

## Husband and Wife--Foreign Divorce--Separation--Affirmative Relief (Fisher v. Fisher, 254 N.Y. 463 (1930))

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HUSBAND AND WIFE—FOREIGN DIVORCE—SEPARATION—AFFIRMATIVE RELIEF.—Plaintiff and one Dalinsky, domiciled and resident in New York, intermarried. Plaintiff left New York temporarily for the sole purpose of securing a Nevada divorce. Although on her suit in the district court at Reno, Dalinsky was personally served in New York, he did not appear nor submit himself to that jurisdiction. Plaintiff returned and remarried defendant in this action in New Jersey. Defendant was and is resident and domiciled in New York. In an action for separation and alimony on the grounds of desertion, *Held*, the decree of divorce from Dalinsky being invalid here, the second marriage was never recognized as valid by the laws of this State. *Fisher v. Fisher*, 254 N. Y. 463, 173 N. E. 680 (1930).

It is well settled that a decree of divorce rendered in a foreign state will be recognized in New York, where the court rendering the decree *had jurisdiction* of the subject-matter and parties, even though the divorce was granted for a cause which is not recognized in this state.<sup>1</sup> If the defendant, in a foreign action, was domiciled in New York and served personally while here and he does not appear, then, although the divorce may have full force and effect in the state wherein it was decreed, it will not be recognized in New York.<sup>2</sup> Where a party seeks to avoid a divorce on the ground of want of jurisdiction, he must show that he was domiciled in New York and did not make an appearance at the action.<sup>3</sup> Where neither party to the foreign action is domiciled in New York at the time of the rendition of the decree, and the notice of the action is served by publication, this state will recognize the foreign divorce if the state wherein the defendant is domiciled recognizes it, but if the latter state does not recognize the decree, New York will not.<sup>4</sup> The instant case is in harmony with previous expressions of the Court of Appeals and is sound practically.

H. L. B.

INSURANCE—EXCLUSION OF EVIDENCE OF FRAUD REVERSIBLE ERROR.—Plaintiff purchased a farm for \$11,500 and built a barn costing \$10,000 thereon. Defendant insurance company's experts estimated the property's market value at \$8,000. The buildings were insured for only \$1,600. The farm did not yield a profit. No stock

<sup>1</sup> *Stewart v. Stewart*, 205 App. Div. 587, 200 N. Y. Supp. 168 (2nd Dept., 1922); *Straus v. Straus*, 122 App. Div. 729, 107 N. Y. Supp. 842 (1st Dept., 1907); *Richards v. Richards*, 87 Misc. 134, 149 N. Y. Supp. 1028 (1914).

<sup>2</sup> *Hunt v. Hunt*, 72 N. Y. 217 (1878); *People v. Baker*, 76 N. Y. 78 (1879); *Olmstead v. Olmstead*, 190 N. Y. 458, 83 N. E. 569 (1908); *Ackerman v. Ackerman*, 200 N. Y. 72, 93 N. E. 192 (1911).

<sup>3</sup> *Percival v. Percival*, 186 N. Y. 587, 79 N. E. 1114 (1905), *aff'g* 106 App. Div. 111, 94 N. Y. Supp. 909 (2nd Dept., 1905).

<sup>4</sup> *Ball v. Cross*, 231 N. Y. 329, 132 N. E. 106 (1921).