RECOGNITION OF FOREIGN DIVORCE DECREES

In *Mountbatten* v. *Mountbatten* [1959] 2 W.L.R. 128, [1959] 1 All E.R. 99, Davies J. refused to extend the principle in *Armitage* v. *Attorney-General* [1906] P. 135, 75 L.J.P. 42, 94 L.T. 614, 22 T.L.R. 306, and reiterated the rule that, subject to exceptions, domicile is the basis of jurisdiction in divorce cases.

The facts of the case were as follows. The husband, a domiciled Englishman, and wife were married in the United States of America in 1950 and lived together in New York until the husband returned to England at the end of 1952. The wife refused to follow him and instituted proceedings for divorce in the State of New York. Later, however, the New York proceedings were discontinued and the wife obtained a decree of divorce in the State of Chihuahua in the Republic of Mexico, in May 1954. The jurisdiction of the Mexican court was based on two grounds, either of which would have been sufficient by itself. 1. The residence of the wife within its jurisdiction: it being sufficient for this purpose that the wife was physically present at the time the decree was granted. 2. The express submission of both parties to the jurisdiction. The husband at all times retained his English domicile of origin.

It was held as a matter of fact that the courts of New York would recognise the Mexican decree of divorce.

The husband sought to have the Mexican decree recognised on the following grounds. The wife had been ordinarily resident in New York for more than three years prior to the granting of the decree. If, therefore, the decree had been granted by the courts of New York, the English courts would have recognised it on the authority of *Travers* v. *Holley* [1953] P. 246, [1953] 3 W.L.R. 507, [1953] 2 All E.R. 794, 97 Sol. Jo. 555; *Carr* v. *Carr* [1955] 2 All E.R. 610, [1955] 1 W.L.R. 422, 99 Sol. Jo. 260; *Arnold* v. *Arnold* [1957] P. 237, [1957] 2 W.L.R. 366, [1957] 1 All E.R. 570; *Robinson-Scott* v. *Robinson-Scott* [1958] P. 71, [1957] 3 W.L.R. 842, [1957] 3 All E.R. 473; and *Manning* v. *Manning* [1958] P. 112, [1958] 2 W.L.R. 318, [1958] 1 All E.R. 291. As the New York courts would recognise the Mexican decree, the English courts should also do so on an extension of the principle in *Armitage* v. *Attorney-General* (above).

Davies J. rejected the argument. He felt considerable doubts as to whether the wife could be said to be ordinarily resident in New York for three years preceding the decree, in view of the fact that she had obtained a certificate of residence in Mexico in order to institute divorce proceedings in Mexico. However, even if it held that she was ordinarily resident in New York for three years prior to the Mexican divorce proceedings, he was not prepared to recognise the decree. The basic rule of English law was that only the courts of the domicile had jurisdiction in divorce cases. By the Matrimonial Causes Act, 1950, Parliament had created an exception to that rule, and on the principle of comity the English courts would recognise decrees granted by foreign courts, other than those of the domicile, in circumstances where, mutatis mutandis, the English courts could have assumed jurisdiction under the Matrimonial Causes Act, 1950. If, therefore, the wife had obtained her divorce in New York, the English courts would have recognised it, even although the New York courts had assumed jurisdiction on the basis of one year's residence; and if the wife had been resident in Mexico for three years prior to the divorce decree, the English courts would have recognised it, even although it was granted on grounds insufficient in English law; nor would the collusive nature of the Mexican proceedings have prevented recognition of the decree, as there was no fraud upon the Mexican court. However, these were not the facts of the case. The divorce had been granted by a Mexican court, which was not the court of the domicile, and the wife had not been ordinarily resident in Mexico for three years prior to the divorce proceedings. *Armitage* v. *Attorney-General* (above) was authority only for the proposition that the English courts will recognise a decree, wherever pronounced, which is recognised by

the court of the domicile of the parties, and he rejected the argument that *Armitage* v. *Attorney-General* was authority for the proposition that the English courts will recognise decrees which are recognised as valid by the courts within whose jurisdiction the wife was resident for three years prior to the divorce. As was said by Hodson L.J. in *Levett* v. *Levett and Smith* [1957] P. 156, 161, ([1957] 2 W.L.R. 484, [1957] 1 All E.R. 720), *Travers* v. *Holley* (above) only decided that the English courts will recognise the right of foreign courts to encroach on the principle of domicile only to the extent to which they do themselves.

It would seem, therefore, that encroachments on the rule that domicile is the sole basis of jurisdiction in divorce cases have come to an end for the present. One effect of these decisions is that it is now possible for a wife to get round the rules of English divorce law in cases where the husband cannot. Suppose that the wife is the guilty party and the husband refuses to divorce her. If she resides for three years in a country which grants divorces on grounds insufficient in English law, such as incompatibility of temperament, she can then obtain a decree of divorce in that country which will be recognised by the English courts. Not so the unhappy husbands, however. Section 18(1)*(b)* of the Matrimonial Causes Act, 1950, gave divorce jurisdiction to the English courts on the ground of three years residence only in the case of petitions by the wife, and as a husband who is not domiciled in England cannot obtain a divorce in the English courts, a husband who is domiciled in England cannot obtain a divorce in any other country, as was held by the Court of Appeal in *Levett* v. *Levett and Smith* (above).

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