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FULL FAITH AND CREDIT—FRAUD IN PROCUREMENT OF PERSONAL SERVICE—DIVORCE—DOMICILE

If some future savant should perchance decipher the remains of any law review, he is almost certain to discover an article on full faith and credit,[1] migratory divorce, and sundry allied problems of jurisdiction, domicile, service of process, and res judicata.

If this explorer is statistically minded he may determine how-much ink, paper, and time had been devoted to this subject. Curiously, no volume dealing exclusively with the subject has been compiled.[2]

This inquiry is but another attempt to state what part of the law in this area may be at the present time with particular reference to a recent Nebraska case, *Zenker v. Zenker*,[3] which raises some interesting questions regarding the never, never land of full faith and credit.

If married persons always had a common domicile there would be far less difficulty in determining which court has the power to grant a divorce entitled to recognition in sister states. But since husbands and wives in the United States may secure separate domiciles quite freely, the jurisdictional problem becomes one of great complexity. In *Haddock v. Haddock*,[4] decided in 1906, the United States Supreme Court held that a foreign divorce decree was entitled to full faith and credit when (1) it was granted, even though ex parte, at the matrimonial domicile; (2) when it was granted by the state which is the domicile of both spouses; or (3) when the granting state was the domicile of one of the spouses and the other was served with process there or appeared. Thirty-six years later this doctrine was overruled, with the holding that the domicile of one party was sufficient jurisdiction for the action.[5] That under certain circumstances the question of domicile could be re-examined by the courts of a state other than

1 U.S. Const. art. IV, § 1.

2 See Jackson, Full Faith and Credit 4 (1945). Research by the author disclosed no such volume as of this writing.

3 161 Neb. 200, 72 N.W.2d 809 (1955).

4 201 U.S. 562 (1906). For early history of domicile in the United States, see Cheever v. Wilson, 9 Wall. 108, 124 (U.S. 1869); Harding v. Alden, 9 Greenl. 140 (Me. 1832); Tolen v. Tolen, 2 Blackf. 407 (Ind. 1831).

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

the one granting the divorce has been held in two subsequent cases.[6]

However, it appears that this right to re-examine is limited and that a state's finding of domicile cannot be questioned where the defendant entered an appearance and appeared personally at the trial,[7] or possibly where the defendant was personally served in the state granting the divorce.[8] Another facet of the problem was considered in *Alton v. Alton*[9] where a court of appeals decided that a Virgin Islands statute providing that six weeks presence should be prima facie evidence of domicile was unconstitutional.[10]

The jurisdictional problems in divorce litigation become increasingly frequent as our population becomes more ambulatory, and as a consequence, clashes with the full faith and credit clause and its implementing statute become more frequent.[11]

Literal interpretation of the full faith and credit clause and its supporting legislation would mean that one state court could not question the judgment of another state court. It is obvious that literal interpretation has not been the rule. For a good many years it has been permissible for the courts of one state to refuse full faith and credit to judgments of courts of other states where the latter lacked jurisdiction.[12]

[6] Rice v. Rice, 336 U.S. 674 (1949); Williams v. North Carolina, 325 U.S. 226 (1945).

[7] Coe v. Coe, 334 U.S. 378 (1948); Sherrer v. Sherrer, 334 U.S. 343 (1948).

[8] See Johnson v. Muelberger, 340 U.S. 581, 587 (1951).

[9] 207 F.2d 667 (3d Cir. 1953).

[10] 121 F. Supp. 878 (D.V.I. 1953). The defendant-husband, domiciled in Connecticut, appeared generally, waived service of summons and did not contest the Virgin Island proceedings. The district court requested the plaintiff-wife to furnish evidence of domicile and when it was not forthcoming, dismissed the suit. The court of appeals held that the domicile of at least one of the parties was necessary to satisfy constitutional requirements and could not be declared indispensable by statute. On writ of certiorari to the United States Supreme Court, 347 U.S. 610 (1954), the case was held moot because prior to the hearing, Mr. Alton, defendant in the Virgin Islands' action, obtained a divorce in Connecticut.

[11] See Act of 1790, 1 Stat. 93 (1827), now 28 U.S.C. 1738 (1948): "Such Acts, records and judicial proceedings or copies thereof, so authenticated, shall have the same full faith and credit in every court within the United States and its Territories and Possessions as they have by law or usage in the courts of such State, Territory or Posession from which they are taken."

[12] See, e.g., Hansberry v. Lee, 311 U.S. 32 (1940); Pennoyer v. Neff, 95 U.S. 714 (1874); Nelson v. Miller, 201 F.2d 277 (9th Cir. 1952); Ulrey v. Ulrey, 231 Ind. 63, 106 N.E.2d 793 (1952). But see Smith v. Smith, 211 Ga. 615, 87 S.E.2d 320, 322 (1955).

Whenever judgments or decrees rendered by a state in a divorce suit are brought into the courts of a sister state for enforcement, it is quite likely two problems will be presented: (1) Is the divorce decree valid in the sister state?; and (2) Must the sister state enforce that part of the decree which grants money in the form of a property settlement or alimony.

At least one, and possibly both, of these issues confronted the Nebraska court in the *Zenker* case.

The wife commenced an action for divorce in the appropriate Colorado court. Her petition asked for a divorce and a division of the marital property. Personal service was had upon the defendant-husband in Colorado, although as will be seen later there was doubt about whether this service was effective to give Colorado personal jurisdiction over him since his presence in Colorado was allegedly procured by the fraud of the plaintiff-wife. The husband entered no appearance and took no part in the Colorado proceedings which were concluded when the Colorado court entered a divorce decree and a judgment in the amount of $15,669.20 in favor of the wife.

The wife next instituted a proceeding in an appropriate Nebraska court in which she asked that the Colorado judgment ". . . be declared to be valid and a lien on defendant's property. . . ."[13] The defendant-husband answered that the wife was not domiciled in Colorado; that instead she was domiciled in Nebraska; that Colorado had no jurisdiction to grant the divorce decree; that the husband's presence in Colorado at the time of the personal service was fraudulently obtained by the wife; and that therefore there was no jurisdiction to enter the money judgment which the wife sought to register. The husband prayed that the Nebraska court deny registration. The wife's reply alleged that the husband was estopped from challenging collaterally the jurisdiction of the Colorado court.

The Nebraska trial court found that the Colorado court did not have jurisdiction to grant the divorce and the money judgment and dismissed the action. It found that the wife was not domiciled in Colorado. Because the wife's attorney did not file the proper papers within the time allotted by Nebraska procedural rules, the evidence bearing upon the domicile of the wife was not before the Nebraska Supreme Court. Consequently, the Nebraska Supreme Court treated the case upon the basis that it was an estab-

[13] 161 Neb. 200, 203-4, 72 N.W.2d 809, 813 (1955).

lished fact that the wife's domicile was not in Colorado, but instead was in Nebraska.

The supreme court agreed with the lower Nebraska court that registration of the Colorado judgment was properly refused. The Nebraska Supreme Court treated the validity of the property judgment as dependent upon the validity of the divorce decree, and held the latter invalid because it was rendered by a state which was not the domicile of either spouse, and which had not secured valid personal jurisdiction over the husband.[14] The court held that service upon a person while he was within the state could not be made the basis of jurisdiction over the person served, where presence was the result of "fraud" of the judgment creditor.

Had there been no fraud in obtaining personal service upon the defendant-husband in Colorado, the Nebraska Supreme Court indicated that it would have felt compelled by decisions of the United States Supreme Court to recognize the Colorado divorce decree, and probably also the Colorado judgment. The question which immediately arises is whether the Nebraska court elicited the correct rule for divorce jurisdiction from the United States Supreme Court cases and if so, does this rule bring us to that advanced state of civilization which permits a transitory divorce action, i. e., is domicile of one of the parties no longer necessary as the jurisdictional basis for granting a divorce?

There can be no doubt that the Nebraska Supreme Court did find language in prior United States Supreme Court opinions to support the view that a state which is not the domicile of either spouse may grant a valid divorce if it obtains personal jurisdiction over the defendant.[15] Whether or not the United States Supreme Court intended to lay down this rule is debatable since such a holding carries far reaching consequences. Carried to its logical conclusion it would result in "mail order" or "vending machine" divorces.[16]

The general rule is that jurisdiction based upon personal service of process procured by fraud, trickery or artifice will not be exercised by a court, and that such service will be set aside upon

[14] Cf. Neb. Rev. Stat. § 42-341 (1943). "A divorce from the bonds of matrimony obtained in another jurisdiction shall be of no force or effect in this state, if both parties were domiciled in this state at the time the proceedings for divorce was commenced."

[15] See, e.g., Cook v. Cook, 342 U.S. 126, 127 (1951).

[16] Cf. Brief of Dean Erwin Griswold for Amicus Curiae, p. 31-33, Granville-Smith v. Granville-Smith, 349 U.S. 1 (1955); see Rheinstein, The Constitutional Bases of Jurisdiction, 22 U. of Chi. L. Rev. 775 (1955).

proper application. Relief is accorded in these cases, not because the court obtained no jurisdiction, but because the court will not exercise its jurisdiction to aid one who has obtained service of summons by unlawful means.[17] The Restatement of Conflicts provides:

> *Non-resident brought into state by fraud or to participate in judicial proceeding.* At common law a state does not in civil cases exercise jurisdiction over a non-resident brought into the state by the fraud of the plaintiff . . . A state has jurisdiction over such an individual but by the common law rule it does not exercise such jurisdiction. If, pursuant to a statute or otherwise, a state does exercise through its courts jurisdiction over such an individual, the action will be recognized as valid by the courts of other states . . . .[18]

The Restatement rule seems to answer the question of what happens if the court exercises jurisdiction notwithstanding the personal service by fraud. Apparently a judgment so acquired is entitled to full faith and credit. Whether a state has jurisdiction over a non-resident brought into the state by unlawful force is left open by the Restatement.[19]

No decision involving the effect of fraud upon personal service has been rendered by the United States Supreme Court since *Jaster v. Currie*.[20] In that case plaintiff, a judgment creditor, requested Nebraska to enforce a judgment recovered against defendant in Ohio. Previously to the Ohio suit plaintiff had brought an action in Nebraska on the same cause, and served notice upon defendant's attorney that plaintiff's deposition would be taken in Ohio for use in the Nebraska action. Defendant was advised by his attorney to be present in Ohio when the deposition was taken. Defendant went to Ohio for that purpose and while there was personally served. Plaintiff then recovered the judgment in Ohio which he asked Nebraska to enforce. The defendant alleged fraud in procurement of the personal service in Ohio. Plaintiff demurred, and the Supreme Court of Nebraska affirmed the overruling of this demurrer.[21] This action was reversed by the United States Supreme Court when it held Nebraska was required to give full faith and credit to the Ohio judgment.

17 See 42 Am. Jur., Process § 35 (1939); Patino v. Patino, 283 App. Div. 630, 129 N.Y.S.2d 333 (1st Dep't 1954), appeal denied, 283 App. Div. 1029, 131 N.Y.S.2d 865 (1st Dep't 1954); Crusco v. Strunk Steel Co., 365 Pa. 326, 74 A.2d 142 (1950); Lloyd v. Thomas, 60 Pa. D & C 516 (1947).

18 Restatement, Conflicts § 78(d) (1934).

19 Restatement, Conflicts § 78(e) (1934).

20 198 U.S. 144 (1905).

21 Jaster v. Currie, 69 Neb. 4, 94 N.W. 995 (1903).

Mr. Justice Holmes delivered the opinion of the Court:

> It will be observed that there was no misrepresentation, express or implied, with regard to anything, even the motives of the plaintiff. The plaintiff did not say or imply that he had one motive rather than another. He simply did a lawful act by all the powers enabling him to do it, and that was all. Therefore the word fraud may be discarded as inappropriate. The question is whether the service of a writ, otherwise lawful, becomes unlawful because the hope for a chance to make it was the sole motive for other acts tending to create the chance, which other acts would themselves have been lawful but for that hope. . . .
>
> It is hard to exhaust the possibilities of a general proposition. Therefore it may be dangerous to say that doing an act lawful in itself cannot make a wrong by the combination. It is enough to say that it does not usually have the result, and that the case at bar is not an exception to the general rule. We must take the allegations of the answer to be true, although they are mainfestly absurd. The plaintiff could not have known that the defendant's lawyer would advise him to go to Ohio, and the defendant would go to his father's house. instead of to Nebraska, when his business was over. But we assume, as far as possible, that the anticipation of these things was the sole inducement for giving the notice and taking the deposition. Still the notice was true, and the taking of the deposition needed no justification. It could be taken arbitrarily, because the plaintiff chose. On the other hand, the defendant could be served with process if he saw fit to linger in Ohio. That also the plaintiff could do arbitrarily, because he chose, if he thought he had a case.[22]

It is difficult to know how much weight should be given the statement concerning the defendant's lingering stay in Ohio, but it seems that Mr. Justice Holmes held that if there was a legitimate reason for the defendant to be in Ohio, i.e., the deposition taking, the fact that the plaintiff, in serving notice that a deposition would be taken, may have been motivated by the hope and desire to serve process on the defendant in Ohio, and in fact did cause the service to be made, will not render a judgment based upon such service subject to attack. This is evident from the last sentence of the opinion:

> He arbitrarily could unite the two acts, and do the first because he hoped it would give him a chance to do the last.[23]

The *Zenker* case involved a fraud similar to that in the *Jaster* case. The allegation of the husband was that the wife induced

[22] 198 U.S. 144, 147-8 (1905).

[23] Actually, the underlying philosophy of what Mr. Justice Holmes said here was epitomized in a later opinion where he said: "The foundation of jurisdiction is physical power. . . ." McDonald v. Mabee, 243 U.S. 90, 91 (1917).

him to come to Colorado by indicating she was ready to sell some jointly owned property in Denver.[24] The analogy is close although the two cases might be distinguished on the ground that in *Jaster* the deposition was actually taken while in *Zenker* the property was not sold—because, according to the husband's testimony, the wife refused to consider the sale.[25]

The cases are strikingly similar as to the facts accepted by the courts. In the *Jaster* case the plaintiff's demurrer to the allegation admitted the existence of "fraud" and in the *Zenker* case, the Nebraska Supreme Court was forced to accept defendant's allegations of fraud in the pleadings.[26]

If the evidence bearing upon the question of fraud had been presented to the Nebraska Supreme Court, it would have been squarely faced with the task of distinguishing the *Zenker* case from the *Jaster* case.

If the wife did "entice" the defendant into Colorado, the question is whether the lawful act of the wife in connection with the sale of the property became unlawful, or fraudulent, when connected with the lawful act of serving process, on the ground that at least one of her motives in getting the husband to come to Colorado was to serve him with process in the divorce action. If there had been no property sale involved and the wife had enticed the husband to Colorado by a promise of an attempted reconciliation, a promise which the wife had no intention to keep at the time it was made, the negative inference from Mr. Justice Holmes' opinion is that the service would be invalid.[27] If in the *Zenker* case the wife did subjectively intend to discuss the sale of property in good faith, and the husband came into Colorado in response to such an invitation, did the Nebraska court fail to apply the test laid down by Mr. Justice Holmes? If the wife had

[24] The Bill of Exceptions, which contains the testimony in the case, reveals a paucity of evidence on this point. The husband testified that his employer in Denver wanted to buy the property and apparently the only testimony as to why defendant went to Denver was his own statement: "Yes, he [presumably his employer] called me up and said they [presumably plaintiff] were ready to take [sic] it over." It should be noted that the employer referred to is not alleged in any manner to be a party to the alleged fraud.

[25] Cf. Schwarz v. Artcraft Silk Hosiery Mill, 110 F.2d 465 (2d Cir. 1940); Wyman v. Newhouse, 93 F.2d 313 (2d Cir. 1937); Iams v. Tedlock, 110 Kan. 510, 204 Pac. 537 (1922).

[26] The testimony on the issue of fraud was not properly before the Nebraska Supreme Court because of the failure to follow Nebraska procedural rules.

[27] Cf. Wyman v. Newhouse, 93 F.2d 313 (2d Cir. 1937).

a good faith intention to discuss with the husband the possibility of a sale of marital property when she communicated with the husband, would her change of mind before the process was served take the service outside of the limits defined by Mr. Justice Holmes?

It is submitted that if the Nebraska Supreme Court had been permitted to examine the testimony in this case, and had strictly followed the *Jaster* case, it would have been extremely difficult to find Colorado lacked personal jurisdiction over the husband for there seems to be no evidence of fraud which was not covered by Mr. Justice Holmes' test. But there are cases that support a contrary result.[28]

The *Zenker* case presents other difficult problems. Let us suppose that A brings an ordinary tort action against B in state X and B enters a special appearance to contest the court's jurisdiction over him. Suppose further that in a contested proceeding the court finds that it has jurisdiction over B's person, and that B withdraws, takes no further part in the proceedings, and a personal judgment in A's favor is entered by default. If A later sues on the judgment in state Y and B attempts to defend upon the ground that state X had no jurisdiction over him we know that he cannot do so—state Y must give full faith and credit to the judgment because the finding of jurisdiction by state X is res judicata.[29] B had his day in court on the matter of jurisdiction. This res judicata effect has been extended to include cases where the defendant did not litigate the question of jurisdiction but had opportunity to do so.[30]

In the *Zenker* case, Mr. *Zenker*, the defendant, was personally served in Colorado. If we assume that that service was fraudulent, and further assume that it was the type of fraud that would vitiate the Colorado personal service, can it be argued that Mr. Zenker was in Colorado and had an opportunity to litigate the effect of that fraud and Colorado's power to render a binding personal judgment? Is this case different from one in which

[28] See Frawley, Bundy & Wilcox v. Pennsylvania Casualty Co., 124 Fed. 259 (C.C.M.D. Pa. 1903); Peel v. January, 45 Ark. 331 (1880).

[29] American Surety Co. v. Baldwin, 287 U.S. 156 (1932); Baldwin v. Iowa State Traveling Men's Ass'n, 283 U.S. 522 (1931); Chicago Sun Life Ins. Co. v. Cherry, 244 U.S. 25 (1917); cf. Treines v. Sunshine Mining Co., 308 U.S. 66 (1939).

[30] Jackson v. Irving Trust Co., 311 U.S. 494 (1941); Chico County Drainage Dist. v. Baxter State Bank, 308 U.S. 371 (1940); see also York v. Texas, 137 U.S. 15 (1890), where a Texas statute converted a special appearance to a general one.

the defendant makes a special appearance? Can it be said that personal service on Mr. Zenker in Colorado gave Colorado power to decide both whether it had jurisdiction over Mr. Zenker and whether Mrs. Zenker was domiciled in Colorado, and that Mr. Zenker is bound because he could have litigated in Colorado the issues of fraud and domicile?

The factual difference between a case of fraudulent service and a special appearance is that in the latter the court's power to decide the question of jurisdiction stems from a voluntary act of the one appearing specially.[31]

However, Mr. Zenker's trip to Colorado, even if fraudulently induced, was voluntary, and this case raises the question of the effect of this fraud upon Mr. Zenker's opportunity to litigate in Colorado the validity of that state's assumption of personal jurisdiction over him. A clear cut ruling on this particular question has never been given by the United States Supreme Court. If we accept Mr. Justice Holmes' theory that the underlying basis of jurisdiction is the existence of power in a state to seize and hold the body of the defendant,[32] it would seem that Colorado had power to seize Mr. Zenker when he came to Denver to talk to his wife about selling some marital property, and that this power at least gave Colorado jurisdiction to make a decision as to the effect of that fraud, a decision that would be binding on other states under the full faith and credit clause. This would appear to be true if the defendant had raised the issue of fraud in Colorado by a special appearance. If it is held that Mr. Zenker has lost the opportunity to raise in other states the question of the effect of fraud because he had an opportunity to litigate that issue in the Colorado proceedings, fraud as a means of vitiating a personal service will be greatly curtailed and will exist only insofar as the state where the service is had chooses to recognize it.[33]

31 It should be pointed out that the apparent reason for Mrs. Zenker's desire to serve Mr. Zenker in Colorado was to prevent him from collaterally attacking the money judgment in Nebraska because it appears that is where the bulk of his property rests. To obtain the divorce decree without a property settlement, only the domicile of Mrs. Zenker in Colorado was required.

32 See McDonald v. Mabee, 243 U.S. 99 (1917).

33 This result might not be too far from that which Congress intended when it passed legislation implementing the full faith and credit clause. See 28 U.S.C. § 1738 (1948): "Such . . . judicial proceedings . . . shall have the same full faith and credit in every court within the United States . . . as they have by law or usage in the courts of such State . . . from which they are taken."

The *Zenker* case suggests another interesting problem. It appears from other records in the case that the husband possesses property in a state other than Nebraska and Colorado. Could the plaintiff-wife, after the Nebraska Supreme Court decision becomes final, enforce the Colorado judgment in another state, e.g., New York, where property of the defendant-husband might be located? Or would New York have to give full faith and credit to the Nebraska Supreme Court decision holding the Colorado property judgment invalid for lack of jurisdiction over the husband? It appears that the answer to the second question is, "Yes." The Nebraska Supreme Court found that the Colorado court granting the divorce had no jurisdiction to grant either the divorce or the property judgment. Since the jurisdictional issues were litigated in Nebraska it would seem the New York court would be bound by the Nebraska decision. The husband never appeared in the Colorado action although he was personally served. The decree and judgment were issued ex parte. When the wife tried to register the property judgment in Nebraska the issue of jurisdiction of the Colorado court was litigated with both parties, husband and wife, before the court, and it was found that Colorado did not have jurisdiction. Affirmance of this result by the Nebraska Supreme Court may bind courts of other states if the property judgment is sought to be enforced elsewhere.

Another question is the validity of the property judgment in Colorado. Other information indicates that property jointly held by plaintiff-wife and the defendant-husband in Denver was the subject of a Colorado foreclosure action which resulted in $921 being applied to the property judgment.[34] If the divorce was invalid, does not the property judgment fall with it, even in Colorado, or would the fact that the Colorado foreclosure action occurred before Nebraska found Colorado had no jurisdiction preclude the Nebraska litigation from affecting the Colorado foreclosure action?

Even assuming that Colorado had jurisdiction to render the divorce, by reason of plaintiff's Colorado domicile, if the personal service is invalid did Colorado have jurisdiction to render a money judgment against the defendant? It is submitted that it did not.[35]

Lastly, is the Colorado divorce decree valid in Colorado? Since the Nebraska court found the decree invalid, the reasonable conclusion is that the Zenkers are husband and wife in Nebraska.

[34] Letter from attorney for Mrs. Zenker in the Colorado action.
[35] Cf. Pennoyer v. Neff, 95 U.S. 714 (1874).

But are they divorced in Colorado? It is submitted they are.[36] If either remarried in Nebraska, or Colorado, could they be prosecuted under bigamy statutes?[37] And if either died would the surviving "spouse" be entitled to share in the estate?

If the divorce decree is valid in Colorado, but invalid in Nebraska, and if all other states are now required to give full faith and credit to the Nebraska decision, the result is that Mr. and Mrs. Zenker are married in forty-seven states and divorced in one. After the Nebraska Supreme Court decision in this case we apparently can be certain of one thing (provided no further review of the case is attempted), and that is that Mr. Zenker's property in the state of Nebraska has little to fear from the Colorado money judgment. Whether property belonging to Mr. Zenker in other states rests secure to the same extent has not yet been determined.

There have been complaints in the past that under existing United States Supreme Court pronouncements a man does not know whether he has a wife or a lawsuit.[38] It appears too that in a case like the *Zenker* case, the husband cannot be certain of his net worth because of the unsettled condition of the law pertaining to property judgments issued as part of divorce litigation. It is conceivable that a divorce decree might not be entitled to recognition in a sister state (e.g. if a valid divorce requires domicile of one spouse and the husband although served, has neither appeared nor litigated the issue of domicile), but that

[36] See Sutton v. Lieb, 188 F.2d 766 (7th Cir. 1951). Although Mr. Justice Black in his dissenting opinion in Williams v. North Carolina, 325 U.S. 226 at p. 270 refers to "the Court's holding that Nevada decrees were 'void,'" it is doubtful if the majorty thought that is what the Court held. At p. 239 Mr. Justice Frankfurter for the majority states: "We conclude that North Carolina was not required to yield her State policy because a Nevada court found that petitioners were domiciled in Nevada when it granted them decrees of divorce. North Carolina was entitled to find, as she did, that they did not acquire domicile in Nevada and that the Nevada court was therefore without power to liberate the petitioners from amenability to the laws of North Carolina governing domestic relations." In his concurring opinion Mr. Justice Murphy at p. 239 states: "The State of Nevada has unquestioned authority, consistent with procedural due process, to grant divorces on whatever basis it sees fit to all who meet its statutory requirements. It is entitled, moreover, to give to its divorce decrees absolute and binding finality within the confines of its borders."

[37] See Neb. Rev. Stat. § 28-903 (Reissue 1948); Colo. Stats. Ann. c. 40-9-1 (1953).

[38] See Mr. Justice Jackson dissenting in Estin v. Estin, 334 U.S. 541, 553 (1948).

the property judgment incident to the divorce might be entitled to recognition (e.g., if it were issued in a divorce proceeding in which there was valid personal service on the husband)? It would seem strange indeed to hold that the property judgment, premised as it is by the state which grants it upon a valid divorce decree, should be entitled to enforcement in a sister state, and at the same time hold that the divorce decree is a nullity outside the state of rendition. Such a result would split an already "divisible" divorce still another way.[39]

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[39] See, e.g., Morris, Divisible Divorce, 64 Harv. L. Rev. 1287 (1951).