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Domestic Relations—Right of Strangers to Attack Foreign Divorce Decree

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New York has also adopted PENAL LAW §§ 43, 720, 722, which in application cover the same ground as Pennsylvania's recognition of common law crimes.

Under Section 43 a defendant was convicted of openly outraging public decency in asking two little girls to commit sodomy with him. *People v. Casey,* 188 Misc. 352, 67 N. Y. S. 2d 9 (City Ct. Utica 1946).

Under Section 720, the shouting of obscenities in defendant's own backyard, but loud enough to be heard in the street, was held to be disorderly conduct. *People v. Whitman,* 157 N. Y. Supp. 1107 (County Ct. 1916).

A case that clearly points up the propinquity of New York's statutory provisions to Pennsylvania common law is *People v. Daly,* 154 Misc. 149, 276 N. Y. Supp. 583 (Sp. Sess. 1935), where defendant was convicted of disorderly conduct for threatening bodily harm and using abusive language over the telephone.

An appraisal of the decisions under Pennsylvania common law auspices and those dealing with the purview of the New York "dragnet" provisions indicates that these states, among others, although they endorse the principle of legality and the doctrine of *nulle poena sine lege,* do not wish to be precluded from dealing with grossly anti-social behavior that cannot be subsumed under any specific positive sanction.

Howard L. Meyer, II

DOMESTIC RELATIONS — RIGHT OF STRANGERS TO ATTACK FOREIGN DIVORCE DECREE

Petition by collateral heirs to remove decedent's purported wife as administratrix of his estate on the ground that their marriage was void, because the divorce decree obtained in Idaho by the purported wife from her former husband was invalid for lack of jurisdiction. *Held* (5-4): Collateral heirs have no standing to attack the decree in this instance. *Estate of Englund,* ___ Wash. ___, 277 P. 2d 717 (1954).

A decree of divorce in one state is subject to collateral impeachment in another by proof of lack of jurisdiction. *Williams v. North Carolina,* 325 U. S. 226 (1944). No case has been found that precludes a stranger, as such, from maintaining a collateral attack on a divorce decree on grounds, which if proven, would

render the decree void for lack of jurisdiction. See note, 12 A. L. R. 2d 729.

The instant case is one of first impression for the Washington courts, although litigated extensively in other jurisdictions. The controlling statute is Section 20, Chapter 215, Laws of 1949, RCW 26.08.200, adopted from the Uniform Divorce Recognition Act, Section 1, 9 U. L. A., which provides that a foreign divorce is void if both parties were domiciled in Washington at the time of the commencement of the divorce proceedings. Both opinions admit that under this statute, the subsequent marriage of the administratrix was void *ab initio,* but the majority contends that since the collateral heirs were strangers to the divorce proceedings, and since the decree did not affect any rights or interests acquired by them prior to its rendition, they have no right to attack it. (277 P. 2d at 721.)

Analysis discloses that cases relied upon to preclude collateral attack by strangers are either cases deciding the attack on the merits and concluding a stranger under these circumstances cannot attack; *Sorensen v. Sorensen,* 219 App. Div. 344, 220 N. Y. Supp. 242 (2d Dep't 1927); or holding a stranger may not attack a decree which is only voidable at the instance of the parties; *Crockett v. Crockett,* 27 Wash. 2d 877, 187 P. 2d 180 (1947); or denying attack because the stranger had no right or interest affected adversely by the decree; *Farah v. Farah,* 196 Misc. 460, 92 N. Y. S. 2d 187 (Sup. Ct. 1949).

The dissenting opinion relies on the plain meaning of the statute to argue that since the marriage was void *ab initio,* the collateral heirs have such an interest in the estate of the deceased as to maintain a collateral attack on the foreign divorce decree. 277 P. 2d at 723. The commissioners' notes with reference to this particular section of the Uniform Divorce Recognition Act state that the purpose of the act is to refuse recognition of extra-state divorces obtained by domiciliaries except as specifically required by the Constitution of the United States, in order to discourage migration in pursuit of a divorce. See 9 U. L. A. 364.

There are numerous decisions holding that a child has such an interest in the estate of a parent that he may collaterally attack a prior divorce of a purported surviving spouse. *In re Petersen's Estate,* 192 Misc. 243, 78 N. Y. S. 2d 572 (Surr. Ct. 1948). Even though on the merits the divorce was found valid, standing to collaterally attack was allowed. *In re Torkkila's Estate,* 198 Misc. 265, 98 N. Y. S. 2d 460 (Surr. Ct. 1950); *In re Paul's Estate,* 77 Cal. App. 2d 403, 175 P. 2d 284 (1946). This interest in the estate of a deceased person has been extended to other collateral heirs

to allow them to challenge a prior divorce of a surviving spouse. *In re Pusey's Estate,* 180 Cal. 368, 181 P. 648 (1919). See *Nimmer's Estate v. Nimmer,* 212 S. C. 311, 47 S. E. 2d 716 (1948), where on similar facts collateral attack by heirs was allowed.

Decisions which seem to deny this interest in heirs are distinguishable because of the appearance of the other party in the divorce proceedings, thereby estopping any collateral denial of jurisdiction. *Johnson v. Muelberger,* 340 U. S. 581 (1951); *Shea v. Shea,* 270 App. Div. 527, 60 N. Y. S. 2d 823 (2d Dep't 1946).

The instant case represents the great reluctance by courts to allow collateral attack on seemingly valid marriages, but this writer suggests the majority reasoning here is too restrained, especially in view of decisions in other jurisdictions and the policy underlying the Uniform Divorce Recognition Act. This policy is to refuse recognition of foreign divorce decrees acquired by domicilaries, subject *only* to constitutional limitations. The *Williams* case suggests that there would be no constitutional obstacle to declaration of the invalidity of the instant divorce decree.

Paul A. Foley

EVIDENCE — CROSS-EXAMINATION TO IMPEACH CREDIBILITY HELD PREJUDICIAL

In an action to recover for personal injuries received while boarding a bus, plaintiff was cross-examined as to prior convictions for intoxication. *Held* (4-1): Since intoxication is not a crime, such questioning was not competent to impeach credibility and should have been excluded. *McQuage v. City of New York,* 285 App. Div. 249, 136 N. Y. S. 2d 111 (1st Dep't 1954).

For purposes of attacking credibility, a witness may be cross-examined concerning any immoral, vicious, or criminal act of his life which may affect his character and tend to show him to be unworthy of belief. RICHARDSON, EVIDENCE (7th ed. 1948) § 576; *People v. Sorge,* 301 N. Y. 198, 93 N. E. 2d 637 (1950). Jurisdictions differ as to what types of moral misconduct are relevant to veracity and thus a proper subject of cross-examination. The English rule has been to allow anything to be asked. Diametrically opposed are two or three states which forbit any inquiries into the moral past of the witness. However, most states, including New York, follow a middle course. According to this theory, the range of the questioning is left to the control of the trial judge. WIGMORE, EVIDENCE § 146 (Students' Ed. 1935). In *Freidel v. Board*