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# Conflicts of Law—Foreign Divorce Action Not Enjoined If Decree Not Entitled to Full Faith and Credit

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interpreted, construed and governed by the laws of that state. Under Illinois law, the agreement amounted to an absolute bar to suit.[43]

The traditional rule is that the law governing a contract must be determined by the intent of the parties.[44] The intent of the parties is no longer conclusive, however, and the courts will look to the law of the place having the most significant contacts with the matter in dispute.[45] Under both tests the Court of Appeals held that Illinois law was applicable.

In considering plaintiff's argument that public policy required the application of New York law, the Court stated that the issue is not whether the New York statute reflects a different public policy from that of the Illinois law, but whether enforcement of the contract under Illinois law represents an affront to our public policy.[46] Moreover, it found that the agreement did in fact satisfy the public policy of New York.

*Bd.*

FOREIGN DIVORCE ACTION NOT ENJOINED IF DECREE NOT ENTITLED TO FULL FAITH AND CREDIT

In *Arpels v. Arpels*,[47] plaintiff sought to enjoin her husband from prosecuting a divorce action, based on alleged adultery, instituted by him in France. Special Term granted a temporary injunction,[48] but the Appellate Division reversed and dismissed the complaint.[49] The Court of Appeals affirmed. The Court noted that the power to enjoin a person from resorting to a foreign court is a power used sparingly inasmuch as it represents a challenge to the dignity and authority of the tribunal. Thus, it is employed only if there is a danger of fraud or gross wrong being perpetrated on the foreign court. The power is further restricted in the case of a foreign divorce action where, even if a serious impropriety would result from prosecution of the action, an injunction will issue only if the ensuing decree would be entitled to full faith and credit.[50]

The Court found that there was no danger of fraud on the foreign court since there was good reason to believe that the French court had jurisdiction to hear the suit and render a binding judgment under French law. Even if there was a possibility of fraud, however, plaintiff still would be unsuccessful. It is well-established that a divorce decree, valid under the laws of one of the states of the union, must be accorded full faith and credit by a sister state.[51]

43. Ill. Rev. Stat. ch. 106¾, § 65.
44. Wilson v. Lewiston Mill Co., 150 N.Y. 314, 44 N.E. 959 (1896); Stumpf v. Hallahan, 101 App. Div. 383, 91 N.Y. Supp. 1062 (1905), aff'd, 185 N.Y. 550, 77 N.E. 1196 (1906).
45. Auten v. Auten, 308 N.Y. 155, 124 N.E.2d 99 (1954); Rubin v. Irving Trust Co., 305 N.Y. 288, 113 N.E.2d 424 (1953).
46. Cf. Loucks v. Standard Oil Co. of New York, 224 N.Y. 99, 120 N.E. 198 (1918).
47. 8 N.Y.2d 338, 207 N.Y.S.2d 663 (1960).
48. 17 Misc. 2d 471, 187 N.Y.S.2d 100 (Sup. Ct. 1959).
49. 9 A.D.2d 336, 193 N.Y.S.2d 754 (1st Dep't 1959).
50. See, Rosenbaum v. Rosenbaum, 309 N.Y. 371, 130 N.E.2d 902 (1955); Garvin v. Garvin, 302 N.Y. 96, 96 N.E.2d 721 (1951).
51. Williams v. State of North Carolina, 317 U.S. 287 (1942); Garvin v. Garvin, supra note 50.

However, no full faith and credit requirement attaches to a judgment rendered in a foreign court.[52] While noting the likelihood that the decree would find acceptance under New York rules of comity,[53] the Court held that inasmuch as it was not entitled to full faith and credit, plaintiff could not be granted an injunction.

*Bd.*

## CONSTITUTIONAL LAW

REGENT'S PRAYER HELD CONSTITUTIONAL

The Board of Education of New Hyde Park, New York, required the recitation of this prayer as a daily procedure in the public schools: "Almighty God, we acknowledge our dependence upon Thee, and we beg Thy blessings upon us, our parents, our teachers and our Country." This recitation by the students was generally led by a teacher or another student. However, no student was compelled to utter the prayer, and no penalty attached for nonparticipation. Petitioners, taxpayers in the school district and parents of children attending the public schools, brought the present proceeding, *Engel v. Vitale*,[1] to compel discontinuance of the recitation. They alleged that the prayer was contrary to the religious beliefs of Jews, Unitarians, Ethical Culturists, and non-believers and thus violated the First Amendment to the Constitution of the United States[2] and Section 3 of Article 1 of the New York State Constitution.[3] The Supreme Court, Special Term,[4] and the Appellate Division[5] upheld the constitutionality of the prayer. The Court of Appeals, in a five to two decision, held that the non-compulsory recitation of this prayer violated neither the Federal nor State Constitutions.

The state constitutional guarantee of freedom of religion must be at least as broad as the guarantees of the First Amendment to the Federal Constitution which is incorporated into the Fourteenth Amendment, and is therefore applicable as a restraint on state governmental action.[6] Thus, a state may not violate either the "free exercise" clause nor the "establishment" clause of the First Amendment.

The Court of Appeals held that the "free exercise" clause was not violated by the recitation of this prayer because students were free to refrain from participating in the prayer if they so desired. The more difficult question for the Court to determine was whether the prayer violated the "establishment" clause.

52. Rosenbaum v. Rosenbaum, supra note 50.
53. Cf. Gould v. Gould, 235 N.Y. 14, 25-26, 138 N.E. 490, 493 (1923).

1. 10 N.Y.2d 174, 218 N.Y.S.2d 659 (1961).
2. Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof. . . .
3. The free exercise and enjoyment of religious profession and worship, without discrimination or preference, shall forever be allowed in this state to all mankind.
4. 18 Misc. 2d 659, 191 N.Y.S.2d 453 (Sup. Ct. 1959).
5. 11 A.D.2d 340, 206 N.Y.S.2d 183 (2d Dep't 1960).
6. Cantwell v. Connecticut, 310 U.S. 296 (1940).