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NOTE

Isle of Hispaniola: American Divorce Haven?

RECENT DEVELOPMENTS IN the Nationality and Nationalization laws of Mexico have abruptly curtailed the activities of "Mexican divorce mills," located south of the American border. As amended, Article 35 of the Mexican Code requires six months residence before a non-citizen can petition for a divorce.¹ The end of this arrangement, long a boon to Mexican tourism² and an accessible "haven" for discontented American couples, was merely a temporary impediment to those seeking foreign divorces. The two nations occupying the small island of Hispaniola, Haiti and the Dominican Republic, quickly filled this vacuum with statutory modifications to their existing laws on divorce. By means of comparison with the now defunct Mexican divorce laws and procedures, some light can be thrown on the validity of these Haitian and Dominican divorces for parties domiciled in the United States.

The particular concern of American divorce law has been the exclusive control over the marital relations of parties domiciled within the jurisdiction. The traditional basis for a court to gain this control has been the domicile of at least one of the parties within the territorial jurisdiction of the court.³ Justice Frankfurter speaking for the majority in *Williams II*⁴ stated that "(u)nder our system of law, judicial power to grant a divorce — jurisdiction, strictly speaking —, is founded on domicile."⁵

The concept of domicile, the place of an individual's significant social, political, and economic activity,⁶ introduces a legitimate state interest because of the status concept of the marital relation. Three parties play a role in the creation of the relationship: the husband, the wife, and the state. Since the institution of marriage is tradi-

¹ Amended Article 35 provides in pertinent part: "No judicial or administrative agency shall entertain a divorce . . . of a foreigner if not accompanied by the certificate that is issued by the Secretary of Gobernacion as to his legal residence in the country and that his immigration status permits it to be acquired."

² Divorce was reportedly a \$50 million-a-year business in Mexico that drew some 18,000 Americans annually. N.Y. Times, Feb. 13, 1972, § 10, at 1, col. 1 (city ed.).

³ *Williams v. North Carolina*, 317 U.S. 287 (1942).

⁴ *Williams v. North Carolina*, 325 U.S. 226 (1945).

⁵ *Id.* at 229; see also RESTATEMENT (SECOND) OF CONFLICT OF LAWS §§ 70, 71 (1971).

⁶ RESTATEMENT (SECOND) OF CONFLICT OF LAWS §§ 11, 12 (1971).

tionally of great legal importance, the dissolution through divorce or separation also concerns the state. As noted in *Williams II*, "divorce, like marriage, is of concern not merely to the immediate parties. . . . It also touches the basic interests of the society."⁷ As a result, the state courts have jealously guarded the right to determine the standards for divorce, and have generally refused to recognize foreign decrees purportedly terminating the marital relations between domiciliaries in that court's jurisdiction.⁸ Only New York has taken the view that domicile is not the only standard relevant to obtain jurisdiction for the divorce.⁹

Where a state court acquires proper jurisdiction, its decree or judgment is entitled to recognition by all sister states due to the constitutional mandate of Full Faith and Credit. This provision carries no force outside the national boundaries, but the principle of comity among nations may accomplish the same result.¹⁰ Comity indicates that "one court should ordinarily respect the judgment of another court in the absence of an obligation to do so. It is not so much a legal rule as a recognition of the need to cooperate among jurisdictions."¹¹ The principle has generally been adopted by American courts,¹² although not without limitation, as no court will enforce a judgment contrary to the strong public policy of the forum.¹³

COMPARISON OF THE RELEVANT FOREIGN LAW

Prior to the 1971 amendments, Mexican divorce law contained procedures for *ex parte*,¹⁴ mail order,¹⁵ and bilateral¹⁶ divorce ac-

⁷ *Williams v. North Carolina*, 325 U.S. 226, 230 (1945).

⁸ *Cocco v. Cocco*, 23 Conn. Supp. 275, 181 A.2d 266 (Super. Ct. 1962); *Commonwealth v. Doughty*, 187 Pa. Super. 499, 144 A.2d 521 (1958); *Ryder v. Ryder*, 2 Cal. App. 2d 426, 37 P.2d 1069 (Dist. Ct. App. 1934). See also Annot., 13 A.L.R. 3d 1419, 1425 (1967).

⁹ Howe, *The Recognition of Foreign Divorce Decrees in New York State*, 40 COLUM. L. REV. 373 (1940); Stimson, *Jurisdiction in Divorce Cases: The Unsoundness of the Domiciliary Theory*, 42 A.B.A.J. 222 (1956). *Rosenstiel v. Rosenstiel*, 21 App. Div. 2d 635, 253 N.Y.S.2d 206 (1st Dep't 1964).

¹⁰ RESTATEMENT (SECOND) OF CONFLICT OF LAWS § 98 (1971).

¹¹ H. CLARK, *LAW OF DOMESTIC RELATIONS IN THE UNITED STATES*, 478 (1st ed. 1968).

¹² See, e.g., *Hilton v. Guyot*, 159 U.S. 113 (1895).

¹³ RESTATEMENT (SECOND) OF CONFLICT OF LAWS § 90 (1971).

¹⁴ *Ex parte* divorce procedure is typified by physical presence of the plaintiff before the foreign jurisdiction in which plaintiff is not a domicil and by service on the defendant by either constructive or personal means, but defendant is not present at the hearing.

¹⁵ Mail order procedure, as implied by its name, is perfected by the use of the mail; parties send a power of attorney to respective foreign counsel, the parties make no court

tions. No American court has recognized the validity of either *ex parte* or mail order decrees,¹⁷ but the bilateral form, where both parties consent to the jurisdiction of the foreign court, has found limited acceptance. The Mexican example can be used to predict the success of bilateral actions in other countries. The practice in the state of Chihuahua, Republic of Mexico, was to provide two alternative bases for granting jurisdiction to a Mexican court over foreign citizens.¹⁸ Article 22 provided that a "judge is competent to entertain a contested divorce, in accord with the place of residence of the plaintiff."¹⁹ Proof of residence as outlined by Article 24 was satisfied by a certificate from a Municipal Register.²⁰ In effect, the residence is established by the party signing the Municipal Register in the city in which he is bringing the action. Article 23 provided the alternative basis consisting of the "express and tacit submission of these parties to the court's jurisdiction."²¹

The Haitian courts also reject the traditional concept of domicile as the jurisdictional basis and make a court competent to dispose of a divorce case if the parties voluntarily submit to the court's jurisdiction.²² The current law, which became effective June 28, 1971, eliminated the necessity of the plaintiff making a formal "*election de domicile*" in Haiti during the pendency of the action²³ and added several grounds for seeking divorce.

The Dominican Republic entered into active competition for the

appearance and the finalized divorce decrees are returned via mail by the foreign attorneys of the parties.

¹⁶ A bilateral divorce results when the plaintiff personally appears at the hearing and the defendant either appears in person or by a duly authorized attorney.

¹⁷ *Ex parte* divorce, see *Bethune v. Bethune*, 192 Ark. 811, 94 S.W.2d 1043 (1936); *Kittel v. Kittel*, 194 So. 2d 640 (Fla. Dist. Ct. App. 1964); *Shenker v. Shenker*, 18 Misc. 2d 606, 187 N.Y.S.2d 95 (Sup. Ct. 1959). See also *Annot.*, 1 A.L.R.3d 1714 (1967).

Mail order divorces, see *State v. DeMeo*, 20 N.J. 1, 118 A.2d 1 (1955); *Annot.*, 13 A.L.R.3d 1419 (1967).

¹⁸ For the full text of Articles Twenty-two, Twenty-three, and Twenty-four see *Wood v. Wood*, 41 Misc. 2d 95, 98, 245 N.Y.S.2d 800, 805 (Sup. Ct. 1963).

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

²² "When a foreign plaintiff personally submits voluntarily to the Haitian jurisdiction and when a defendant shall have appointed a duly mandated representative, this voluntary submission of both parties to the Haitian justice will give competence of the matter to the Haitian court." Law of June 28, 1971, Art. II.

²³ ". . . tourists, visiting persons and residing aliens may apply to Haitian courts for a domicile in Haiti during the pendency of the divorce action." Law of June 28, 1971, Art. X.

divorce market with passage of Law 142 on May 18, 1971.²⁴ The statutes' jurisdictional standard, like its Haitian counterpart, is based on the voluntary submission of the parties to the court's jurisdiction.²⁵ Such in personam jurisdiction requires the plaintiff to appear in person and the defendant to at least be represented by counsel.

The Mexican federal law contains 17 grounds for divorce listed in the Civil Code.²⁶ Each state within the republic has also codified its own laws on divorce, most of which are similar to the federal provisions.²⁷ One notable exception was the state of Chihuahua, which made liberal modifications to the national standards. For example, the federal time period after which an abandoned party may initiate action for divorce is six months.²⁸ The Chihuahua standard requires the deserted party to wait only three months. The state has also adopted the ground of incompatibility of character as a basis for divorce while such a standard is non-existent under the federal law.²⁹ This particular ground has been successfully claimed in a substantial number of cases, and it is contended that its proof may be satisfied by its "mere assertion" before a sympathetic court.³⁰

²⁴ "Foreigners who are in this country, although not residents, can be divorced by mutual consent, providing, however, that at least one of the parties must be physically present, and the other represented by a special attorney in fact." Law No. 142, Art. I, Paragraph V.

²⁵ *Id.*

²⁶ Grounds for divorce under Mexican Federal Law: (1) Adultery; (2) fact that wife gave birth to child conceived before marriage and judicially declared illegitimate; (3) proposal of husband to prostitute wife or his receiving remuneration to permit such prostitution; (4) efforts of either spouse to make other commit a crime; (5) attempts to corrupt children and toleration of such corruption; (6) syphilis, tuberculosis or any other incurable chronic disease which is contagious and hereditary, and impotence arising after marriage; (7) incurable mental alienation; (8) unjustified abandonment of home for six months; (9) abandonment of home for reason authorizing a divorce, if prolonged for over a year without institution of a divorce action by absent spouse; (10) declaration of absence by reason of disappearance for over two years, and declaration of presumption of death; (11) cruel treatment, threats and grave insults; (12) refusal to support, where right to support exists and cannot be enforced; (13) slanderous charge by one spouse against the other of a crime carrying over two years imprisonment; (14) commission of a nonpolitical, infamous crime carrying over two years imprisonment; (15) habits of gambling, drunkenness or use of drugs, when they threaten family ruin or cause constant marital discord; (16) acts of either spouse against person or property of other which in other circumstances would be punished by at least one year imprisonment; (17) mutual consent. 5 MARTINDALE-HUBBELL LAW DIRECTORY 3413 (104th ed. 1972).

²⁷ Summers, *The Divorce Laws of Mexico*, 2 LAW AND CONTEMPORARY PROBLEMS 310 (1935).

²⁸ *Id.* at 319.

²⁹ *Id.*

³⁰ Du Puy, *Divorce by Mail-Ease and Cheapness of Mexican Decrees Attract Thousands*, 1 Today, June 9, 1934, at 8.

The "mutual consent" ground for divorce presents an even more liberal standard under both the federal and Chihuahua laws. The procedure basically allows for termination of the marital relation upon agreement of the parties.³¹ It provides that, "when both parties mutually consent to the termination of the marriage, are of age, have no children and are of accord as to the liquidation of community property, they may present themselves before the clerk of the civil register of their domicile and manifest their intention of procuring a divorce."³² After a court imposed cooling-off period of 15 days, the parties are in a position to obtain a final decree of divorce. Even where the parties fail to meet all of the criteria, such as the condition of having no children or the inability to agree on the disposition of property, a court has discretion to grant a divorce after an unsuccessful attempt by the parties to effect a reconciliation.

By comparison, the Haitian divorce code appears to be more restrictive in that only ten grounds for divorce are recognized.³³ However, included in this group are the grounds of incompatibility of character and mutual consent. While incompatibility is basically a procedural step both in Mexico and Haiti, the ground of mutual consent in Haiti is closely monitored by the court.³⁴ For this reason it does not lend itself to actively participate in the "quickie" international divorce trade. Mutual consent for both native and foreign parties, is only available if the male is at least twenty-five years old and the female is between the ages of twenty-one and forty-five. The parties must have been married at least two years but not over twenty. To these age and duration requirements the court has initiated a protracted waiting period of at least fifteen months with court sponsored attempts at reconciliation during that period. This procedure makes divorce by mutual consent in Haiti a rather rigorous exercise and impracticable for Americans seeking a Mexican-style divorce.

³¹ 5 MARTINDALE-HUBBELL, *supra*, note 26.

³² *Id.*

³³ Haitian grounds for divorce include: (1) adultery of wife; (2) adultery of husband if he had the concubine in the marital home; (3) excesses; (4) cruelty; (5) grave and public insults; (6) sentence after trial to an effective and infamous punishment; (7) sentence by default to a penalty carrying suspension of civil rights if the judgment is not vacated within five years; and (8) mutual consent. 5 MARTINDALE-HUBBELL LAW DIRECTORY 3266 (104th ed. 1972); *see also* Forscher, *Haitian, Dominican Law on Divorce Evaluated*, N.Y.L.J., Oct. 19, 1971, at 1.

³⁴ For an outline of the procedure of divorce based on grounds of mutual consent, *see* 5 MARTINDALE-HUBBELL, *supra* note 33.

Foreign divorces in the Dominican Republic are governed by Law No. 142, adopted May 18, 1971. Mutual consent is the exclusive ground provided with respect to foreign parties.³⁵ The procedure for native couples requires a thirty to sixty day cooling-off period.³⁶ However, the country's New York consulate has distributed a memorandum indicating that the waiting period for foreigners will be a minimum of only seventy-two hours.³⁷

MAJORITY RULE IN THE UNITED STATES

The majority of courts in the United States view domicile as the principal means of obtaining proper jurisdiction over the marital status. Domicile of the parties determines the *res* of the marriage, thus granting the court in rem jurisdiction.³⁸ A number of states that are representative of this majority view have questioned the ability of comity to supersede their own jurisdictional requirements. These jurisdictions found the use of the comity principle particularly offensive when used to terminate the marital status of persons domiciled in the state during the action. For example, in *Golden v. Golden*³⁹ the parties obtained a divorce as a result of a single day's journey from New Mexico into the Republic of Mexico. Some months later the wife brought an action in New Mexico, the domicile state, to compel alimony payments. By way of defense, Mr. Golden claimed his ex-wife's participation in the Mexican divorce estopped her from bringing the present action. In denying recognition of the Mexican decree, the court affirmatively cited the California case of *Ryder v. Ryder*,⁴⁰ stating that, "(t)he general rule is that jurisdiction over the subject matter of divorce rests upon the domicile . . . and a decree of divorce rendered in a foreign jurisdiction may be impeached and denied recognition upon the ground that neither of the parties had such domicile or residence at the divorce forum notwithstanding the recital in the decree."⁴¹ The New Mexico court held that recognition of such divorce would be "contrary to the public policy of this state."⁴²

³⁵ See note 24 *supra*.

³⁶ See note 34 *supra*.

³⁷ Memorandum from the Office of the General Consulate of the Dominican Republic in New York City, Feb. 25, 1972.

³⁸ See text accompanying note 6 *supra*.

³⁹ 41 N.M. 356, 68 P.2d 928 (1937).

⁴⁰ 2 Cal. App. 2d 426, 37 P.2d 1069 (1934).

⁴¹ *Golden v. Golden*, 41 N.M. 356, 365, 68 P.2d 928, 933 (1937).

⁴² *Id.* at 368, 68 P.2d at 935.

Ohio has also taken a position with the majority view on this issue by challenging the application of comity to supply a foreign court with jurisdiction over the parties. In *Bobala v. Bobala*⁴³ the husband initially filed for divorce in Ohio but later proceeded to Mexico for the purpose of acquiring the same divorce decree. Disregarding an injunction against the Mexican action, Mr. Bobala completed the necessary formalities. Upon notification of the pending action, the wife made an appearance through an attorney to contest the divorce. Having lost at both the trial and appellate levels of the Mexican system, Mrs. Bobala initiated a divorce action in Ohio. The Ohio court dismissed the husband's defense of *res judicata* and held that the Mexican court lacked jurisdiction over the parties. The court stated that, "jurisdiction cannot be obtained by consent of the parties, waiver, or estoppel. Jurisdiction is prescribed by law and cannot be increased or diminished by consent of the parties, and where there is want of jurisdiction of the subject matter a judgment is void. . . ."⁴⁴ The Ohio Court noted that the principle of comity is an obligation of "deference and respect," and is not admissible or controlling when its application would be "contrary to its (the state's) known policy or prejudicial to its interest."⁴⁵

In *Warrender v. Warrender*⁴⁶ the parties, both New Jersey domiciliaries, agreed to procure a Mexican divorce. The wife, armed with her husband's power of attorney, went to Juarez and within one day transacted the necessary procedural formalities and returned to New Jersey. The divorce decree based its jurisdiction upon the voluntary submission of the parties to the court's jurisdiction. No reference was made to the actual domicile of either of the parties. Subsequently, the wife brought suit in New Jersey for custody of the children and separate maintenance. In granting the wife's pleas, the *Warrender* court held:

There is no question but that the Mexican divorce is absolutely void on its face and that it has not legally terminated the marriage of the parties. Both parties were and are domiciliaries of New Jersey, and there is not the faintest pretense of adjudication by the decree of either residence or domicile of either of them in Mexico when rendered.⁴⁷

⁴³ 68 Ohio App. 63, 33 N.E.2d 889 (1943).

⁴⁴ *Id.* at 71, 33 N.E.2d at 849.

⁴⁵ *Id.*

⁴⁶ 79 N.J. 114, 190 A.2d 684 (App. Div. 1963); *aff'd*, 42 N.J. 287, 200 A.2d 684 (1964).

⁴⁷ *Id.* at 118, 190 A.2d at 686.

This entire line of cases shares the same fatal omission in that the parties failed to acquire proper jurisdiction through domicile. The competency of the court is dependent on this factor of domicile, without which the validity of the divorce decree is in question.⁴⁸ The attempted adjudication of the rights of non-domiciliaries violated the strong public policy of exclusive state control over the divorce law. While these cases deal exclusively with attempted Mexican divorces, the same general considerations apply to both Haitian and Dominican divorces. In Mexico, the jurisdiction of the courts was not based on domicile, but rather the express submission of the parties to the court. Similarly, the defective jurisdictional basis of the Haitian and Dominican courts will render these decisions ineffective in the the majority of American states.

THE UNIFORM DIVORCE RECOGNITION ACT

The U.D.R.A.,⁴⁹ a legislative response to extranational divorces, was presented in 1948 by the National Conference of Commissioners on Uniform State Laws for adoption by interested states. As stated within the Commissioner's Prefatory Notes,

this act takes its conception from the public dissatisfaction which has arisen over the practice of 'migratory divorces,' whereby residents of one state journey to another to take advantage of laxer or more speedy divorce procedures than those afforded by the state of their domicile.⁵⁰

With this motivation,

the aim of this proposal is to preserve to each state the authority to determine the marital status of its own domiciliaries to the fullest extent possible under existing constitutional doctrines.⁵¹

To fulfill this objective, the uniform statute invalidates a divorce obtained outside the jurisdiction where both parties to the marriage "were domiciled in this state at the time the proceeding for the divorce was commenced."⁵² Section 2 provides that a party holds prima facie domicile within a jurisdiction if either of two conditions are met: (1) the person obtaining the divorce was "domiciled in this state within 12 months prior to the commencement of the pro-

⁴⁸ *Torlonia v. Torlonia*, 108 Conn. 292, 142 A. 843 (1928).

⁴⁹ Presently, ten states have this act in their statutes with only slight modification: California, Louisiana, Montana, Nebraska, New Hampshire, North Dakota, Rhode Island, South Carolina, Washington and Wisconsin. 9A UNIFORM LAWS ANN. 457.

⁵⁰ UNIFORM DIVORCE RECOGNITION ACT, Commissioner's Prefatory Note.

⁵¹ *Id.*

⁵² *Id.* § 1.

ceeding . . . and resumed residence in this state within 18 months after the date of his departure,"⁵³ or (2) a party maintains a place of residence within the state during the period he remains outside the jurisdiction.⁵⁴

The uniform law supports the majority United States position of the *res* or status theory of the marital relation based on domicile. Indeed, the comments to the act,⁵⁵ various cases,⁵⁶ and commentators,⁵⁷ urge that the statute is merely a codification of the common law view in most states. As the jurisdictional basis for divorce in both Haiti and the Dominican Republic is the voluntary submission to the court's authority, such decrees would be incompetent under the uniform statute.

MINORITY RULE: NEW YORK

The state of New York represents a minority of one in the recognition of Mexican bilateral divorces. However, it joins the majority view of refusing to recognize either mail order⁵⁸ or ex parte foreign decrees.⁵⁹ The New York viewpoint is attributable to two major considerations. The first is the restrictive nature of the present divorce code, which only allows an action to lie on grounds of adultery, cruelty, abandonment, or two years separation pursuant to a separation agreement.⁶⁰ This suggests that a liberal recognition of foreign divorces serves as a safety valve in that it offers an alternative to the rigorous state procedures.⁶¹ The second has been attributed to the unwillingness of the New York courts to adopt the *res* or status concept of the marital relationship.⁶²

The controlling principle in the recognition of foreign divorces has not been the Full Faith and Credit clause, but rather, the principle of comity. Comity requires a general recognition of the acts and decrees of another jurisdiction unless it appears to be contrary or re-

⁵³ *Id.* § 2.

⁵⁴ *Id.*

⁵⁵ *Id.* Commissioner's Note (c).

⁵⁶ *Sohnlein v. Winchell*, 230 Cal. App. 2d 508, 41 Cal. Rptr. 145 (1964).

⁵⁷ See, e.g., *Stumberg, The Migratory Divorce*, 33 WASH. L. REV. 331 (1958).

⁵⁸ *Caldwell v. Caldwell*, 298 N.Y. 146, 81 N.E.2d 880 (1960).

⁵⁹ *Alfaro v. Alfaro*, 5 App. Div. 2d 770, 169 N.Y.S. 943 (1958), *aff'd*, 7 N.Y. 949, 165 N.E.2d 880 (1960).

⁶⁰ N.Y. DOM. REL. LAW § 170 (McKinney Supp. 1972-73).

⁶¹ *Howe*, note 9 *supra*.

⁶² See note 9 *supra*.

pugnant to the policy or law of the state.⁶³ Courts in New York have routinely utilized this principle as a basis for the recognition of foreign decrees.⁶⁴

Public policy is to be gleaned from "the law of the State, whether found in the constitution, the statutes, or judicial records."⁶⁵ The state constitution reveals no compelling prohibition of the recognition of a foreign decree, as long as it is obtained within the requirements of the foreign jurisdiction.

The *Rosenstiel* case,⁶⁶ affirmed by the highest state court, reviewed the applicable case law with respect to the bilateral Mexican divorce. The Superior Court was clearly faced with the recognition issue in this case, and in upholding the Mexican divorce, determined that domicile is not mandatory for a court to have the proper jurisdictional base. Citing *Drew v. Hobby*,⁶⁷ the court stated that, "it was long ago decided in New York that lack of domicile is not necessarily a bar to the recognition of a foreign divorce."⁶⁸ The companion case to *Rosenstiel*⁶⁹ similarly did not make domicile the key factor in obtaining jurisdiction, and held that voluntary submission to the court's jurisdiction was sufficient to render the court competent.

The *Rosenstiel* court also concerned itself with the potential violation of state public policy by recognizing a divorce obtained on grounds outside the New York law. To this inquiry, it looked to *Matter of Rhineland*⁷⁰ which held that, "if the parties both appeared before the foreign court, the New York court will recognize the divorce even if it was based on grounds not recognized in New York."⁷¹ This conclusion stems from state common law which recognized a foreign decree even when the primary purpose of the parties in leaving the state was to obtain the divorce.⁷²

The court also noted that the bilateral foreign decree has been

⁶³ *Weil v. Weil*, 26 N.Y.S.2d 467, 470 (Dom. Rel. Ct. 1941).

⁶⁴ *Weibel v. Weibel*, 37 Misc. 2d 162, 234 N.Y.S.2d 298 (Sup. Ct. 1962); *Heine v. Heine*, 231 N.Y.S.2d 239 (Sup. Ct. 1962), *aff'd mem.*, 19 App. Div. 2d 695, 242 N.Y.S.2d 705 (1963).

⁶⁵ *Glaser v. Glaser*, 276 N.Y. 296, 302, 12 N.E.2d 305, 307 (1938).

⁶⁶ *Rosenstiel v. Rosenstiel*, 43 Misc. 2d 462, 251 N.Y.S.2d 565 (Sup. Ct. 1964), *aff'd*, 21 App. Div. 2d 635, 253 N.Y.S.2d 206 (1st Dep't 1964).

⁶⁷ 123 F. Supp. 245 (S.D.N.Y. 1954).

⁶⁸ *Id.* at 247.

⁶⁹ *Wood v. Wood*, 22 App. Div. 2d 660, 253 N.Y.S.2d 204 (1st Dep't 1964).

⁷⁰ 290 N.Y. 14, 47 N.E.2d 681 (1943).

⁷¹ *Id.* at 36, 47 N.E.2d at 684.

⁷² *Gould v. Gould*, 235 N.Y. 14, 138 N.E. 490 (1923).

considered valid for nearly twenty-five years and could not be overturned on a policy basis without some identifiable change in public policy.⁷³ The application of the Haitian and Dominican divorce codes under New York law would not seem to present any difficulties that are unresolved by the *Rosentiel* case.

While the case law of New York seems willing to respect foreign decrees of divorce, public policy contained within the General Obligation Laws⁷⁴ may pose a statutory impediment in the process of foreign divorce recognition. That law's prohibition of divorce by prior agreement creates some conceptual difficulties with New York's liberal view of foreign decrees. This is particularly true in the Dominican Republic which considers mutual consent as the exclusive ground for divorce. Use of the mutual consent basis could conflict with the Obligation law either by (1) construing the mutual consent vehicle as a contract to alter or dissolve marriage or (2) viewing the use of mutual consent as an express provision requiring the dissolution of the marriage. In either case, casting the mutual consent ground in this light could fail to meet the tests of the Obligation laws.

Another New York statutory provision which warrants consideration is the Domestic Relations Law.⁷⁵ It provides for much the same prima facie presumption with respect to domicile as provided in the Uniform Divorce Recognition Act. However, the one reported decision dealing with the effect of this statute on a foreign decree did not change the New York position.⁷⁶ In that case the court upheld the validity of a bilateral Mexican divorce and noted that if the "legislature sought to nullify the effect of the *Rosentiel* case on foreign divorces, then certainly more decisive language could have been chosen."⁷⁷ As a result, the Domestic Relations Law does not appear to bar recognition of decrees obtained by non-domiciliaries in either Haiti or the Dominican Republic.

CONCLUSION

The traditional domiciliary basis for in rem jurisdiction over mar-

⁷³ 21 App. Div. 2d at 639, 253 N.Y.S.2d at 209.

⁷⁴ N.Y. GEN. OBLIGATIONS LAW § 3-511 (McKinney Supp. 1972-73). The statute points out that a "husband and wife cannot contract to alter or dissolve the marriage. . . . An agreement . . . between husband and wife shall not be considered a contract to alter or dissolve the marriage unless it contains an express provision requiring the dissolution of the marriage or provides for the procurement of grounds for divorce."

⁷⁵ N.Y. DOM. REL. LAW § 250 (McKinney Supp. 1972-73).

⁷⁶ *Kakarapis v. Kakarapis*, 58 Misc. 2d 515, 296 N.Y.S.2d 208 (1968).

⁷⁷ *Id.* at 517, 296 N.Y.S.2d at 210.

ital matters, which precludes the recognition of divorce decrees obtained in Mexico, would also seem to preclude recognition of those decrees obtained from Haiti and the Dominican Republic. This *res* theory has been rejected in New York with the consequence that such decrees will likely be respected in that jurisdiction.

While the case law within New York would not seem to be an impediment to recognition of Haitian or Dominican divorces, certain statutes do question the validity of these decrees. The General Obligation Law, § 3-511, could be interpreted to find a divorce obtained on the mutual consent ground as violative of the state's public policy with respect to divorce. Also, the effect of the Domestic Relations Laws, § 250, could result in the placing of more emphasis on domicile as a means of a court obtaining jurisdiction over the parties. Under the possible interpretation of either of these statutes, the validity of a Haitian or Dominican divorce is conceivably at issue.

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