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Migratory Divorce - The Ghost of Mrs. Haddock Gets a Scare (Cook v. Cook)

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the publication of its order in the Colorado Reports, has not written a clarifying opinion. Regardless of the rationale of the decision, however, it is a landmark in the development of the law of unauthorized practice in Colorado and should be recognized as such. It demonstrates a willingness on the part of the Court, in a clear case, to handle these problems with efficiency and dispatch. Every lawyer in Colorado who recognizes his duty to the public to protect it from the evils of spurious legal advice and his corrolary duty to protect himself and his profession from the constantly increasing encroachments of those who would practice law without a license, may take heart from this decision.

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Unauthorized Practice of Law Committee,
The Denver Bar Association.

CASE COMMENTS

MIGRATORY DIVORCE — THE GHOST OF MRS. HADDOCK GETS A SCARE (COOK v. COOK)[1]—Discovering that Mrs. Cook was yet married to a Mr. Mann, Mr. Cook sent her to Florida to clear the whole thing up. Coming back with a Florida divorce, and, no doubt, a lovely tan, Miss Migratory and her lad tried the marriage vow again. Unfortunately, the new Mrs. Cook was not at peace in her heart, so off she went to Hawaii where she just happened to pick up a decree of separation and maintenance. Mr. Cook, on the other hand, wasn't going to take it lying down. Why should he when the Supreme Court of Vermont, with Mrs. Cook appearing, would annul both of their marriages. It looked like Mr. Cook finally cooked Mrs. Cook's goose. But, alas, Mr. Justice Douglas and Mr. Justice Frankfurter have their differences, you know, and Mr. Justice Douglas was not about to let the ghost of *Haddock v. Haddock*[2] enjoy squatters' rights into perpetuity. That is, not without a good old Olson and Johnson scare in parting.

One would suppose that the Supreme Court through Mr. Justice Douglas would not place a stumbling block in the path of the victorious *Williams v. North Carolina,*[3] the Second, even if Mr. Justice Frankfurter did dig up a ghost there. He could have emphasized so many things such as estoppel, condonation and collusion; such as collateral attack, void and voidable; such as domicile and presumptions in favor of competency of the members of

[1] Cook v. Cook, 72 S. Ct. 157.

[2] Haddock v. Haddock, 201 U. S. 562 (1906). For some comments see Beale, "Haddock Revisited," 39 Harv. L. Rev. 417 (1926); Vreeland, "Mr. and Mrs. Haddock," 20 A. B. A. J. 568 (1934).

[3] Williams v. State of North Carolina, 325 U. S. 226 (1945).

the Supreme Court of Vermont. Yes, this latter most particularly since he was more than gracious in according such presumption to the Florida Court. And Mr. Justice Frankfurter? Well, just as was the case in *Williams v. North Carolina,*[4] the First, and in *Sherrer v. Sherrer* [5] and *Coe v. Coe,*[6] the gentleman went back to dissenting.

The Full Faith and Credit Clause of the Constitution [7] has perhaps received its greatest interpretation when applied to the recognition of divorce judgments. Since our law considers the termination of marital status as a matter of state concern, it readily followed that the laws of the state of the domicile would control from a social science point of view. *Ditson v. Ditson* [8] may be taken as an early (1856) example of this legal position. In *Atherton v. Atherton* [9] (1901) the United States Supreme Court compelled the New York court to recognize a Kentucky divorce stating that the judgment was entitled to full faith and credit "because the husband always had his domicile in Kentucky and the matrimonial domicile of the parties was in Kentucky." But five years later the recalcitrant New York court again caused the Supreme Court to consider the problem. In *Haddock v. Haddock* [10] the court sustained New York's refusal to recognize a Connecticut divorce since the wife had not appeared in response to publication (it being questionable who the court considered deserted whom). The court said that it must always be borne in mind that where full faith and credit is involved, the question of jurisdiction of the court rendering the decree is always open to attack by a party who was not personally served or did not enter an appearance.[11] Mr. Justice Holmes dissented, denying any distinction as to the *Atherton* case and recalling that the *Haddock* case was parallel in the fact situation to the *Ditson* case upon which the court relied in *Atherton v. Atherton.* Then in the first *Williams* case,[12] the Supreme Court through Mr. Justice Douglas "expressly overruled the Haddock case." Apparently the decision meant that a decree granted ex parte by a court which finds petitioning spouse to be a domiciliary without regard to length of sojourn is entitled to full faith and credit so far as it determined the marital status. In the second *Williams* case [13] Mr. Justice Frankfurter, who dissented in the first case, wrote the majority opinion which seemed to restore *Haddock v. Haddock.* Mr. Justice Douglas dissented to the recognition of prima facie evidence of domicile while at the same

[4] Williams v. State of North Carolina, 317 U. S. 287 (1942).
[5] Sherrer v. Sherrer, 334 U. S. 343 (1948).
[6] Coe v. Coe, 334 U. S. 378 (1948).
[7] Art. IV, Section 1.
[8] Ditson v. Ditson, 4 R. I. 87.
[9] Atherton v. Atherton, 181 U. S. 155 (1901).
[10] Haddock v. Haddock, 201 U. S. 562 (1906).
[11] Thompson v. Whitman, 18 Wall. 457 settled the general issue in 1874.
[12] Williams v. State of North Carolina, 317 U. S. 287 (1942).
[13] Williams v. State of North Carolina, 325 U. S. 226 (1945).

time holding that the fact of domicile as a jurisdictional factor may be determined de novo by the court in a questioning state. *Sherrer v. Sherrer,*[14] *Coe v. Coe*[15] and *Johnson v. Muelberger*[16] shed more light on the problem and limited the chances for denying full faith and credit by barring a spouse from later questioning jurisdiction if (1) the issue of domicile had been contested by the spouse on appearance at the trial, or (2) if the spouse appeared and admitted the other's domicile, or (3) if the spouse had been personally served in the divorce state.

The judgment of the Supreme Court of Vermont[17] came two years after the *Sherrer* and *Coe* decisions. The Vermont Court had chosen to disregard theories of estoppel, collusion and fraud on the court. This it had a right to do even according to the dissent in this case. The court, in annulling both marriages, certainly must have determined that none of the three situations mentioned above were present here for it permitted Mr. Cook to collaterally attack the judgment as to Mrs. Mann's domicile. This, of course, was Mr. Justice Jackson's position in the dissent. Mr. Justice Douglas, however, felt that the Vermont record did not clearly show that the first husband had not appeared, and thus that the first husband was yet in a position to contest jurisdiction. The court stated,[18] "For until Florida's jurisdiction is shown to be vulnerable, Vermont may not relitigate the issue of domicile on which the Florida decree rests". Thus, the language of the second *Williams* case was flaunted in the face of its writer. With this the court remanded the cause to Vermont for proceedings not inconsistent with its opinion.

Dedication to a cause is the highest of judicial attributes. But one sometimes wonders whether this characteristic is being sacrificed rather than nurtured in the give and take of judicial pugilistics. In any event the attorney now must ascertain that the court is clearly setting forth the facts showing lack of jurisdiction in the divorce state which will justify its refusal to recognize the divorce collaterally attacked. This is so despite the fact that such a refusal could be based on no other findings than that those considerations are present. Perhaps placing the responsibility on the attorney is as it should be. Realizing the failure of federal legislation to determine the manner in which full faith and credit is to be realized, Mr. Justice Robert Jackson earlier

[14] Sherrer v. Sherrer, 334 U. S. 343 (1948).
[15] Coe v. Coe, 334 U. S. 378 (1948).
[16] Johnson v. Muelberger, 340 U. S. 581 (1951).
[17] Cook v. Cook, 116 Vt. 374, 76 A. 2d 593.
[18] Cook v. Cook, 72 S. Ct. 157, 160 (1951) The court felt entitled to assume a limited view because of the burden placed upon one assailing the decree of a sister state by *Williams v. State of North Carolina,* 325 U. S. 226 at page 234, and also by *Esenwein v. Commonwealth of Pennsylvania* ex rel. Esenwein, 325 U. S. 279, 280-281 (1945). The court further stated that it dealt only with the presumption not with the issues on which the Vermont court made its findings. *Cook v. Cook,* supra, at page 160.

has registered such a charge to the legal profession.[19] In fact he considers the Full Faith and Credit Clause as "peculiarly the attorneys' clause".[20]

GEORGE F. BARBARY.

DIVORCE FORMS CORRECTED

It has been called to the attention of the subcommittee on District Court Forms, that the acceptance of service to be used in divorce litigation shown at page 95 of Volume XXIX, Number 3, Dicta (March, 1952), is incorrect in that it does not comply with Rule 4 (i) 5, of the Colorado Rules of Civil Procedure, which provides as follows:

> "Proof of service of process shall be made as follows: . . . . by the admission or waiver of service by the person to be served, *duly acknowledged.*"

In view of this error, waiver of service to be used in divorce litigation should read as follows:

"STATE OF COLORADO,
CITY AND COUNTY OF *DENVER* } ss.

I, *Reginald Phinehas Hpuiwmn,* being duly sworn, state that I am of full age, am the defendant in this action, have received a copy of the summons and complaint and accept service thereof, and state that I am not now in the Military Service.

Reginald Phinehas Hpuiwmn.

Subscribed, sworn to and acknowledged before me this *15th* day of *February, 1952.*

Sally N. Doakes,
Notary Public.

My commission expires *September 20, 1953.*"

Royal C. Rubright *chairman,*
Forms Standardization Committee.

Donald M. Lesher, *Chairman*
Subcommittee on District Court Forms.

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[19] Robert H. Jackson, "*Full Faith and Credit,*" 45 *Col. L. Rev.* 1, 33.

[20] While the 1948 Judiciary Code (28 U. S. C. 1738) adds some certainty to the situation, it probably does not relieve the attorney of the burden referred to by Justice Jackson.