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Domestic Relations--Conflict of Laws--Full Faith and Credit Clause (Johnson v. Muelberger, 71 Sup. Ct. 474 (1951))

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DOMESTIC RELATIONS—CONFLICT OF LAWS—FULL FAITH AND CREDIT CLAUSE.—Petitioner, in a New York court, seeks a surviving spouse's statutory share in the decedent's estate [1] against a testamentary provision which named the respondent as the sole legatee. The respondent, decedent's daughter by a former wife, claims that the petitioner's marriage to the decedent was ineffective; and supports this claim by a collateral attack on the validity of her deceased father's Florida divorce, obtained prior to his marriage to the petitioner. The undisputed facts show that the divorce was obtained by a fraud committed against the Florida court since the complainant in the action had failed to fulfill the jurisdictional residence requirement.[2] Decedent appeared in the divorce proceedings and had full opportunity to litigate all the issues. However, he chose to contest only the merits of the action, and failed to question the allegations as to residence. A finding of jurisdiction was made and the divorce granted. *Held,* judgment for respondent reversed. The validity of the Florida divorce may not be questioned in New York. The full faith and credit clause [3] bars collateral attack on the divorce decree of a sister state by any person unable to attack the decree in the courts of the state of rendition. Since respondent was barred by Florida law from attacking the decree in that state,[4] her attack will not be permitted elsewhere in the Union. *Johnson v. Muelberger,* 71 Sup. Ct. 474 (1951), *reversing Matter of Johnson,* 301 N. Y. 13, 92 N. E. 2d 44 (1950).

Migratory divorce decrees and their complex consequences have long occupied the attention of the bar and the public generally. The importance of such decrees can hardly be overemphasized since they directly affect some of society's most basic relationships. The marital status of the parties and their rights to support, by way of alimony or separate maintenance, are among the circumstances which may be altered by the foreign courts' action. Collateral attacks are frequently brought in jurisdictions other than the one rendering the decree to determine the precise effect of these divorces on such relationships.

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[1] N. Y. DECEDENT ESTATE LAW § 18.

[2] "In order to obtain a divorce the complainant must have resided ninety days in the State of Florida before the filing of the bill of complaint." FLA. STAT. ANN. § 65.02.

[3] U. S. CONST. Art. IV, § 1. "Full Faith and Credit shall be given in each State to the public Acts, Records, and Judicial Proceedings of every other State." 62 STAT. 947, 28 U. S. C. § 1738 (1948). "Such Acts, records and judicial proceedings . . . shall have the same full faith and credit in every court within the United States . . . as they have by law or usage in the courts of such State . . . from which they are taken."

[4] The Court found that Florida decisions permit collateral attack only by those strangers to the action having a pre-existing interest at the time of the rendition of the decree. If respondent were considered a stranger to the action, she could not attack the judgment since she had a mere expectancy in decedent's estate at time of divorce. Persons in privity with the immediate parties would be barred by res judicata. Johnson v. Muelberger, 71 Sup. Ct. 474, 478-479 (1951).

The success of such attacks promises to be increasingly restricted by the continued invocation of the full faith and credit clause.

"Under our system of law, judicial power to grant a divorce . . . is founded on domicile." [5] Acquisition of a bona fide domicile by the petitioner is essential to give the court jurisdiction to grant a divorce entitled to full faith and credit. Failure of the defending spouse to participate in the action does not vary this rule.[6] A finding of jurisdiction in an *ex parte* proceeding will not prevent other states from inquiring into the existence of domicile in the rendering forum.[7] But, when both parties appear and actively litigate the jurisdictional facts, then, as to them, the court's findings are res judicata.[8] Full opportunity [9] to litigate the jurisdictional issues, even though not availed of, binds the parties as conclusively as an actual contest. If the immediate parties either contest the action or have the opportunity to do so, they will be barred from collaterally attacking a divorce decree on jurisdictional grounds, except when such attack is permitted in the courts of the divorce state.[10]

The principal case greatly broadens the rule that collateral attacks are allowed only when the divorce state permits. This doctrine no longer binds merely the immediate parties but now may be equally applicable to persons who were neither personally before the divorce tribunal nor under the court's jurisdiction.[11] The divorce forum has the power to determine the identity of the persons who will be subject to their decree, and to fix the circumstances under which the conclusiveness of their decrees will apply. Any attempt to forecast the methods by which the states will seek to extend the res judicata effect of their judgments would be largely conjectural. It would seem however that the "nature of interest" test illustrated here will be supplemented, if necessary, by other restrictive devices, possibly of an evidential or procedural nature. The cumulative burden imposed on

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[5] Frankfurter, J., in Williams v. North Carolina, 325 U. S. 226, 229 (1945), citing Bell v. Bell, 181 U. S. 175 (1901), and Andrews v. Andrews, 188 U. S. 14 (1903).

[6] Williams v. North Carolina, 317 U. S. 287 (1942).

[7] Williams v. North Carolina, 325 U. S. 226 (1945).

[8] Davis v. Davis, 305 U. S. 32 (1938).

[9] "Full opportunity" is afforded those persons who either personally appear or who are personally served within the state awarding the divorce decree, even though the jurisdictional facts are not actually litigated. Note, 48 COL. L. REV. 1083, 1085 (1948).

[10] Sherrer v. Sherrer, 334 U. S. 343 (1948); Coe v. Coe, 334 U. S. 378 (1948).

[11] Support for the instant holding seems to be reasonably found in the following dicta: "It is one thing to recognize as permissible the judicial reexamination of findings of jurisdictional fact where such findings have been made by a court of a sister State which has entered a divorce decree in *ex parte* proceedings. It is quite another thing to hold that the vital rights and interests involved in divorce litigation may be held in suspense pending the scrutiny by courts of sister States of findings of jurisdictional fact . . . ." Sherrer v. Sherrer, 334 U. S. 343, 355-356 (1948).

a would-be attacker by the states' actions might conceivably terminate all future effective litigation of this nature.

The Court, by its immediate application of the full faith and credit clause to a decree rendered after a finding of jurisdiction, has avoided disturbing directly the domicile theory of divorce jurisdiction.[12] However, since ". . . the decree of divorce is a conclusive adjudication of everything except the jurisdictional facts upon which it is founded . . . ," [13] collateral attacks are made on the jurisdictional facts which include domicile. The limitation placed on the right to bring such attacks, after contested hearings, has an important practical effect on the domicile rule. For collateral attack purposes, the rule no longer states that the domicile of the petitioner must be bona fide. It apparently has been modified to read domicile of the petitioner in the foreign state must be bona fide only as to those persons and under such circumstances as the divorce state dictates. As to all others, the finding or assumption of jurisdiction is conclusive. This limitation on the right to collateral attack can only be an invitation to consent divorce, sham proceedings, perjury and collusion. It is also unfortunately an invitation to those states offering what are called "bargain counter" divorces, to restrict, by legislation or decision, as much as is constitutionally possible, the opportunities for collateral attack elsewhere.

It remains unanswered, however, whether the state of matrimonial domicile may be precluded from itself attacking the jurisdictional findings in a contested action held in a foreign state (*e.g.*, in a criminal prosecution for adultery). The majority of the Court again [14] evidently limit this right of the home state to situations where the defending spouse has not participated in the action. They therefore limit the traditional view that the state has an immediate vital interest in the preservation of the marital relationship of its domiciliaries.[15] If we accept the theory that the state is an interested party

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[12] GOODRICH, CONFLICT OF LAWS § 127 (3d ed. 1949) discussing the *Sherrer* and *Coe* cases said: "Certainly the general principle involved . . . [res judicata] . . . does not detract from the proposition that divorce jurisdiction is not a personal matter to be conferred by the consent of the parties for it is clear that under the *Williams'* holding domicile of at least one of the parties in the state where the divorce is sought is necessary in order that the marital status may be properly put in issue." It would seem that this comment has applicability here.

[13] Frankfurter, J., in Williams v. North Carolina, 325 U. S. 226, 232 (1945).

[14] The Court in the instant case found Williams v. North Carolina, 325 U. S. 226 (1945), held: ". . . a sister state [is] free to determine whether there was domicile of one party in an *'ex parte'* proceeding so as to give the court jurisdiction to enter a decree."

[15] ". . . the State has an interest in the family relations of its citizens vastly different from the interest it has in an ordinary commercial transaction. That interest cannot be bartered or bargained away by the immediate parties to the controversy by a default or an arranged contest in a proceeding for divorce in a State to which the parties are strangers." Frankfurter, J., dissenting in Sherrer v. Sherrer, 334 U. S. 343, 358 (1948). Dissent repeated in Coe v.

only when the hearings are *ex parte,* and apply the Florida law which permits attack only by persons with pre-existing interests,[16] it appears that jurisdictional findings in contested Florida actions may not thereafter be re-examined by other sister states. All states could adopt the Florida rule and then ". . . a court's record would establish its power and the power would be proved by the record." [17] It is submitted, however, that the state's interest in the marriage status of its citizens is of paramount importance both in *ex parte* and contested hearings. It cannot be within the power of the parties to cut off the interest which society, represented by the state, has in the marriage. This must be true, especially when that society may later be called upon to provide support, educational facilities and many other benefits.

The Court, in the principal case, was completely aware that the complainant in the divorce action had deceived the Florida court as to her domicile. Yet the Court chose to ignore the fraud because the present respondent was not a party entitled to attack the decree in courts of the rendering state. The effect of this policy is to validate by use of the full faith and credit clause a decree rendered by a state without jurisdiction and to shield fraudulent acts committed against the tribunal. The Court might well have declined to ". . . infuse constitutional virility into the judgment of a court . . . which has been deliberately deceived in proceeding to judgment in a cause over which . . . it had no jurisdiction." [18]

The present case points up the increasing role which res judicata will play in future divorce litigation. Unquestionably it will contribute greatly to the certainty of the status of divorced persons. All parties interested in the decree, directly or indirectly, may now ascertain their rights and duties under it to an extent heretofore impossible. This undoubted socially beneficial result unhappily offers an inducement to a state to preclude other sovereignties and persons justifiably entitled to relief from the right of collateral attack. It is not presumptuous to assume that a state making a business out of granting divorces will act to eliminate all collateral attack rights not constitutionally protected. Nor is it presumptuous to assume that the public generally will become a bigger customer of the "bargain counter" divorce.

Coe, 334 U. S. 378 (1948). *Sherrer* case dissent referred to in dissent in instant case.

[16] See note 4 *supra.*

[17] Williams v. North Carolina, 325 U. S. 226, 234 (1945).

[18] Staedler v. Staedler, 6 N. J. 380, 78 A. 2d 896, 901 (1951).