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THE RECOGNITION OF FOREIGN DECREES OF DIVORCE*

WM. TURNEY FOX**

The question of the recognition of foreign decrees of divorce is one of real and growing importance. The conflict of law that exists in this country, where divorces are granted by one state and their validity tested in another, is one that is familiar to the legal profession. In fact, it is familiar to the public generally. The unfortunate situation of persons legally divorced in one state and not in another; of a second marriage valid in one state, declared invalid in another; and the general confusion resulting from such conflict is constantly presented to the public through the daily press and current magazines. It now appears that there is to be added to this chaos, the confusion of divorce decrees granted in foreign countries to citizens of our own country who have sojourned therein only long enough to obtain the decree and then bring it home.

It is my purpose to attempt an analysis of the underlying principles concerning divorce decrees rendered by the courts of one state and for which recognition is sought in others; and then by analogy to seek to determine, so far as is possible by this process of reasoning, the status in the courts of this country of divorce decrees rendered by the courts of foreign countries.

It will, perhaps, be helpful at the outset to attempt the statement of a few general basic principles. First, it seems to be the generally accepted doctrine in this country that, so far as the subject matter of the controversy is concerned, actions for divorce deal with the status of the parties; that it is an action in rem or quasi in rem, the marital status, though intangible in nature, being the res; and that the recognition of a decree in another jurisdiction depends primarily on jurisdiction of the court rendering the decree over this res. As a corollary to this proposition, it seems

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that a court does not have jurisdiction over this res unless one of the parties is domiciled in the jurisdiction where the decree is granted and has lived there for the time fixed by the local statutes. While Section 128 of our Civil Code, which lays down the conditions upon which one may maintain an action for divorce in this state, uses the term "resident," reference to other sections of our codes and statements in our reports, seem to indicate that the principles of domicile are the foundation stones of jurisdiction in such cases. This is indicated by the provisions of Section 128 of the Civil Code, which provides, as amended in 1925, that "In actions for divorce neither the domicile nor residence of the husband shall be deemed the domicile or residence of the wife;" and that, "For the purpose of such an action each may have a separate domicile or residence, depending upon proof of the fact and not upon legal presumption." Reference to Section 52 of the Political Code, which lays down the rules for determining *residence*, seems to support this conclusion also. In that section seven rules are given for determining residence. An analysis of these rules shows that they are the rules made use of in determining domicile. As typically illustrating this proposition reference is made to only four of the shorter rules. Rule two provides, "There can be only one residence;" rule three that, "A residence cannot be lost until another is gained;" rule five that, "The residence of the husband is the residence of the wife;" and rule seven that, "The residence can be changed only by the union of act and intent."

Our Supreme Court, as well as the Supreme Court of the United States, has from time to time made statements which seem to bear out this conclusion. As early as 1865 our Supreme Court, in the case of *Bennett* v. *Bennett*,[1] made the statement that: "The tribunals of a country have no jurisdiction over a cause of divorce, if neither of the parties has an actual bona fide domicile within the territory." A similar statement was made by our Chief Justice, then a Justice of the Appellate Court, in the case of *Anthony* v. *Tarpley*.[2] In that case he said: "As distinguished from legal domicile, mere residence within a particular state of the

[1] 28 Cal. 559 (1865).
[2] 45 Cal. App. 72, 187 Pac. 779 (1919).

plaintiff in a divorce cause, brought in a court of such state, is not sufficient to confer jurisdiction upon such court to dissolve the marriage relation existing between the plaintiff and a non-resident defendant." This language was taken from the opinion of Mr. Justice White in *Haddock* v. *Haddock*.[3] Further on in the opinion, Mr. Chief Justice Waste said: "As, according to the complaint, neither of the parties to the divorce action had a legal domicile in the State of Oregon, the want of jurisdiction in the court of that state to entertain the divorce action is clear." However, it should be borne in mind that domicile alone, as defined in international law, is not sufficient to confer jurisdiction; for a party may be domiciled, in that sense, in a jurisdiction in which he has not lived for years. Our familiar statutory provisions must, of course, also be complied with. This principle is illustrated by the well-known case of *De La Montanya* v. *De La Montanya*.[4] Not only must these requirements be met so far as the individual is concerned, but since the decree is in rem or quasi in rem, if it is to be entitled to recognition in other jurisdictions, particularly under the full faith and credit clause of the Constitution, that domicile must be of such a character or acquired under such circumstances as to carry along with it the res as a basis for giving the court jurisdiction over it. This proposition is illustrated by the famous Haddock and Atherton cases, which will be discussed later.

We may now turn to the consideration of a few typical situations regarding the recognition by the courts of one jurisdiction of decrees of divorce granted by the courts of another. So far as the states of the union are concerned such recognition depends either upon the principles of comity or upon the effect of the full faith and credit clause of the Federal Constitution. With respect, however, to such decrees, granted by the courts of foreign countries, their recognition by the courts of this country depends entirely upon principles of comity.

First of all, it is not open to question that where the husband and wife are domiciled in a state—and have lived together there for the period fixed by statute—there exists

[3] 201 U. S. 562 (1906).
[4] 112 Cal. 101, 44 Pac. 345 (1896).

jurisdiction in the courts of such state, for good cause, to enter a decree of divorce which will be entitled to enforcement in another state by virtue of the full faith and credit clause.

It has also been decided by the United States Supreme Court in *Cheever* v. *Wilson*[5] that where a bona fide domicile has been acquired in a state by either of the parties to the marriage, and a suit is brought by the domiciled party in such state for divorce, the courts of that state, if they acquire personal jurisdiction also of the other party, have authority to enter a decree of divorce, entitled to be enforced in every state by virtue of the full faith and credit clause.

From an international point of view the same conclusions would be reached on the principle of comity. That such is the law of England and Scotland is shown by such cases as *Harvey* v. *Farnie*.[6] That the same results would be reached by the courts of this country is shown by such cases as *Miller* v. *Miller*,[7] *Sorenson* v. *Sorenson*,[8] and *McGrew* v. *Mutual Life Insurance Company*.[9] In this connection it might be noted that decrees granted by the courts of foreign countries will be recognized by our courts on the principle of comity, although the decree may have been granted for a cause that would not have been a ground for divorce in this country and through a procedure wholly unknown to our law. In the Miller case the parties were Russian subjects and appeared before a rabbi and were divorced according to the Jewish and Russian law. In passing on the validity of the decree the court said: "The effect of the power delegated to the rabbis to grant divorces was substantially to create an ecclesiastical court, recognized as such in the Russian Empire; and their pronouncement of sentence of divorce has the same effect in that country as like sentences have in the courts of our states."

In the California case just cited the parties were, at the time the action was begun, residing in and domiciled in Honolulu, Hawaiian Islands. The husband was declared to

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[5] 9 Wall. (U. S.) 108 (1869).
[6] L. R. 8 A. C. 43 (1882).
[7] 128 N. Y. S. 787 (1911).
[8] 202 N. Y. S. 620 (1924).
[9] 132 Cal. 85, 64 Pac. 103 (1901).

be an incompetent and a guardian was appointed. An action for divorce was later started by the husband through his guardian against the defendant wife. Although a decree could not have been obtained in California under such a procedure, our court recognized the validity of the Hawaiian decree upon the principle of comity. We find the English courts applying the same principles under similar circumstances. This is brought out in a case before the Privy Council, *Le Mesurier* v. *Le Mesurier*.[10]

We may now turn our attention to the situation where one party, say the husband, deserts the other and goes to another jurisdiction and there establishes a personal domicile and secures a divorce in such jurisdiction upon constructive service and then sets up this decree as a defense, when sued in the jurisdiction where the parties last lived together. This is substantially the famous Haddock Case. It will be recalled that the United States Supreme Court held that the *ex parte* decree of the husband, obtained in Connecticut, was not entitled to recognition in another state, under the full faith and credit clause, although the majority opinion proceeded upon the assumption that the decree Mr. Haddock had obtained in Connecticut was valid in that state because of the inherent power which all governments must possess over the marriage relation, its formation and dissolution as regards its own citizens. It would therefore seem to follow that in the State of Connecticut Mr. Haddock's status was that of an unmarried man and that he was legally free to contract another marriage, which he did, in fact, but that in the State of New York he was still the lawful husband of the first Mrs. Haddock. The reasoning by which ths anomalous result was reached may perhaps be re-examined with profit. Mr. Haddock, of course, to get his decree in Connecticut must have been able to convince the court that he was domiciled there and that he was the innocent party. If then he was the innocent party it would seem to necessarily follow that he took with him the marital status, thereby giving to the court jurisdiction of the subject matter—the res—as well as submitting himself to the jurisdiction by filing the suit, and therefore the judgment would be entitled to recognition everywhere. But

[10] L. R. (1895) A. C. 517.

before any such conclusion is to be accepted another query must be made. And that is, what was, in fact, the nature of the jurisdiction the Connecticut court had acquired? We are familiar with the proposition that before a judgment of a court of one state is entitled to recognition by the court of another state, the court rendering the original judgment must have had proper jurisdiction. Now did the Connecticut court have such jurisdiction as to entitle its decree to recognition by the courts of other states? The fact that the court of the first jurisdiction assumes that it has proper jurisdiction is not sufficient to foreclose the matter; neither is the fact that the court rendering the original judgment recites on its record all necessary jurisdictional facts conclusive. The judgment may still be attacked collaterally for lack of jurisdiction. This proposition was announced at an early date by our United States Supreme Court in *Thompson* v. *Whitman*[11] and has since frequently been repeated. This is also the rule in California, as shown by such cases as *In re James,*[12] and many others.

Now let us see what the situation is. The court of the second jurisdiction may find, as the New York court did in the Haddock case, that the one who obtained the decree in the first jurisdiction was the guilty party and by reason of being the guilty party, or deserter, as in that case, did not take with him the res or marital status and therefore the res remained in that jurisdiction with the party that court finds to be the innocent party. Therefore, the innocent party could not be deemed even to be constructively within the first jurisdiction, and was not individually domiciled in said jurisdiction and was only constructively served. The conclusion then reached is that the court granting the first decree did not acquire such jurisdiction of the marital status or res, or of the defendant personally as to compel the courts of other states to recognize its decree.

One of the difficulties presented is the fact that the court of each jurisdiction has reached a different conclusion as to which of the parties was at fault. Which court's conclusion on this question is entitled to the greater weight? It must be remembered that the original decree was granted

[11] 18 Wall. (U. S.) 457 (1873).
[12] 99 Cal. 374, 33 Pac. 1122 (1893).

on an *ex parte* application; that the defendant in that action did not appear; and that there was no contest. Under such circumstances it is relatively easy for a plaintiff in such a situation to make out a sufficient case to get a decree. However, in the second jurisdiction both parties are before the court; the case is contested; both sides may be heard from. There is therefor less opportunity to impose upon the court and a far greater probability that the court will make a correct finding as to who was really at fault, and therefore it seems more reasonable to give conclusive effect to the finding of the court in the second jurisdiction.

The result may perhaps also be supported upon another theory by starting with what seems to be an accepted doctrine, viz., that each state maintains a complete and exclusive jurisdiction, for most purposes, over all persons and things within its territorial limits and particularly the wide scope of authority which each government possesses, according to its policy, over the contract of marriage and its dissolution. As pointed out by Mr. Justice White, if one government, because of authority over its own citizen, has the right to dissolve the marriage tie between one of its citizens and that of another jurisdiction, it must follow that no government possesses as to its own citizens complete power over the marriage relation and its dissolution even within its own territorial limits. For if it be that one government, by virtue of its authority over its own citizen, may dissolve the marriage bond as to citizens of another government, other governments would have a similar power, and hence the right of every government as to its own citizens might be rendered nugatory by the exercise of the power by some other government. This anomalous result is made more manifest when we consider that at the time the constitution was adopted, the states possessed full power over the subject of marriage and divorce and that prior to its adoption the extent to which one state would recognize a divorce decree obtained in another depended upon its conception of duty and comity. It must also be remembered that the constitution delegated no authority to the government of the United States on the subject of marriage and divorce. And yet, if a decree such as Mr. Haddock ob-

tained in Connecticut had to be recognized by the other states because of the full faith and credit clause, it would follow that the destruction of the power of the state over the dissolution of marriage, as to its own citizens, would be brought about by the operation of this clause of the constitution. And as the government of the United States has no delegated authority on the subject, that government would be powerless to prevent the evil thus brought about by the full faith and credit clause. Thus neither the state nor the federal government would be able to exert that power over the marriage tie possessed by every other civilized government.

I fully appreciate that there are many cogent arguments that may be made for a different ruling in such a case, but it would probably not be profitable here to enter into an academic discussion of these various theories. They have been very admirably stated by the judges who dissented in the Haddock case and by many of our very able legal thinkers and writers who have criticized the majority opinion even to the extent of becoming sarcastic. It is true that the decision may occasionally place an individual in an awkward situation, but it is perhaps also true that a contrary decision would have resulted in placing other individuals in just as unfortunate positions. But, at any rate, whether we agree with the decision of the majority of the United States Supreme Court in that case or not, or with the reasoning by which the result was reached, it still remains the law.

In our own state we find the Haddock case referred to apparently with approval in the case of *Bruguiere* v. *Bruguiere*.[13] In that case the parties lived in San Francisco as husband and wife. The husband abandoned the wife without cause and went to Nevada. After having stayed there for the period fixed by the Nevada statute he secured a divorce upon service by publication. He later married and came back to California to live with his second wife. Up to this point the facts are exactly in line with the Haddock case. But then, the first wife, knowing the Nevada decree, went east and married another man. She later learned that the Nevada decree was not valid

[13] 172 Cal. 199, 155 Pac. 988 (1916).

because the residence was not *bona fide* and had her second marriage annulled on the ground that she was not legally divorced and therefore could not legally remarry. After securing the annulment of her second marriage she came back to California and started a separate maintenance suit against Mr. Bruguiere. He set up the Nevada decree. Our Supreme Court discussed the Haddock case at considerable length and closed their discussion by this statement: "Upon the principles thus established, it seems clear that the decree obtained by the husband in Nevada is not binding upon the courts of California, even if his residence there was *bona fide*." It is true that this statement is dictum, because the court finally held that the wife was estopped to question the validity of the Nevada decree, because she had acted upon it by her subsequent marriage, but it shows the attitude of our own Court on the question.

We should now consider what might perhaps be termed a limitation upon the doctrine of the Haddock case. This limitation is illustrated by the situation where the parties are domiciled in and have lived together in a particular state and one of them wrongfully abandons the other and flees to another jurisdiction. The courts of the state where the parties last lived together, which is known as the "matrimonial domicile," have jurisdiction under the authority of *Atherton* v. *Atherton*,[14] to render a decree which will be entitled to full faith and credit under the constitution even upon constructive service, since they have jurisdiction of the party there domiciled and of the marital status or res. It seems that one of the theories upon which this conclusion is reached is that since the absent party is unjustifiably away, that party cannot, by reason of the wrongful act, take along the marital status and that therefore the marital status or res must remain with the innocent party in the domicile of matrimony, thereby giving to the courts of that state such jurisdiction that they can render a decree that is entitled to recognition in all other states.

Another theory upon which the same result is reached is to disregard the unjustifiable absence and treat the absent party's domicile as still being in the state of the "matri-

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[14] 181 U. S. 155 (1901).

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monial domicile" for the purpose of the dissolution of the marriage. This might be called a constructive domicile.

But whatever theory is followed a practical difficulty is encountered which is very hard to solve upon any very satisfactory and logical basis. You will recall that I have already pointed out that the United States Supreme Court held at a fairly early date that the jurisdiction of the court granting the original decree might be inquired into when recognition was sought for that decree in the courts of another state. You will also recall that this was done in the Haddock Case.

In the Atherton Case the situation was this: Atherton and his wife were domiciled in and lived together in Kentucky. Mrs. Atherton went away to New York. Mr. Atherton continued to live in Kentucky and later filed an action for divorce in the Kentucky court, securing only constructive service upon the defendant wife. The Kentucky court found he was the innocent party and accordingly granted him a decree. The wife in the meantime had started an action for separate maintenance in New York. Atherton appeared and set up his Kentucky decree. The New York court refused to recognize it and found that the wife was the innocent party and accordingly granted her a decree. The United States Supreme Court then held that the finding of the Kentucky court that the husband was the innocent party, and its decree accordingly upon only constructive service, was conclusive upon the wife and the New York court because the domicile of the husband and the domicile of matrimony were both in that jurisdiction. Such reasoning, however, does not seem to be altogether persuasive. Because the conclusion reached on this point in this case seemed inconsistent with that reached in the Haddock case, Mr. Justice Holmes stated in his dissent to the latter case that he thought the Atherton case was overruled by the majority opinion in the Haddock case. This opinion was shared in for some time by many of our very able legal writers. But such seems not to be the case, for the Atherton case was later followed in *Thompson* v. *Thompson.*[15]

Now suppose that instead of filing his action for divorce in Kentucky, Mr. Atherton had moved to some other state

[15] 226 U. S. 551 (1913).

and established a *bona fide* domicile and lived there the required time. Would he have been able to secure a decree there upon constructive service which would have been entitled to recognition in other states under Article 4, Section 1, of the Constitution? So far as the writer knows, this question has not been passed upon by the United States Supreme Court. Its solution depends upon what is meant by the term "matrimonial domicile." It may mean the place where the parties last lived together as husband and wife; or, it may mean the place where one spouse is rightfully domiciled and where the other ought to be to fulfill the marital obligation. The latter view has been taken in a few decisions, of which *Parker* v. *Parker*[16] and *Montmorency* v. *Montmorency*[17] are typical. However, a majority of our courts have either held or assumed that the doctrine of "matrimonial domicile" should be confined to the place where the parties last lived together as husband and wife.

We may now consider the case where one party has gone to another jurisdiction for the purpose of securing a divorce and has stayed there long enough to meet the local statutory requirements, neither of the parties being in fact domiciled in the jurisdiction. Under this heading I shall discuss the status of Yucatan divorce decrees in our courts. Many of you, no doubt, have received, as I did some months ago, a circular letter from a Yucatan attorney soliciting the business of clients who might be desirous of securing a Yucatan decree and also giving a general outline of the requirements to be met in order to get such a decree. As I recall that letter the principal requirement was sufficient money to pay the state and national tax, court costs and attorney's fee—twenty per cent of which fee would be remitted to the forwarding attorney. So far as the expenditure of time on the part of the plaintiff was concerned, that was a relatively insignificant matter. The whole thing could be handled in the space of from ten days to two weeks. It further appeared that there was no necessity of going to the trouble of sending any notice to the defendant. From this it is clear that there is not even a colorable attempt to meet the requirements of jurisdiction that our

[16] 222 Fed. 186 (1915).
[17] 139 S. W. 1168 (Tex. Civ. App. 1911).

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courts hold are necessary to entitle a foreign decree to recognition. Since the jurisdiction of the court granting the original decree may be inquired into, it would seem that in the ordinary case it would be relatively easy to show lack of *bona fide* residence or domicile. Furthermore, such a course of conduct would perpetrate a fraud upon our courts and our citizens, which our courts would not permit. Also the fact that no notice is required to be sent to the defendant is so contrary to our notion of due process of law that it would be against our public policy to recognize such decrees.

So far as the writer knows, no appellate court in the United States has yet passed upon the validity of these Yucatan decrees. They have, however, been passed upon by the Superior Courts of this state. The first case, *Dinsmore* v. *Dinsmore,* came up in March of this year before Judge Johnson of San Francisco. As reported in the daily press, it appears that Mr. Dinsmore went down to Yucatan in November, 1922, and there secured a divorce without Mrs. Dinsmore's knowledge. On his way back to California he married a San Francisco school teacher in Mexicali. Mrs. Dinsmore filed suit against her husband, who set up the Yucatan decree. Judge Johnson held that the Yucatan decree was not entitled to recognition by the courts of this state and consequently was no defense. Among other things Judge Johnson is reported to have said: "No principle of international law requires the courts of this state to permit a fraud on a citizen of California; and it is always within the sovereignty of the State of California to deny recognition to any foreign judgment which is in fraud of the law of the land. Not only because of lack of jurisdiction is the Yucatan decree repugnant to our system of jurisprudence," he said, "but equally so because of the secrecy with which the decree was procured."

The validity of a Yucatan decree was passed upon by Judge Summerfield on the 21st of September in an annulment action brought by Winfield Scott, Jr., against Eunice Lorraine Ginter, No. D-42526. Judge Summerfield also held the Yucatan decree invalid. These decisions would seem to be abundantly justified both upon reason and principle.

The result would still seem to be the same even if the defendant were given notice, such as service by publication. It has been held by the United States Supreme Court in *Bell* v. *Bell*[18] and *Streitwolf* v. *Streitwolf*[19] that a decree rendered by one of our states under such circumstances is not entitled to recognition in another under Article 4, Section 1, of the Constitution. Both of these cases were cited with approval by Mr. Chief Justice Waste in *Anthony* v. *Tarpley, supra.* In that case he made the further observation that, "In order to entitle one to maintain a divorce action the residence must be *bona fide.* Going into another state with the intention of returning to this, when the divorce has been procured, is not the establisment of a *bona fide* residence or domicile." It does not seem likely that we would recognize a Mexican decree on the principles of comity when we would not be compelled to recognize a decree granted by the courts of a sister state under the same circumstances. But the situation has been complicated in some cases by the fact that the defendant has appeared in the action. Will this give the court jurisdiction so that it may grant a valid decree? That question was presented to the United States Supreme Court in the case of *Andrews* v. *Andrews*.[20] The issue in the Andrews Case arose in this way: Andrews had obtained a decree of divorce in South Dakota, in which state he had taken up a residence for the time prescribed by law, but in which he had never acquired a *bona fide* domicile. The referee had found, and his finding was accepted by the court, that "his (Andrews') intention was to become a resident of that state for the purpose of getting a divorce and to that end to do all that was needful to make him such a resident." The defendant in the South Dakota suit entered a personal appearance, pleaded, and for a while, at least, contested the action, though her contest was afterwards abandoned. Andrews' divorce was granted and he moved back to Massachusetts, where he married again and subsequently died. The contest was between the first and second Mrs. Andrews as to the right to administer his estate, each claiming to be the widow. Since the question of jurisdiction of the South Dakota court might be inquired into and the decree

[18] 181 U. S. 175 (1901).
[19] 181 U. S. 179 (1901).
[20] 188 U. S. 14 (1902).

collaterally attacked under the previous decisions of the United States Supreme Court, it was held that the decree was invalid because there was not a *bona fide* domicile and that neither the appearance of the defendant nor the consent of the parties could confer jurisdiction over the subject matter. This case was followed and quoted at length by Mr. Chief Justice Waste in *Anthony* v. *Tarpley, supra.*

It seems to the writer that the principles of the Andrews Case offer a solution to the question as to how far decrees rendered by French courts will be recognized in this country on the principles of international comity. It would perhaps first be well to make at least a cursory examination of the requisites for obtaining a divorce in the French courts.

It is said that in order to give the French court jurisdiction of an action for divorce the plaintiff must be domiciled in France. But it should be remembered that the term "domicile" as used and understood in French law does not mean the same thing as it means in our law. In France it means nothing more than residence, so that the rule is that a plaintiff must be resident in France in order to give the French courts jurisdiction. It is also said that if this residence is in good faith no length of time is required to establish it. Thus one may go to France with the intention of residing there and immediately establish such a residence as to give the court jurisdiction.

While the French law still seems to follow the old theory that the domicile of the wife is the domicile of the husband, yet, as a practical matter, the French courts take the position that since under our law a woman may acquire a domicile separate and apart from that of the husband, she may have the same privilege in France. So, at the outset of the litigation, the French judge designates a separate domicile for the wife by a formal order.

In an attempt to insure recognition of the French decrees in our courts it is the usual practice to get personal jurisdiction of the defendant. This is done by getting personal service of process upon the defendant within the jurisdiction of the French court, or an appearance by counsel for defendant through a warrant of attorney.

As to whether or not French decrees will be recognized by the courts of the United States depends very largely up-

on the facts and circumstances in each particular case. If one of the parties has established a *bona fide* domicile there in the sense in which that term is used and understood in our law and the other party is either personally served within the jurisdiction of the court or voluntarily appears through counsel, it would seem clear that the court had acquired proper jurisdiction to award a decree which would be recognized by the courts of this country under the principles of comity. This proposition is fairly illustrated by the case of *Lie* v. *Lie*.[21] In this case it appeared that after the husband and wife had for some years lived in New York the wife went to Norway in 1913. In 1915 the husband followed her to Norway and there obtained a decree of divorce against her. The defendant wife continued to live there and later married in Norway. The first husband came back to New York and filed another suit against her, alleging her cohabitation with the second husband was adulterous on the theory that they were not legally divorced on the ground that the court of Norway did not have jurisdiction. It would seem that the Norway court might very reasonably have found that the defendant wife who had lived there for two years had established a domicile there. It was also clear that her going to Norway was not for the purpose of procuring a divorce and perpetrating a fraud either upon our courts or upon those of our citizens since she was the defendant in the action. It should also be remembered both parties were before the court. In view of these facts and circumstance the New York court very properly held that the Norway court had jurisdiction and that the decree rendered by it was entitled to recognition by their courts.

If, on the other hand, actual domicile in the American sense does not in fact exist at the time the action is filed in a French court, it seems very likely that our courts will hold that the subject matter was not within the jurisdiction of the French courts and that their decree is not entitled to extra-territorial effect. To hold otherwise would be to give to a decree of a foreign tribunal greater extra-territorial effect than is given to the decree of a court of a sister state and we can hardly suppose that this will be done. The Wis-

[21] 96 N. Y. Misc. 3, 159 N. Y. S. 748 (1916).

consin court followed this principle in *St. Cure* v. *Lindsfelt*[22] in refusing to recognize a decree rendered in Sweden in favor of the wife while both parties were domiciled in that state. This is also the view taken by the English courts. A good illustration of the rule in England is *Shaw* v. *Gould*[23] in which the House of Lords held void in England a Scotch divorce granted to English subjects on mere residence without legal domicile, even though the question at issue with regard to such divorce was the legitimacy of children born of a subsequent attempted marriage of one of the parties.

The situation presented to the English courts in dealing with Scotch divorces, at a time when Scotch courts required something less than domicile, is the situation that will be presented to American courts in dealing with French divorces to Americans under a requirement of residence that is less than domicile. Bearing in mind that the general principles enunciated by our courts on this question of conflict of laws are the same as those recognized in England, the conclusion seems justified that the attitude to be taken by our courts with regard to French decrees will be the same as that taken by English courts with regard to Scotch decrees.

So far as I can find there is only one American case which is out of harmony with the views expressed above. That is, the case of *Gould* v. *Gould*, decided by the New York Court of Appeals.[24] The facts in the case were very unusual and undoubtedly made a strong appeal to the court. The husband was originally domiciled in New York and according to the decree of the French court, maintained his legal domicile in that state. He was married in Scotland and he and his wife took up their matrimonial domicile in France and had lived there together for about six years before any dissention developed between them. Both parties instituted suits for divorce in French courts and a decree was finally granted to the husband. The Court of Appeals, in discussing the case, states that after the marriage the parties "came to reside perma-

[22] 82 Wis. 346, 52 N. W. 308 (1892).
[23] L. R. 3 H. L. 55 (1868).
[24] 275 N. Y. 14, 138 N. E. 490 (1923).

nently in France." It also says that even at the time of the litigation in New York the husband had "no apparent intention to return to this state * * * but to permanently reside in France." These facts would appear to show the *animus manendi* and would have justified a finding that legal domicile existed in France, but for the fact that the French decree itself had recited that the husband was domiciled in New York. Both the Appellate Division and the Court of Appeals sustained the validy of this decree in New York, influenced undoubtedly by the strong appeal of the particular facts of the case.

The Appellate Division based its opinion on the theory that jurisdiction may be based on a "matrimonial domicile" at a place where neither of the spouses has a legal domicile, citing as authority for this conclusion the decisions of the United States Supreme Court in the Haddock, Atherton and Thompson Cases. It is, however, apparent that these decisions are not authority for this conclusion because in the Atherton and Thompson Cases there existed both the "matrimonial domicile" and individual domicile of the plaintiff and hence both decrees were recognized, while in Haddock's Connecticut Case one of these elements was absent and the decree was not recognized. It is interesting to note, however, that the Court of Appeals does not repeat the views of the Appellate Division in this respect, but simply rests its decision upon the statement that, while in the absence of a legal domicile it is not required to recognize a foreign decree, it is not, under the particular facts of the Gould Case, a violation of the public policy of the state of New York for it to do so.

While others may very rationally disagree with respect to the theories advanced regarding the proposition last discussed, it is submitted that most, if not all of us, will agree with the next proposition, *viz.*, that if one of our citizens goes to France merely for the purpose of staying there long enough to secure a divorce decree and then immediately returning to this country, such a decree is not entitled to recognition by our courts even though the defendant is personally served in France or appears through an attorney. Such conduct would seem to very clearly show there was no *bona fide* residence or domicile and to constitute a fraud

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upon our courts in a matter in which the state as a third party is vitally interested. Since our United States Supreme Court has already very difinitely held in the Andrews Case, as previously pointed out, that consent of the parties cannot confer jurisdiction and since the question of jurisdiction may be inquired into, it would seem to inevitably follow that if the defendant could show lack of good faith on the part of the plaintiff our courts would not recognize the decree. That California courts will come to this conclusion, when the question is presented to them, is indicated by the fact that we have already approved the Andrews Case. This was the conclusion reached by our local Superior Court in May of this year in the case of *Godissort* v. *Godissort,* in which Judge Hollzer held that the decree which had previously been obtained in Paris was not valid. This would seem to be the only reasonable and logical conclusion that could be reached under our established public policy and legal principles.