

**Injunction--Suit by Wife to Enjoin Mexican Divorce Action
Disallowed (Rosenbaum v. Rosenbaum, 309 N.Y. 371 (1955))**

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flexibility of earlier holdings in protecting the rights of the pledgor.²³ That justice was served by the holding is not doubted. However, the general problem of what constitutes adequate public notice still remains. It is submitted that a workable solution would be to amend the Lien Law so that its provisions would unmistakably apply to pledge agreements, and could not be waived by the pledgor.



INJUNCTION—SUIT BY WIFE TO ENJOIN MEXICAN DIVORCE ACTION DISALLOWED.—Defendant-husband instituted a divorce action in Mexico while on a one-day visit there. Plaintiff-wife sought an injunction restraining her husband from maintaining the action, alleging that the defendant had not established bona fide domicile in Mexico. The Court of Appeals held,¹ on motion to dismiss, that as the Mexican divorce would be invalid, there would be an adequate remedy in declaratory judgment. *Rosenbaum v. Rosenbaum*, 309 N.Y. 371, 130 N.E.2d 902 (1955).

The Constitution reserves to the states control over marriage and divorce.² This, coupled with the jurisdictional problems peculiar to divorce actions, led to confusion as to the recognition of sister-state decrees.³ Eventually most states⁴ recognized divorces of other states where jurisdiction was founded on the domicile of one party and service by publication of the defendant.⁵ A line of Supreme Court decisions clarified the law in this area by stating that a wife may establish separate domicile whenever necessary and proper;⁶ that where neither party is domiciled a divorce decree is invalid;⁷ that every state must give full faith and credit to divorce decrees of sister states based on

²³ See, e.g., *Toplitz v. Bauer*, *supra* note 21; *Wheeler v. Newbould*, 16 N.Y. 392 (1857); *Cole v. Manufacturers Trust Co.*, 164 Misc. 741, 299 N.Y. Supp. 418 (Sup. Ct. 1937).

¹ The Court split 4-3 in reversing the Appellate Division. *Rosenbaum v. Rosenbaum*, 285 App. Div. 427, 138 N.Y.S.2d 885 (1st Dep't 1955).

² U.S. CONST. amend. X (by implication); *In re Burrus*, 136 U.S. 586, 593-94 (1890) (dictum); see 40 IOWA L. REV. 667, 669 (1955).

³ 2 KENT, COMMENTARIES *108.

⁴ See, e.g., *Thompson v. State*, 28 Ala. 12 (1856); *In re James' Estate*, 99 Cal. 374, 33 Pac. 1122 (1893); *Dunham v. Dunham*, 162 Ill. 589, 44 N.E. 841 (1896); *Gould v. Crow*, 57 Mo. 200 (1874); *Shafer v. Bushnell*, 24 Wis. 372 (1869).

⁵ Some states excepted to this rule. See, e.g., *People v. Baker*, 76 N.Y. 78 (1879); *Irby v. Wilson*, 21 N.C. 568 (1837); *McCreery v. Davis*, 44 S.C. 195, 22 S.E. 178 (1895).

⁶ *Cheever v. Wilson*, 76 U.S. (9 Wall.) 108 (1869).

⁷ *Bell v. Bell*, 181 U.S. 175, 177 (1901) (dictum); *Streitwolf v. Streitwolf*, 181 U.S. 179, 183 (1901) (dictum). See also RESTATEMENT, CONFLICT OF LAWS § 111 (1934).

domicile and service by publication;⁸ and that jurisdictional power of a sister state may be questioned by the non-appearing spouse in the court of his domicile.⁹

In the area of equitable relief, other jurisdictions have granted injunctions under circumstances similar to, or even less compelling than, those of the instant case. In one case, a British court restrained a party bringing suit in a foreign country where neither party was domiciled.¹⁰ Some states have granted injunctions against citizens who have instituted foreign-nation divorce actions, including a so-called "mail-order" divorce.¹¹

The New York law was shaped by the leading case of *Goldstein v. Goldstein*¹² and the first *Williams v. North Carolina* case.¹³ The Appellate Division early approved the issuance of injunctions to restrain sister-state and foreign divorce actions,¹⁴ and the trial courts followed this lead.¹⁵ One court restrained a husband merely threatening an action.¹⁶ The Court of Appeals reversed this trend in the *Goldstein* case. There the court held, on motion to dismiss, that as Florida was not the matrimonial domicile and neither party was domiciled there, any decree of divorce issued on these facts would be invalid and could not harm the plaintiff's rights. In 1942, the first *Williams* case held that a decree of a sister state based on domicile and service by publication is entitled to full faith and credit in every other state. This resulted in a partial reversal of New York's position. The courts granted injunctions against persons maintaining divorce actions in sister states or territories.¹⁷ In the leading case of *Garvin*

⁸ *Williams v. North Carolina*, 317 U.S. 287 (1942). This case expressly overruled the famous case of *Haddock v. Haddock*, 201 U.S. 562 (1906), which held that a New York court did not violate the full faith and credit clause of the Constitution when it refused to recognize a Connecticut divorce issued on domicile of the husband and service by publication of the wife.

⁹ *Williams v. North Carolina*, 325 U.S. 226 (1945).

¹⁰ *Moore v. Moore*, 12 T.L.R. 221 (C.A. 1896). This result was reached though "English Courts do not recognise as possessing extra-territorial validity any decree of divorce pronounced by the Courts of a foreign country . . . unless at the date of the suit the parties were domiciled within the jurisdiction of the Court pronouncing it" 6 HALSBURY, LAWS OF ENGLAND 304-05 (2d ed. 1932).

¹¹ See, e.g., *Wells v. Wells*, 230 Ala. 430, 161 So. 794 (1935); *Knapp v. Knapp*, 12 N.J. Misc. 599, 173 Atl. 343 (Ch. 1934) (mail-order divorce).

¹² 283 N.Y. 146, 27 N.E.2d 969 (1940).

¹³ 317 U.S. 287 (1942).

¹⁴ In *Gwathmey v. Gwathmey*, 116 Misc. 85, 190 N.Y. Supp. 199 (Sup. Ct.), *aff'd mem.*, 201 App. Div. 843, 193 N.Y. Supp. 935 (1st Dep't 1921), the court issued an injunction after finding that the defendant had no bona fide domicile in Florida. In *Greenberg v. Greenberg*, 218 App. Div. 104, 218 N.Y. Supp. 87 (1st Dep't 1926), the court granted an injunction after finding defendant had no bona fide domicile in Mexico.

¹⁵ *Jeffe v. Jeffe*, 168 Misc. 123, 4 N.Y.S.2d 628 (Sup. Ct. 1938); *Dublin v. Dublin*, 150 Misc. 694, 270 N.Y. Supp. 22 (Sup. Ct. 1934); *Richman v. Richman*, 148 Misc. 387, 266 N.Y. Supp. 513 (Sup. Ct. 1933).

¹⁶ *Johnson v. Johnson*, 146 Misc. 93, 261 N.Y. Supp. 523 (Sup. Ct. 1933).

¹⁷ *Hammer v. Hammer*, 303 N.Y. 481, 104 N.E.2d 864 (1952); *Garvin v.*

v. Garvin,¹⁸ the Court of Appeals held that since any divorce the husband might obtain in the Virgin Islands would be accorded full faith and credit, the wife should be saved the burden of striking down the prima facie effect of the district court's finding of residence. Nevertheless, the courts still refused to enjoin citizens prosecuting actions in other countries.¹⁹

In the instant case, the Court follows New York precedent in holding that where a plaintiff institutes a divorce action in a foreign country, but acquires no bona fide domicile there, no valid decree can be issued and he need not be enjoined. The decision reaffirms the policy of the *Goldstein* case and distinguishes the *Garvin* case. In the latter case, the court granted a temporary injunction because of the presumptive validity that full faith and credit would give the decree. Such a judgment would be valid until collaterally attacked and could be used to the wife's detriment. Thus, the court in that case considered the wife's burden of disproving the decree's validity to be the irreparable injury necessary to support an injunction.²⁰

But the Court here points out that the *Garvin* case turns upon full faith and credit while the instant case does not. It denies that Mexican decrees should be accorded the prima facie effect given decrees of sister states. The Court states, ". . . we have never held that any such presumptive legality and validity must be accorded Mexican divorces. . . ." ²¹ It calls such decrees evidence only, relying on Section 397 of the Civil Practice Act.²² Thus, the Court refuses to extend comity to Mexican divorces and considers them ineffective until proven in domestic courts. Since the Mexican decree would be a nullity, the Court reasons that it can do the plaintiff no harm.

The dissent disagrees and asserts that judgments of foreign countries reciting domicile and service by publication should be accorded the same presumptive validity given sister-state decrees. While

Garvin, 302 N.Y. 96, 96 N.E.2d 721 (1951); *Pereira v. Pereira*, 272 App. Div. 281, 70 N.Y.S.2d 763 (1st Dep't 1947); *Palmer v. Palmer*, 184 Misc. 291, 50 N.Y.S.2d 329 (Sup. Ct.), *aff'd per curiam*, 268 App. Div. 1010, 52 N.Y.S.2d 383 (3d Dep't 1944); *Holmes v. Holmes*, 46 N.Y.S.2d 628 (Sup. Ct. 1944).

¹⁸ 302 N.Y. 96, 96 N.E.2d 721 (1951). The wife sued for separation in New York and the husband made a general appearance. While the separation action was pending, the husband made a trip to the Virgin Islands and instituted a divorce action there after a short stay. The wife was served by publication. She then moved in New York for a temporary injunction alleging that her husband's Virgin Island's residence was a sham.

¹⁹ *Fromer v. Fromer*, 138 N.Y.S.2d 883 (Sup. Ct. 1955); *Borax v. Borax*, 136 N.Y.S.2d 164 (Sup. Ct. 1952); *Newman v. Newman*, 181 Misc. 256, 44 N.Y.S.2d 525 (Sup. Ct. 1943); *Lipman v. Lipman*, 138 N.Y.S.2d 310, 311 (Sup. Ct. 1953) (dictum).

²⁰ See 25 ST. JOHN'S L. REV. 364 (1951).

²¹ *Rosenbaum v. Rosenbaum*, 309 N.Y. 371, 375, 130 N.E.2d 902, 903 (1955).

²² "Nothing in the last two sections is to be construed as declaring the effect of a record or other judicial proceeding of a foreign country, authenticated, so as to be evidence." N.Y. CIV. PRAC. ACT § 397. Section 395 provides that "A copy of a record . . . of a foreign country, is evidence when authenticated. . . ."

these decrees are beyond full faith and credit considerations, the dissent points out that New York policy has been to recognize judgments of foreign countries except where they contravene public policy. The Mexican decree to be procured, then, would be valid on its face and have effect until declared void.²³ In that situation, as in the *Garvin* case, an injunction would be justified to save the plaintiff the burden of striking down the prima facie effect of the decree.

In denying presumptive validity to Mexican decrees, the Court leaves plaintiff's marital rights in danger. If the defendant obtains the decree he seeks in Mexico, the plaintiff must have the decree declared a nullity to protect her rights.²⁴ In the meantime, the decree will be accorded prima facie validity in other states²⁵ and the husband may use the decree to the plaintiff's injury. Defendant supports the plaintiff. If he remarries, he would have to provide for two "wives" and his support of the plaintiff might thus be impaired.²⁶ Even if separated from the second "wife," he could be obliged to support her and he would not be allowed to plead the invalidity of his decree.²⁷

The decision aids no one. The defendant is left free to entangle himself further in marital difficulties; the plaintiff must stand by helplessly while her cause of action becomes overripe; the state will find itself burdened by more litigation. Clearly, it would have been wiser to adopt the view of the dissent that: "It is traditional for equity to restrain persons from doing acts which will work an injury to others, and are for that reason contrary to equity and good conscience."²⁸



MUNICIPAL CORPORATIONS — NOTICE OF CLAIM — FAILURE OF ANOTHER TO ACT FOR INCAPACITATED CLAIMANT WILL NOT BAR APPLICATION FOR LATE FILING.—Six months after sustaining injury,

²³ *Rosenbaum v. Rosenbaum*, *supra* note 21 at 381-82, 130 N.E.2d at 907 (dissenting opinion). See also *Goldstein v. Goldstein*, 283 N.Y. 146, 153-54, 27 N.E.2d 969, 972 (1940) (dissenting opinion).

²⁴ Chief Judge Conway notes in his dissent that "If we deny plaintiff the right to injunctive relief we will be placing her in a position where she cannot prevent a so-called 'legal nullity' from coming into existence, yet in order to have this 'legal nullity' so adjudged she will have to prove, in an action for a declaratory judgment, the self-same allegations presently before us." *Rosenbaum v. Rosenbaum*, *supra* note 21 at 381, 130 N.E.2d at 907 (dissenting opinion).

²⁵ See *Reik v. Reik*, 109 N.J. Eq. 615, 158 Atl. 519 (Ch. 1932), *aff'd per curiam*, 112 N.J. Eq. 234, 163 Atl. 907 (Ct. Err. & App. 1933); *Commonwealth ex rel. Thompson v. Yarnell*, 313 Pa. 244, 169 Atl. 370 (1933).

²⁶ See *Goldstein v. Goldstein*, *supra* note 23 at 156, 27 N.E.2d at 973 (dissenting opinion).

²⁷ See *Krause v. Krause*, 282 N.Y. 355, 26 N.E.2d 290 (1940).

²⁸ *Rosenbaum v. Rosenbaum*, 309 N.Y. 371, 382, 130 N.E.2d 902, 907 (1955) (dissenting opinion).