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Does Residence Equal Domicile? Divorce Regulation Under New York Domestic Relations Law Section 250

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pany, and, like the domestic forwarders, own no means of transportation. Presently "the number of ocean freight forwarders operating as NVOCCs has been limited and there have been no problems . . . in the duplication of bills of lading,"[24] even though, as in the domestic field, both the forwarder and the underlying carrier issue bills of lading.

CONCLUSION

The "freight forwarder problem" appears to be a theoretical and not a practical problem. While in theory it is possible to have competing holders of bills of lading for the same goods in the freight forwarder situation, the facts would suggest that the problem never arises in practice. Although the possibility does exist that a freight forwarder might demand and get a negotiable bill of lading and thereafter negotiate it to a holder of a duly negotiated document, the possibility seems quite remote. A simple way to eliminate the doubt that this problem might ever arise would be an I.C.C. regulation forbidding the issuance of a negotiable bill of lading to a freight forwarder. Other alternatives, equally simple, could remove all doubt that a forwarder might be able to negotiate its bill to a holder of a duly negotiated document; for example, different color bills of lading could be required to be issued to a forwarder than to a "usual" shipper; or the carrier could be required to write on the bill of lading, after the forwarder's name the fact that it is a forwarder (*i.e.*, "John Doe Co., *a forwarder*"). There are, as seen, many easy cures to the "freight forwarder problem" that would make section 7-503(3) of the Uniform Commercial Code as unnecessary in theory as it is in reality.

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DOES RESIDENCE EQUAL DOMICILE? DIVORCE REGULATION UNDER NEW YORK DOMESTIC RELATIONS LAW SECTION 250

Section 250[1] of the New York Domestic Relations Law was approved on April 27, 1966, and will become effective September 1, 1967. It provides:

> 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 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.[2]

Vessel Carriers, 6 Fed. Maritime Bd. 245 (1961). See also Letter From Gerald Ullman Esq., *supra* note 20.

24. Letter From Gerald Ullman Esq., *supra* note 20.

1. N.Y. Sess. Laws 1966, ch. 254, § 11.
2. N.Y. Sess. Laws 1966, ch. 254, § 11.

This Note will explore the alternatives available to the New York courts in interpreting section 250 as well as the probable effect of this section upon recognition of foreign divorces.

I. Domicile

Section 250 creates a rule of evidence which makes certain facts prima facie evidence of "domicile." But domicile is not defined by the section, thereby relegating the definition to the courts. Domicile has different meanings in different contexts; even in the single area of jurisdiction in a divorce action, the term has varied in meaning and effect. Originally, the courts looked to the husband's domicile as the locus of the "marital res."[3] Today there are basically two theories regarding domicile as a basis for the court's exercise of its jurisdiction in divorce actions.

The modern conservative theory favors the common law definition of domicile. This view of domicile is defined by Wharton as "a residence acquired as a final abode. To constitute it there must be (1) residence, actual or inchoate; (2) the non-existence of any intention to make a domicile elsewhere."[4] The advocates of this doctrine take the position that "the character of the residence is of no importance; and, if domicile has once existed, mere temporary absence will not destroy it, however long continued [; but] when one domicile is abandoned and a new one selected and entered upon, length of time is not important; one day will be sufficient, provided the animus exists."[5]

The liberal theory favors a less doctrinal approach to the definition of domicile. This approach varies from minor disagreement with the conservative view regarding an objective intention to remain a permanent resident, to abolition of the concept of domicile in its entirety.[6] However, this liberal theory has yet to be reflected in case law or endorsed by legislation.

Section 250 appears to be based on the conservative theory, although this would be more of a certainty if the New York Legislature also had enacted section one of the Uniform Divorce Recognition Act which makes such an intention explicit. For the remainder of this commentary, it will be presumed that "domicile" within section 250 is based on the conservative view.

II. The Statute

Section 250 changes the evidentiary weight of certain facts which usually were required by the common law to be established in order to prove domicile. The operative facts (*i.e.*, length of absence or maintainence of a residence) be-

3. See, *e.g.*, Griswald, *Divorce Jurisdiction and Recognition of Divorce Decrees—A Comparative Study*, 65 Harv. L. Rev. 193 (1951).

4. Wharton, Conflict of Laws § 21 (1805).

5. White v. Tennant, 31 W. Va. 790, 8 S.E. 596 (1888). *But see* Goodrich, Conflict of Laws 62 (3d ed. 1949). See also 1 Beale, Conflict of Laws 134 (1934).

6. Stimpson, *Jurisdiction in Divorce Cases: The Unsoundness of the Domiciliary Theory*, 42 A.B.A.J. 222 (1956).

come prima facie evidence of domicile under this section. The subjective intention of the party to remain a domiciliary of the attacking state no longer need be shown.

Under subsection (a), certain minimum absences from the state preceded and followed by residence here, are insufficient to change domicile. This would seem to allow a New York court to reopen the issue of the jurisdiction of the out-of-state court where that state's residency requirement is shorter than the limits set out in subsection (a).[7]

Subsection (b), if read literally, would give New York courts the power to set aside an out-of-state divorce granted to a person who has never been a domiciliary of this state. By placing the beginning of subsection (a) before the reference to domicile, the legislature has made it difficult to read subsection (b) with any logical consistency. A literal reading of the introduction and subsection (b) is grammatically impossible. Such a reading would equate *maintaining a residence* with *continued domicile*, which probably exceeds the bounds of the full faith and credit clause of the United States Constitution. The New York courts have two options available: transpose the designation of subsection (a) to its proper place after "therefor, and"; or strike down subsection (b) entirely as unconstitutional.

Assuming the courts read the statute as it should have been drafted, subsection (b) will still be a significant change in the law. It makes the mere fact that a person maintained a New York residence during his absence from the state evidence of domicile. This would make the common law element of intention to remain a domiciliary irrelevant. By the operation of this subsection, maintaining a residence *alone* is prima facie evidence of domicile. Ours is a highly mobile society where many people have more than one residence, yet it is generally held that a person can have only one domicile. Thus, equating *domicile* with *residence* is a radical departure from the conservative view of domicile.

Section 250 as adopted in New York is a slightly modified[8] version of section two of the 1948 Uniform Divorce Recognition Act.[9] The act, which is designed to make state laws uniform in their enforcement of foreign divorce decrees,[10] has been enacted in ten states, other than New York, since 1949.[11]

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7. *E.g.*, Nevada requires six weeks residence for plaintiff in a divorce action, Nev. Rev. Stat. § 125.020(2) (1963).

8. N.Y. Sess. Laws 1966, ch. 254, § 11 omits "from the bonds of matrimony" after "divorce" from the first sentence of the Uniform Divorce Recognition Act § 2.

9. Uniform Divorce Recognition Act § 2.

10. See Uniform Divorce Recognition Act, Commissioner's Prefatory Note:

> This act takes its inception from the public dissatisfaction which has arisen over the practice of "migratory divorce," whereby residents of one state journey to another to take advantage of laxer or more speedy divorce procedures than those afforded by the state of their domicile.
>
> Public opinion increasingly recognizes the ills which spring from this situation. Those able to embark on divorce-seeking tours obtain a discriminatory advantage over their fellow citizens. Respect for local law is destroyed. The effectiveness of state policy is broken down. The autonomy in local affairs which is the object of federalism is subverted. Since the "quickie" divorces are obtained in large measure by persons whose conduct is regarded as "newsworthy," the resultant publicity helps

III. Validity of Divorce Decrees Under the Act

The drafters of the Uniform Act intended to create a rule of evidence to be used in attacking the validity of an out-of-state court's finding of jurisdiction based on domicile. Although the intention was laudable, the results have been disappointing. In the fifteen years the Uniform Act has been in effect in California, "not one case has been found where the application of the act has brought about a result different from that which would be reached under the common law."[12] This opinion is substantiated by a survey of case law in other enacting states: in only one case was the act clearly applied and upheld in application to an ex parte sister state decree.[13] In two others the act was held not to apply to bilateral divorce decrees.[14] Although applicable, the act was either ignored or not considered in four other cases.[15]

In general, the effectiveness of the act since its inception might best be shown by the following: "For the most part, the act has been a dead letter and in 1965 the commissioners sent out inquiries as to whether or not the Act should be retained as a recommended uniform act."[16]

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to establish a pattern of disrespect for law and social institutions. The impression of well-to-do and influential elements of the community that they need not be hampered by inconvenient restrictions of their local laws renders difficult the promotion of measures of reform. Actually, however, the validity of subsequent marriages, the status of children, title to property, rights of inheritance and many other incidents of life are rendered uncertain by the cloud of invalidity hanging over the "tourist" divorce.

11. Cal. Ann. Civ. Code §§ 150-150.4 (Deering 1960) (California has added § 150.4, which makes the act expressly subject to and limited by the full faith and credit clause of the United States Constitution.); N.H. Rev. Stat. §§ 459:1-459:4 (1955); Nebr. Rev. Stat. §§ 42-341–42-344 (1949); R.I. Gen. Laws Ann. §§ 15-6-1–15-6-4 (1956) (Rhode Island limits the application of the statute to ex parte divorce decrees.); Wash. Rev. Code §§ 26.08.200–26.08.210 (1949); Wis. Stat. Ann. § 247.22 (1955); S.C. Code Ann. §§ 20-131 to 20-134 (1962); N. Dak. Cent. Code §§ 14:1201-14:1218 (1953); La. Rev. Stat. §§ 9:352-9:354 (Supp. 1952) [Louisiana later repealed the statute, La. Acts 1954, No. 616, § 1]; Mont. Rev. Code § 21-150 (1963) (Montana has limited the statute to apply only to ex parte divorce decrees and further added: "Otherwise, the burden for impeaching the validity of a foreign divorce decree shall rest upon the assailant and prima facie validity shall be accorded to divorce decrees of sister states").

12. Note, 16 Hastings L.J. 121 (1965).

13. Yost v. Yost, 161 Neb. 164, 72 N.W.2d 689 (1955).

14. Solley v. Solley, 227 Cal. App. 2d 522, 38 Cal. Rptr. 802 (1964) (act does not apply; party to Nevada bilateral divorce is estopped from collateral attack); Hartenstein v. Hartenstein, 18 Wis. 2d 505, 118 N.W.2d 881 (1963) (The act does not apply to bilateral decrees.).

15. Carmichael v. Carmichael, 216 Cal. App. 2d 674, 31 Cal. Rptr. 514 (1963) (Overwhelming evidence that husband was not a Nevada domiciliary at time he procured ex parte Nevada divorce made it unnecessary to consider the constitutionality of the act.); Nevin v. Nevin, 88 R.I. 426, 149 A.2d 722 (1959) (Evidence sustained finding that wife acquired bona fide domicile for Nevada ex parte divorce, and hence unnecessary to decide whether the act applied or not.); James v. Williams, 247 S.C. 100, 145 S.E.2d 683 (1965) (No mention of the act even though relevant to issues.); Craney v. Low, 46 Cal. 2d 757, 298 P.2d 860 (1956) (ignores and circumvents the act, referring to Cook v. Cook, 342 U.S. 126 (1951), and the full faith and credit obligation; also presumed that Nevada divorce was bilateral rather than ex parte in absence of proof to the contrary).

16. Foster & Freed, Law and the Family (Supp. 1966, at 34).

Standing of Sister State Bilateral Decrees

The standing of a sister state bilateral divorce decree in the several states, including New York, is controlled by the United States Supreme Court decisions of *Sherrer v. Sherrer*,[17] *Cook v. Cook*[18] and *Johnson v. Muelberger*.[19] The *Sherrer* case states:

> [T]he requirements of full faith and credit bar a defendant from collaterally attacking a divorce decree on jurisdictional grounds in the courts of a sister State where there has been participation by the defendant in the divorce proceedings, where the defendant has been accorded full opportunity to contest the jurisdictional issues, and where the decree is not susceptible to such collateral attack in the courts of the State which rendered the decree.[20]

Thus, the basic premise in a bilateral divorce case is that both parties have participated in the proceeding and had an opportunity to contest the jurisdictional basis of domicile and therefore, since the decree is res judicata, the issue is waived or conclusive as between the parties. In *Johnson v. Muelberger*[21] the Supreme Court extended this rationale, holding that a collateral attack by a stranger to the divorce action was forbidden under the full faith and credit clause unless permitted in the rendering state.[22] In *Cook v. Cook*[23] the Court reinforced the policy underlying the *Johnson* and *Sherrer* cases, holding that a divorce decree gives rise to a presumption of jurisdiction over both parties.[24]

Section 250 probably will have no effect on the validity of sister state bilateral divorce decrees in New York. The Supreme Court in *Sherrer, Cook* and *Johnson* has pre-empted the field by interpreting the full faith and credit clause. Only one case has been found in which the act was so applied and upheld and its constitutionality may be doubtful.[25] If the New York State courts applied the act to bilateral decrees, they would be using a legislative rule of evidence to overcome a presumption established by the Supreme Court for the constitutional

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17. 334 U.S. 343 (1948).
18. 342 U.S. 126 (1951).
19. 304 U.S. 581 (1951).
20. 334 U.S. 343, 351 (1948).
21. 340 U.S. 581 (1951) (Daughter attacked the validity of her deceased father's Florida divorce since by his will he left everything to her, but his wife by a later marriage filed notice of election to one third of the estate.).
22. U.S. Const., art. IV, § 1 provides: "Full faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and Effect thereof."
28 U.S.C. § 687 (1957) provides in part: ". . . And the said records and judicial proceedings . . . shall have such faith and credit given to them in every court within the United States as they have by law or usage in the courts of the state from which they are taken."
See Comment, *Collateral Attack on Foreign Divorces: Proof of the Foreign Law*, 8 Buffalo L. Rev. 389 (1959).
23. 342 U.S. 126 (1951).
24. See Comment, *supra* note 22.
25. Zenker v. Zenker, 161 Neb. 200, 72 N.W.2d 809 (1955) (Act upheld as applied to bilateral divorce decree; Sherrer v. Sherrer, 334 U.S. 343 (1948) distinguished.).

implementation of the full faith and credit clause. Therefore such use by the New York State courts might be unconstitutional.

In *Johnson*, the Supreme Court held that a bilateral decree was open to collateral attack by a stranger to the decree, to the same extent such attack would be allowed in the rendering state.[26] If the rendering state did allow an attack by a stranger, yet did not have a divorce recognition statute, it is doubtful that section 250 could be used as a rule of evidence in such an attack, since this would be an attack to an extent not allowed in the rendering state.

Standing of Sister State Ex Parte Decrees

The standing of a sister state ex parte divorce decree in New York is controlled by the decision in *Williams v. North Carolina (II)*.[27] The Supreme Court held that where only one party appears before the divorcing state's forum, and the court asserts jurisdiction over the "marital res," the same forum may not foreclose a re-examination of the jurisdictional basis for the divorce decree.[28] However, the Court has indicated, by affirmance of the trial court's charge to this effect, that full faith and credit must be given to the decree to the extent that such decree is prima facie evidence that the divorcing party was a domiciliary of the divorcing state.[29] The Court further stated that the assailant has a "heavy burden"[30] when attacking such a decree and the reviewing state may not place "unfair barriers" in the way of such decrees nor weight the scales in favor of the assailant.[31]

It is difficult to estimate the effect of the application of section 250 to ex parte sister state decrees in New York. If a case arises in which the proof of lack of domicile in the rendering state is substantial the statute is at best superfluous. On the other hand, if the proof tends to substantiate the claim of domicile in the rendering state, the use of the statute might be inconsistent with the Supreme Court's opinion in *Williams (II)*.[32] Whether the latter use is so inconsistent as to raise unfair barriers to recognition[33] or unfairly weight the scales of justice in favor of the assailant,[34] who has a heavy burden,[35] is the determinative issue. The question of whether the act can constitutionally stand depends

26. Johnson v. Muelberger, 340 U.S. 581 (1951).
27. 325 U.S. 226 (1945).
28. *Id.* at 234.
29. *Id.* at 236 (The Court said that the charge of the trial court granting "prima facie evidence" sufficient to warrant a finding of domicile in Nevada but not compelling "such an inference," discharged the full faith and credit obligation.).
30. *Id.* at 233.
31. *Id.* at 236. See generally Comment, *supra* note 22. See also Note, 34 Cornell L.Q. 263 (1948); Note, 33 Minn. L. Rev. 317 (1949); Note, 22 Temp. L.Q. 241 (1948); Note, 34 Va. L. Rev. 709 (1948); Paulsen, *Divorce Jurisdiction by Consent of the Parties: Developments Since "Sherrer v. Sherrer"*, 26 Ind. L.J. 381 (1952); Comment, *Stranger Attack on Sister State Decrees of Divorce*, 24 U. Chi. L. Rev. 376 (1957); Stimson, *Jurisdiction in Divorce Cases: The Unsoundness of the Domiciliary Theory*, 42 A.B.A.J. 222 (1956).
32. Williams v. North Carolina (II), 325 U.S. 226 (1945).
33. *Id.* at 236.
34. *Ibid.*
35. *Id.* at 233.

upon the outcome of this issue. *Williams (II)* further stated there must be a "fair determination by appropriate procedure"[36] and a finding adverse to jurisdiction by reason of domicile in the rendering state must be "amply supported in evidence."[37] The "rule of evidence" established by section 250 does not create a presumption of domicile in New York State. It is only prima facie evidence of domicile where a party's actions, which are deemed indications of domiciliary intent, make him subject to the act.

If it is assumed that the prima facie weight of the new statutory rule of evidence established by section 250, is at least equal to the prima facie weight of the foreign decree, what has been accomplished? Since *Williams(II)* places the burden of proof on the assailant and further states that a finding in favor of such assailant must be "amply supported in evidence," it does not follow that mere application of section 250 is sufficient to overcome that burden. It would seem that equating the two rules of evidence leaves only the bare facts required for the operation of section 250 to carry the burden of proof. However, these few facts would probably not be sufficient to adequately carry this burden since the Supreme Court has indicated that a finding against domicile in the rendering state must have ample support. If this is true, the assailant must show more than meet the heavy burden of proof. The conclusion is that the assailant must show some "extra" evidence to enable him to meet his burden of proof. "Extra" evidence, in this context, would mean evidence other than the operative facts of the act. Just how much "extra" evidence would be necessary is not clear, but at least it would have to create a preponderance of the evidence.

Thus, three possible results from the application of the act remain. First, if the assailant does not produce enough evidence to allow a finding adverse to the rendering state's finding of domicile, would not an adverse finding by operation of the act alone be unconstitutional as an unfair weight in favor of the assailant?[38] Second, if the assailant is able to produce substantial evidence of the defendant's lack of domicile, is not the use of section 250, even as an aid to impeaching the foreign decree, little more than superfluous? Third, the final possibility is the use of section 250 in the "grey areas" between the two above situations; that is, the act might be used effectively where enough facts are found to allow its application as well as create a preponderance with "extra" facts. These combined facts, without the application of section 250, at common law, might not have been enough to constitutionally allow a finding adverse to the rendering state's finding of domicile.

A Mexican ex parte divorce decree is valid in New York if the party establishes bona fide domicile, by New York standards, in a Mexican state, provided the absent spouse has been duly notified of the proceedings.[39] Where no attempt

36. *Ibid.*
37. *Ibid.*
38. *Id.* at 233.
39. Imbrioscia v. Quaile, 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 1959). See Laufer, *Mexican*

to establish domicile has been made, a Mexican ex parte divorce, will be treated much like a "mail order" or "quicky" divorce and will not be recognized by New York courts.[40]

A bilateral Mexican divorce where the one party personally appears before the court, and the other appears either personally, by a duly authorized representative, or by filing papers indicating submission to the jurisdiction of the court, is recognized as valid as a matter of comity in New York.[41] Under comity, as contrasted with full faith and credit, New York courts have power to ignore a decree rendered outside the United States, for reasons of public policy alone, despite any claims or findings of jurisdiction made by the foreign court.[42] Thus, domicile as a prerequisite to the exercise of jurisdiction in a foreign country bilateral divorce is not at issue when the state courts examine a foreign country decree.[43] Therefore, "lack of domicile, as the concept is generally applied in the United States, is not necessarily a bar to recognition of a foreign divorce."[44]

The extent to which section 250 is applicable to Mexican or foreign country divorce decrees is unclear and probably the area most open for dispute. In *Rosenstiel v. Rosenstiel*[45] the Court of Appeals held that domicile was not required for the parties in a Mexican participation divorce to have the decree recognized as valid in New York and that "the sole criterion by which these decrees may be judged is whether they contravene our public policy."[46] In the light of this and prior New York decisions, the intention in enacting section 250 must be ascertained to predict its affects in the area of foreign country decrees.

The New York State Legislature must have been aware of the practical significance and public furor caused by the *Rosenstiel* decision.[47] It is therefore possible to conclude that the legislature intended section 250 to be a legislative overruling of *Rosenstiel.* Also, when one considers that the main reason migratory divorces were a problem in New York was the unrealistic nature of its former divorce laws, the argument can be made that now that New York has liberalized

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Divorces for New Yorkers, Sixteenth Session Outline, Television Presentation of the State University of New York at Buffalo Law School, p. 6 (Jan. 1966).

40. Baumann v. Baumann, 250 N.Y. 382, 165 N.E. 819 (1929); Rosenbaum v. Rosenubam, 309 N.Y. 371, 130 N.E.2d 902 (1955).

41. Rosenstiel v. Rosenstiel, 16 N.Y.2d 64, 209 N.E.2d 709, 262 N.Y.S.2d 86 (1965).

42. See authorities cited in Note, 14 Buffalo L. Rev. 556, 557 nn.5-7 (1965). See also Laufer, *op. cit. supra* note 39, p. 6: "To the extent that New York recognizes judgments and decrees, including divorce decrees of any foreign country, it does so on the principle of '*comity*,' a judicial rule based on the notion that it will contribute to justice, stability and orderly international cooperation if state *A* will give effort to validly entered judgments of foreign country *B provided* that they meet minimum standards of due process and do not violate state *A*'s public policy"; Kulzer, *Some Aspects of Enforceability of Foreign Judgments: A Comparative Summary*, 16 Buffalo L. Rev. 84 (1966).

43. See, *e.g.*, Rosenbaum v. Rosenbaum, 309 N.Y. 371, 131 N.E.2d 902 (1955).

44. Note, *supra* note 42.

45. Rosenstiel v. Rosenstiel, 16 N.Y.2d 64, 209 N.E.2d 709, 262 N.Y.S.2d 86 (1965).

46. *Id.* at 79, 209 N.E.2d at 716, 262 N.Y.S.2d at 95 (Scileppi, J., dissenting, quoting Rosenbaum v. Rosenbaum, 309 N.Y. 371, 130 N.E.2d 902 (1955)). [Emphasis omitted.].

47. Foster & Freed, Law and the Family (Supp. 1966, at 33).

its divorce laws,[48] recognition of Mexican divorce decrees is unnecessary and thus they should no longer be recognized as a matter of comity.

There are four primary reasons why section 250 should not be read as a statutory overruling of *Rosenstiel,* nor a change in policy towards recognition of foreign country divorce decrees. First, section 250 is a Uniform Act which applies only when domicile is an issue; since domicile is not an issue in the recognition of Mexican divorce decrees,[49] there is no need to refer to the act. Second, it could be argued that enactment of section 250 was intended to make domicile indispensable to jurisdiction in all divorce recognition cases regardless of origin. If that was the intention of the legislators, they also could have enacted section one of the Uniform Divorce Recognition Act[50] which makes domicile a requirement for jurisdiction in all divorce decrees. The New York State Legislature could have specifically included foreign country decrees under the act by a simple amendment to the uniform version or by a separate section under the Domestic Relations Law. In the absence of such a provision it is reasonable to conclude that no effect was intended on foreign country decrees. Third, the legislature could have left us a guide to its intention by means of legislative notes or comments regarding the application of section 250 to foreign country decrees. In the absence of such comment it seems reasonable to conclude that the act was not meant as a statutory overruling of case law. An overruling is more likely to be accompanied by a specific comment to that effect, as is usual practice.[51] Finally, when one considers that comity, which is a matter of public policy, is the controlling factor in foreign country decree recognition cases, it would be more likely that the legislature would enact a policy section, such as section one[52] rather than section two of the Uniform Divorce Recognition Act which only provides a rule of evidence.

IV. Conclusion

It can be concluded that the use of section 250 of the Domestic relations Law will have a very narrow effect on sister state bilateral decrees. It will only be used by a stranger to the decree who collaterally attacks the decree when the rendering state allows the collateral attack and the use of such a rule of evidence for the attack. Such a combination, when one considers that the rendering state is the least likely (if it is a "divorce mill" state) to have enacted a divorce recognition statute, will be extremely rare.

48. N.Y. Sess. Laws 1966, ch. 254 (six grounds for divorce will be available under the new law instead of the single ground (adultery) that has existed for 179 years).

49. Rosenbaum v. Rosenbaum, 309 N.Y. 371, 375, 130 N.E.2d 86 (1955); Foster & Freed, Law and the Family (Supp. 1966, at 33).

50. Uniform Divorce Recognition Act § 1 (1955): "Validity of Foreign Decree—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 proceedings for the divorce commenced."

51. See, *e.g.,* N.Y. Estates, Powers and Trusts Law, Revisers' Notes and Comments to § 5-1.4 (1966); N.Y. Bus. Corp. Law, Revisers' Notes and Comments to § 202(a)(15) (McKinney 1962).

52. See *supra* note 50.

Section 250 may have some small effect on *ex parte* sister state decrees, but it is more likely to be superfluous or held unconstitutional depending on the amount of evidence the assailant is able to present.

In the area of foreign country decrees where a New York court is not bound by the constitutional mandate of full faith and credit, the application of section 250 will be open to debate. The effect of the act in this area is not likely to be recognized as a statutory overruling of *Rosenstiel* and prior case law.

One difficulty in understanding the New York legislators' intention in enacting section 250 is its past history. The same statute has had little or no effect in ten other enacting states for the past eighteen years. The inherent defects in draftsmanship would seem to prejudice the statute's chances for being constitutionally sustained under judicial scrutiny. The Supreme Court decisions in the area of divorce recognition since it was first enacted may indeed destroy the usefulness of the act.

When these factors are combined with the lack of legislative notes or comments to section 250, its existence is not easily reconciled with its supposed goals. It would appear that when the New York legislature finished reforming the divorce laws it added section 250 primarily to keep New Yorker's divorces before New York courts.

MICHAEL L. MCCARTHY

THE "UNFAIR" INTERESTED DIRECTORS' CONTRACT UNDER THE NEW YORK BUSINESS CORPORATION LAW

According to the majority common law rule a contract between a director and his corporation, or between corporations with interlocking directorates, will be enforced if the contract is basically "fair" to the corporation but may be avoided if "unfair."[1] This rule seems to have been extended by section 713(a) of the New York Business Corporation Law, which provides in part:

> 713. Interested directors.—(a) No contract or other transaction between a corporation and one or more of its directors, or between a corporation and any other corporation, firm, association or other entity in which one or more of its directors are directors or officers, or are financially interested, shall be either void or voidable for this reason alone or by reason alone that such director or directors are present at the meeting of the board, or of a committee thereof, which authorizes such contract or transaction, or that his or their votes are counted for such purpose:
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> (1) If the fact of such common directorship, officership or financial interest is disclosed or known to the board or committee, and the

1. See generally 19 Am. Jur. 2d *Corporations* § 1307 (1965); Annot., 33 A.L.R.2d 1062, 1064 (1954).