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# Divorce: Right of Strangers to Attack Foreign Divorce Decree

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DIVORCE: RIGHT OF STRANGERS TO ATTACK FOREIGN DIVORCE DECREE.—Does a stranger to an out-of-state divorce decree have the right to make a collateral attack on such decree? This question involves a considerable lack of unanimity among the various jurisdictions as to who is permitted to challenge the validity of a foreign divorce and under what circumstances a challenge is authorized.

In *In re Englund's Estate*,[1] decedent's sister, on behalf of herself and other collateral heirs, petitioned to remove decedent's purported wife as administratrix of his estate on the ground that the alleged wife had never obtained a valid divorce from her first husband and therefore her second marriage to the deceased was void. The purported wife, prior to her marriage to decedent, had procured an Idaho divorce from her former husband while both parties to the divorce were domiciled in Washington, having obtained substituted service on her husband. The Washington statute,[2] adopted from the Uniform Divorce Recognition Act, provides that such foreign divorce should be "of no force or effect," but the Washington Supreme Court, in a five to four decision, reversing the trial court's granting of the petition, held that the decedent's sister and other heirs were strangers to the divorce proceedings and, as such, had no standing to attack the decree unless it affected some rights or interests acquired by them prior to the time it was rendered.

Each state is required by the Constitution to give full faith and credit to the public acts, records and judicial proceedings of every other state.[3] However, the present rule of law, laid down by the United States Supreme Court in *Williams v. North Carolina*,[4] recognizes that a judgment of divorce rendered in another state may be declared void by a showing that the court lacked proper jurisdiction over the divorce proceedings. This ruling has been limited by subsequent cases which prohibit a collateral attack where the defendant in the divorce proceedings has appeared in the action or was personally served within the jurisdiction of the divorce court. The United States Supreme Court, in *Sherrer v. Sherrer*[5] and *Coe v. Coe*,[6] declared that because of such appearance by the defendant, the doctrine of res judicata, combined with the full faith and credit clause of the Constitution, precluded any future collateral attack by either party on the divorce court's finding of jurisdiction. The *Sherrer* rule was extended by the decision of *Johnson v. Muelberger*,[7] which held that the law of the state which grants the decree governs the right of collateral attack by third party challengers in the courts of sister states, where there has been participation by the defendant in the divorce action.

Inasmuch as the defendant in the divorce suit in the case of *In re Englund's Estate* received only substituted service, discussion will be limited primarily to the right to make a collateral attack on a foreign ex parte divorce.

It was the intent of the drafters of the Uniform Divorce Recognition Act[8] to discourage "tourist divorces" by non-recognition of extra-state divorces by domiciliaries of the state enacting the statute and, under the Washington statute, such foreign divorces are of "no force or effect." Nevertheless, the court, in the *Englund*

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[1] 45 Wash.2d 708, 277 P.2d 717 (1954).

[2] RCW 26.08.20 (1949), c. 215 § 20. "A divorce obtained in another jurisdiction shall be of no force or effect in this state if both parties to the marriage were domiciled in this state at the time the proceeding for divorce was commenced."

[3] U.S. CONST. art IV, § 1.

[4] 325 U.S. 226 (1945).

[5] 334 U.S. 343 (1948).

[6] 334 U.S. 378 (1948).

[7] 340 U.S. 581 (1951).

[8] 9 UNIF. LAWS ANN. 364.

case, maintained that the statute declared no new law in Washington, and that it was not to be construed so as to allow *anyone* the right to attack the decree.

California, also having adopted the Uniform Divorce Recognition Act, has enacted a similar statute[9] to that of Washington which expresses the rule of prior decisions. In 1946 in *Crouch v. Crouch*,[10] a leading case, the court said:

> " . . . it is always competent to collaterally impeach a decree of divorce rendered in another state by extrinsic evidence showing that the court pronouncing it did not have jurisdiction either of the parties or the subject matter."[11]

A foreign divorce decree which is regular on its face carries a presumption of validity and the burden of rebutting that presumption, by showing a jurisdictional defect, is on the party attacking it. Where a divorce decree is collaterally attacked for lack of jurisdiction by one whose rights or interests are prejudiced thereby, it is well settled that the mere fact that he is a stranger to the proceeding does not preclude him from making the attack.[12] The determining factor as to the stranger's right to maintain the attack is whether he has a sufficient interest adversely affected and whether he is estopped from asserting that right. The further question arises, however, as to whether the rights of the stranger, so adversely affected by the decree, must have accrued prior to the rendition of the decree in order to collaterally attack it or whether it is merely sufficient to show that he is being injuriously affected by it at the time of the attack. There is a diversity of opinion among the courts on this matter. The court in *In re Englund's Estate* decided that:

> " . . . a stranger to the decree has no standing to attack it, unless such decree affected some right or interest which he had acquired prior to its rendition."[13]

Similar views have been adjudged by courts in Missouri,[14] Texas[15] and Florida.[16]

But in Massachusetts the court in *Old Colony Trust Company v. Porter*,[17] while expressly emphasizing the fact that there were no property interests of the third person involved at the time the decree was granted, held it proper for strangers to a foreign divorce decree to attack it when their interests are subsequently affected thereby. The court referred to numerous cases:[18]

> " . . . apparently representing the weight of authority, which in general support the principle of collateral attack for want of jurisdiction upon decrees of divorce by persons not parties to the divorce proceedings whose rights would be impaired if effect were given to the decrees as against them."[19]

It is difficult, however, to determine definite rules on the question of a stranger's right to attack a foreign divorce. The cases frequently fail to distinguish between disallowing an attack where the stranger has no standing to challenge the validity

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[9] CALIF. CIV. CODE § 150.1.

[10] 28 Cal.2d 243, 169 P.2d 897 (1946).

[11] *Id.* at 250, 169 P.2d at 900.

[12] Williams v. North Carolina, 325 U.S. 226 (1945); In re Pusey's Estate, 180 Cal. 368, 181 Pac. 648 (1919); Old Colony Trust Co. v. Porter, 324 Mass. 581, 88 N.E.2d 135 (1949); In re Lindgren's Estate, 293 N.Y. 18, 55 N.E.2d 849 (1944); Ex parte Nimmer, 212 S.C. 311, 47 S.E.2d 716 (1948).

[13] See note 1 *supra* at 715, 277 P.2d at 721.

[14] Reger v. Reger, 316 Mo. 1310, 293 S.W. 414 (1927).

[15] National Loan & Investment Co. v. L. W. Pelphrey & Co., 39 S.W.2d 926 (Tex. Civ. App. 1931).

[16] de Marigny v. de Marigny, 43 So.2d 442 (Fla. 1949).

[17] 324 Mass. 581, 88 N.E.2d 135 (1949).

[18] Goodloe v. Hawk, 72 App. D.C. 287, 113 F.2d 753 (1940); Brill v. Brill, 38 Cal.App.2d 741, 102 P.2d 534 (1940); In re Pusey's Estate, 180 Cal. 368, 181 Pac. 648 (1919); Urquhart v. Urquhart, 272 App.Div. 60, 69 N.Y.S.2d 57 (1947); In re Grossman's Estate, 263 Pa. 139, 106 Atl. 86 (1919).

[19] See note 17 *supra* at 588, 88 N.E.2d at 140.

of the decree and disallowing it where the attack is not well founded on its merits. California decisions,[20] in most instances, have not expressly expanded the question in point further than to permit a collateral attack by strangers where, if the judgment were given full effect, some rights or interests of such strangers would be adversely affected. But, in light of the results of the California cases, there is indication that, if the enforcement of the divorce decree would unduly prejudice the rights of the interested stranger, it would seem likely that a collateral attack would be allowed.

In the *Englund's Estate* case, reference is made to California cases[21] in support of the argument that a third party cannot make a collateral attack. But, as is pointed out in the dissenting opinion, these cases are not in point with the issue at hand. These cases are considered under the estoppel doctrine, wherein the third parties, by their own conduct, are estopped from bringing an action.

Although the drafters of the Uniform Divorce Recognition Act intended to eliminate estoppel as an indirect means of upholding migratory divorces, California has interpreted the act as not affecting existing state rules recognizing the estoppel doctrine and has continued to disallow an attack under certain circumstances. In *Rediker v. Rediker*[22] the court stated:

> "The validity of a divorce decree cannot be contested by a party who has procured the decree or a party who has remarried in reliance thereon, or by one who has aided another to procure the decree so that the latter will be free to remarry."[23]

The decision in the *Englund* case was rendered, notwithstanding the express language of the statute which declared such a divorce invalid. The underlying reason for the court's reluctance to allow a collateral attack appears to be based on a public policy interpretation of the statute as reflecting only a public concern with marital relationship, rather than being applicable to cases involving private property, as was here involved. Despite the strong dissent against the "whittling away" of the statute, the court seemingly arrived at a desirable result. Public policy requires weighing the effects of the preservation of foreign divorces and remarriages against the policy underlying the Uniform Divorce Recognition Act of discouraging recognition of extra-state divorces obtained in states lacking proper jurisdiction. Surely, recognition of irregular, migratory divorces would outweigh the policy of disallowing such divorces where the upsetting of them might result in bigamous marriages, illegitimate children or other unfortunate disruptions of existing domestic relationships.

Regardless of the basis of the decision in this case, it exemplifies the very definite problems and inconsistencies in this field of divorce law. Although the Uniform Divorce Recognition Act has attempted to standardize and clarify divorce laws, it is still necessary to consider the public policy of the states in protecting the interests and welfare of their citizens. Until all the states have adopted uniform divorce laws, we will continue to be plagued by the ever-occurring problems of foreign divorces and the rights of interested parties.

—*Edward P. Atkins.*

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[20] Dietrich v. Dietrich, 41 Cal.2d 497, 261 P.2d 269 (1953); In re Paul's Estate, 77 Cal.App.2d 403, 175 P.2d 284 (1946); Brill v. Brill, 38 Cal.App.2d 741, 102 P.2d 534 (1940); In re Pusey's Estate, 180 Cal. 368, 181 Pac. 648 (1919). But see Mumma v. Mumma, 86 Cal.App.2d 133, 194 P.2d 24 (1948).

[21] Dietrich v. Dietrich, 41 Cal.2d 497, 261 P.2d 269 (1953); Union Bank & Trust Co. v. Gordon, 116 Cal.App.2d 681, 254 P.2d 644 (1953).

[22] 35 Cal.2d 796, 221 P.2d 1 (1950).

[23] *Id.* at 805, 221 P.2d at 6.