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Conflict of Laws--Domestic Relations--Foreign Divorce--Jurisdiction (Sherrer v. Sherrer, 92 L. Ed. 1055 (1948))

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RECENT DECISIONS

CONFLICT OF LAWS—DOMESTIC RELATIONS—FOREIGN DIVORCE —JURISDICTION.—A wife leaving the matrimonial domicil in Massachusetts claimed to have acquired a Florida domicil and instituted a divorce suit there. The husband, on receiving notice by mail of the pendency of the suit, retained Florida counsel, who entered a general appearance and filed an answer denying the allegations of the complaint, including those as to complainant's domicil. The husband appeared personally to testify with respect to custody of the children. The wife introduced evidence to establish her Florida residence and counsel for the husband failed to cross-examine or introduce evidence in rebuttal. The Florida court entered a decree of divorce in favor of the wife after specifically finding that she was a bona fide resident of that state and that the court had jurisdiction of the parties and the subject matter. The husband subsequently instituted an action in Massachusetts to declare the wife's divorce and subsequent marriage invalid. It appeared that she had resided in Florida slightly more than ninety days before filing for the divorce and later had returned to Massachusetts with a new husband. Judgment was in favor of the husband and the defendant wife appeals. *Held,* judgment reversed. Massachusetts had failed to accord full faith and credit to a decree of divorce rendered by the court of a sister state; the requirements of full faith and credit bar a defendant from collaterally attacking a divorce decree on jurisdictional grounds in the courts of a sister state where there has been participation by the defendant in the divorce proceedings, where the defendant has been afforded full opportunity to contest the jurisdictional issues, and where the decree is not susceptible to such collateral attack in the courts of the state which rendered the decree. *Sherrer v. Sherrer,* — U. S. —, 92 L. ed. 1055 (1948).

The Supreme Court simplified the law on interstate divorce by precluding the parties to the foreign action from attacking the decree, where both had appeared and opportunity was had for contesting the jurisdictional issue. In doing so it confirmed the dicta of the first *Williams*[1] case which implied that the foreign decree would not be subject to collateral attack and must be recognized under the "full faith and credit clause" of the Constitution,[2] where both parties have

[1] Williams v. North Carolina, 317 U. S. 287, 87 L. ed. 279 (1942).

[2] U. S. CONST. Art. IV, § 1 provides: "Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof."

appeared in the litigation.[3] The recognition of foreign divorce decrees has followed a devious path. *Williams v. North Carolina*[4] compelled the recognition of a foreign divorce if the petitioner was domiciled in the state granting the divorce, without regard to the fact that jurisdiction over the other party was obtained by substituted service.[5] The second *Williams*[6] case then held that the state of domiciliary origin should not be bound by a recital of a jurisdictional fact such as domicil where that issue was not squarely litigated in a truly adversary proceeding. For internal purposes, the position is taken in most jurisdictions that not only is domicil the basis of jurisdiction but, in addition, the domicil of one spouse alone is sufficient to confer jurisdiction to divorce *ex parte*.[7] However, not all state courts have been as generous in conceding the existence of jurisdiction abroad under the same conditions as those which are regarded as sufficient when jurisdiction is claimed at home.[8] The New York courts have been reluctant to give full faith and credit to divorce decrees granted by the courts of sister states.[9] The diversity of opinion concerning the importance of domicil in determining jurisdiction results from traditional concepts and notions of expediency and local statutory policy with respect to divorce.[10] The conclusion in the instant case appears to be a spoke in the wheel which is rolling toward greater restriction of states' power over divorce law through the instrument of the "full faith and credit clause." However, the issue unanswered in this decision is whether a state is also precluded from col-

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[3] Williams v. North Carolina, 317 U. S. 287, 297, 87 L. ed. 279, 285 (1942). The court acknowledged that the plaintiff's domicil in a state "is recognized in the *Haddock* case and elsewhere . . . as essential in order to give the court jurisdiction which will entitle the divorce decree to extraterritorial effect, at least when the defendant has neither been personally served nor entered an appearance."

[4] *Supra* note 1.

[5] Thus overruling the doctrine of Haddock v. Haddock, 201 U. S. 562, 50 L. ed. 867 (1906), which held that the domiciliary state of a defendant who did not appear personally before the court, need not recognize the foreign decree. It also did away with the need of the doctrine laid down in Atherton v. Atherton, 181 U. S. 155, 45 L. ed. 794 (1901), which made the recognition of the foreign decree upon substituted service compulsory if it was rendered by the courts of the last matrimonial domicil, that is, of the state in which the parties last lived together as husband and wife.

[6] Williams v. North Carolina, 325 U. S. 226, 89 L. ed. 1577 (1944).

[7] See Note, 39 A. L. R. 710 (1924).

[8] Arrington v. Arrington, 102 N. C. 491, 9 S. E. 200 (1889); McCreery v. Davis, 44 S. C. 195, 22 S. E. 178 (1895).

[9] People v. Baker, 76 N. Y. 78 (1879); De Meli v. De Meli, 120 N. Y. 485, 24 N. E. 996 (1890). *See also* Atherton v. Atherton, 155 N. Y. 129, 49 N. E. 933 (1898).

[10] South Carolina would be more reluctant to recognize as valid a divorce involving a citizen of that state than would the courts of a state where divorce is relatively easy to obtain. *See* Ackerman v. Ackerman, 200 N. Y. 72, 93 N. E. 192 (1910).

laterally attacking a foreign divorce decree in a civil or criminal proceeding initiated by it where both parties have appeared.[11]

E. V. W., JR.

CONSTITUTIONAL LAW—FREEDOM OF SPEECH, PRESS AND RELIGION—EXCLUSION BY PROPERTY OWNER.—Plaintiffs, members of the Jehovah's Witnesses sect, endeavor to interest people in their tenets by means of leaflets which they distribute, either on the streets or from door to door. They also disseminate their doctrines orally or with the aid of portable phonographs. The defendant, the owner of a housing project known as Parkchester, situated in the Bronx, in New York City, pursuant to authority granted it in its leases with its tenants, adopted a regulation prohibiting any person from entering any of its apartment buildings in order to solicit donations or contributions to any religious or other organization or to distribute pamphlets or tracts without the consent of the manager of the development. Such activities were permitted in the apartment of any tenant who gave his written consent. The plaintiffs attack this regulation as being an infringement upon their constitutional rights of freedom of speech, of the press and of worship.[1] The trial court dismissed the complaint and held that the regulation was reasonable and valid and not in violation of plaintiffs' rights. *Held,* dismissal affirmed. The Bill of Rights does not proscribe the reasonable regulation by an owner of conduct inside his multiple dwelling. *Watchtower Bible & Tract Society, Inc. v. Metropolitan Life Insurance Company,* 297 N. Y. 339, 79 N. E. 2d 433 (1948).

The plaintiffs contend that door-to-door preaching and distribution of bible literature is protected by the Constitution,[2] and such protection extends to multiple as well as single dwellings.[3] Therefore, argue the plaintiffs, this regulation is void, since it abridges fundamental freedoms by expressly prohibiting such door-to-door calls in Parkchester. In the cases cited by the plaintiffs to sustain

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[11] Mr. Justice Frankfurter, in writing the majority opinion in the second *Williams* case left the question, as to the right of a state to attack a foreign divorce decree, rendered in a truly adversary proceeding, open. An answer to that question was not necessary to the decision of the instant case, nor did the court by way of dictum answer it, unless the holding that the Florida decree is conclusive be deemed to preclude the state of Massachusetts as well as the parties. Mr. Justice Frankfurter, by voicing a strong dissent on the ground that the state should not be precluded, apparently felt that the question had been answered.

[1] U. S. CONST. AMENDS. I, XIV, § 1; NEW YORK CONST. Art. I, §§ 3, 8.

[2] Murdock v. Commonwealth of Pennsylvania, 319 U. S. 105, 87 L. ed. 1292 (1943); Martin v. City of Struthers, 319 U. S. 141, 87 L. ed. 1313 (1943).

[3] Marsh v. State of Alabama, 326 U. S. 501, 90 L. ed. 265 (1946); Tucker v. State of Texas, 326 U. S. 517, 90 L. ed. 274 (1946); Hague v. Committee for Industrial Organization, 307 U. S. 496, 83 L. ed. 1423 (1939).