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Civil Procedure And Evidence—Injunctions—Foreign Divorce Actions

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admitting the medical testimony he may still find that there is insufficient proof of accidental death.[59] However, the amendment to the Civil Service Law does not give him the power to reject expert testimony as to the cause of death.

Injunction—Foreign Divorce Actions

In *Rosenbaum v. Rosenbaum*,[60] a wife brought an action for an injunction to restrain her husband from prosecuting a divorce action in Mexico. The Court *held* (4-3) that the wife had an adequate remedy at law under the Civil Practice Act by a declaratory judgment[61] and therefore was not entitled to injunctive relief.

The Supreme Court of the United States has declared that decrees of divorce, rendered by sister states are entitled to a presumption of validity[62] under the "Full faith and credit" clause of the Federal Constitution.[63] At one time, such decrees had no such presumption of validity,[64] and it was usually held that a court of equity would not intervene to restrain a proceeding entirely void.[65] Since the decrees of a sister state now have a presumption of validity, equity will grant an injunction to prevent hardships.[66]

The propriety of an injunction is not clear however, when the divorce decree of a foreign country is involved. There is no presumption of validity accorded foreign country divorce decrees. The problem is thus not the effect of the full faith and credit clause of the Federal Constitution, but solely a question of comity.[67] There is a tendency in this country to refuse recognition to Mexican divorce decrees.[68]

The majority in the instant case applied the familiar equity doctrine of not intervening to restrain a proceeding entirely void, holding that since a decree of divorce rendered by a court of a foreign country is null and void on its face, an injunction is not the proper remedy and a plaintiff will be left to an appropriate remedy at law. The minority contended, however, that since an injunction could issue to prevent a defendant from procuring a divorce in a sister state, the same

59. See *McCadden v. Moore*, 276 App. Div. 490, 95 N.Y.S. 2d 740 (4th Dep't 1950), *aff'd* 301 N.Y. 760, 95 N.E. 2d 819 (1950).
60. 309 N.Y. 371, 130 N.E. 2d 902 (1955).
61. N. Y. CIV. PRAC. ACT §§473, 1169-a.
62. *Williams v. North Carolina* 317 U.S. 287 (1942).
63. U. S. CONST. art. IV, §1, cl. 1.
64. *Haddock v. Haddock*, 76 App. Div. 620, 79 N.Y. Supp. 133 (1st Dep't 1902); *aff'd* 178 N.Y. 557, 70 N.E. 1099; *aff'd* 201 U.S. 562 (1906).
65. *Goldstein v. Goldstein*, 283 N.Y. 147, 27 N.E. 2d 969 (1940).
66. *Hammer v. Hammer*, 303 N.Y. 481, 104 N.E. 2d 864 (1952).
67. *Martens v. Martens*, 284 N.Y. 363, 31 N.E. 2d 489 (1940).
68. *May v. May*, 251 *App. Div.* 63, 295 N.Y.S. 599 (4th Dep't 1937); SCHOULER DIVORCE MANUAL Pp. 531-532 (1944).

justification is present to grant an injunction to restrain a defendant from procuring a foreign country decree of divorce, the justification being that such a decree may be used to jeopardize the rights of the aggrieved spouse.

In the opinion of the writer the minority presents a more liberal view, because until the Mexican divorce decree is declared null and void, the aggrieved spouse's status is in doubt and she may be placed in an unfavorable light in the community in which she lives.

Trial De Novo—Availability

A trial de novo is defined as a new trial or retrial had in an appellate court in which the whole case is gone into as if no trial whatever had taken place in the court below.[69] In *Hughes v. Board of Education*[70] the Court of Appeals was faced with the question of whether a college professor, having been dismissed by the Board of Education because of Communist party membership, was entitled to a trial de novo. New York has adopted three statutes pertaining to the removal of public school teachers for treasonable or seditious acts or utterances.[71] The Civil Service Law[72] enables a person dismissed under section 12-a to obtain a trial de novo.[73]

In affirming the Appellate Division's reversal,[74] the Court of Appeals indicated that a teacher found disqualified pursuant to the Feinberg Law has an election of three methods of review: 1) trial denovo,[75] 2) limited judicial review,[76] 3) appeal to the Commissioner of Education.[77]

The Board of Education argued that a full administrative hearing followed by Article 78 proceedings, or in the alternative an appeal to the State Commis-

69. BLACK, LAW DICTIONARY (4th ed. 1951); *In re Breen's Estate* 329 Ill. App. 650, 70 N.E. 2d 90 (1946), *Bardwell v. Riverside Oil & Refining Co.* 139 Okla. 26, 280 P. 1083, 1085 (1929).

70. 309 N.Y. 319, 130 N.E. 2d 638 (1955).

71. N. Y. EDUCATION LAW §3021; N. Y. CIVIL SERVICE LAW §12-a (applicable to all public employees, including teachers); N. Y. EDUCATION LAW §3022, (the "Feinberg Law", which implements the two prior statutes).

72. N. Y. CIVIL SERVICE LAW §12-a(d): "A person dismissed . . . may . . . petition for an order to show cause . . . why a hearing on such charges should not be had. . . . The hearing shall consist of the taking of testimony in open court with opportunity for cross-examination . . . ."

73. *Thompson v. Wallin*, 301 N.Y. 476, 95 N.E. 2d 806 (1950), *aff'd sub nom. Adler v. Board of Education*, 342 U.S. 485 (1952).

74. 286 App. Div. 180, 141 N.Y.S. 2d 392 (1955).

75. N. Y. CIVIL SERVICE LAW §12-a(d), note 71 *supra;* see *Thompson v. Wallin*, 301 N.Y. 476, 95 N.E. 2d 806 (1950).

76. N. Y. CIV. PRAC. ACT art. 78, §§ 1283, 1306.

77. N. Y. EDUCATION LAW §310.