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Conflict Of Laws—Foreign Divorce Proceedings

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no other forum capable of hearing the issues. Under these circumstances, possibly the doctrine might better have been ruled inapplicable at the outset. At any rate, the decision in the *Royal China* case is at least apparently in accord with the federal cases[15] denying the exercise of a court's discretion in this regard in the absence of a showing of at least one other forum possessed with the power to make an adjudication on the merits.

Foreign Divorce Proceedings

Should the New York courts issue a temporary injunction against the maintenance of a foreign *ex parte* divorce proceeding by the migrant spouse in order that the *bona fides* of his claim to domicile might be tested in New York? This question has been twice posed to the Court of Appeals in as many years,[16] and was again answered in the affirmative in *Hammer v. Hammer.*[17]

Plaintiff wife and defendant husband were married in New York in 1913, and established the marital domicile within the State. In 1948, an action for separation was commenced by the wife in the State Supreme Court. The action was settled when the defendant agreed to the separation and to periodic payments for the wife's support. In 1951, the wife was constructively served as defendant in a Florida divorce action. Plaintiff wife, alleging that the defendant's Florida domicile was sham, moved for a prohibitory injunction *pendente lite,* to become final on the court's determination that the defendant's domicile had remained in New York. The Appellate Division reversed the denial of the motion by Special Term.[18] The Court of Appeals affirmed the Appellate Division, holding that inasmuch as plaintiff's complaint entitled her to a permanent injunction against the maintenance of the foreign *ex parte* divorce action, the Appellate Division had, in its discretion, power to issue the injunction *pendente lite.*

When acts are threatened which, if performed, would subject the plaintiff to irreparable damage, an injunction against the action will issue, whether it be local or foreign.[19] Irreparable

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15. *Supra* n. 5.

16. The identical point was raised in *Garvin v. Garvin,* 302 N. Y. 96, 96 N. E. 2d 721 (1951).

17. 303 N. Y. 481, 104 N. E. 2d 864 (1952); *motion for reargument denied,* 303 N. Y. 1008, 106 N. E. 2d 283 (1952).

18. 278 App. Div. 396, 940, 105 N. Y. S. 2d 812 (1st Dep't 1951).

19. RESTATEMENT, CONFLICT OF LAWS § 96 *Comment a.* As to the efficacy of such an injunction once issued, see Jacobs, *The Utility of Injunctions and Declaratory Judgments In Migratory Divorce,* 2 LAW AND CONTEMP. PROB. 370, 386-391 (1935). Comment, 39 YALE L. J. 719 (1930).

injury exists when a legal wrong has been done or threatened and when there exists in the party seeking equitable protection some substantial right, damage to which will not readily be compensable.[20]. Although until rather recently injunctive relief was denied to the litigant desiring a prohibitory injunction against the maintenance of a migrant divorce action,[21] the decisions in *Williams v. North Carolina*[22] speeded the courts of New York to the conclusion that there were ample grounds for equitable intervention in this area.[23]

Thus, under a factual situation identical to that of the instant case, the Appellate Division held in *Pereira v. Pereira*[24] that the requested prohibitory injunction *pendente lite* would issue. The court stated that such a ruling was not inconsistent with *Estin v. Estin*[25] (holding that support rights obtained under a separation decree could not be affected by a subsequent valid *ex parte* divorce) since the court in the *Pereira* case was interested in protecting not only the private rights secured under the separation decree, but the rights inherent in the marital status as well. Therefore, the commencement[26] of the foreign *ex parte* action was held to constitute, *per se*,[27] an irreparable injury sufficient to justify the issuance of the temporary injunction.

With this decision as background, the Court of Appeals found no great difficulty in reaching the same result, under similar facts,

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20. *Baumann v. Baumann*, 250 N. Y. 382, 165 N. E. 819 (1929); *Luchenbach S. S. Co. v. Norton*, 21 F. Supp. 707 (E. D. Pa. 1937).

21. *Goldstein v. Goldstein*, 283 N. Y. 146, 27 N. E. 2d 969 (1940) exemplified the rule in New York prior to the *Williams* case. The Court in refusing to grant the injunction, reasoned that inasmuch as *Haddock v. Haddock*, 201 U. S. 562 (1906), had ruled that any *ex parte* divorce decree was invalid, the maintenance of such an action constituted, at most, a mere annoyance which did not justify restraint.

22. (I) 317 U. S. 287 (1942), overruled *Haddock v. Haddock*, 201 U. S. 562 (1906), (and substantially weakened the effect of *Goldstein v. Goldstein*, *supra* n. 21), holding that any such *ex parte* divorce decree was entitled to prima facie validity and as such must be given full faith and credit by the sister states.

(II) 325 U. S. 226 (1945), the Supreme Court ruled that the *bona fides* of the claim to domicile was subject to collateral attack in the sister states.

23. *Selkowitz v. Selkowitz*, 179 Misc. 608, 40 N. Y. S. 2d 9 (Sup. Ct. 1943); *Adams v. Adams*, 180 Misc. 578, 42 N. Y. S. 2d 266 (Sup. Ct. 1943); *Palmer v. Palmer*, 50 N. Y. S. 2d 329 (Sup. Ct. 1944), *aff'd* 268 App. Div. 1010, 52 N. Y. S. 2d 383 (3rd Dep't 1944). Note, 31 GEO. L. REV. 210, 221 (1943).

24. 272 App. Div. 281, 70 N. Y. S. 2d 763 (1st Dep't 1947).

25. 296 N. Y. 308, 73 N. E. 2d 113 (1947), *aff'd*, 334 U. S. 541 (1948). See also, *Krieger v. Krieger*, 334 U. S. 555 (1948).

26. Irreparable injury cannot exist *in vacuo*. Thus, a threat to commence such an action, unaccompanied by acts, was held not to be enjoinable in *De Raay v. De Raay*, 280 N. Y. 822, 21 N. E. 2d 879 (1939).

27. 272 App. Div. at 289, 70 N. Y. S. 2d at 769 (1947).

in *Garvin v. Garvin*.[28] The *Garvin* case was clear authority for the issuance of the injunction in *Hammer v. Hammer*, and was cited as such. It would appear that at least this portion of the New York law of divorce is now well settled.

Choice of Court

An employee of a large organization may find himself working at different times in different States. He may remain outside of his State of domicile or of employment for varying periods. When such an employee is injured on the job, what forum is to handle any claims which he might have against his employer? Such a problem was presented in *Cradduck v. Hallen Co.*[29]

Plaintiff, a resident of Pennsylvania, was employed as an apprentice steel-worker by a New York corporation. He was sent to Indiana, to remain there until the completion of a particular construction job. Sustaining personal injury, he sought workmen's compensation in New York, where an award was made and sustained on appeal to the Appellate Division.[30] The Court of Appeals, in disallowing the award, held that the New York Workmen's Compensation Board had no jurisdiction. The Court reasoned that such employment outside the State was not transitory or temporary but was at a fixed place; therefore, New York had but a remote concern with it.[31]

In this State, the solution to the above question is thus presented by a characterization of the work itself. The Court of Appeals has consistently withheld the State's facilities where the employment is, in any sense, "stationary"[32]—distinguishing this type of work from that done by salesmen and others similarly situated.[33]

Choice of Law

In conflict of laws, the "choice of law" contemplates the problems inherent in the determination of the particular local law applicable in a specific case. For example, when a testator de-

28. 302 N. Y. 96, 96 N. E. 2d 721 (1951).

29. 304 N. Y. 240, 107 N. E. 2d 11 (1952).

30. 279 App. Div. 679, 107 N. Y. S. 2d 874 (3rd Dep't 1951).

31. *Matter of Cameron v. Ellis Const. Co.*, 252 N. Y. 394, 169 N. E. 622 (1930).

32. *Matter of Roth v. A. C. Horn Co.*, 287 N. Y. 545, 38 N. E. 2d 221 (1941).

33. *Matter of Amaxis v. N. A. Vassilaros, Inc.*, 258 N. Y. 544, 180 N. E. 325 (1931); *Matter of Zeltoski v. Osborne Drilling Corp.*, 264 N. Y. 496, 191 N. E. 532 (1934).