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Foreign Divorce Recognition in California

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just is not reduced to a mere mechanical formula, but is a necessary determination of the quality and nature of the particular acts and circumstances of each case.⁵⁶ Nor has it been a simple task to determine what constitutes a minimum contact with the forum; but it does appear that even with a slight relaxation of the older concepts, that the "traditional notion of fair play and substantial justice" will be violated if the test of minimum contact in essence becomes one of "any" contact with the forum.

Where the underlying theory is founded on a "balance of interests"⁵⁷ or a "balance of conveniences"⁵⁸ with emphasis being placed on the benefit the foreign corporation derives from the local market, a resulting flexible standard would offer the clearest test of fairness while avoiding the pitfalls of inflexible mechanical rules or theories. Under such a standard, with due consideration given to the commercial nature and extent of the foreign corporation's activities within the forum, physical repossession or repossession and sale of secured chattels may be a sufficient minimal contact with the forum to require the foreign corporation to defend a suit, whether or not it was related to those particular activities, without being violative of the "traditional notion of fair play and substantial justice."

*Albert F. Pagni**

⁵⁶ *Empire Steel Corp. v. Superior Court*, 56 Cal. 2d 823, 832, 366 P.2d 502, 507, 17 Cal. Rptr. 150, 155 (1961).

⁵⁷ *Jeter v. Austin Trailer Equip. Co.*, 122 Cal. App. 2d 376, 265 P.2d 130 (1953).

⁵⁸ See note 56 *supra*.

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FOREIGN DIVORCE RECOGNITION IN CALIFORNIA

Whether a state is obliged to recognize a divorce obtained in a sister state has been a source of debate and confusion since the beginning of the nineteenth century.¹ On one hand, the states desire to exercise some control over the domestic relations of their citizens, and on the other, such efforts are often futile in that they conflict with the full faith and credit clause of the Constitution.²

Full Faith and Credit

The Constitution demands that the judicial proceedings of each state be given full faith and credit by every other state.³ This provision establishes a rule requir-

¹ See Merrill, *The Utility of Divorce Recognition Statutes*, 27 TEXAS L. REV. 291, 291-95 (1949).

² If the foreign decree is not recognized, a second marriage may result in a prosecution for bigamy, the children of the second marriage may be deemed illegitimate, and many other incidents of life would be rendered uncertain. However, if the decree is recognized, a state with liberal divorce laws will inevitably infringe upon the social policy of a state which requires its citizens to comply with rules aimed at preventing migratory divorces.

³ U.S. CONST. art. IV, § 1.

ing enforcement of foreign judgments without questioning the merits upon which the judgment was based, but, according to *Williams v. North Carolina (Williams II)*, it does not prevent a collateral attack upon the jurisdiction of the sister state to render the judgment.⁴ In the United States, ex parte divorce jurisdiction is based upon the concept of domicile.⁵ Thus, if a party obtains a divorce ex parte and is subsequently found not to have been domiciled in the rendering state at the time the decree was granted, the decree so obtained is not entitled to full faith and credit because the court purporting to render the original judgment lacked jurisdiction, and hence, lacked the power to pass on the merits.⁶ Although domicile must be present if divorce jurisdiction is to be found, it is often difficult to ascertain exactly when new domicile is acquired since it depends, in part, upon the intention of the party whose domicile is in question.⁷

Until *Williams v. North Carolina (Williams I)*⁸ it was deemed necessary that the divorce decree be rendered in the state of matrimonial domicile before it was entitled to full faith and credit by the state in which the decree was attacked.⁹ But the Court in *Williams I* decided that the Constitution required that full faith and credit be given to a divorce granted ex parte by any state where one spouse was domiciled. In deciding this case the Court expressly overruled the earlier cases

⁴ 325 U.S. 226 (1945); accord, *Thompson v. Thompson*, 226 U.S. 551 (1912); *Bigelow v. Old Dominion Copper Min. & Smelting Co.*, 225 U.S. 111 (1911).

⁵ *Williams II*, *supra* note 4.

⁶ *Ibid.*

⁷ Although necessary to determine certain rights, duties, and liabilities, domicile is often uncertain in its application. The fundamental concept of domicile has been expressed by Mr. Justice Holmes in *Williamson v. Ostenton*, 232 U.S. 619, 625 (1914), "The very meaning of domicil is the technically pre-eminent headquarters that every person is compelled to have in order that certain rights and duties that have been attached to it by the law may be determined." But when does one become domiciled in one place rather than another? Holmes contends, "The essential fact that raises a change of abode to a change of domicil is the absence of any intention to live elsewhere," *Williamson, supra* at 624. This leads to the necessary conclusion that domicile is a subjective concept. Whether one is domiciled in a particular state at a particular time is dependent upon his intention to be a permanent resident coupled with his physical presence at that particular instant, and this notwithstanding a floating intention of returning to the former place of domicile. *Texas v. Florida*, 306 U.S. 427 (1939); *Gilbert v. David*, 235 U.S. 561 (1914).

Although the trier of fact must draw inferences from objective facts in order to determine the subjective intent, it would seem that the objective facts considered should be those in existence when domicile is originally being tested by the court rendering the divorce decree since one's domicile can readily be changed by acquiring new residence coupled with the intent to remain. But, by the rule laid down in *Williams II*, a sister state can go behind the foreign divorce decree and find a lack of domicile by re-examining the facts in existence during the original proceeding *as well as* facts coming into being at a later time.

⁸ 317 U.S. 287 (1942).

⁹ In *Atherton v. Atherton*, 181 U.S. 155 (1900), the Court held that a sister state had to give full faith and credit to a divorce granted after constructive service by the state of matrimonial domicile to a deserted husband. In *Haddock v. Haddock*, 201 U.S. 562 (1905), the Court refused to extend *Atherton*, holding that a state need not give full faith and credit to a divorce granted ex parte to a deserted husband by a domiciliary state other than the matrimonial domicile.

which based divorce jurisdiction upon the concept of matrimonial domicile. *Williams I* was then limited by *Williams II* which made it clear that full faith and credit was required to be given only if the granting state was actually the domiciliary state, and that a finding on this issue could be collaterally attacked in the state determining the validity of the foreign decree.

Since *Williams I* and *II* the Court has broadened the scope of the full faith and credit clause by holding in *Sherrer v. Sherrer*¹⁰ that res judicata precludes a sister state from questioning the finding of a bona fide domicile in the rendering state if both parties *participated*¹¹ in the original proceeding. In *Johnson v. Muelberger*,¹² this ruling was held applicable even though the collateral attack was made by a party who had not appeared in the original divorce proceeding and who had independent interests.

Uniform Divorce Recognition Act

In an attempt to eliminate the uncertainties in this area which remain unresolved by the Supreme Court, California, along with nine other states, has enacted the Uniform Divorce Recognition Act, drafted by the Commissioners on Uniform State Laws to discourage the so-called migratory divorce.¹³ The act is incorporated in the Civil Code as sections 150.1 and 150.2, and reads as follows:

¹⁰ 334 U.S. 343 (1948). See also *Coe v. Coe*, 334 U.S. 378 (1948).

¹¹ There is authority that the concept of *participation* as used in the *Sherrer* and the *Coe* cases is limited to a true adversary proceeding. See *Zenker v. Zenker*, 161 Neb. 200, 72 N.W.2d 809 (1955); *Staedler v. Staedler*, 6 N.J. 380, 78 A.2d 896 (1951). However, the California courts have taken a more liberal view as to the meaning of *participation*.

It is pointed out by the court in *Estate of Schomaker*, 93 Cal. App. 2d 616, 623, 209 P.2d 669, 673 (1949): "The test therefore is not whether the issue of jurisdiction was *actively litigated* in the court rendering the divorce decree. It is sufficient if the defendant has participated in the proceeding and had *full opportunity to litigate* the issue. If so, the decree is binding even though a relitigation of the question of jurisdictional residence requirements in another state might result in a finding that the domiciliary claim was fraudulently asserted for the purpose of obtaining a decree which as a matter of policy could not be procured in the state of actual domicile." (Emphasis added.)

See also *Haden v. Haden*, 120 Cal. App. 2d 722, 262 P.2d 73 (1953), where the divorce defendant filed a general appearance and waived summons, thus submitting to the jurisdiction of the Nevada court. It was held that the Nevada divorce decree was entitled to full faith and credit, even though the divorce defendant was not represented by counsel and did not appear at the trial.

¹² 340 U.S. 581 (1951). Here the plaintiff, daughter of decedent by his first marriage, attacked in New York the validity of a divorce decree obtained by her deceased father's second wife in Florida. The decedent had appeared by attorney in the Florida court. The New York Court of Appeals (301 N.Y. 13, 92 N.E.2d 44 (1950)) held that the Florida judgment finding jurisdiction to decree the divorce bound only the parties themselves. The Supreme Court reversed, holding that plaintiff, although considered a stranger to the divorce proceedings, was barred from contesting the validity of the decree in New York since under Florida law such an attack could not be made. Mr. Justice Reed, speaking for the Court, pointed out, "When a divorce cannot be attacked for lack of jurisdiction by parties actually before the court or strangers in the rendering state, it cannot be attacked by them anywhere in the Union. The Full Faith and Credit Clause forbids." 340 U.S. at 589.

¹³ The act was approved by the National Conference of Commissioners on Uniform

Section 150.1. 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.

Section 150.2. Proof that a person hereafter obtaining a divorce from the bonds of matrimony in another jurisdiction was (a) domiciled in this State within twelve months prior to the commencement of the proceeding therefor, and resumed residence in this State within eighteen months after his departure therefrom, or (b) at all times after his departure from this State and until his return maintained a place of residence within this State, shall be prima facie evidence that the person was domiciled in this State when the divorce proceeding was commenced.

Section 150.1 codifies the law of *Williams I* and *II*. It is clear that if both parties are domiciled in California at the time of divorce neither could be domiciliaries of the divorce granting state.¹⁴ In California, prior to the enactment of section 150.1, the courts consistently denied recognition to ex parte foreign decrees in such cases, where both parties were actually domiciled in this State at the time the divorce was granted.¹⁵ However, the California courts recognized an exception to this rule based on the principle of estoppel. Hence, it was held, prior to the adoption of the act, that one who obtained a foreign divorce ex parte in a forum lacking proper divorce jurisdiction was estopped from attacking its validity in California.¹⁶ The estoppel doctrine was also applied to a party who aided another in procuring the decree,¹⁷ and to a party who had remarried in reliance thereon.¹⁸ Thus, the California decisions prior to the adoption of the act held that even though the court rendering the divorce decree lacked jurisdiction over the parties (the decree not otherwise being entitled to full faith and credit), a party would be estopped from challenging the decree's validity if his conduct so warranted.

By providing that decrees rendered while both parties are domiciled in California "shall be of no force or effect," does section 150.1 purport to overturn

State Laws and the American Bar Association in 1948. States other than California which have adopted the act are: La., Mont., Neb., N.H., N.D., R.I., S.C., Wash., and Wis. See UNIFORM DIVORCE RECOGNITION ACT, 9A U.L.A. 275 (1957). This legislation was adopted prior to 1953 in all the above states except Montana. Montana adopted the act in 1963, MONT. REV. CODES ANN. § 21-150 (Supp. 1963).

¹⁴ It is a basic rule that every person has a domicile at all times, but never has more than one at a time. *Smith v. Smith*, 45 Cal. 2d 235, 288 P.2d 497 (1955); RESTATEMENT, CONFLICT OF LAWS § 11 (1934).

¹⁵ *Crouch v. Crouch*, 28 Cal. 2d 243, 169 P.2d 897 (1946); *Delanoy v. Delanoy*, 216 Cal. 27, 13 P.2d 719 (1932).

¹⁶ *Kelsey v. Miller*, 203 Cal. 61, 262 Pac. 200 (1928); *Bruguiere v. Bruguiere*, 172 Cal. 199, 155 Pac. 988 (1916).

¹⁷ *Harlan v. Harlan*, 70 Cal. App. 2d 657, 161 P.2d 490 (1945). Plaintiff brought an action to have his marriage to defendant annulled on the ground that defendant had a former husband living, and that her marriage to her former husband had not been dissolved by divorce or otherwise. The court held that plaintiff was estopped from taking advantage of the invalidity of the Mexican divorce decree which the defendant obtained from her former husband since plaintiff was instrumental in arranging said divorce and paid the attorney's fee and expenses for same.

¹⁸ *Bruguiere v. Bruguiere*, 172 Cal. 199, 155 Pac. 988 (1916); *In re Kyle*, 77 Cal. App. 2d 634, 176 P.2d 96 (1947).

these decisions? By giving a literal effect to the language of the statute, the question clearly must be answered in the affirmative. Furthermore, it is clear that when drafting the act, the Commissioners intended to foreclose the application of estoppel in these cases as much as possible without violating the rule of *Sherrer* that the requirements of full faith and credit bar a party from challenging the validity of a foreign divorce decree if he had participated in the original action.¹⁹ The California courts, however, have apparently failed to act in accordance with the design of the Commissioners and the legislature. Although the courts have not ruled directly upon section 150.1 in relation to the estoppel doctrine, there are dicta to the effect that the law of estoppel remains unchanged despite the contrary intention of the act's draftsmen.²⁰

Section 150.2 sets out certain situations in which the foreign decree will be prima facie invalid.²¹ The effect of this section presumably is to shift to the party

¹⁹ "A number of decisions refuse to allow attack upon the validity of a foreign divorce by one who obtained it, or who has appeared in the proceedings brought against him, with or without contesting the foreign court's jurisdiction, or who has assented to the divorce or has neglected to attack it for a considerable time. . . . The enunciation of policy proposed by this section will close, to the extent permitted under the Coe and Sherrer cases, *supra*, the door to evading the validity [*sic.*, *invalidity*] of the tourist divorce which the decisions first cited above leave ajar." UNIFORM DIVORCE RECOGNITION ACT, Commissioner's Notes § 1, 9A U.L.A. 282 comment *c* (1957).

²⁰ In *Dietrich v. Dietrich*, 41 Cal. 2d 497, 261 P.2d 269 (1953), defendant was estopped from asserting the invalidity of plaintiff's Nevada divorce from her former husband when defendant married plaintiff in California the day following the Nevada decree. As to the rule of section 150.1, the court said, "Noah urges that the public policy applicable here is stated in section 150.1 of the Civil Code. . . . But we are not considering the 'force or effect' of the Nevada decree as such consideration is necessarily incident to the holding that Noah, because of his conduct with relation to that decree, has no standing to question it." If the defendant's conduct estops him from "questioning" the foreign decree in this situation, it appears that the court will not find that section 150.1 prevents the application of estoppel in similar cases.

Support for this view is found in a recent case decided by the District Court of Appeal, First District. In *Solley v. Solley*, 227 A.C.A. 572, 38 Cal. Rptr. 802 (1964), plaintiff, who procured a Nevada divorce decree, validity of which was not questioned by her husband, was estopped to contest its validity in a subsequent California action concerning a property settlement which had been incorporated in the Nevada decree. Plaintiff argued that the Uniform Divorce Recognition Act prevented enforcement of the decree in California since neither of the parties was a bona fide resident of Nevada at the time the decree was rendered. In dismissing this argument the court said, "We have found no authority in California, nor does plaintiff cite any, holding that the above Act precludes the operation of the doctrine of estoppel."

Since the adoption of the act, the courts have applied the estoppel doctrine in the following cases: *Spellens v. Spellens*, 49 Cal. 2d 210, 317 P.2d 613 (1957); *Dietrich v. Dietrich*, 41 Cal. 2d 497, 261 P.2d 269 (1953); *Watson v. Watson*, 39 Cal. 2d 305, 246 P.2d 19 (1952); *Rediker v. Rediker*, 35 Cal. 2d 796, 221 P.2d 1 (1950); *Estate of Vinson*, 212 Cal. App. 2d 543, 28 Cal. Rptr. 94 (1963). See also Comment, 42 CALIF. L. REV. 503 (1954).

²¹ In such situations the fact that the decree is prima facie invalid places the party relying upon the foreign decree at a distinct disadvantage when relitigating the question of jurisdiction, since once the facts come within the broad language of the statute, he bears the burden of going forward with the evidence or suffer a directed verdict against him. This burden of production is not met by merely contradicting

relying upon the decree the burden of going forward with evidence of bona fide domicile in the divorce forum.²² If so, this section changes prior California law, perhaps constitutionally compelled, which placed the burden of proving lack of domicile upon the assailant, and under which the foreign decree was presumed valid until lack of domicile was conclusively shown.²³ The rule of evidence set out in this section clearly altered the existing law of the State, in that heretofore no fixed incidents of domicile had been deemed prima facie evidence thereof, although actual residence in a place has been held to raise a presumption of domicile.²⁴

Prior to the adoption of the act, the California courts recognized that a party did not lose his California domicile by merely moving to another jurisdiction to gain legal advantages, if he intended to return to California once his mission was accomplished.²⁵ In view of this attitude of the courts, it is submitted that under the common law established in California, factual situations coming within the scope of section 150.2(a) may well have warranted the inference that a party (who procured an extra-state divorce) fled the State merely to make use of the legal machinery of the foreign jurisdiction, thus retaining his California domicile.²⁶ But heretofore the party attacking the decree had the burden of discrediting the divorce plaintiff's foreign domicile, which was not accomplished by merely casting suspicion on his motive for residing in the foreign jurisdiction.²⁷ It seems clear then, that section 150.2(a) does not necessarily lead to a finding of California domicile where such would not have been the case under the prior common law, but it does equip the attacking party with a procedural advantage not enjoyed until the adoption of the act.

Under section 150.2(b) proof that a person maintained a place of residence in California while obtaining a foreign divorce is deemed prima facie evidence that he was domiciled in this State during the proceedings. Although *residence* is generally interpreted to mean domicile in statutes relating to divorce jurisdiction,²⁸ the Commissioners made it clear that the statute was drawn with the

the statutory presumption, but is only met by evidence which overcomes it. According to CAL. CODE CIV. PROC. § 1833, "Prima facie evidence is that which suffices for the proof of a particular fact, until contradicted and overcome by other evidence. . . ." In *Berry v. Chaplin*, 74 Cal. App. 2d 652, 662, 109 P.2d 422, 429 (1946), the court pointed out, "When prima facie evidence of a fact has been introduced its effect is not destroyed by the introduction of contradictory evidence." See also *Miller & Lux Inc. v. Secara*, 193 Cal. 755, 227 Pac. 171 (1924).

²² *Flicker v. Jones*, 28 Cal. 618, 626 (1865).

²³ *DeYoung v. DeYoung*, 27 Cal. 2d 521, 165 P.2d 457 (1946); *Cardinale v. Cardinale*, 8 Cal. 2d 762, 68 P.2d 351 (1937); *Delanoy v. Delanoy*, 216 Cal. 27, 13 P.2d 719 (1932); *Davis v. Davis*, 71 Cal. App. 2d 150, 162 P.2d 64 (1945).

²⁴ *Sheehan v. Scott*, 145 Cal. 684, 79 Pac. 350 (1905); *Dow v. Gould & Curry Silver Min. Co.*, 31 Cal. 629 (1827); *Murphy v. Travelers Ins. Co.*, 92 Cal. App. 2d 582, 207 P.2d 595 (1945).

²⁵ In *DeYoung v. DeYoung*, 27 Cal. 2d 521, 524, 165 P.2d 457, 458 (1946), the court speaking of acquisition of new domicile, said, "Merely abiding in a place for a definite time for a transient purpose such as obtaining a divorce, unaccompanied by any intention to remain permanently or indefinitely, is not sufficient."

²⁶ *Ibid.*

²⁷ Note 23 *supra*.

²⁸ *Ungemach v. Ungemach*, 61 Cal. App. 2d 29, 36, 142 P.2d 99, 102 (1943); RESTATEMENT, CONFLICT OF LAWS § 9, comment *e* (1934).

distinction between the concepts of *residence* and *domicile* in mind.²⁹ Thus, under a literal interpretation of this section a person maintaining an apartment in California in addition to a house in Nevada would be presumed to be domiciled in this State for purposes of determining jurisdiction of divorce proceedings. Here again the burden of proof is apparently shifted to the party relying upon the foreign divorce decree. To rebut the presumption he must prove by his declarations and acts that he clearly intended his out of state residence to be considered his legal domicile.³⁰

Constitutionality

As drafted by the Commissioners, the Uniform Divorce Recognition Act is open to question upon constitutional grounds. Clearly insofar as the act conflicts with the rules of the *Sherrer*³¹ and *Johnson*³² cases, which foreclose attack upon the validity of a foreign divorce if there was participation by both parties to the original proceeding (regardless of the fact that neither party was a bona fide domiciliary of the state rendering the divorce decree), it is to that extent unconstitutional, being repugnant to the full faith and credit clause of the Constitution. True, it is not known to what degree the scope of the full faith and credit clause will be extended by the Supreme Court in these cases, but if the decisions since *Williams II* are any indication of what lies in the future, its scope will be broadened rather than limited.

As pointed out above, the effect of section 150.2 is apparently that of placing the burden of proof as to bona fide domicile on the party relying on the foreign divorce decree. If so, it follows that all ex parte divorces, coming within the broad language of the statute, which are attacked in California must be prima facie invalid. This result is not only contrary to the California case law,³³ but it is in direct conflict with the rule laid down by the Supreme Court that under the full faith and credit clause prima facie validity must be accorded the divorce decree of a sister state.³⁴ Writing for the majority in *Williams II*, Mr. Justice Frankfurter pointed out "the burden of undermining the verity which the Nevada decrees import rests heavily upon the assailant."³⁵ This statement is of particular note in view of the fact that the dissenters in this case vigorously contended that

²⁹ "The wording, 'was domiciled' and 'resumed residence' has been employed deliberately to make clear that the statute is drawn with the distinction between the concepts of 'domicil' and 'residence' in mind, and that this distinction is to be employed in the application of the Act." UNIFORM DIVORCE RECOGNITION ACT, Commissioner's Notes § 2, 9A U.L.A. 285-86 comment c (1957).

³⁰ "Where a person has two dwellings in different places and resides a part of his time in one place and a part of the time in another alternatively, the question which of the two places is his legal residence is almost altogether a question of intent." *Chambers v. Hathaway*, 187 Cal. 104, 105, 200 Pac. 931, 932 (1921); cf. *Brady Estate*, 177 Cal. 537, 171 Pac. 303 (1918); *Peters Estate*, 124 Cal. App. 75, 12 P.2d 118 (1932).

³¹ 334 U.S. 343 (1948).

³² 340 U.S. 581 (1951).

³³ E.g., *DeYoung v. DeYoung*, 27 Cal. 2d 521, 165 P.2d 457 (1946); *Davis v. Davis*, 71 Cal. App. 2d 150, 162 P.2d 64 (1945).

³⁴ *Cook v. Cook*, 342 U.S. 126 (1951); *Rice v. Rice*, 336 U.S. 674 (1948); *Esenwein v. Pennsylvania*, 325 U.S. 279 (1945); *Williams II*.

³⁵ 325 U.S. at 233.

to allow any collateral attack upon extra-state divorce decrees is to completely ignore the full faith and credit clause of the Constitution.³⁶

It may be argued that the statute does not shift the burden of proof but merely prescribes the quantum of proof needed by the attacking party to disprove the presumption of the foreign decree's validity. But even under this interpretation it is open to attack as being unconstitutional in that there are numerous factual situations which come within the language of section 150.2 which do not justify, under the rules laid down by the Supreme Court,³⁷ an inference of lack of domicile in the foreign jurisdiction.³⁸ At any rate, in the Commissioners' note to this section (the section corresponding to Civil Code section 150.2) it is made clear that under the act an ex parte divorce decree is presumed invalid when the facts of the case come within the language of the statute.³⁹

Conclusion

In attempting to evaluate the Uniform Divorce Recognition Act the ultimate question to be examined is of what utility has the act proved to be as an expression of public policy. The act was drawn in the wake of adverse public reaction to *Williams I.* This decision left open a door which allowed local citizens to obtain a "quickie" divorce merely by traveling to a neighboring state. As a result, respect for local law and social customs was being destroyed.⁴⁰ There was a strong feeling that the states should be able to preserve jurisdiction over the marital status of their own citizens. In a flurry of adoptions, the act became law in nine states, then interest apparently subsided for more than a decade until Montana's adoption last year.⁴¹

Whether the act presently reflects the considered views of the public is open to question. Perhaps, the steady increase in the nation's mobility has led to a diminution of the public's interest in reserving to the state of original domicile a tight grip on the marital status of her citizens. There also may be a growing feeling that the matter of divorce is a private one and the parties involved should be permitted to dissolve their marriage by obtaining a divorce in a foreign jurisdic-

³⁶ "Every divorce, wherever granted, whether upon a residence of six weeks, six months or years, may now be re-examined by every other state, upon the same or different evidence, to redetermine the 'jurisdictional fact', always the ultimate conclusion of 'domicile'" *Id.* at 248 (Rutledge, J., dissenting).

³⁷ See *Tot v. United States*, 319 U.S. 463 (1943).

³⁸ "[I]t would be difficult to justify the section constitutionally, in all cases to which it applies, on the theory that it is a reasonable regulation of the quantum of proof required to establish lack of domicil in the foreign state. This difficulty is increased by the fact that in many cases the only evidence which could rebut this presumption and permit the other party to escape a directed verdict might be testimony by the person whose domicil is in question as to his intent, but he may be dead or otherwise unavailable at the time of suit." Marsh, *The Uniform Divorce Recognition Act*, 24 WASH. L. REV. 259, 263-64 (1949).

³⁹ The Commissioners point out, "In some cases a presumption of the validity of the foreign divorce seems to have been indulged. . . . The reverse would be true, under this section, once facts giving rise to the inference were proved." UNIFORM DIVORCE RECOGNITION ACT Commissioner's Notes § 2, 9A U.L.A. 285 comment c (1957).

⁴⁰ Merrill, *The Utility of Divorce Recognition Statutes*, 27 TEXAS L. REV. 291, 294 (1949).

⁴¹ See note 13 *supra*.