OTTO C. SOMMERICH †

# Recognition of Mexican Divorces Part I*

The continued interest that Private International Law takes in the subject of extraterritorial recognition of divorce decrees is manifested by the draft convention on the subject prepared by the Special Committee on Divorce for The Hague Conference on Private International Law [1] and the priority given to the study of recognition of foreign decrees of divorce by the Law Commission of Great Britain.[2]

The principle of comity, which is largely involved in so far as the United States is concerned, has for the past years perhaps been put to its severest test in the case of bilateral Mexican divorce decrees, based, as they usually are, on ephemeral "domicile" or "residence" contacts. Although no New York decision has refused to recognize such a bilateral Mexican divorce,[3] New Mexico, New Jersey, and Ohio have denied its validity as a matter of their own public policy.[4]

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* Part II will appear in the next issue of *The International Lawyer.*

† The author, a member of the New York Bar since 1899, is chairman of the Section's Committee on European Law. A graduate of Columbia University Law School, he has written for many law reviews and legal periodicals and is co-author with Benjamin Busch of *Foreign Law—A Guide to Pleading and Proof.*

[1] Draft (Oct .5-15, 1965). The United States became a member of The Hague Conference in 1964, and Dean Erwin N. Griswold of the Harvard Law School has participated in the deliberations of the said Special Committee since 1965. Prof. Willis L. M. Reese credits Dean Griswold's effectiveness for the fact that "The draft takes account in a surprising degree of the law interests of the United States." (The next issue of the American Journal of Comparative Law will carry an article by Prof. Reese on the subject). The United Kingdom is actively participating in this convention, and Prof. Graveson is the presiding officer of the Special Commission of The Hague Conference on the Foreign Divorce Convention.

[2] First Annual Report 1965-1966—The Law Commission (Her Majesty's Stationery Office, 1966).

[3] Rosentiel v. Rosenstiel, 16 N Y 2d 64, 71, 209 N.E.2d 709, (1965); cert. den. 383 U.S. 943, 6 L. Ed. 2d, 282, 86, S.Ct. 1197. *N.Y. Times* June 7, 1966.

[4] id. See cases cited on p. 71. Prof. Henry H. Foster and Dr. Doris Freed, in an article on "Family Law" in the 1965 *Annual Survey of American Law,*

The traditional acceptance by the courts of New York of such bilateral divorces came to a sudden and unexpected jolt in 1963 and 1964 when it was held by two New York lower courts that *bona fide* domicile was intrinsically an indispensable prerequisite to jurisdiction and consequently to the recognition of foreign divorce decrees, and that the minimal contact which sufficed for the purpose of obtaining a Mexican divorce did not meet that prerequisite.[5]

The decisions of the highest appellate court of New York which reversed the lower courts and which re-established in that jurisdiction the recognition of these bilateral divorces, even in the absence of more than minimal domicile or residence contacts,[6] occasioned the accompanying comparative study of the recognition of foreign divorce decrees under European law. The countries under study include Austria, Belgium, France, Germany, Italy, Netherlands, Spain, Switzerland, United Kingdom, U.S.S.R., Sweden, and other Nordic countries.

The facts in *Rosenstiel v. Rosenstiel,*[7] which illustrate the usual Mexican bilateral divorce case, are fascinating in any attempt to correlate principles of domicile, jurisdiction, and comity. In that case, a husband, not a resident of Texas, arrived one day in 1954 in El Paso, Texas, registered at a motel, and the next day crossed the Mexican border to the City of Juarez, in the State of Chihuahua. He signed the Municipal Register of that city, which is an official book for the listing of its residents, and obtained a certificate of such registration. He then filed said certificate and a petition for divorce in the District Court at Juarez, alleging incompatibility with his spouse. All this took approximately one hour and the husband then returned to El Paso, Texas, and presumably, ultimately, to his original place of residence.

The next day, in accordance with prior arrangements, a Mexican attorney appeared for the wife under a power of attorney authorizing him to act for her, and filed an answer submitting said client to the jurisdiction of the court and admitting the allegations of the complaint. A decree of divorce was granted that same day.

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state at pp. 389 ff.: "Indirect recognition has been given by the application of an estoppel against collateral attack, usually where the attacker is seeking financial gain, in Arizona, California, District of Columbia, New Jersey, New York and Texas, but there are cases rejecting the application of an estoppel doctrine from Arizona, Arkansas, District of Columbia, Georgia, New Jersey, New Mexico and Ohio."

[5] Wood v. Wood, 41 Misc. 2d 95; Rosenstiel v. Rosenstiel, 43 Misc. 2d 462.

[6] Rosenstiel v. Rosenstiel, 16 N.Y. 2d 64 (July 9, 1965).

[7] *Supra,* n. 3.

The wife thereafter married Mr. Rosenstiel in New York in 1956 and the latter instituted an action in 1964 for an annulment of the marriage on the ground that his wife's Mexican decree was invalid and that she was still married to her former spouse when she married Rosenstiel.

The proof of foreign law elicited at the trial and the determination of which was taken from the jury [8] established that under the Divorce Law of the State of Chihuahua, the court has jurisdiction to decide the issues and to render a decree dissolving a marriage if the plaintiff is a resident of the state (Art. 22), or if either party is a resident of the state and the divorce is sought by mutual consent (Art. 22). The requisite residence referred to is sufficiently established by a certificate proving that the party has signed the Municipal Register of Residents (Art. 24). Even if proof is lacking of the entry in said register, the court has jurisdiction if it appears that both parties have submitted themselves to the jurisdiction of the court (Art. 24). Such submission may be express or tacit (Art. 24).[9]

Three separate opinions were handed down by the New York Court of Appeals in *Rosenstiel v. Rosenstiel,* two concurring in the reversal of the lower courts and one dissenting.[10] Judge Bergan held the divorce to be valid and with a majority of the court ruled that the decision established such validity, retrospectively as well as prospectively.[11] Chief Judge Desmond concurred in the ultimate determination, "but with the clear understanding that divorces of this sort granted after the date of the decision of these appeals will be void in New York State." [12] Judge Scileppi would have held these divorces void, but would permit the appellant in the case to succeed on this appeal.[13]

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[8] 43 Misc. 2nd 462, 466.

[9] Each of the 30 states of the Republic of Mexico, its Federal District and two territories enacts its own divorce laws and the jurisdictional requirements of each vary. Chihuahua requires the least actual residential contact. The Federal District limits jurisdiction to the court of conjugal domicile. The latter is the domicile of the husband, except in instances of desertion where it is the domicile of the deserted spouse. A presumption of domicile is established in the Federal District by residence of 6 months or more therein.

[10] 16 N.Y.2d 64, at pp. 70, 75 and 79.

[11] *Id.,* at pp. 70, et seq.

[12] *Id.,* at p. 78.

[13] *Id.,* at p. 79.

The majority opinion viewed the question before the court to be the following (at p. 71):

> There is squarely presented to this court now for the first time the question whether recognition is to be given by New York to a matrimonial judgment of a foreign country based on grounds not accepted in New York, where personal jurisdiction of one party to the marriage has been acquired by physical presence before the foreign court, and jurisdiction of the other has been acquired by appearance and pleading through an authorized attorney although no domicile of either party is shown within that jurisdiction; and "residence" has been acquired by one party through a statutory formality based on brief contact.

Although said opinion recognizes the Mexican statutory requirements of domicile to be less exacting than those of New York State, it held "on pragmatic grounds" [14] that it was necessary, in today's mobile era, to understand the concept of a marriage moving from place to place with either spouse and that the voluntary appearance of the other would be sufficient to grant to the court involved competent jurisdiction over the marriage as a legal entity. The court flatly stated that "domicile is not intrinsically an indispensable prerequisite to jurisdiction," [15] citing (at p. 73): "(cf. Stimson, Jurisdiction in Divorce Cases: The Unsoundness of the Domiciliary Theory, 42 *Amer. Bar Assn.* J. 222 [1956]; Griswold, Divorce Jurisdiction and Recognition of Divorce Decrees—A Comparative Study, 65 *Harv. L. Rev.* 193, 228)," and that a balanced public policy requires that recognition should be given to a bilateral Mexican divorce rather than withheld and that such recognition "as a matter of comity offends no public policy" of New York State.[16]

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[14] *Id.*, at p. 72.

[15] *Id.*, at p. 73.

[16] *Id.*, p. 74. In the case of Shea v. Shea, 270 App. Div. 527, Judge Carswell held that the question of validity of a bilateral divorce decree [in the United States of America] was the question of the policy of each State. He referred to the case *In re Rhinelander*, 290 N.Y. 31, where the New York State Court of Appeals held: "It is no part of the public policy of this State to refuse recognition to divorce decrees of foreign states when rendered on the appearance of both parties, even when the parties go from this State to the foreign state for the purpose of obtaining the decree and do obtain it on grounds not recognized here." An interesting aftermath of Rosenstiel v. Rosenstiel is Chapter 54 of the Laws of 1966 of the State of New York enacting Sec. 250 of the Domestic Relations Law of that state, to the effect that proof that plaintiff who obtained a divorce in another jurisdiction was domiciled in New York within 12 months prior to commencing this foreign divorce proceeding and resumed his New York residence within 18 months after the date of his departure from said foreign jurisdiction, shall be *prima facie* evidence that