

## Domestic Relations--Injunction Proceedings to Restrain Foreign Divorce (Goldstein v. Goldstein, 283 N.Y. 146 (1940))

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invalid decree is legally bound by the effects and consequences of his action.<sup>11</sup> Citing the case of *Kaufman v. Kaufman*,<sup>12</sup> 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*."<sup>13</sup>

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.<sup>1</sup> 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

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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).

<sup>11</sup> *Kaufman v. Kaufman*, 177 App. Div. 162, 163 N. Y. Supp. 566 (1st Dept. 1917).

<sup>12</sup> 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?"

<sup>13</sup> *Oldham v. Oldham*, 19 N. Y. S. (2d) 667, 668 (1940).

<sup>1</sup> *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").

been committed or threatened. Reprehensible conduct, that is only socially wrong, annoying and humiliating, will not justify the granting of an injunction.<sup>2</sup> Equity cannot by injunction restrain conduct merely because it injures a person's feelings and causes mental anguish.<sup>3</sup> The remedy for such a situation lies in the declaratory judgment which will quiet or stabilize an uncertain or disputed jural relation either as to present or prospective obligation.<sup>4</sup> This step will establish the matrimonial status of litigants, and, since it is alleged that the defendant is a resident of New York State, all the issues would be properly adjudicated by a declaratory judgment, and plaintiff's rights as a spouse fully protected. On the facts of the instant case, the courts of Florida are wholly without jurisdiction to render a valid divorce against plaintiff.<sup>5</sup> It is not the duty of the courts of equity to regulate unconscionable acts that result only in social and moral wrongs to a member of society.<sup>6</sup> The validity of a foreign decree depends upon jurisdiction of the marital *res* or of both the parties.<sup>7</sup> In view of this fact, equity will not issue an injunction where in the final analysis plaintiff's rights will be fully protected when the dispute is properly tried.<sup>8</sup> The plaintiff has nothing to fear from the action brought against her by her husband in Florida, for on her own statement a judgment entered there would be a nullity.<sup>9</sup>

E. R. D.

LABOR DISPUTE—EFFECT OF EMPLOYER-EMPLOYEE RELATIONSHIP IN DETERMINING PRESENCE OR ABSENCE OF LABOR DISPUTES—SECTION 876-a OF THE CIVIL PRACTICE ACT.—Plaintiff-employer and an "inside" association<sup>1</sup> of his employees were granted an injunction<sup>2</sup> in an action against "outside" defendant union<sup>3</sup> picketing the employer's premises. The plaintiff was an employer of retail sales clerks; the defendant was a union of retail sales clerks which sought recogni-

<sup>2</sup> *Lowe v. Lowe*, 265 N. Y. 197, 192 N. E. 291 (1934).

<sup>3</sup> *Atkinson v. Doherty*, 121 Mich. 372, 80 N. W. 285 (1899); *Mitchell v. Rochester Ry.*, 151 N. Y. 107, 45 N. E. 354 (1896); *Roberson v. Rochester Folding-Box Co.*, 171 N. Y. 538, 64 N. E. 442 (1902).

<sup>4</sup> *James v. Alderton Dockyards*, 256 N. Y. 298, 176 N. E. 401 (1931).

<sup>5</sup> *Haddock v. Haddock*, 201 U. S. 562, 26 Sup. Ct. 525 (1906); *Ball v. Cross*, 231 N. Y. 329, 132 N. E. 106 (1921).

<sup>6</sup> *Chappel v. Stewart*, 82 Md. 323, 33 Atl. 542 (1896) ("The Court has no jurisdiction, \* \* \* to enforce the performance of a moral duty, except so far as the same is concerned with rights of property, \* \* \*").

<sup>7</sup> *Haddock v. Haddock*, 201 U. S. 562, 26 Sup. Ct. 525 (1906).

<sup>8</sup> *Baumann v. Baumann*, 250 N. Y. 382, 165 N. E. 819 (1929).

<sup>9</sup> *Hubbard v. Hubbard*, 228 N. Y. 81, 126 N. E. 508 (1920).

<sup>1</sup> Employees of plaintiff-employer belonged to an association headed by the employer's general manager.

<sup>2</sup> 255 App. Div. 643, 8 N. Y. S. (2d) 819 (2d Dept. 1939).

<sup>3</sup> The Retail Women's Apparel Salespeople's Union, Local 1125.