N.Y. 146, 151, 81 N.E.2d 60, 63 (1948), *modifying* 272 App. Div. 1025, 73 N.Y.S.2d 683 (2d Dep't 1947); *Lamb v. Lamb*, 307 N.Y.S.2d 318, 321 (Fam. Ct. 1969).

2. The opinion of the Appellate Division gave the following as the relevant text of the power of attorney:

[T]o appear for and represent me in the divorce action that my husband . . . has instituted against me . . . and to state in my name, that I am in complete conformity with the judgment which was rendered in the said action, that I submit myself expressly to the jurisdiction of the Court and that I accept the aforesaid judgment as final and conclusive; and generally to act . . . with *full power of substitution*, hereby ratifying and confirming and holding valid all that my said attorney shall lawfully do or cause to be done by virtue of these presents.

Ramm v. Ramm, 34 App. Div. 2d 667, 668, 310 N.Y.S.2d 111, 113 (2d Dep't 1970) (emphasis added) [hereinafter cited as instant case].

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tiff's behalf before the decree granting court for the purpose of submitting to the jurisdiction of that court and assenting to its judgment. Plaintiff signed the document with the understanding that it was a prerequisite to the release of \$15,000 held in escrow for her by the defendant, and the validation of the prior divorce decree. In 1962, two years after the original decree, an attorney, other than the one named in the agreement, appeared before the Mexican court to have the court recognize the plaintiff's *appearance*³ and her conformity with the prior divorce decree. The attorney requested that the court declare the earlier judgment *res judicata*, and invulnerable to attack collaterally or directly. The court acknowledged the plaintiff's appearance and added it to the file of the original divorce action. Subsequently, the plaintiff brought an action to have the Mexican decree declared void contending that: (1) Mexican courts have no authority to reopen divorce cases; (2) plaintiff neither appeared at the submission of the power of attorney, nor on the date the court rendered judgment based on the power of attorney, and therefore, the Mexican decision was not in conformity with the personal contract requirements set forth in *Rosenstiel v. Rosenstiel*;⁴ (3) the appearance of the Mexican attorney in her behalf was unauthorized and; (4) her appearance was procured by means of a contract in violation of section 5-311 of the General Obligations Law.⁵ The Supreme Court, Queens County, entered judgment for the defendant and dismissed the action.⁶ Plaintiff appealed to the Appellate Division, Second Department. *Held*, the belated appearance of the plaintiff through an authorized attorney, which resulted in a post judgment declaration by the Mexican court that the original divorce decree was *res judicata*, rendered the divorce recognizable in New York as of the date of appearance. *Ramm v. Ramm*, 34 App. Div. 2d 667, 310 N.Y.S.2d 111 (2d Dep't 1970).

In adjudicating the validity of foreign bilateral divorces,⁷ New York courts refuse to determine whether a genuine residence or domicile exists within the divorce granting nation.⁸ In doing so, New York courts have rejected the domicile theory of marriage with its concomitant jurisdictional

3. Mexican decrees have been held valid if there is an appearance of the absent party through a duly authorized attorney. *Rosenstiel v. Rosenstiel*, 16 N.Y.2d 64, 209 N.E.2d 709, 262 N.Y.S.2d 86 (1965), *cert. denied*, 383 U.S. 940, *cert. denied*, 384 U.S. 971 (1966); *Parrish v. Parrish*, 50 Misc. 2d 827, 833, 271 N.Y.S.2d 792, 797-98 (Sup. Ct. 1966).

4. 16 N.Y.2d 64, 209 N.E.2d 709, 262 N.Y.S.2d 86 (1965), *cert. denied*, 383 U.S. 940, *cert. denied*, 384 U.S. 971 (1966).

5. N.Y. GEN. OBLIGATIONS LAW § 5-311 (McKinney 1964).

6. *Ramm v. Ramm*, 160 N.Y.L.J. 120 (Sup. Ct. Queens Co. 1969).

7. Bilateral indicates a divorce in which personal jurisdiction is acquired over both parties, and each participates in the proceeding. Such appearance may be through an attorney.

8. This policy was ostensibly begun in 1938 with the decision of *Leviton v. Leviton*, 6 N.Y.S.2d 535 (Sup. Ct. 1938); *see* Comment, *Mexican Divorce—A Survey*, 33 *FORDHAM L. REV.* 449 (1965).

requirements based on the state's interest in the marital *res*.⁹ New York courts do not find the question of jurisdiction to be the *sine qua non* of recognition.¹⁰ Rather, they base their decision on whether recognition would contravene the public policy of the state.¹¹ The determination of public policy is vested in the legislature and the courts of the state.¹² While the legislature has not been concise as to its policy, the courts have manifested a distinctly liberal attitude towards bilateral divorce recognition. In *Matter of Rhinelander*,¹³ the Court of Appeals declared:

It is no part of the public policy of this state to refuse recognition to divorce decrees of foreign states . . . 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.¹⁴

Where the residence requirement of the decree granting jurisdiction is entirely synthetic the New York courts have still accorded recognition.¹⁵

The critical issue in these decisions is whether due process has been satisfied. An opportunity to be heard and proper notice are intrinsic to due process.¹⁶ If both parties are personally served within the decree granting jurisdiction, or both appear personally, these two requirements are met. It has been held that due process is not complied with where one of the parties to the action is neither served with process, nor appears and submits to the jurisdiction of the court.¹⁷ However, due process can be fulfilled where one

9. The domicile theory centers on the interest of the state in the marriage and is a policy of exclusivity. Under this theory, marriage is a status in which the state has an interest, and this interest gives the state the right to assume control over the marital status. Because the state of domicile has been designated to best represent the state with the requisite interest, the law which is applied to the marital status is the law of the parties' domicile.

Comment, *Mexican Bilateral Divorce—A Catalyst In Divorce Jurisdiction Theory?*, 61 Nw. U.L. REV. 584, 591 (1966).

10. *Rosenstiel v. Rosenstiel*, 16 N.Y.2d 64, 209 N.E.2d 709, 262 N.Y.S.2d 86 (1965), *cert. denied*, 383 U.S. 940, *cert. denied*, 384 U.S. 971 (1966).

11. *Id.*; *Glaser v. Glaser*, 276 N.Y. 296, 12 N.E.2d 305, *reargument denied*, 277 N.Y. 652, 14 N.E.2d 205 (1938); *Leviton v. Leviton*, 6 N.Y.S.2d 535 (Sup. Ct.), *aff'd and modified mem.*, 254 App. Div. 670, 4 N.Y.S.2d 992 (1st Dep't 1938).

12. *DePena v. DePena*, 31 App. Div. 2d 415, 298 N.Y.S.2d 188 (1st Dep't 1969); *see Borax' Estate v. Commissioner Int. Rev.*, 349 F.2d 666, 670 (2d Cir. 1965), *cert. denied*, 383 U.S. 935 (1966); *Glaser v. Glaser*, 276 N.Y. 296, 12 N.E.2d 305, *reargument denied*, 277 N.Y. 652, 14 N.E.2d 205 (1938).

13. 20 N.Y. 31, 47 N.E.2d 681 (1943); *accord*, *Tanburn v. Tanburn*, 114 N.Y.S.2d 670, 672 (Sup. Ct. 1952).

14. *Matter of Rhinelander*, 290 N.Y. at 36-37, 47 N.E.2d at 684.

15. *Rosenstiel v. Rosenstiel*, 16 N.Y.2d 64, 209 N.E.2d 709, 262 N.Y.S.2d 86 (1965), *cert. denied*, 383 U.S. 940, *cert. denied*, 384 U.S. 971 (1966).

16. Many controversies have raged about the cryptic and abstract words of the Due Process Clause but there can be no doubt that at a minimum they require that deprivation of life, liberty or property by adjudication be preceded by notice and opportunity for hearing appropriate to the nature of the case.

Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306, 313 (1950).

17. *Rosenbaum v. Rosenbaum*, 390 N.Y. 371, 376, 130 N.E.2d 902, 904 (1955).

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of the parties appears personally and the other appears through an attorney.¹⁸

The great lengths that New York courts go to recognize foreign bilateral decrees is evidenced by the decisions holding that a prior void decree, defective owing to the absence of one of the parties to the action, can subsequently be validated through a belated appearance of the absent party. In *Matter of Rhineland*,¹⁹ after the wife made a delayed appearance, the court held the decree to be of the same force and effect as if originally obtained through the appearance of both parties. Similar results prevailed in *Valentine v. Valentine*.²⁰ There the court held a prior New York judgment, declaring a Florida decree invalid, not to be *res judicata* in a subsequent New York action that validated the Florida decree. The rationale of the decision was that a subsequent appearance, by the wife, cured any jurisdictional defects in the original decree. In a parallel case,²¹ a husband procured a Mexican *ex parte* divorce.²² One year later, his wife submitted to the jurisdiction of the court through an attorney. The supreme court held that the decree had been cured of defects, and was entitled to the effect of *res judicata* in New York. The court reasoned that the Mexican decree was not a *nunc pro tunc* order,²³ which Mexican law did not recognize, but was a recording of the absent party's submission to the jurisdiction of the court. That case established that not only may the appearance be delayed but it also may be entered through an attorney. The appearance through an attorney, however, must neither be unauthorized,²⁴ nor borne out of a collusive agreement that contemplates the dissolution of the marriage.²⁵

An attorney may appear on behalf of one of the parties through a power of attorney.²⁶ The relationship thus created is one of principal-agent.²⁷ If

18. *Skolnick v. Skolnick*, 24 Misc. 2d 1077, 1078, 204 N.Y.S.2d 63, 64 (Sup. Ct. 1960).

19. 290 N.Y. 31, 47 N.E.2d 681 (1943).

20. 280 App. Div. 795, 112 N.Y.S.2d 879 (2d Dep't 1952).

21. *Hytell v. Hytell*, 44 Misc. 2d 663, 254 N.Y.S.2d 851 (Sup. Ct. 1964).

22. *Ex parte* indicates a divorce in which only one of the parties is present, and the absent party is merely constructively served with process.

23. "A method of amending a court record. An order entered to take effect as of an earlier time." *BALLENTINE'S LAW DICTIONARY* 873 (3d ed. 1969).

24. Prior to 1963, only twice were foreign bilateral divorces declared void in New York. Both adverse decisions were due to a defective power of attorney. *MacPherson v. MacPherson*, 1 Misc. 2d 1049, 149 N.Y.S.2d 525 (Sup. Ct. 1956); *Molnar v. Molnar*, 131 N.Y.S.2d 120 (Sup. Ct. 1954), *aff'd mem.*, 284 App. Div. 948, 135 N.Y.S.2d 623 (1st Dep't 1954).

25. See N.Y. GEN. OBLIGATIONS LAW § 5-311 (McKinney Supp. 1969-70).

26. "[T]he instrument by which the authority of one person to act in place and stead of another as attorney in fact is set forth. . . ." *In re Katz' Estate*, 152 Misc. 757, 274 N.Y.S. 202 (Sur. Ct. 1934).

27. *In re Katz' Estate*, 152 Misc. 757, 274 N.Y.S. 202 (Sur. Ct. 1934).

the attorney exceeds the authority, either expressed or implied²⁸ in the instrument, the principal will not be bound by his acts.²⁹ The attorney may, if authorized, delegate his authority to a subagent.³⁰ An agent, however, cannot delegate authority conferred upon him personally, unless there is some manifestation of consent from the principal.³¹ This requirement is particularly applicable where the principal-agent relationship is one where personal trust or confidence is reposed. In this situation, authority cannot be delegated unless there is a special power of substitution either express or implied.³² An unauthorized appearance by an attorney, on behalf of a non-resident, does not give the court jurisdiction over the non-resident, and a personal judgment thus rendered is void.³³

Even though due process has been satisfied and a power of attorney is valid, New York courts may still refuse to recognize a foreign divorce where it is repugnant to public policy.³⁴ With regard to a contract to dissolve a marriage, New York's policy is enunciated in section 5-311 of the General Obligations Law. Under this statute, a husband and wife cannot contract to alter or dissolve their marriage. A divorce procured pursuant to such a contract will not be accorded recognition in New York.³⁵ This restriction has been qualified, however, by an amendment requiring an *express provision* in the agreement as a requisite for a finding of collusion.³⁶ Therefore, if such an agreement lacks an express provision calling for the dissolution of the marriage, section 5-311 of the General Obligations Law is not violated. Given the presumption of regularity attached to official proceedings,³⁷ a foreign bilateral divorce, procured through an authorized attorney not in

28. Implied authority may be viewed as actual 'authority given implicitly by a principal to his agent' or as a 'kind of authority arising solely from the designation by the principal of a kind of agent who ordinarily possesses certain powers.'

Masuda v. Kawaski Dockyard Co., 328 F.2d 662, 664 (2d Cir. 1964).

29. A principal is not bound by his agent's acts in excess of his actual authority where the facts and circumstances are such to put the person dealing with the agent upon inquiry as to the power of the agent. Amusement Securities Corp. v. Academy Pictures Dist. Corp., 251 App. Div. 227, 295 N.Y.S. 436 (1st Dep't 1937), *aff'd*, 277 N.Y. 557, 13 N.E.2d 471 (1938); *In re Steinmetz' Estate*, 1 N.Y.S.2d 601 (Sur. Ct. 1937).

30. Wilson & Co. v. Smith, 44 U.S. (3 How.) 763 (1845).

31. Paige v. Faure, 229 N.Y. 114, 127 N.E. 898 (1920).

32. Warner v. Martin, 52 U.S. (11 How.) 209 (1850); Skutt, Inc. v. Goodwin, Ltd., 251 App. Div. 84, 295 N.Y.S. 772 (4th Dep't 1937).

33. Amusement Securities Corp. v. Academy Pictures Dist. Corp., 251 App. Div. 227, 295 N.Y.S. 436 (1st Dep't 1937), *aff'd*, 277 N.Y. 557, 13 N.E.2d 471 (1938).

34. "A contract which binds one of the parties to do that which is contrary to the policy of the state or nation is void. . . ." *In re Hughes' Will*, 225 App. Div. 29, 31, 232 N.Y.S. 84, 86 (4th Dep't 1928), *aff'd*, 251 N.Y. 529, 168 N.E. 415 (1929).

35. N.Y. GEN. OBLIGATIONS LAW § 5-311 (McKinney Supp. 1969-70).

36. "An agreement, heretofore or hereafter made between a husband and wife, shall not be considered a contract to alter or dissolve the marriage unless it contains an express provision requiring the dissolution of the marriage. . . ." N.Y. GEN. OBLIGATIONS LAW § 5-311 (McKinney Supp. 1969-70).

37. RICHARDSON ON EVIDENCE 48 (9th ed. 1964).

violation of section 5-311, will result in a divorce recognizable in New York State.

In the instant case, the court adopts the holding of *Hytell v. Hytell*.³⁸ The court quotes with approval from *Hytell*: ". . . the judgment of divorce, even if originally defective, became *res judicata* by judicial declaration because [it was] expressly consented to by [the] plaintiff through her attorney acting under a power of attorney. . . ." ³⁹ The court's opinion is in fundamental conflict with the perspective in which the plaintiff views the gravamen of the dispute. In response to the plaintiff's efforts to demonstrate the nugatory effect of the Mexican divorce law in New York, the court simply asserts the applicability of Mexican *res judicata* in New York. The effect is that New York will recognize a Mexican bilateral divorce so obtained by its citizen-residents. While the court is under no compulsion to give full faith and credit to the judgments of a foreign nation, the opinion accepts the Mexican decree as valid under the concept of comity.⁴⁰ Comity does not mandate that the decision be given the effect of *res judicata* where the effect is repugnant to public policy.⁴¹ However, the court felt that ". . . the mandates of sound jurisprudence and public policy . . . require that the decree be given that *res judicata* effect which it is accorded in the rendering jurisdiction."⁴² Consequently, the court held that the plaintiff should be barred from relitigating the issues decided in the Mexican action if the plaintiff did, in fact, appear.

In response to the plaintiff's denial that she authorized the Mexican attorney to appear on her behalf, the court pointed out that "[t]he record is devoid of any explanation of the substitution . . ." ⁴³ of another attorney. The opinion stated that the plaintiff had failed to overcome the presumption of regularity attached to a foreign nation's judgment.⁴⁴ Concluding its argument for sustaining the decision of the lower court, the court rebutted the contention that the agreement violated section 5-311 of the General Obligations Law. The court, citing *Matter of Rhineland*,⁴⁵ found that the plaintiff's argument must fail because the agreement to sign the power of attorney was made after the entry of the Mexican divorce decree, and lacked an express provision requiring the dissolution of the marriage.

The dissent would reverse the lower court's decision, and declare that the plaintiff and defendant were not legally divorced by virtue of the wife's

38. *Hytell v. Hytell*, 44 Misc. 2d 663, 254 N.Y.S.2d 851 (Sup. Ct. 1964).

39. *Id.* at 666, 254 N.Y.S.2d at 854.

40. *Schoenbrod v. Seigler*, 20 N.Y.2d 403, 408, 230 N.E.2d 638, 640, 283 N.Y.S.2d 881, 884 (1967).

41. *Rosenbaum v. Rosenbaum*, 309 N.Y. 371, 130 N.E.2d 902 (1955); *DePena v. DePena*, 31 App. Div. 2d 415, 298 N.Y.S.2d 188 (1st Dep't 1969).

42. Instant case at 669, 310 N.Y.S.2d at 115.

43. *Id.*

44. See RICHARDSON ON EVIDENCE 48 (9th ed. 1964).

45. 290 N.Y. 31, 47 N.E.2d 681 (1943).

questionable appearance.⁴⁶ The dissent rejected the statement by the court that it was applying Mexican *res judicata* and not its divorce law. Further, the effect of the majority's holding would be to give recognition to Mexican divorce decrees contrary to established New York precedent of refusing to recognize such decrees where one of the parties is neither personally served with process, nor appears in the action. The dissent also stated that the dubious appearance of an attorney, two years after the original decree, could not revive a legal nullity. After attempting to refute the majority's finding that the record was devoid of evidence sufficient to rebut the presumption of regularity, the dissent stated that the appearance of one not named in the instrument raised a presumption of irregularity. Finally, the dissent placed the agreement between the plaintiff and defendant in violation of ". . . the spirit if not the letter of section 5-311 of the General Obligations Law. . . ." ⁴⁷

The difference in viewpoints between the majority and the dissent is ostensibly one of interpretation. The majority, through an application of authority in point, reaches a decision based on *stare decisis*. The dissent, while uncovering no contrary holdings in point, reaches a diametrically opposed conclusion. The dissent apparently ignores a line of cases that have upheld such divorces.

The dissent fails to consider the actual language of the power of attorney. The instrument contained the words "full power of substitution." Instead of attempting to interpret this inclusion, the dissent proclaimed that the appearance of an attorney other than the one named in the instrument gave rise to a presumption of irregularity. In the face of the language of the document, and the rule that ambiguous words are to be construed most strictly against the principal,⁴⁸ it is not clear how the dissent reached its conclusion.

The appearance of the plaintiff, through an attorney, was made in 1962. Yet the plaintiff waited over three years to attack the validity of the judgment. Since that time, the defendant had remarried and relocated. Quite possibly this case could have been disposed of by denying plaintiff relief on equitable principles. In *Farber v. Farber*,⁴⁹ which, on the facts, is similar to the instant case, the plaintiff's action was barred due to laches where she had delayed three years before commencing same. If a three year delay gave

46. Instant case at 670, 310 N.Y.S.2d at 116.

47. *Id.* at 671, 310 N.Y.S.2d at 117.

48. *Silver Bay Ass'n v. London*, 121 Misc. 712, 201 N.Y.S. 868 (Sup. Ct. 1923), *aff'd*, 215 App. Div. 852, 213 N.Y.S. 910 (3d Dep't 1926).

49. 25 App. Div. 2d 850, 269 N.Y.S.2d 608 (2d Dep't 1966).

rise to laches in that case, the three year delay in this case should also give rise to laches.⁵⁰

The instant case does not signal a new policy as to the recognition of foreign divorces. It follows the holdings of *Hytell*—a case quite similar on the facts. The difference in the instant case is the court's reluctance to delve into the proceedings that took place in Mexico, to determine if they were indeed regular. The court's decision alludes to the idea that if Mexico regards a bilateral divorce as *res judicata*, New York will not question that determination. Rather than a new policy, this case represents a further delineation of the boundaries of the present policy towards foreign bilateral divorce recognition.⁵¹ The decision signifies a liberalization in degree and not kind.

New York has done little to alleviate the inequities inherent in its divorce policy. An amendment to section 170 of the Domestic Relations Law,⁵² while liberalizing the grounds for divorce, did so at the expense of the inclusion of a mandatory conciliation clause.⁵³ This has not resulted in a decrease in the number of migratory divorces.⁵⁴ Likewise, the enactment of section 250 of the Domestic Relations Law,⁵⁵ which attempted to clarify New York's position as to the migratory divorce, has had little effect on the recognition of Mexican bilateral decrees.⁵⁶ The result is tacit legislative endorsement of a divorce policy under which only those with sufficient resources are entitled to the convenience of a second and more liberal divorce forum.

50. Compare *Bigelow v. Bigelow*, 27 Misc. 2d 124, 213 N.Y.S.2d 179 (Sup. Ct. 1961), with *Fusaro v. Fusaro*, 236 N.Y.S.2d 525 (Sup. Ct.), *aff'd*, 18 App. Div. 2d 714, 237 N.Y.S.2d 989 (2nd Dep't 1962).

51. Similarly, the cases discussed previously, dealing with Mexican bilateral divorce recognition, have delimited the extent to which these divorces will be accorded validity in New York.

52. N.Y. DOM. REL. LAW § 170 (McKinney Supp. 1969-70).

53. *Id.* § 215(a) and (b); see Note, *Divorce Law—Compulsory Conciliation Through The Judiciary—New York Domestic Relations Law, Article 11-B*, 31 ALBANY L. REV. 114 (1967).

54. Before the amendment to section 170 of the Domestic Relations Law, it was estimated that of the 18,000 divorces granted each year in Juarez, ninety percent or more went to New Yorkers. Foster, *Divorce Reform*, 22 N.Y. COUNTY B. BULL. 165, 168 (1965). In 1969, three years after the amendment took effect, more than half of the 45,000 Juarez divorces granted in that year went to New York couples. N.Y. Times, Aug. 12, 1970, at 1, col. 6 (city ed.).

55. Proof that a person obtaining a divorce in another jurisdiction was (a) domiciled in this state within twelve months prior to the commencement of the proceeding therefor, and resumed residence in this state within eighteen months after the date of his departure therefrom, or (b) at all times after his departure from this state 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. N.Y. DOM. REL. LAW § 250 (McKinney Supp. 1969-70).

56. *Rosenstiel* apparently is still the authority as to foreign bilateral divorce recognition. In *Kakarapis v. Kakarapis*, 58 Misc. 2d 515, 296 N.Y.S.2d 208 (Fam. Ct. 1968), the supreme court held, *inter alia*, that § 250 did not change the holding that public policy

On August 11, 1970, President Gustavo Diaz Ordaz proposed legislation that would ". . . kill the present system of quick divorces in . . . Juarez."⁵⁷ Chihuahua, which includes Juarez, is the only Mexican state where it is possible to establish immediate residence for the purpose of obtaining a divorce. The proposed amendment to the Mexican Nationality and Naturalization Law would establish a "federal certificate" as the only valid proof of residence for all Mexican federal, state and municipal court actions. The amendment is being considered by the congress which convened September first. "The overwhelming majority in the congress of the President's Revolutionary Institutional Party virtually assures approval."⁵⁸

New York courts have contended with the issue of Mexican migratory divorces for many years. The product of this litigation is a body of law replete with inequities. The passage of the proposed Mexican law would deny New Yorkers the availability of "quickie" Mexican bilateral divorces. Ironically, the problems presented to New York courts by migratory divorce recognition may soon be solved by Mexico.

WARREN B. ROSENBAUM

EMINENT DOMAIN—IMPERMISSIBLE TO BASE MARKET VALUE OF
CONDEMNED LAND SOLELY ON CAPITALIZATION OF INCOME EXPECTED TO BE
REALIZED FROM BUILDINGS ON WHICH NO WORK HAD BEEN DONE AS OF THE
DAY OF TAKING

The claimants, fee owners (Siegel et al.), had assembled a 26.78 acre parcel which was leased to the claimant tenant (Banner Holding Corp., the assignor of Arlen of Nanuet). On May 10, 1961, four months after the assemblage, the State appropriated slightly more than sixteen acres of the vacant land for highway purposes. The fee owners had paid \$247,800.00 for the 26.78 acres. It was leased to the tenant for a 25-year term, at an annual ground rent after the first year of \$61,250.00. The obligation of the subtenant, Korvette, was to become effective upon completion of the construction. Korvette was to pay an annual sublease rental of \$285,000.00 to Banner. This sum included not only a payment for land use, but also a reward to the tenant for construction costs and risk. As of April, 1961, it was uncertain whether the claimant's land would be condemned. To guard against the eventuality of condemnation, the tenant, on April 13, 1961, obtained a ground lease on an adjacent 26-acre site. After condemna-

requires that recognition be extended to bilateral foreign divorces; see Comment, *Does Residence Equal Domicile? Divorce Regulation Under New York Domestic Relations Law § 250*, 16 BUFFALO L. REV. 831 (1967).

57. N.Y. Times, Aug. 12, 1970, at 1, col. 6 (city ed.).

58. *Id.*