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CONFLICT OF LAWS-APPLICATION OF ESTOPPEL TO INVALID DIVORCES-MEXICAN "MAIL ORDER" DIVORCE

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CONFLICT OF LAWS—APPLICATION OF ESTOPPEL TO INVALID DIVORCES—MEXICAN "MAIL ORDER" DIVORCE—Plaintiff and defendant, who wished to marry, persuaded defendant's wife to agree to a Mexican "mail order" divorce. The spouses executed and delivered powers of attorney to counsel residing in Mexico, where a divorce was granted and the decree mailed back to New York. Neither of the parties went to Mexico, nor did the decree of the Mexican court recite presence or domicile of either spouse. Upon learning that the decree had been granted, plaintiff and defendant were married in Virginia and then returned to New York, their state of domicile. In 1946, the plaintiff commenced this action, asking for separation and support, alleging that she was duly married to the defendant and that he had abandoned her. The trial court found for the plaintiff, and this judgment was affirmed by the Appellate Division on the ground that the defendant was estopped to impeach the divorce decree obtained by him in the foreign jurisdiction.[1] On further appeal, *held*, reversed. Inasmuch as there was no "color of jurisdiction" to support the Mexican decree, neither party having appeared in the proceeding, defendant was not estopped to show its invalidity. *Caldwell v. Caldwell*, (N.Y. 1948) 81 N.E. (2d) 60.

It is well settled that a party must be domiciled within the jurisdiction before a court will be said to have the authority necessary to grant a divorce which will

[1] 272 App. Div. (N.Y.) 1025, 73 N.Y.S. (2d) 683 (1947).

be recognized in other jurisdictions.[2] To avoid harsh results which might otherwise occur, however, several states invoke another rule whereby a participant in an invalid proceeding is estopped to assert the infirmity of the decree.[3] Thus it has been held that when a wife, knowing her husband was not a resident of the foreign jurisdiction, appeared in the foreign action and admitted her husband's alleged residence, she could not later claim dower in his estate on the ground of invalidity of the divorce, although the decree was in fact void.[4] Also, when both parties appear in the foreign jurisdiction, the party who obtains the decree cannot thereafter impeach it in another state in order to bring an action of alienation of affection,[5] or in order to share in the estate of the other party to the prior divorce proceedings.[6] Although one of the parties does nothing to obtain the invalid decree, the rule will apply if he takes advantage of the decree by remarrying, the policy here apparently being that the estoppel should be invoked to protect the second wife.[7] The estoppel doctrine was carried to its utmost limits in one case where the wife returned after a three year absence and asserted she had obtained a divorce; she was held to be estopped later to deny the existence of a decree although it appeared that there had been none.[8] The courts of New York, following the general policy of estoppel illustrated by the foregoing examples, often have refused to allow a party to assert the invalidity of a foreign decree.[9] On the other hand, the principal case indicates the distinction which has been made in the case of a "mail order" divorce, wherein neither spouse was within the jurisdiction

[2] 1 BEALE, CONFLICT OF LAWS 116 (1935); Williams v. North Carolina, 325 U.S. 226, 65 S.Ct. 1092 (1945); Bell v. Bell, 181 U.S. 175, 21 S.Ct. 551 (1901).

[3] Jacobs, "Attack on Decrees of Divorce," 34 MICH. L. REV. 749 at 769 (1936): "What the courts really mean . . . is that, due to the circumstances of the particular case, it would be both unfair and inequitable for the party obtaining the divorce to attack it . . . . By the divorce his election has been made." See also Dorby, "Obligation of Invalid Divorce on Person Who Induced It and Married Party Procuring It," 12 N.Y. UNIV. L.Q. 31, 39 (1934).

[4] Ferry v. Troy Laundry Co., (D.C. Ore. 1917) 238 F. 867.

[5] Bledsoe v. Seaman, 77 Kan. 679, 95 P. 576 (1908).

[6] Dale v. Carson, 141 Okl. 105, 283 P. (2d) 1017 (1929); Chapman v. Chapman, 224 Mass. 427, 113 N.E. 359 (1916).

[7] Cummings v. Huddleston Adm., 99 Okl. 195, 226 P. 104 (1924); Marvin v. Foster, 61 Minn. 154, 63 N.W. 484 (1895). The same result was reached where the estopped party did not know of the invalidity of the prior divorce at the time of the second marriage. See Arthur v. Israel, 15 Colo. 147, 25 P. 81 (1890).

[8] Edgar v. Richardson, 33 Ohio St. 581 (1878).

[9] Lacy v. Lacy, 38 Misc. 196, 77 N.Y.S. 235 (1902); Starbuck v. Starbuck, 173 N.Y. 503, 66 N.E. 193 (1903); Shrady v. Shrady, 47 Misc. 333, 95 N.Y.S. 991 (1905); Kaufman v. Kaufman, 177 App. Div. 162, 163 N.Y.S. 566 (1917). See particularly Krause v. Krause, 282 N.Y. 355 at 359, 26 N.E. (2d) 290 (1940), "To refuse to permit this defendant to escape his obligations to support plaintiff does not mean that the courts of this State recognize as valid a judgment of divorce which necessarily is assumed to be invalid in the case at bar, but only that it is not open to defendant in these proceedings to avoid the responsibility which he voluntarily incurred." This language was the basis of the lower court's decision in the principal case.

of the court entertaining the divorce proceeding.[10] Though the distinction is here couched in terms of a lack of "color of jurisdiction" in the foreign court, this seems merely a misleading way of stating that there is a point beyond which the New York policy prohibits recognition of invalid decrees.[11]

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[10] Vose v. Vose, 280 N.Y. 779, 21 N.E. (2d) 616 (1939); Querze v. Querze, 290 N.Y. 13, 47 N.E. (2d) 423 (1943).

[11] Other states refuse to recognize the "mail order divorce" on the grounds of public policy. Golden v. Golden, 41 N.M. 356, 68 P. (2d) 928 (1937); Kegley v. Kegley, 16 Cal. App. (2d) 216, 60 P. (2d) 482 (1936); Bergman v. Bergman, 287 Mass. 524 at 529, 192 N.E. 86 (1934); "To recognize the Mexican divorce as valid in the circumstances here disclosed would frustrate and make vain all state laws regulating and limiting divorce. By such recognition state control over the marriage relation would be destroyed."