

Washington University Law Review

Volume 24 | Issue 2

January 1939

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Recommended Citation

Divorce—Full Faith and Credit—Decree Against Non-Resident Wife as Basis for Modifying Separation Decree in State of Wife's Residence, 24 WASH. U. L. Q. 271 (1939).

Available at: https://openscholarship.wustl.edu/law_lawreview/vol24/iss2/17

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DIVORCE—FULL FAITH AND CREDIT—DECREE AGAINST NON-RESIDENT WIFE AS BASIS FOR MODIFYING SEPARATION DECREE IN STATE OF WIFE'S RESIDENCE—[United States].—A husband had obtained a separation *a mensa et thoro* because of the wife's fault in the District of Columbia where both parties were domiciled. Subsequently he acquired a domicile in Virginia and sought an absolute divorce on grounds not available in the District. Notice being given, the wife, who was still residing at the former home, filed a special appearance to deny jurisdiction in the court and her husband's right to be before it. In granting the divorce, the Virginia court deemed the wife's participation in the litigation on the merits sufficient to constitute a general appearance. The husband's later application to the District of Columbia court to alter its decree to conform with the terms of the Virginia divorce was denied. *Held*, by the United States Supreme Court on certiorari¹ that recognition of the Virginia decree was required by the full faith and credit clause of the United States Constitution.²

The result in the instant case seems proper enough on the authority of the closely analogous case of *Cheever v. Wilson*,³ which the Court did not discuss.⁴ There, also, a divorce decree was held entitled to full faith and credit where the complainant was domiciled in the state of the forum and the non-resident defendant had made a general appearance. The principal case however rests on other bases which may well be challenged.

In one rather indefinite paragraph the Court possibly implies that the "matrimonial domicile" doctrine of *Atherton v. Atherton*⁵ might aid in achieving the desired result. This contention, if there was an intention to advance it, is of questionable soundness in view of the usual construction of "matrimonial domicile" as meaning "the place where the parties last lived as husband and wife with intent of making that place their home."⁶ In the instant case, inasmuch as husband and wife had lived together only in the District, the problem is clearly different from that in the *Haddock*⁷ and in the *Atherton* cases.

The court likewise intimated that the fact that defendant was at fault might be a circumstance bringing the Virginia decree within the operation of the full faith and credit clause. When only comity is concerned, a majority of American courts are willing to recognize a divorce decree although complainant alone was domiciled in the state of the forum;⁸ a few adopt the view that the factor of fault in the defendant is an additional requisite.⁹ This latter position is preferred by the *Restatement*¹⁰ and has

1. *Davis v. Davis* (1938) 59 S. Ct. 3.

2. Art. 4, Sec. 1.

3. (1870) 9 Wall. 108.

4. The court cited the *Cheever* case only for the proposition that the definitions of "matrimonial domicile" are varied.

5. (1901) 181 U. S. 155.

6. Goodrich, *Matrimonial Domicil* (1917) 27 Yale L. J. 49; *Atherton v. Atherton* (1901) 181 U. S. 155; *Haddock v. Haddock* (1906) 201 U. S. 562.

7. (1906) 201 U. S. 562.

8. Beale, *Conflict of Laws* (1931) 484, sec. 113.2; Goodrich, *Conflict of Laws* (1927) 290, sec. 127; Stumberg, *Conflict of Laws* (1937) 268 *et seq.*

9. See *Loker v. Gerald* (1882) 157 Mass. 42, 31 N. E. 709, 34 A. L. R. 252, 16 L. R. A. 497; *Thomas v. King* (1895) 95 Tenn. 60.

10. *Restatement, Conflict of Laws* (1934) sec. 113a(ii).

been advanced by Professor Beale¹¹ as the rationale of the *Haddock* case. Proponents of the fault theory argue that its application would achieve absolute uniformity and predictability in recognition of divorce decrees, alleviating the unfortunate social situation which exists when a marriage is considered dissolved in one state and not in another,¹² and that equalization of the respective positions of husband and wife as to divorce would also follow.¹³ It has been subjected to vigorous criticism,¹⁴ however, on the ground that the factual issue of fault is an extremely difficult one to determine,¹⁵ especially where, as is often the case, one¹⁶ or more¹⁷ of the parties are dead. Uniformity of decision would be as remote as ever because of the troublesome aspects of ascertaining "fault" as a jurisdictional problem, *i. e.*, what degree of fault would be necessary, and what court and precedents would determine the relevant issues.¹⁸ Certainly the Supreme Court would have to ascertain the legal content of the term; and, since the *Haddock* decision in 1906, cases in point have only infrequently presented themselves.¹⁹ Moreover it is unlikely that many courts would secede from the present majority view.²⁰ It is submitted that injection of the issue of "fault" only tends further to confuse a vague and nebulous area in the conflicts field. No case has directly held "fault" a sufficient basis to compel full faith and credit. That even the *Haddock* case contains such *dicta* may well be challenged.

It would seem that the theories on which the court acted are partially inapplicable and may tend to perplex those who in the future may attempt to ascertain the precise holding in the present case. It would have been sounder to rest the result on the principle of *Cheever v. Wilson* to which the Court made but a passing allusion.

C. J. D.

11. Beale, *Conflict of Laws* (1931) 497, sec. 113.10.

12. McClintock, *Fault as an Element of Divorce Jurisdiction* (1928) 37 *Yale L. J.* 564; Strahorn, *A Rationale of the Haddock Case* (1938) 32 *Ill. L. Rev.* 796; Strahorn, *The Supreme Court Revisits Haddock* (1938) 33 *Ill. L. Rev.* 412, n. 16.

13. Beale, *Haddock Revisited* (1926) 39 *Harv. L. Rev.* 417; Beale, *Conflict of Laws* (1935) 505, sec. 113.11; Strahorn, *The Supreme Court Revisits Haddock* (1938) 33 *Ill. L. Rev.* 412.

14. McClintock, *Fault as an Element of Divorce Jurisdiction* (1928) 37 *Yale L. J.* 564; Strahorn, *A Rationale of the Haddock Case* (1938) 32 *Ill. L. Rev.* 796.

15. McClintock, *Fault as an Element of Divorce Jurisdiction* (1928) 37 *Yale L. J.* 564.

16. See *Andrews v. Andrews* (1903) 188 *U. S.* 14.

17. See *Maynard v. Hill* (1888) 125 *U. S.* 190.

18. The writer has in mind the question: "Is it the type of fault needed in a mere separation from bed and board or for an absolute divorce?" For an amplification of the problem, see McClintock, *Fault as an Element of Divorce Jurisdiction* (1928) 37 *Yale L. J.* 564.

19. *Thompson v. Thompson* (1913) 226 *U. S.* 551; *Williams v. Osenton* (1914) 232 *U. S.* 625; *Davis v. Davis* (1938) 59 *S. Ct.* 3.

20. See McClintock, *Fault as an Element of Divorce Jurisdiction* (1928) 37 *Yale L. J.* 564.