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Migratory Divorces since *Williams v. North Carolina*

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gage of brands and marks, as such, but only when specifically provided for in the mortgage. Such statutes, then, only serve to accentuate the novel features presented by Wyo. Comp. Stat. 1945 Sec. 59-102.

JOSEPH F. MAIER

MIGRATORY DIVORCES SINCE WILLIAMS V. NORTH CAROLINA

In 1940, Otis Williams and Lillie Hendrix, domiciliaries of North Carolina, went to Nevada to obtain divorces from their respective spouses. After satisfying the residence requirement under the Nevada statute, each of them obtained a divorce. Both divorces were granted on constructive service. They married and returned to North Carolina where they lived together as husband and wife until they were convicted of bigamous cohabitation. The North Carolina Supreme Court sustained the convictions.¹ The decision was based on *Haddock v. Haddock*² which held that the state of New York, the matrimonial domicile where the wife still resided, need not give full faith and credit to a foreign decree obtained by the husband who wrongfully left his wife in the matrimonial domicile, service on her having been obtained by publication.

In a 1942 decision known as *Williams v. North Carolina I*,³ the Supreme Court of the United States reversed a judgment of conviction by expressly overruling *Haddock v. Haddock* and holding that if either spouse is domiciled in a state where a divorce is granted upon constructive service, the divorce must be recognized in other states irrespective of whether it was rendered by a court of the matrimonial domicile. The United States Supreme Court had previously said, in *Bell v. Bell*,⁴ that no valid divorce could be decreed, on constructive service, by courts of a state in which neither party was domiciled. The rule of *Bell v. Bell* is still followed in modern decisions,⁵ but the United States Supreme Court refused to consider this rule in *Williams I* because the State of North Carolina did not seek to sustain the judgment on that ground.⁶

In 1944, the Supreme Court of North Carolina again sustained the decision of bigamous cohabitation in the case of *State v. Williams*.⁷ The court looked into the question of domicil and based the decision on *Bell v. Bell* instead of *Haddock v. Haddock* by reasoning that, since the jury found that the petitioners were actually domiciled in North Carolina when they brought their actions for divorce in Nevada, they had not acquired a bona fide domicil in Nevada and therefore the foreign decrees were void in North Carolina. In 1945, the Su-

1. *State v. Williams*, (1941) 220 N. C. 445, 17 S. E. (2d) 769.

2. (1906) 201 U. S. 562, 26 Sup. Ct. 525, 50 L. Ed. 867, 5 Ann. Cas. 1.

3. (1942) 317 U. S. 287, 63 Sup. Ct. 207, 87 L. Ed. 279, 143 A. L. R. 1273.

4. (1900) 181 U. S. 175, 21 Sup. Ct. 551, 45 L. Ed. 804.

5. *Evans v. Evans*, (D. C. C. A. 1945) 149 F. (2d) 831, Cert. denied (1945) 326 U. S. 738, 66 Sup. Ct. 48, 90 L. Ed. 43; *Cohen v. Cohen*, (Mass. 1946) 64 N. E. (2d) 689, 163 A. L. R. 362; *Hall v. Hall*, (Miss. 1946) 24 So. (2d) 347; *Reed v. State*, (Tex. Cr. App. 1944) 187 S. W. (2d) 660.

6. *Williams v. North Carolina*, (1942) 317 U. S. 287, 63 Sup. Ct. 207, 87 L. Ed. 279, 143 A. L. R. 1273.

7. (1944) 224 N. C. 183, 29 S. E. (2d) 744.

preme Court of the United States, on a second appeal, known as *Williams v. North Carolina II*, affirmed the conviction and held that, notwithstanding the full faith and credit clause of the Federal Constitution, a decree of divorce rendered in one state may be impeached collaterally and denied recognition in another, upon the ground that neither of the parties had a bona fide domicil at the divorce forum.⁸

Since the *Williams I* decision, a foreign divorce obtained by constructive service of process upon a non-resident defendant has been held to be valid and entitled to extraterritorial recognition, if other jurisdictional requisites are present.⁹ As a result of the *Williams II* decision, many, who had placed a feeling of security in their foreign divorce, have returned home to find themselves embroiled in litigation. For example, in *Hall v. Hall*,¹⁰ a doctor left his wife in Mississippi and proceeded to Nevada where he passed the medical examination required to practice medicine in Nevada and actually engaged in such practice pending the divorce hearing. After the Nevada divorce was granted, the doctor returned to Mississippi and resumed his practice there. The Mississippi Supreme Court found that a bona fide domicil had not been established in Nevada and refused to give full faith and credit to the Nevada decree. In *Evans v. Evans*,¹¹ the United States Court of Appeals followed *Williams II* by stating that the finding of the Nevada court as to existence of domicil in that State, in an uncontested case, is not binding upon the courts of the District of Columbia under the full faith and credit provision of the Federal Constitution. *White v. White*¹² fell in line with *Williams II* by stating that, where the conduct of the husband bore the earmarks of a trip to Florida for the sole purpose of securing a divorce with no intention of establishing a permanent residence, the Florida decree was not entitled to full faith and credit and was no defense in a suit by the wife for maintenance in the District of Columbia. However, the burden of proving the invalidity of the foreign decree is upon the one assailing it as such decree is considered prima facie valid.¹³ Where the burden of proof is not met, the divorce is entitled to recognition. In *Davis v. Davis*,¹⁴ the foreign decree was upheld where the evidence showed that the husband was affected with tuberculosis and that he had gone to Nevada for his health and not for the sole purpose of obtaining a divorce, in spite of the fact that he remarried as soon as the divorce was granted. The report of this case does not indicate whether or not the husband returned to California to live.

Black, J., in his dissenting opinion in *Williams II*, asserted that, "Statistics indicate that approximately five million divorced persons are scattered through-

8. (1945) 325 U. S. 226, 65 Sup. Ct. 1092, 89 L. Ed. 1577, 157 A. L. R. 1366.

9. *Calhoun v. Calhoun*, (1945) 70 Cal. App. (2d) 233, 160 P. (2d) 923; *Herman v. Herman*, (N. Y. Sup. Ct. 1945) 57 N. Y. S. (2d) 614; *Re Codling*, (1945) 23 Wash. (2d) 261, 160 P. (2d) 635.

10. (Miss. Sup. Ct. 1946) 24 So. (2d) 347.

11. (D. C. C. A. 1945) 149 F. (2d) 831, Cert. Denied (1945) 326 U. S. 738, 66 Sup. Ct. 48, 90 L. Ed. 43.

12. (App. D. C. 1945) 150 F. (2d) 157.

13. *Herman v. Herman*, (N. Y. Sup. Ct. 1945) 57 N. Y. S. (2d) 614; *Dalton v. Dalton* (1945) 270 App. Div. 269, 59 N. Y. S. (2d) 68.

14. (1945) 71 Cal. App. (2d) 150, 162 P. (2d) 62.

out the forty-eight states. More than 85% of these divorces were granted in uncontested proceedings. Not one of this latter group can now retain any feeling of security in his divorce decree."¹⁵ This statement implies that the contested out-of-state divorces are free from collateral attack unless the contested hearing was on the jurisdictional fact of domicile. In 1938, the United States Supreme Court in the case of *Davis v. Davis*,¹⁶ held that, if the defendant makes an appearance for the purpose of contesting the jurisdiction of the divorce court for lack of domicile in the divorce forum, and that issue is specifically considered and decided in favor of the existence of such a domicile, the decree is entitled to foreign recognition. This rule has since been applied in *Pratt v. Miedema*.¹⁷ The Supreme Court of Michigan in that case stated that a divorce decree by a Nevada court in favor of the wife, in a suit where the husband appeared and claimed that the wife had not secured a bona fide domicile in Nevada, was res judicata of the issue of the wife's fraud in obtaining residence in Nevada. Further, that under the full faith and credit clause of the Federal Constitution, the decree must be respected in the Michigan courts in the wife's suit to recover accrued installments of alimony under such decree. The Supreme Court of Missouri applied the same rule in *Keller v. Keller*¹⁸ by holding that, where the defendant was present and had the opportunity to raise the issue of domicile, the Nevada decree was conclusive on that issue. The record of this case does not disclose that any contest on the question of domicile was actually had which implies that, since the wife had her day in court and the court found that the husband was a bona fide resident of Nevada, the husband's bona fide residence was res judicata, and the Missouri courts were bound to give full faith and credit to the divorce decree. In *Shea v. Shea*,¹⁹ the Appellate Division of the New York Supreme Court clearly stated that a foreign divorce decree may not be attacked collaterally where the defendant personally appeared and the issue of residence was contested in the foreign jurisdiction or where the opportunity was present to do so and the issue was not litigated.

On the other hand, some have taken the view that, even where the defendant has made a personal appearance in the foreign divorce court, the divorce decree may still be collaterally attacked in a later suit by the defendant. In *Giresi v. Giresi*,²⁰ the Court of Errors and Appeals of New Jersey allowed the wife to challenge the validity of a Nevada divorce decree on the ground that the husband was not a bona fide resident of Nevada, notwithstanding the fact that the wife appeared generally in the Nevada suit by filing an answer and also accepting money for the suit that had been awarded by the Nevada Court. The decision was based on *Feickert v. Feickert*,²¹ a prior New Jersey decision, which set forth the view that, while ordinarily one may not challenge the jurisdiction

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15. *Williams v. North Carolina*, (1945) 325 U. S. 226, 65 Sup. Ct. 1092, 89 L. Ed. 1577, 157 A. L. R. 1366.
 16. (1938) 305 U. S. 32, 59 Sup. Ct. 3, 83 L. Ed. 26.
 17. (1945) 311 Mich. 64, 18 N. W. (2d) 279, Cert. denied (1945) 326 U. S. 739, 66 Sup. Ct. 49, 90 L. Ed. 43.
 18. (1944) 352 Mo. 877, 179 S. W. (2d) 728.
 19. (1946) 294 N. Y. 904, 60 N. Y. S. 823.
 20. (1945) 137 N. J. Eq. 336, 44 A. (2d) 345.
 21. (1926) 98 N. J. Eq. 444, 131 Atl. 576.

of a court after the entry of a general appearance, divorce decrees in another state present an exception in that, in such cases, the public is a party and the jurisdictional defect of lack of domicile cannot be waived by appearance of the parties where neither are domiciled in the divorce forum. The Supreme Judicial Court of Massachusetts, in *Cohen v. Cohen*,²² followed the rule of the Giresi case by stating that the filing of an appearance by the defendant in a divorce suit in a state in which neither party is domiciled does not cure the jurisdictional defect. The court explained that the rule of *Davis v. Davis*²³ does not apply unless the jurisdictional facts are actually litigated even though the wife did make an appearance, file an answer and a cross complaint, and cause witnesses to appear by deposition.

Mr. Thomas Reed Powell of the Harvard Law School has suggested the following safety rules for securing a divorce under the present state of the law: "Those who wish the benefit of easier divorce laws must really live in states which have them. To be really safe, those who are newcomers should live on in those states after they have received their dispensation. If later they wish to live elsewhere, they should have some good reason for doing so, a reason that will not cast doubt on their earlier intention to make a home and dwell indefinitely in the divorcing state."²⁴

A recent survey revealed that the number of divorces reached a new peak in the United States in 1946. Reno, Nevada reported 11,000 in that city alone, which surpassed the the previous record of 8,500 set in 1945.²⁵ Since Wyoming is one of the three states with the most lenient residence requirements for divorce,²⁶ it is reasonable to assume that lawyers in this state are doing a good share of the "migratory" divorce business out of which most of the legal complications evolve. There are, no doubt, many fact situations in which Mr. Powell's safety rules are too cautious; but it would seem good policy for every lawyer to explain the possible unfortunate results to his client when consulted about such cases.

FLOYD D. GORRELL

"HEART BALM" LEGISLATION AND THE CONSTITUTION

In recent years there has been wide-spread acceptance of the view that the causes of action for breach of promise to marry, seduction, alienation of affections, and criminal conversation have afforded a fertile field for blackmail and extortion by means of manufactured suits in which the threat of publicity is used to force a settlement. Consequently fifteen states have passed what are

22. (Mass. 1946) 64 N. E. (2d) 689, 163 A. L. R. 362.

23. (1938) 305 U. S. 32, 59 Sup. Ct. 3, 83 L. Ed. 26.

24. Powell, and Repent at Leisure, (1945) 58 Harv. L. Rev. 930.

25. United Press Dispatch, Jan. 14, 1947.

26. Warren, Schouler Divorce Manual (1944) pp. 705-720.