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Conflict of Laws -- Full Faith and Credit -- Establishment of Foreign Decrees as Local Decrees

CASES NOTED

CONFLICT OF LAWS—FULL FAITH AND CREDIT—ESTABLISHMENT OF FOREIGN DECREES AS LOCAL DECREES

A New York court granted a decree of separate maintenance to the wife. The husband subsequently sued for divorce in Nevada and obtained a default judgment on substituted service. The wife then brought suit in Nevada to assert her New York decree. *Held,* a Nevada court, under the full faith and credit clause, must recognize the validity of the decree of the New York court for all payments to the wife, including those accruing after the Nevada divorce, even though under Nevada law a divorce cuts off all liability under a pre-existing separate maintenance decree. *Summers v. Summers,* 241 P.2d 1097 (Nev. 1952).

The full faith and credit clause,[1] implemented by an Act of Congress,[2] substituted a command for the earlier principles of comity and thus altered the sovereign status of the states. Prior to the first *Williams* case,[3] it was not deemed a denial of full faith and credit for a state to refuse to recognize a decree of divorce granted in a sister state by constructive service of process on the defendant spouse.[4] However, the second *Williams* case[5] held that it was *not* a denial of full faith and credit for a sister state to make separate inquiry into the matter of jurisdiction of the court granting the divorce. This right of inquiry was later restricted to cases wherein the defendant spouse had not made a personal appearance.[6]

In *Estin v. Estin*[7] it was held that a New York court was not violating the full faith and credit clause by enforcing its own separate maintenance decree issued prior to a divorce decree of a sister state, even though the law of the sister state was that a final divorce decree terminated all liability under a prior separate maintenance decree. The court ruled that the state of the domicile of one spouse may not, through the use of constructive service, enter a decree that changes every legal incidence of the marriage relationship.[8] The court left open the question whether the separate main-

1. U. S. CONST., Art. IV, § 1.
2. 1 STAT. 122 (1790), 28 U.S.C. § 687 (1948).
3. Williams v. North Carolina, 317 U.S. 287 (1942) *reversed* Haddock v. Haddock, *infra* n. 4.
4. Haddock v. Haddock, 201 U.S. 562 (1906) (decided that New York courts need not recognize a divorce granted a husband in Connecticut by substituted service with respect to a New York wife).
5. Williams v. North Carolina, 325 U.S. 226 (1945).
6. Sherrer v. Sherrer, 334 U.S. 343 (1948).
7. Estin v. Estin, 334 U.S. 541 (1948).
8. *Id.* at 541, 546.

tenance decree would similarly be entitled to full faith and credit in Nevada courts.[9]

Some courts hold that a valid foreign decree of absolute divorce, even though obtained by constructive service, terminates the obligation of the husband to pay separate maintenance under a local decree previously rendered, as to installments accruing after the foreign divorce decree.[10] This is based upon the reasoning that separate maintenance cannot be separated from the marital status, and if that status is validly dissolved, whether by a foreign or local decree for absolute divorce, the incident of that status necessarily dies with it. Other courts hold that a valid foreign decree of divorce granted by constructive service does not terminate a local separate maintenance decree.[11] This view is based on the theory that the marital status is separable from its incidents, such as the obligation to pay maintenance.

It has been held that a former wife may successfully sue, on diversity of citizenship, on a *judgment* granted by a state court for accrued payments under a separate maintenance decree, where subsequent to the separate maintenance decree the husband obtained a divorce through the use of substituted service.[12] The court reasoned that the husband could have appeared in the proceedings leading to the judgment and pleaded any defenses he might have had. It is generally conceded by the courts that a decree for future installments of alimony not yet due is not, as to such installments, enforceable under the requirements of full faith and credit.[13] Generally it has been held under principles of comity, as well as public policy, that a foreign decree may be established as a local decree by asserting it in the local court.[14] In such a case the husband, since the wife is seeking equitable relief, may present any defenses which exist in his favor,[15] such as the existing law of the state that an absolute divorce ends the right to alimony under the former separate maintenance decree.

In the instant case the plaintiff did not reduce the accrued payments to *judgment* in the New York court. Instead, she established the decree of separate maintenance obtained in New York as a local decree in Nevada. It is submitted that in so doing the local law of Nevada should have been applied. Under Nevada law an absolute divorce bars all future obligations under a separate maintenance decree. It appears that the Nevada court

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9. *Id.* at 549.

10. *E.g.*, Cardinale v. Cardinale, 8 Cal.2d 762, 68 P.2d 351 (1937); State v. Lynch, 42 Del. 95, 28 A.2d 163 (1942); Shaw v. Shaw, 332 Ill., App. 442, 75 N.E.2d 411 (1947); Rosa v. Rosa, 296 Mass. 271, 5 N.E.2d 417 (1936); Rodda v. Rodda, 185 Ore. 140, 200 P.2d 616 (1948).

11. *E.g.*, Estin v. Estin, 334 U.S. 541 (1948); Kreiger v. Kreiger, 334 U. S. 555 (1948); Bennett v. Tomlinson, 206 Iowa 1075, 221 N.W. 837 (1928) Schoen v. Schoen, 181 Misc. 727, 47 N.Y.S.2d 942 (Sup. Ct. 1944).

12. Bassett v. Bassett, 141 F.2d 954 (9th Cir.), *cert. denied* 323 U.S. 718 (1944).

13. Sackler v. Sackler, 47 So.2d 292, 294 (Fla. 1950).

14. Cousineau v. Cousineau, 155 Ore. 184, 63 P.2d 897 (1936); Biewend v. Biewend, 17 Cal.2d 108, 109 P.2d 701 (1941).

15. Sackler v. Sackler, 47 So.2d 292, 295 (Fla. 1950).

confused the conflict-of-laws rules applicable to foreign decrees under the full faith and credit clause with the law to be applied where foreign decrees for separate maintenance are established as local decrees. In so doing, it is submitted that the Nevada court made an unnecessary extension of the doctrine laid down in the *Estin* case.[16]

CONSTITUTIONAL LAW — PENALTY PROVISIONS UNDER THE FEDERAL REGULATION OF LOBBYING ACT

The National Association of Manufacturers sought to enjoin prosecutions against them by the Government for violations of the Federal Regulation of Lobbying Act, contending that the penalty provision[1] infringed constitutional rights of freedom of speech and petition. *Held*, the penalty contravenes the First Amendment of the Constitution guaranteeing freedom of speech and petition. *National Asociation of Manufacturers of the United States v. McGrath*, 103 F. Supp. 510 (D.D.C. 1952).

The Congress seldom deprives a convicted person of either his Civil or Constitutional rights as the penalty for violation of a statute, preferring to rely on the formula of fine or imprisonment.[2] However, the last twenty years have evidenced the increased use of punishment designed to regulate a particular economic or political situation without resort to imprisonment.[3] Because of the singular nature of the problem involved, the Federal Regulation of Lobbying Act depends for its effectiveness on the prohibition from influencing legislation for three years, those lobbyists convicted for noncompliance.[4] This sanction is a type which deprives a convicted person of a Constitutional right as the penalty for his crime.[5] The most frequently expressed grounds for holding a penal provision, unconstitutional as to a litigant challenging the validity of the legislation, is that the penalty prevents

16. 334 U.S. 541 (1948).

1. 60 STAT. 839, 2 U.S.C. §§ 261-270 (1946). (The penalty clause provides for a fine and imprisonment. In addition, it provides that any person so convicted shall be prohibited from appearing in a Congressional committee and from attempting to influence directly or indirectly, the passage or defeat of any proposed legislation for a period of three years. 310 [b]).

2. Statutes covering similar problems: Corrupt Practices Act, 43 STAT. 1070 (1925), 2 U.S.C. § 241 (1927) and 18 U.S.C. § 208 (1950) (registration provisions identical to Lobbying Act, but sanction is fine and imprisonment); The Voorhis Act, 54 STAT. 1201 (1940), 46 U.S.C. 643(b) (1944) (fine and imprisonment); Foreign Agents Registration Act, 52 STAT. 631 (1938), *as amended*, 56 STAT. 248 (1942), 22 U.S.C. § 618 (1952) (fine and imprisonment).

3. 54 STAT. 1141 (1940); 8 U.S.C. § 706 (1942) (deserting naturalized citizen); Nelson v. Secretary of Agriculture, 133 F.2d 453 (7th Cir. 1943) (suspension); Wright v. Securities and Exchange Commission, 112 F.2d 89 (2d Cir. 1940) (expulsion); Farmers' Livestock Comm. Co. v. United States, 54 F.2d 375 (E.D. Ill. 1931) (suspension).

4. 47 COL. L. REV. 98, 109 (1947), n. 66. For the actual effectiveness of this sanction in the Federal and State Lobbying Act see 27 NEB. L. REV. 123 (1947).

5. The right of petition is ". . . a simple, primitive, and natural right. As a privilege it is not even denied in addressing the Deity." 1 COOLEY'S CONSTITUTIONAL LIMITATION 738 (5th ed.).