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George W. Stumberg

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THE MIGRATORY DIVORCE

GEORGE W. STUMBERG*

In most of the American states a divorce is relatively easy to obtain. The statutory grounds are broad and have frequently been made broader by judicial decision. Given a sympathetic judge and a not too recalcitrant spouse, cruelty, particularly of the mental variety, can cover a multitude of sins, whether of omission or commission. There should be no valid reason for a husband or a wife living in one of these states to migrate elsewhere solely to sure a decree dissolving the marriage. However, they sometimes do. One reason may be to avoid local publicity.[1] Another may be to work a fraud on the respondent spouse by alleging in the foreign proceedings grounds which, while valid at home, cannot be sustained there.[2] When the suit is brought abroad the other spouse, if he wishes to contest, can only do so at great inconvenience and risk. The risk consists of the possibility that the foreign forum will decide against him by giving a more sympathetic and so more liberal application of a local cause or ground than the same cause or ground would be given back home.

In a minority of states the permissible grounds for divorce are limited. In South Carolina it was impossible until recently to secure an absolute dissolution of the marriage under any circumstances.[3] In New York adultery is the only ground.[4] In some of the other states,

* Professor of Law, University of Texas.

[1] See *In re* Englund's Estate, 45 Wn.2d 708, 277 P.2d 717 (1954), where Mrs. Englund testified that she went to Idaho "to get away from it all."

[2] See Reed v. State, 148 Tex. Crim. 409, 187 S.W.2d 660 (1945). A decree secured *ex parte* in Oklahoma by the defendant who was prosecuted for bigamous cohabitation in Texas was held not to be a defense. The Oklahoma domicile was simulated.

[3] See Brearley, *A Note on Migratory Divorce,* 2 LAW AND CONTEMPORARY PROBLEMS 329 (1935).

[4] For a discussion of the judicial attitude toward divorce in New York with special reference to migratory decrees, see Tobias Weiss, *A Flight on the Fantasy of Estoppel in Foreign Divorce,* 50 COL. L. REV. 409 (1950). See also *Annulments for Fraud—New York's Answer to Reno,* 48 COL. L. REV. 900 (1948).

while the strictures may not be as severe as in New York, the list of causes is not so generous as in the majority of states. In these minority states, including, of course, New York, it may be felt by those who wish to be freed absolutely from the chains of matrimony that there is a real reason for having a try at bringing suit elsewhere. It should be added that restrictions in some states on remarriage within a given period after the decree is granted may offer a temptation to a spouse who wishes to remarry in haste to migrate elsewhere in order to secure a decree which would be subject to no such restrictions.[5]

If, no matter what the reason for the migration, the spouse who has obtained the foreign decree returns to his usual abode, a court there may be confronted with the problem of the local effect of the decree. The problem is one which has been with us with varying degrees of intensity since almost the very formation of the American Union.

The earliest reported case involving a migratory divorce seems to be *Jackson v. Jackson,* decided by a New York court in 1806.[6] Nancy Jackson, unable to adjust herself to physical abuse by her husband, discovered through her attorney that she could file suit for divorce in Vermont without becoming a resident there. Not only did the Vermont court grant the divorce decree, but it also granted alimony. Suit on the alimony decree was brought in New York. Her husband, Archibald, not denying the physical abuse, insisted that he had at all times been faithful to Nancy. Since the Vermont court granted its decree on a ground not permitted in New York, it was not, so he contended, entitled to recognition as valid in that state. Dismissing Nancy's suit, the court in effect reprimanded her for attempting to work a fraud, not only on her husband, but also on the State of New York.[7] Shortly after the *Jackson* case, Vermont ceased to be a tempting haven in this respect, since the legislature provided for residence by the petitioner for a protracted period of time. Other state legislatures had already done so or followed suit. In most of the states the

[5] In some states by statute, parties to a divorce action are, without regard to fault, forbidden to marry until the expiration of a year after the decree. In a number of these states a marriage in a state having no such provision has been held to be bad when contracted by domiciliaries. Cf. Peters v. Peters, 177 Kan. 100, 276 P.2d 302 (1954). In other states the decree does not become final until after the expiration of a given time, such as one year. Similar legislation in Washington was repealed.

[6] Jackson v. Jackson, 1 John. 424 (N.Y. 1806).

[7] Cf. Sewall, J. in Barber v. Root, 10 Mass. 260 (1813), at 265: "I must . . . say, the operation of this assumed and extraordinary jurisdiction [Vermont's] is an annoyance to the neighboring states, injurious to the morals and habits of their people. . . ." "The alimony decree would not be entitled to full faith and credit today because of lack of a jurisdiction 'in personam.' "

required period of residence became a year or more.[8] However, the New York courts at an early stage took the position that a divorce granted abroad was invalid in New York as to a spouse domiciled in that state without regard to the domicile by the petitioning spouse in the decree-granting state. In other words, the restrictive divorce policy of New York was applied to all foreign divorces where the respondent was a citizen of New York. It will be recalled that this issue came to a head in the case of *Haddock v. Haddock*.[9] There the husband and wife married in New York where they then lived. Shortly after the marriage the husband moved to Connecticut, where he in due course obtained a divorce *ex parte* upon an allegation of desertion. His wife subsequently sued in New York for judicial separation and maintenance. The New York courts refused to give full faith and credit to the Connecticut decree in spite of the fact that the husband had acquired a Connecticut domicile, a matter which was not disputed. The Supreme Court of the United States affirmed. Speaking for a bare majority,[10] Chief Justice White laid down three conditions, one of which must exist in order for a foreign divorce decree to be entitled to full faith and credit. (1) If the divorce is granted *ex parte*, the decree-granting state must be the matrimonial domicile. If the decree is granted in a state which is the domicile of the petitioning spouse alone and not the matrimonial domicile, (2) the respondent must be served locally with process or appear, or (3) the respondent must also be domiciled within the state granting the petition. When the Supreme Court overruled the *Haddock* case in the first *Williams* case,[11] the concept of matrimonial domicile as a jurisdictional requirement for purposes of full faith and credit was eliminated. Instead, a decree granted at the domicile of the petitioning spouse, although *ex parte*, became entitled to full faith and credit. Also, it was subsequently held that if the respondent appears to contest jurisdiction on the merits

[8] According to a statement in the Jackson case, at the time the Vermont decree was granted the legislature had already provided for residence, but the statute had not yet gone into effect. The fact that there was no jurisdiction in personam to enter the alimony decree was not discussed by the New York court.

[9] Haddock v. Haddock, 201 U.S. 562 (1906). Cf. Atherton v. Atherton, 181 U.S. 155 (1901), where the New York courts were compelled to give full faith and credit to a Kentucky decree. The respondent wife had left the husband to return to New York. Kentucky was the marital home.

[10] The decision in the Haddock case was five to four. The majority did not hold that the Connecticut decree could not be given full faith and credit. They merely held that New York did not have to do so. A number of state courts even before the first Williams case accorded recognition to decrees granted at the domicile of the petitioning spouse. Of course, it was this point of view which finally won out in the first Williams case (see note 11) as a mandate of full faith and credit.

[11] Williams v. North Carolina, 317 U.S. 287 (1942).

and the case goes against him, the decree cannot be attacked elsewhere, even by persons not parties to the divorce procedings.[12] At the same time, the position was taken in the second *Williams* case that, when a decree is granted *ex parte,* it may be attacked elsewhere upon an affirmative showing that the petitioning spouse was not in fact domiciled in the decree-granting state; otherwise, not.[13] The result of the shift from matrimonial domicile to domicile in fact of one of the spouses is that courts in states like New York, which have had a policy to the contrary, must now grant full faith and credit to foreign decrees granted at the domicile of the petitioning spouse, even though the respondent is a local domiciliary or has become a resident since the rendition of the decree. On the other hand, if the decree is not one granted at the domicile and there has been no appearance, it is not entitled to recognition elsewhere.[14] It would seem then that decrees granted *ex parte* in states where the required periods of residence are short are, from the point of view of full faith and credit, suspect, at least where the petitioning spouse returns to his former abode shortly after the divorce is granted, since a stay of a short period would negative the intent required for domicile.[15]

Reference has already been made to the fact that residence of a year or more by the petitioning spouse became the requirement for divorce in most of the states.[16] However, beginning in the late 1920's, several state legislatures shortened considerably the necessary period. These states include Nevada, Arkansas, Idaho, and Florida. Until 1927 the residence period in Nevada was six months. In that year it was reduced to three. Arkansas followed suit in 1931 by reducing its period from one year to three months. Idaho did likewise approximately two weeks later by enacting a ninety-day law. The action of these two states induced Nevada further to reduce its period to six weeks. Finally in 1937 Florida adopted a ninety-day law. In all four states the avowed purpose was to induce discontented spouses to migrate temporarily for the purpose of securing divorces. In effect,

[12] Sherrer v. Sherrer, 334 U.S. 343 (1948); Coe v. Coe, 334 U.S. 378 (1948). The same result was reached with respect to a daughter of the earlier marriage on the ground that in Florida, where the decree was granted, she could not collaterally attack. Johnson v. Muelberger, 340 U.S. 581 (1951).

[13] Williams v. North Carolina, 325 U.S. 226 (1945). See Cook v. Cook, 342 U.S. 126 (1951) to the effect that the one attacking the foreign decree has the burden of showing lack of domicile and hence the non-existence of jurisdiction.

[14] See Williams v. North Carolina, *supra* note 13.

[15] To acquire a domicile in a particular place, a person must not only be there, but he must intend to remain there for an indefinite period of time. See Dupuy v. Wirtz, 53 N.Y. 556 (1873).

[16] See note 18, *infra.*

invitations were issued to those who might be weary of their matrimonial status to come to them, where, after a short stay, unhappy spouses could be freed from their matrimonial bonds. Hotels, motels, apartment houses, and places of amusement would benefit appreciably and, who knew, the migrants might even remain after their immediate objective had been attained.[17] Nevada, in reducing her period to six weeks, hoped to gain through volume more than she might lose through shortness of stay. The ultimate fate of Mr. Williams and Mrs. Hendrix, the defendants in the second *Williams* case, illustrates a danger involved in going to a short-residence state to secure a divorce, since in that case the pair who had obtained Nevada decrees were convicted in North Carolina, where they resided and to which they returned, of bigamous cohabitation upon a jury finding that they had not acquired bona fide domiciles in Nevada.[18] However, the extent of the risk should be measured by reference to the lack of zeal of public prosecutors and to the attitude of courts under a doctrine of what has sometimes been called estoppel[19]—erroneously, it seems to be generally admitted. The New York case of *Starbuck v. Starbuck*[20] is a relatively early illustration of a decree which was treated as valid for a particular purpose, although it was assumed not to be entitled to full faith and credit. In that case the claimant had married the decedent, a resident of New York, in Massachusetts. After several years of cohabition in New York, she left him. Returning to her former home in Massachusetts, she procured in that state a divorce *ex parte* on the ground of extreme cruelty. Upon the death of her husband, she asserted a claim for dower in his New York lands, all of which had been acquired after the Massachusetts divorce. Her claim was rejected upon the thesis that she, having sought the jurisdiction of the Massachusetts court, should not be permitted to assert the invalidity of its decree. To permit her to do so would be inequitable. But the notion that it might be inequitable for a person to assert the invalidity of a foreign decree did not stop with its application to instances where the one who obtained the decree was asserting its invalidity. It was also applied in New York when the respondent who

[17] For an account of the enactment of short term residence statutes see Bergeson, *The Divorce Mill Advertises*, 2 LAW AND CONTEMPORARY PROBLEMS 348 (1935). The residence requirement in Idaho is now six weeks. Idaho Code Ann. Sec. 32-701.

[18] Williams v. North Carolina, 325 U.S. 226 (1945).

[19] See generally Weiss, *A Flight on the Fantasy of Estoppel in Foreign Divorce*, 50 COL. L. REV. 409 (1950); Harper, *The Myth of the Void Divorce*, 2 LAW AND CONTEMPORARY PROBLEMS 335 (1935); Merrill, *Utility of Divorce Recognition Statutes*, 27 TEX. L. REV. 291 (1948)

[20] Starbuck v. Starbuck, 173 N.Y. 503, 66 N.E.2d 193 (1903).

did not appear in the foreign proceedings had remarried. For example, in *Carbulon v. Carbulon*[21] the wife, who had remarried, attempted to enforce a New York order for maintenance against her first husband, who had obtained a Connecticut divorce decree after the entry of the maintenance order. The New York court held that the "plaintiff could not assert that the marriage relation with the defendant remained unaffected by the foreign decree and at the same time assert that she had legal capacity to marry another." It might be worth mentioning that in both these cases the foreign decrees were granted under circumstances where they would now be entitled to full faith and credit.[22] However, the courts of New York have applied the doctrine of estoppel or inequity to decrees which, under the second *Williams* case, would be subject to attack because the petitioning spouse had not acquired a domicile in the decree-granting state. *Krause v. Krause*[23] is an illustration. The husband had secured a Nevada decree. Upon his return to New York he remarried. Later his second wife sued for judicial separation and maintenance. His defense that the second marriage was invalid because of the invalidity in New York of the Nevada decree was denied.

Since the *Williams* cases, divorces, even though subject to collateral attack, have been given effect for some purposes between the parties in other jurisdictions.[24] In California, for example, a person who remarries or marries one of the divorced spouses may not question the validity of the decree. Again, the one who procured it may not challenge it.[25] In Washington the supreme court has gone further than most courts apparently have, since it has held that a stranger may not attack the decree when property claims are involved. In the case of *Wampler v. Wampler*,[26] decided in 1946, the court announced a doctrine to the effect that, whatever may be the sphere of estoppel or inequitable conduct where property claims are involved, it has no application to a matrimonial action. The wife, who had secured an earlier decree in Idaho, sued her first husband, who had remarried, for divorce. The respondent contended that the wife's suit was barred by the Idaho decree, which she, as petitioning spouse in Idaho, could

[21] Carbulon v. Carbulon, 293 N.Y. 375, 57 N.E.2d 59 (1944).

[22] In the Starbuck case the petitioner was domiciled in Massachusetts. In the Carbulon case the fact that the petitioner was probably domiciled in Connecticut was not referred to.

[23] Krause v. Krause, 282 N.Y. 355, 26 N.E.2d 290 (1940).

[24] For cases in general, see 175 A.L.R. 538 (1948). For cases involving attacks by parties without interest on domestic and foreign decrees, see 28 A.L.R.2d 1328 (1953).

[25] For a discussion of the California cases, see 42 CAL. L. REV. 503, 507 (1954).

[26] Wampler v. Wampler, 25 Wn.2d 258, 170 P.2d 316 (1946).

not attack. The contention was denied on the ground that this was a matrimonial action and not one involving property rights.

The general theory of the *Wampler* case was followed in *In re Tamke's Estate*[27] but with a different result. The wife, who had obtained a decree from Tamke in Nevada and immediately thereafter had married another and then returned to Washington, filed a petition there to be appointed administratrix of Tamke's estate. The contest was between her and a brother of the deceased. The court below appointed Mrs. Tamke, but this was reversed on the ground that this was not a matrimonial action, as was the suit for divorce in the *Wampler* case. On the contrary, so it was held, the suit was one to determine conflicting property claims. It might be noted that in the *Tamke* case a second marriage (by Mrs. Tamke to one Lavier) had been annulled at the instance of Lavier, apparently on the ground that an annulment suit involves matrimonial status. The over-all result of the case is that Mrs. Tamke was not married to Lavier, her second husband, because she was still married to Tamke, since her Nevada divorce from him was invalid. At the same time, she was not married to Tamke insofar as any claim against his estate might be concerned.

However, according to *In re Englund's Estate,*[28] a later decision, if Mrs. Tamke's marriage to Lavier had not been annulled and if it had been Lavier who died, she would have succeeded in a contest with his brothers and sisters, because her deceased husband would not have been able to assert the invalidity of the foreign decree, since he, having married with knowledge and not having disclaimed the marital status, would have been precluded from denying while alive its effectiveness with respect to property rights. Those claiming through him could have no greater rights than would he.[29] The subtle nuances, not only in Washington, but in other states as well, might be expressed in terms of "Off again Finnegan, on again Finnegan" or "Button, button, where's the button?"

No one, not even the courts, have been able to give a satisfactory explanation of the partial recognition doctrine beyond stating that it would be inequitable under the circumstances to permit an attack upon a decree which otherwise is not entitled to full faith and credit.[30]

[27] *In re* Tamke's Estate, 32 Wn.2d 927, 204 P.2d 526 (1949).

[28] *In re* Englund's Estate 45 Wn.2d 708, 277 P.2d 717 (1954). See *In re* Lindgren's Estate, 293 N.Y. 18, 55 N.E.2d 849 (1944) in which a daughter was permitted to attack, even though her father could not.

[29] The case is noted 43 CAL. L. REV. 881 (1955).

[30] See note 19 *supra* for general discussions of the estoppel doctrine.

An explanation of the earlier *Starbuck*[31] case might be that it was decided when the New York courts were following a strict, and harsh, policy with respect to nonrecognition of foreign decrees insofar as they might affect the status of residents of New York. The decision may have reflected a spirit of repentance at the strictures imposed in not according recognition to a decree granted at what was admittedly the domicile of the petitioning spouse. If this repentance was a contributing cause, the reason ceased with the first *Williams* case, since now the same decree would be entitled to full faith and credit. Seemingly the same feeling exists today because of the difficulty involved in getting a divorce at all in New York.[32]

In any event, whose equities are involved? In the Washington *Tamke*[33] case, the wife migrated to Nevada, apparently to secure a divorce more quickly, so that she could remarry sooner. In the *Englund* case[34] she migrated to Idaho for much the same purpose. In both instances the wives wanted to eat their cake and have it too. They wanted divorces which, on the facts, they might not be able to get at home, but they also wanted to keep their homes in Washington. In neither case was anyone misled. Their husbands were no piano players who were unaware of what was going on upstairs. The second consorts were no Alices in Wonderland. All concerned seemed to be satisfied with the arrangements except Mr. Lavier (Mrs. Tamke's second spouse), and he apparently became dissatisfied only after Mrs. Tamke assaulted him. In the *Tamke* case it might have been unfair to permit Mrs. Tamke to succeed, since she would have gained had the decision gone the other way. She was in effect asking for an additional piece of cake. However, in the *Englund* case Mrs. Englund was allowed to profit by securing the Idaho decree and then remarrying. To change about language employed in some of the cases, she profited by her own wrong, assuming that to migrate temporarily to Idaho to secure a divorce which could not be gotten as quickly at home was wrong. But was it wrong? Perhaps it was not. That would be a matter for the domiciliary forum to decide.

There is nothing in the Constitution which forbids the action taken by the Washington and other courts. The Supreme Court has never held that a divorce granted in a short-term residence state, even without domicile there, is void in the state where granted. The basis for

[31] Starbuck v. Starbuck, 173 N.Y. 503, 66 N.E.2d 193 (1903).
[32] See note 4 *supra*.
[33] *In re* Tamke's Estate, 32 Wn.2d 927, 204 P.2d 526 (1949).
[34] *In re* Englund's Estate 45 Wn.2d 708, 277 P.2d 717 (1954).

so holding would be denial of due process by the decree-granting state. Insofar as property is concerned, the respondent spouse loses no more than nebulous expectancies in future acquisitions. Whether a husband or wife has a *right* to consortium with an unwilling spouse seems more than questionable. It would appear then that an attack on due process grounds would fail. If the decree is valid where granted, there is nothing to preclude its recognition as valid elsewhere for any purpose. All that the Supreme Court has held is that a decree granted *ex parte* at the domicile of the petitioning spouse must be given full faith and credit; if not so granted, it need not be given recognition elsewhere. This is quite different from saying it must *not* be accorded full faith and credit if it is granted in a state which is not the domicile of the petitioning spouse.[35]

It may be that recognition, though not required, is the direction in which courts giving a broad scope to the estoppel-inequity doctrine are going. The fact that the state rarely intervenes through criminal proceedings or that annulment suits grounded on the invalidity of the foreign decree are relatively infrequent, and then often employed as a convenient substitute for divorce proceedings,[36] seems to indicate that, as a practical matter, this may be the point almost reached in the State of Washington as a consequence of the *Englund* decision. At the same time the fuller the recognition accorded a foreign decree becomes, the more easily a spouse by migrating (for a short stay) can flout with impunity the divorce policy of his own state. In this connection it might be added that those who can conveniently migrate are relatively few. Even a sojourn of six weeks in Las Vegas or Reno plus the two or three weeks it may take to secure the decree, to say nothing of the longer stay in Hot Springs or Miami, requires leisure and money. The vast majority, those who have neither the finances nor the leisure, must remain at home to abide by the requirements of their local law. Consequently, unrestrained recognition can result in discrimination between those who have and those who have not, or, at least, those who have less.

Critics of judicial resort to the estoppel-inequity doctrine to expand voluntary recognition of foreign *ex parte* decrees beyond the point required by full faith and credit, at times seem to assume that recog-

[35] In the second Williams case, note 13, Justice Murray in a concurring opinion seemed to assume that the Nevada decree was valid in that state. See 325 U.S. at 242. The Chief Justice and Justice Jackson joined in his views. Cf. the language of Justice Rutledge at 325 U.S. at 246.

[36] But see 48 COL. L. REV. 900 (1948), in which annulment in New York as an answer to Reno is discussed.

nition is being given to something which has no validity whatever.[37] The implication is that the courts are surreptitiously bringing about unlawful results or, even worse, closing their eyes to alleged immoral activities and so in effect encouraging them. There is nothing illegal in going abroad to secure a divorce, even though the resulting decree may not be entitled to full faith and credit. Perjury by the petitioning spouse would, of course, be a crime in the state where the testimony is given, but unless it were of a sort that would make the decree subject to collateral attack where granted, it would, from what has been said, be valid there. Whether it should be given effect at the domiciliary forum should be a matter to be decided there by reference to questions pertaining to the desirability of protecting domestic divorce policy through discouraging migration solely for the purpose of obtaining a divorce, rather than by reference to *a priori* assumptions of misconduct. If, in the second *Williams* case,[38] the Supreme Court of North Carolina had reversed the conviction below, it would have meant no more than an indication that the activities of Mr. Williams and Mrs. Hendrix were a matter of indifference to the State of North Carolina. As it was, in affirming the conviction, the North Carolina court in effect took the position that it would be disruptive of the overall local divorce policy to permit the two to go to Nevada solely to secure a divorce and then to return with impunity. Probably if criminal proceedings were brought under similar circumstances in other states, even in those which have given extensive application to the estoppel-inequity doctrine, a similar result would be reached, assuming a local statute made bigamous cohabition criminal.[39] It would seem that consistency, if the matter is here one of making effective local policy with respect to divorce, should lead to a pattern of recognition or nonrecognition, as the case might be, in such a manner as to preclude any benefit to the migrating spouse.

With this thought in mind, one can readily agree with the Texas Court of Criminal Appeals[40] that a divorce obtained in Oklahoma by a resident of Texas under a simulated Oklahoma residence should be treated as of no effect in Texas when the state intervenes to prosecute on a charge of bigamous cohabition. It is also easy enough to go along with the holding in the Washington *Tamke* case, since the

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[37] See Harper, *supra* note 19; Merrill, *supra* note 19.

[38] 325 U.S. 226 (1945).

[39] This would seemingly be true in Washington, since the prosecution would involve the effect of the divorce on marital relations.

[40] See Reed v. State, 148 Tex. Crim. 409, 187 S.W.2d 660 (1945).

result there was designed to penalize migration by denying to Mrs. Tamke a claim against Mr. Tamke's estate. The court was not saying to Mrs. Tamke, "We are denying your claim, because the decree which you obtained in Nevada is entitled to recognition in Washington." On the contrary, what it was in effect saying was: "Your claim is not entitled to full faith and credit in Washington, but we will not permit you to rely upon its ineffectiveness, because to do so would permit you to take advantage of activities of which we disapprove, i.e., your migration to Nevada for the sole purpose of evading our divorce policy."

By way of contrast, in the *Englund* case Mrs. Englund reaped a benefit from her Idaho decree, even though the background circumstances were such that it was obvious that all concerned were willing to circumvent the result which might have been reached had the divorce petition been filed in Washington. There is an inconsistency between the *Tamke* and *Englund* cases if in fact the over-all policy in Washington is to discourage resort to a foreign forum when the domicile of the decree-seeking spouse is in Washington. This policy seems to be expressed clearly enough in the Uniform Divorce Recognition Act as adopted by the Washington legislature in 1949.[41] The argument might be, as was that of the majority in the *Englund* case, that the act was not intended to disturb the pre-existing estoppel doctrine. A ready answer to that argument may not be available, since the evidence as to what was intended is meager. However, the legislatures of nine states and the Commission on Uniform Laws must have intended the legislation to operate as a brake on peregrinations abroad to secure divorce decrees. Otherwise the legislation would not have been recommended and enacted. It is not unreasonable to assume that the thought was that the migrant should be discouraged by nonrecognition of the decree at the forum when recognition would enable him to secure an advantage in spite of his effort to evade local divorce policy.

When the Supreme Court decided the first *Williams* case, it reduced considerably the area of permissible nonrecognition of foreign divorce decrees. The area was unnecessarily and more drastically reduced when it decided the *Johnson* case, since the decision in that case made it possible for cooperative spouses to evade their own laws.[42] Now

[41] For a discussion of the Uniform Act with particular reference to both California and Washington, see 43 CAL. L. REV. 881 (1955). See also Marsh, *The Uniform Divorce Recognition Act*, 24 WASH. L. REV. 259 (1949).

[42] 340 U.S. 581 (1951).

many of the state courts, such as those of California, New York, and Washington, are to one degree or another cooperating further by recognizing for particular purposes the local validity of decrees that are not entitled to full faith and credit, even under the narrow limits set by the Supreme Court. A justification that may be given, at least insofar as New York and California are concerned, is that the divorce laws of these states are too restrictive—in New York because of the single ground or in California because of the postponement of the finality of local decrees—thus making immediate remarriage illegal. Recognition, though not required, so it may be thought, serves to alleviate the hardship imposed by local strictures which are not realistic, human nature being what it is. A further thought may be that courts are presented with hardship situations in which it is better to recognize to some extent the legitimacy of a new marriage or change in status at the expense of what otherwise appears to be state divorce policy. An answer is that if the domicile divorce laws are too strict, change them. The very fact that it has been difficult to bring about legislative change is indicative of strong-rooted approval of the *status quo*. When a court broadens the area of recognition, it by that much thwarts the operation of its local divorce laws. The issue here is not one of giving or not giving validity to something that is invalid, but essentially one of deciding whether what the court has a right to do should be done in the light of its possible effect on local policy with respect to divorce.