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Domestic Relations--Foreign Divorce--Jurisdiction--Estoppel (Krause v. Krause, 282 N.Y. 355 (1940); Oldham v. Oldham, 174 Misc. 22 (1940))

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between the parties cannot and does not limit the powers of the court conferred by statute. Nevertheless, courts in awarding alimony have no power to abrogate or modify any provisions of a separation agreement without the mutual consent of the parties,[12] and, though the terms of a separation agreement have been incorporated in a subsequent decree of divorce, the statutory authority to modify alimony awards does not warrant the alteration of such prior separation agreement.[13] The contractual obligation is still enforceable in courts of law, but the special and drastic remedies afforded by statute [14] for failure to adhere to an alimony judgment can be resorted to only where there is a failure to pay the amount fixed in the modified judgment.

S. C.

DOMESTIC RELATIONS — FOREIGN DIVORCE — JURISDICTION — ESTOPPEL.—(First Case) Defendant and his first wife were domiciled in this state. While retaining his residence here, defendant went to Reno, Nevada, where he obtained a decree of divorce from his wife who neither appeared nor was personally served in that action, but who at all times remained a resident of New York State. Subsequently, defendant married the present plaintiff, who now sues him for separation. Defendant contends this action cannot be maintained as the Nevada decree is invalid in this state and that he is therefore not legally married to plaintiff. *Held,* the Nevada court, having no jurisdiction, could not render a decree that would be valid here; [1] however, defendant sought the judgment and may not now be heard to impeach it.[2] *Krause* v. *Krause,* 282 N. Y. 355, 26 N. E. (2d) 290 (1940).

(Second Case) Plaintiff sues defendant for separation. Plaintiff had been previously married to a Canadian citizen who was a resident of Quebec. While living separate and apart from him, she met the defendant. Solely through defendant's aid, she came to New York and then went immediately to Nevada where she obtained upon service by publication a divorce from her husband, in which action both plaintiff and defendant took part. Defendant claims the Nevada divorce is invalid. *Held,* plaintiff, having invoked the jurisdiction of the Nevada court, would be estopped from denying the validity of its

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[12] Galusha v. Galusha, 138 N. Y. 272, 33 N. E. 1062 (1893).
[13] Henderson v. Henderson, 37 Ore. 141, 60 Pac. 597 (1900).
[14] See N. Y. CIV. PRAC. ACT §§ 1171, 1171-a, 1171-b, 1172.

[1] Winston v. Winston, 165 N. Y. 553, 59 N. E. 273 (1901); Hubbard v. Hubbard, 228 N. Y. 81, 126 N. E. 508 (1920); Lefferts v. Lefferts, 263 N. Y. 131, 188 N. E. 279 (1933).
[2] Starbuck v. Starbuck, 173 N. Y. 503, 66 N. E. 193 (1901); Hynes v. Title Guarantee and Trust Co., 273 N. Y. 612, 7 N. E. (2d) 719 (1937); Brown v. Brown, 242 App. Div. 33, 272 N. Y. Supp. 877 (4th Dept. 1934).

decree; [3] defendant, who aided her, is likewise estopped.[4] *Oldham* v. *Oldham,* 174 Misc. 22, 19 N. Y. S. (2d) 667 (1940).

It has been the policy of our courts to refuse to recognize the validity of divorces obtained in other states upon grounds insufficient for that purpose in this state.[5] It was held in the decisive case of *Haddock* v. *Haddock* [6] that the mere domicile within the state of one party to the marriage does not give the courts of that state jurisdiction to render a decree of divorce enforceable in all the other states by virtue of the full faith and credit clause of the Federal Constitution [7] against a non-resident who did not appear and was only constructively served with notice of the pendency of the action. The decree may, however, be recognized by a sister state where not against its public policy under principles of comity, of which the courts of each state are the final arbiters.[8]

A party who has invoked the aid of a court and procured a judgment or decree to be entered in his favor may not question the jurisdiction of the court to which he has voluntarily submitted himself.[9] The *Krause* and *Oldham* cases are in accord with the well-settled law on this point and it is this principle which we find to be the turning point of both decisions. The public policy of the state will not permit one to impeach a decree obtained at his instance and in his own behalf,[10] and one who participates in the wrongful act of obtaining an

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[3] Krause v. Krause, 282 N. Y. 355, 26 N. E. (2d) 290 (1940).

[4] Kaufman v. Kaufman, 177 App. Div. 162, 163 N. Y. Supp. 566 (1st Dept. 1917).

[5] Cross v. Cross, 108 N. Y. 628, 15 N. E. 333 (1888); De Meli v. De Meli, 120 N. Y. 485, 24 N. E. 996 (1890); Williams v. Williams, 130 N. Y. 193, 29 N. E. 98 (1891); Matter of Kimball, 155 N. Y. 62, 49 N. E. 331 (1898); Winston v. Winston, 165 N. Y. 553, 59 N. E. 273 (1901); Hubbard v. Hubbard, 228 N. Y. 81, 126 N. E. 508 (1920); Lefferts v. Lefferts, 263 N. Y. 131, 188 N. E. 279 (1933).

[6] Haddock v. Haddock, 201 U. S. 562, 26 Sup. Ct. 525 (1906).

[7] U. S. CONST. Art. IV, § 1.

[8] Note (1909) 18 L. R. A. 647. It is said therein that so long as the doctrine of the *Haddock* case stands, it is clear that, with the exception of cases where the defendant was actually or constructively domiciled at the divorce forum, and with the possible exception of cases where, though the defendant may have legally acquired a separate domicile elsewhere, the last common matrimonial domicile of the parties was at the divorce forum, the question as to the recognition in one state of a decree of divorce rendered in another upon constructive service of process without appearance by the defendant does not involve any consideration of the full faith and credit clause.

[9] Bledsoe v. Seaman, 77 Kan. 679, 95 Pac. 576 (1908); Starbuck v. Starbuck, 173 N. Y. 503, 66 N. E. 193 (1901); Kelsey v. Kelsey, 204 App. Div. 116, 197 N. Y. Supp. 371 (4th Dept. 1922); Brown v. Brown, 242 App. Div. 33, 272 N. Y. Supp. 877 (4th Dept. 1934) (holding that defendant might not impugn the validity of the marriage by proof that a judgment of divorce previously obtained by him in a foreign state was invalid for lack of jurisdiction and that his former wife being living, he was incapable of entering into a valid marriage with the plaintiff); People *ex rel.* Shrady v. Shrady, 47 Misc. 333, 95 N. Y. Supp. 991 (1905).

[10] Matter of Ellis' Estate, 55 Minn. 401, 56 N. W. 1056 (1893); Kinnier v. Kinnier, 45 N. Y. 535 (1871); Hewitt v. Northrup, 75 N. Y. 506 (1878);

invalid decree is legally bound by the effects and consequences of his action.[11] Citing the case of *Kaufman* v. *Kaufman*,[12] Justice McLaughlin in the *Oldham* case declared, "If the plaintiff could be estopped from contesting the validity of the decree of the Nevada court, so too the defendant should also be estopped because he and she were both principals in the acts that were necessary for the obtaining of a decree of divorce. Whatever doubt there might be as to the application of the doctrine of estoppel to contest the validity of a divorce by one of the parties to it, that question was settled by the Court of Appeals in the action of *Krause* v. *Krause*." [13]

R. G.

DOMESTIC RELATIONS—INJUNCTION PROCEEDINGS TO RESTRAIN FOREIGN DIVORCE.—Plaintiff-wife seeks a judgment permanently restraining defendant from prosecuting an action against her for divorce in a Florida court. In her complaint she alleges that the parties, residents of New York State, were married here and that they are now and have been for the last twelve years living in this state where the defendant is engaged in business. The Special Term granted a temporary injunction which has been upheld on appeal by the Appellate Division. The Appellate Division, however, allowed an appeal to the Court of Appeals and certified the following question: "Does the complaint herein state facts sufficient to constitute a cause of action for injunctive relief?" *Held,* reversed, and complaint dismissed. The question certified is answered in the negative. *Goldstein* v. *Goldstein,* 283 N. Y. 146, 27 N. E. (2d) 969 (1940).

The malicious prosecution of an action in a court having no jurisdiction of the subject-matter is not an injury for which an injunction will lie. A court of equity will not award the extraordinary relief of injunction, except in cases where some legal wrong has been done or is threatened.[1] It is, therefore, a matter of primary necessity that one who would seek the aid of the courts in an action of this nature should allege that a legal right has been infringed, or that a legal wrong has

Van Koughnet v. Dennie, 6 Hun 179, 22 N. Y. Supp. 823 (1893); Matter of Morrison, 52 Hun 102, 5 N. Y. Supp. 90 (1889).

[11] Kaufman v. Kaufman, 177 App. Div. 162, 163 N. Y. Supp. 566 (1st Dept. 1917).

[12] The court in that case found, "If she would not be heard to question the validity of the divorce, and could not have her marriage with plaintiff annulled on the ground that the divorce was invalid, why should he, who induced her to obtain it and then to marry him on the assumption that she was free to do so be heard to question its validity?"

[13] Oldham v. Oldham, 19 N. Y. S. (2d) 667, 668 (1940).

[1] Baumann v. Baumann, 250 N. Y. 382, 165 N. E. 819 (1929) ("Whether there exist or is threatened a legal wrong to be restrained and a legal right to be protected is, in the absence of disputed questions of fact, a question of law").