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Conflict of Laws -- Domestic Relations -- Conflicting Decrees in Sister States

Rhode Island Bar Ass'n v. Automobile Service Ass'n case,[14] the court determined that contempt should be invoked only when there is an evident need for summary action to protect the public and the jurisdiction of the court. It is not to be encouraged for punishing trivial or unimportant instances of illegal practice of the law.[15]

In the absence of a regulatory statute the contempt citation of the court is substantially the only method for punishing unauthorized practice, but where other remedies are available and efficient, they should first be invoked.[16] Criminal contempt is a summary proceeding and, as such, dangerous. Where a statute makes the unauthorized practice of law a crime, as in the instant case, summary action is merely an alternative method, the results of which might be unjust when compared with the ordinary protection afforded in the processes of the criminal courts.[17]

CONFLICT OF LAWS — DOMESTIC RELATIONS — CONFLICTING DECREES IN SISTER STATES

Petitioner divorced respondent in Illinois in 1939, and was awarded alimony in installments for as long as she should remain unmarried. In 1944, in Nevada, petitioner married one Henzel who had obtained a Nevada divorce from a resident of New York. After this Nevada decree had been declared void[1] by a New York court, petitioner obtained a New York decree of annulment of her marriage to Henzel,[2] and then married a third man. Petitioner then filed suit, asserting diversity jurisdiction, in district court in Illinois, for unpaid installments of alimony from respondent for the period from the Nevada marriage to her third presumably valid marriage in New York. *Held*, on certiorari, that the New York decree of annulment was entitled to full faith and credit and the Nevada decree of divorce was not, but that the effect of the annulment on respondent's obligation to pay alimony should be determined in the district court under Illinois law. *Sutton v. Leib*, 72 Sup. Ct. 398 (1952).

The problem suggested in the instant case is one whose growth may be traced from the second *Williams*[4] case, which affirmed that it was not a denial of full faith and credit[5] for a sister state to make separate inquiry

14. 255 R.I. 122, 179 Atl. 139 (1935).
15. *Id.* at 129, 179 Atl. at 142.
16. Rhode Island Bar Ass'n v. Automobile Service Ass'n, 55 R.I. 122, 179 Atl. 139 (1935); *In re* Bugasch, 12 N.J. Misc. 788, 175 Atl. 110 (1934).
17. People *ex rel.* Chicago Bar Ass'n v. Goodman, 366 Ill. 346, 366, 8 N.E.2d 941, 951, *cert. denied*, 302 U.S. 728, *rehearing denied*, 302 U.S. 777 (1937) (dissent); *In re* Baker, 85 A.2d 505, 515 (N.J. 1951) (dissent).

1. By means of a separate maintenance proceeding instituted by Henzel's first wife.
2. This judgment declared that petitioner's marriage to Henzel was "null and void" for the reason that he "had another wife living at the time of said marriage."
3. 188 F.2d 766 (5th Cir. 1951).
4. Williams v. North Carolina, 325 U.S. 226 (1945).
5. U. S. CONST. Art. IV, § 1.

into the jurisdictional facts of a foreign divorce. This right of separate inquiry permitted a state to declare invalid, on grounds of lack of jurisdiction, domestic decrees of a sister state, although this right was later precluded[6] in cases wherein the defendant spouse had made voluntary appearance.[7]

Then came the concept of the "divisible divorce,"[8] by which the property rights of a marriage were allowed to be separated from the status itself. Thus, even where a foreign *ex parte* divorce was valid, an apparently conflicting and contradictory judgment of another jurisdiction was held to be enforcable in the courts of that jurisdiction:[9] *e.g.*, a separate maintenance decree was enforceable even though the husband had secured an absolute divorce in another jurisdiction. Even in the case of conflicting findings of jurisdiction, however, the right of collateral attack has been denied to persons who were not parties to the action, such as a child of the former marriage.[10]

In the case of conflicting domestic decrees of two sister states, which of them should be given full faith and credit by a third state? It must be noted at the outset that this situation occurs rarely, and the handful of cases must be viewed with caution. The decision may rest upon some rules of preference for one judgment over another, or it may depend upon the court's interpretation of the substantive law which gave rise to the judgments. An example of the latter method of decision is seen in a case[11] wherein a New York separate maintenance decree was sought to be enforced in California against a husband who had a Nevada divorce. There it was held that the Nevada decree prevented the enforcement of the New York decree on substantive grounds—that is, that separate maintenance depended on the continuance of the marital relationship.[12]

The former criteria are used in a group of cases which set forth certain temporal standards of preference. In *Trienes v. Sunshine Mining Co.*[13] there were conflicting judgments between a Washington state court and a federal court in Idaho as to the ownership of stocks. The Supreme Court implied that the proceedings latest in time were those to which full faith and credit must be given.[14] The same rule appears to have been held good

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6. Sherrer v. Sherrer, 334 U.S. 343 (1948); Coe v. Coe, 334 U.S. 378 (1948).
7. But *Sherrer* may not have solved even this problem. See de Marigny v. de Marigny, 193 Misc. 189, 81 N.Y.S.2d 228 (N.Y. Sup. Ct. 1948).
8. Estin v. Estin, 334 U.S. 541 (1948).
9. But the *Sherrer* rule is followed where the wife appears in the foreign proceeding, even though the issue of separate maintenance is not raised. Lynn v. Lynn, 302 N.Y. 193, 97 N.E.2d 748 (1951).
10. Johnson v. Muelberger, 340 U.S. 581 (1951).
11. Chirgwin v. Chirgwin, 26 Cal. App. 2d 506, 79 P.2d 772 (1938).
12. *Contra*: Estin v. Estin, 334 U.S. 541 (1948).
13. 308 U.S. 66 (1939).
14. *Accord*: Hartman v. Time, Inc., 166 F.2d 127 (2d Cir. 1948) (" . . . that it is the judgment in the proceedings latest in time which is the one that must be given the full faith and credit").

in a California case[15] in which the court was called upon to decide between conflicting decrees of New York and Philippine Islands courts. Certain other cases seem to have taken no cognizance of this rule.[16] The "latest in time" solution has been hinted at in the *Restatement of Conflicts*,[17] and inchoately appears in two older cases.[18]

There have not yet evolved any clear standards for the determination of such issues as these—nor even any clear cut divisions of authority. The instant court, while giving other reasons for its decision, actually moved along the same lines as the "latest in time" cases. This is a particularly muddy portion of a whole field greatly in need of clarification, and hope is expressed that the Illinois district court in its forthcoming decision "may let in more light to the student."[19]

CONSTITUTIONAL LAW — DIRECT ACTION STATUTE VS. "NO ACTION" CLAUSE — IMPAIRMENT OF CONTRACT

The plaintiff brought suit directly against a foreign insurer for injuries resulting from the use of the insured's product. In accordance with a Louisiana statute, the defendant had filed written consent to be sued directly as a condition precedent to doing business in that state. Upon suit, the defendant moved to dismiss on the ground that the policy, valid in the state where made, stipulated that the insurer could not be sued for indemnification until the claim against the insured was liquidated. *Held*, that the statute depriving defendant of this valuable contract right is unconstitutional. *Bish v. Employers' Liability Assur. Corp. Ltd.*, 102 F. Supp. 343 (W.D. La. 1952).

The problem of whether a state can enlarge contractual obligations made outside its borders appears when dealing with foreign corporations doing local business. While a state may completely exclude foreign corporations,[1] impose certain conditions on their entry and operation[2] and regulate their local business,[3] the Fourteenth Amendment[4] forbids state legislation

15. Perkins v. Benguet Consolidated Mining Co., 55 Cal. App. 2d 720, 132 P.2d 70 (1939); see McKee v. McKee, 239 Iowa 1093, 32 N.W.2d 379 (1948)) (Texas modification of Iowa decree entitled to full faith and credit); Darraugh v. Carrington, 62 N.Y.S.2d 241 (App. Div. 1946).

16. Hammel v. Britton, 19 Cal. 2d 72, 119 P.2d 333 (1942) (California court refused full faith and credit to Colorado's setting aside of a Colorado decree upon which a California judgment was based); Passailaigue v. Herron, 38 F.2d 775 (5th Cir. 1930). (Federal court in Florida refused to recognize a Louisiana decree cancelling a Louisiana divorce).

17. RESTATEMENT, CONFLICT OF LAWS § 450, comment *b*, illustration 1 (1934).

18. Piedmont Coal Co. v. Green, 3 W. Va. 54, 98 Am. Dec. 799 (1868); Peet v. Hatcher, 112 Ala. 514, 21 So. 711 (1896).

19. STORY, THE CONFLICT OF LAWS ix (3d ed. 1846).

1. Bothwell v. Buckabee-Mears Co., 275 U.S. 274 (1927).
2. Robertson v. California, 328 U.S. 440 (1946).
3. Palmetto Fire Ins. Co. v. Connecticut, 272 U.S. 295 (1926).
4. U. S. CONST. AMEND. XIV, § 1.