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Marriage by Injunction: A Study of the Problems Enjoining Divorce

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time, the presence or absence of a financial limitation on an action has been the most significant consideration. Indeed, all of the cases that have arisen striking down *lex loci delicti* have been at issue over some restriction, be it a limit on recovery or a rule disallowing the action. Yet, one would expect these issues to overturn *lex loci delicti* since they point out the unreasonableness of the old inflexible rule. This new approach will soon be argued in areas which will not concern financial limitations.

While the new rule is developing, perhaps it might be best to begin an attack on these problems by applying the *lex loci delicti* rule as a rebuttable presumption, putting the burden on the party attempting to have the court apply the law of another jurisdiction to show what interests the other jurisdiction possessed to rebut the presumption. The presumption could be rebutted by showing that *lex loci* was the only interest that that state had or that another state had more "significant contacts." It could also be rebutted by showing that some undue hardship would be worked on the plaintiff.

Our purpose here is not to solve the problem that will inevitably arise or to suggest a new approach, but to present a practical approach, acknowledging the presence of difficulties in this changing area. These problems are no different than the many problems which face the bar with every judicial reform. The only solution to the "uncertainty" that these problems present is the development of a body of judicial determination to establish the limits of the rule. The certainty will develop through the establishment of precedents as has been done in many other new areas of the law. One thing is certain at the present time; all of the critics of the *lex loci* rule and many of the critics of the new rule realize that some flexibility is needed in this area. The "interest analysis" approach, if anything, adds this. It is now in the hands of the practitioners and the courts to further develop it along proper lines and establish the certainty so frantically sought.

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MARRIAGE BY INJUNCTION: A STUDY OF THE PROBLEMS ENJOINING DIVORCE

A state may restrain persons over whom it has in personam jurisdiction from instituting proceedings in foreign jurisdictions.[1] Further, each state regulates and controls the marital status of its domiciliaries. The purpose of this comment is to focus attention upon the conditions under

1. 17 AM. JUR., *Divorce and Separation* § 997 (1957); 28 AM. JUR., *Injunctions* § 200 (1959).

which the courts will exercise their equity jurisdiction to restrain a spouse from prosecuting a divorce action in a foreign country or sister state. This comment will examine specifically this remedy as developed in Pennsylvania.

I.

INJUNCTIONS AGAINST FOREIGN PROCEEDINGS

Injunctions by the Chancellor against suits in other courts date back to at least the late sixteenth century.[2] The very existence of the power, however, was denied in the seventeenth century[3] and thereby the operation and development of this remedy was delayed. The reason for the negative determination was the misapprehension as to the operation of the decree. It was decided that an injunction would not be issued to restrain a suit in any "foreign ports" since this would be an unauthorized interference with the conduct of the foreign court and would be an attempt to prohibit it from assuming jurisdiction. This misconception was subsequently rectified in the case of *Lord Portarlington v. Soulby*.[4] The Chancellor in that case granted an injunction restraining a party from bringing a suit in another court. He reasoned that his court did not direct or control the foreign court, but did direct the party within the jurisdiction of the injunction forum. This approach has been uniformly adopted in England[5] and in the United States.

The leading American case accepting this principle is *Cole v. Cunningham*.[6] In that case, a citizen of Massachusetts was indebted to a copartnership doing business in Massachusetts. A consignor in New York was indebted to the Massachusetts resident. The copartnership assigned its claim to a New York party who proceeded to summon the consignor as garnishee in a litigation in New York against the Massachusetts citizen. Subsequently, assignees in insolvency for the estate of the Massachusetts resident were duly appointed. These assignees in insolvency brought a bill in equity in Massachusetts requesting that the members of the copartnership and their assignee be enjoined from continuing the suit against the Massachusetts citizen in the New York courts. Their contention was that the New York suit would cause injury to other residents of Massachusetts, namely, to other creditors of the Massachusetts party. The Massachusetts court, agreeing with this contention, held that the copartnership, its members being within the court's jurisdiction, should be enjoined from prosecuting the New York suit.[7] The members of the copartnership appealed from this decision to the Supreme Court of the United States, but the decision was affirmed.

2. Cliffe v. Turnor, Cary 83 (1579); Chock v. Cheu, Cary 83 (1579); Tanfield v. Davenport, Tot. 114 (1638); Trinick v. Bordfield, Tot. 117 (1638).
3. Lowe v. Baker, 2 Freem. Ch. 125; 22 Eng. Rep. 1101 (1665).
4. 3 My. & K. 104, 40 Eng. Rep. 40 (1834).
5. Venning v. Loyd, 1 De G. F. & J. 193, 45 Eng. Rep. 332 (1859).
6. 133 U.S. 107 (1890).
7. 142 Mass. 47, 6 N.E. 782 (1886).

The Supreme Court's reasoning and decision followed that of the Chancellor in *Lord Portarlington v. Soulby.*[8] The Court held that the equity court in directing its injunction was controlling domiciliaries in their actions, not usurping the jurisdiction of the foreign state court. Therefore the Court determined that a decree of a state court enjoining citizens of that state from prosecuting attachment suits begun in another state, and brought therein in order to evade the laws of the first state was a valid exercise of the first court's equity power and was not violative of the full faith and credit clause of the Constitution of the United States.[9] Thus, injunctions to prevent proceedings in other courts received its impetus in the United States.

Courts are necessarily reluctant to exercise such power and when called upon to do so will carefully weigh the equities. An analysis of the reported cases where an injunction has been issued shows that the issuance has always been based upon one of five grounds.[10] The rule is generally applied: to prevent great hardship and expense in defending suits,[11] to prohibit evasion of the laws of the forum,[12] to curtail fraud,[13] to prevent vexatious litigation,[14] and to avoid a multiplicity of suits.[15]

II.

INJUNCTION AGAINST DIVORCE

In 1850, a New York court enjoined a resident spouse, attempting to circumvent the laws of New York, from prosecuting a divorce action in a sister state.[16] That case involved a spouse attempting to procure a Pennsylvania divorce although he did not have a bona fide Pennsylvania residence. The court reasoned that, even though New York would not recognize the divorce, it would be inequitable to put the wife, who was also a New York domiciliary, under the cloud of such a decree, or put her to the expense of the litigation necessary to avoid it.

Once this precedent was established, the power to enjoin a resident spouse was exercised liberally until the case of *Goldstein v. Goldstein.*[17] There, the defendant-husband had attempted to acquire a Florida divorce.

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8. 3 My. & K. 104, 40 Eng. Rep. 40 (1834).

9. Art. IV § 1.

10. See Comment, 13 BROOKLYN L. REV. 148 (1947).

11. Kern v. Cleveland, C.C. & St. L. Ry., 204 Ind. 595, 185 N.E. 446 (1933); Ippolito v. Ippolito, 3 N.J. 561, 71 A.2d 196 (1950) (dictum).

12. Oates v. Morningside College, 217 Iowa 1059, 252 N.W. 783 (1934); Ballard v. Ballard, 199 Miss. 316, 24 So. 2d 335 (1946).

13. Jenkins v. Jenkins, 239 Ala. 141, 194 So. 493 (1940); Kahn v. Kahn, 325 Ill. App. 137, 59 N.E.2d 874 (1945); Garvin v. Garvin, 302 N.Y. 96, 96 N.E.2d 721 (1951).

14. Commercial Acetylene Co. v. Avery Portable Lighting Co., 152 Fed. 642 (7th Cir. 1906).

15. Newell v. Newell, 289 P.2d 22 (Cal. Dist. Ct. App. 1955). For a complete breakdown of all the cases on this topic concerning divorce, see 54 A.L.R.2d 1240.

16. Forrest v. Forrest, 2 Edm. Sel. Cas. 180 (N.Y. 1850).

17. 283 N.Y. 146, 27 N.E.2d 969 (1940).

Under the alleged facts, neither party was a domiciliary of that state. The plaintiff requested an injunction in New York to restrain defendant from taking or procuring a judgment of divorce in Dade County, Florida, but the injunction was denied. The court decided that on these facts the Florida court was without jurisdiction since Florida was not the matrimonial domicile. Pursuant to the decision of *Haddock v. Haddock*,[18] the divorce does not have to be recognized since New York could refuse to recognize an ex parte divorce in a state other than the state of matrimonial domicile. Therefore the instant plaintiff had nothing to fear from the Florida action since it could be declared a nullity. The court rejected plaintiff's contentions of her annoyance and injured feelings.

In 1942, the *Haddock* case was overruled by the first of the *Williams v. North Carolina*[19] cases. That case held that a divorce must be granted recognition by all states if either spouse was a domiciliary of the granting state. This holding was limited by the second *Williams* case[20] which stated that the finding of domicile by the granting state would not be conclusive but merely raises a presumption of validity which the assailant must rebut. Now the party seeking an injunction would have something to fear — he must overturn the presumption of validity of the foreign divorce decree.

In 1951, the *Goldstein* case in turn was overturned by the decision of *Garvin v. Garvin*.[21] The New York Court of Appeals determined that an injunction restraining a sister state divorce proceeding may be issued. The court held that since any divorce that the husband might obtain would presumptively be accorded full faith and credit, the wife should be saved the burden of striking down the prima facie effect of the decree. Cognizant of the aforementioned burden, the *Garvin* decision was a natural outgrowth of the second *Williams* case. Today there are decisions in eight states[22] that have upheld an injunction against a divorce proceeding in a sister state.

In the case of *Rosenbaum v. Rosenbaum*,[23] involving a foreign country divorce, the New York Court of Appeals refused to grant an injunction. *Rosenbaum* involved an action by a wife to enjoin her husband from prosecuting a divorce action in Mexico. The court failed to grant the injunction by distinguishing foreign country divorces from sister state proceedings. The court decided that since there was no presumptive legality to be accorded Mexican divorces, because they were beyond the scope of full faith and credit, no injunction need be granted. The court

18. 201 U.S. 562 (1906).

19. 317 U.S. 287 (1942).

20. 325 U.S. 226 (1945). Williams II does not completely resolve the problem. At present, there may be different concepts of domicil among the states. Therefore, a valid adjudication of domicil by one state using its own standards may be set aside in a subsequent action in another state whose standards of domicil are more stringent.

21. 302 N.Y. 96, 96 N.E.2d 721 (1951).

22. Alabama, California, Illinois, Maine, New York, Pennsylvania, New Jersey and Rhode Island. Mississippi, in Ballard v. Ballard, 199 Miss. 316, 24 So. 2d 335 (1946), indicated that they would recognize the remedy in a proper case. See 54 A.L.R.2d 1240, for an annotation of the cases in this area.

23. 309 N.Y. 371, 130 N.E.2d 902 (1955).

stated, ". . . Thus, under comity — as contrasted with full faith and credit — our courts have power to deny even prima facie validity to the judgments of foreign countries for policy reasons, despite whatever allegations of jurisdiction may appear on the face of such foreign judgments."[24] In other words, since the foreign divorce would not be recognized, no burden was placed upon the wife and an injunction was unnecessary. Identical reasonings was proffered in the *Goldstein* case. This logic, mechanically valid as it may be, ignores the annoyances which would be caused by a legally invalid Mexican decree. Although the spouse may have the divorce declared void, meanwhile she may be subjected to the jeopardy of a questionable marriage status.

Other jurisdictions, faced with the identical problem, have issued injunctions. In New Jersey, the Court of Chancery[25] held that a spouse may be enjoined from prosecuting a suit for divorce in a foreign jurisdiction. The New Jersey court apparently saw no difference between an injunction against a sister state proceeding and an injunction against a foreign country divorce since the language of the case drew no distinction and the holding was entirely based on *Kempson v. Kempson*,[26] a sister state injunction case.

Even though the next section of this comment deals solely with Pennsylvania law, the Pennsylvania case of *Young v. Young*[27] must be noted at this point. The court motivated by the hardship factor, granted an injunction against a Mexican divorce. This court felt that subjecting the wife to the jeopardy of a questionable marital status and to vexatious litigation was sufficient to grant the relief sought. The court stated its view thusly:

> Should he succeed in securing a judgment in his favor in Mexico, he would acquire an unfair and unconscionable advantage over her. She is a citizen of this Commonwealth clothed with the status of a lawful wife, and, in the full and unquestioned enjoyment of that status and of the right incident to it, she is entitled to protection of our laws and of our courts. We will not permit her to be forced into a foreign land to defend rights which our law secures to her as a citizen. The law of her home is adequate to protect her in such a situation.[28]

This decision rested heavily upon *Greenberg v. Greenberg*,[29] a New York case subsequently repudiated by the *Goldstein*[30] and *Rosenbaum*[31] reasoning. There is no reason, however, to believe that this is not still the law in Pennsylvania, as *Young*, also rested heavily on the hardship to the innocent spouse, a factor discounted by the New York judiciary.

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24. *Id.* at 372, 130 N.E.2d at 903.
25. Knapp v. Knapp, 12 N.J. Misc. 599, 173 Atl. 343 (1934).
26. 58 N.J. Eq. 94, 43 Atl. 97 (1899), *aff'd*, 63 N.J. Eq. 783, 52 Atl. 360 (1902).
27. 16 Pa. D. & C. 287 (1932).
28. *Id.* at 289.
29. 218 App. Div. 104, 218 N.Y. Supp. 87 (1st Dep't 1926).
30. Goldstein v. Goldstein, 283 N.Y. 146, 27 N.E.2d 969 (1940).
31. Rosenbaum v. Rosenbaum, 285 App. Div. 427, 138 N.Y.S.2d 885 (1955).

III.

INJUNCTION AGAINST DIVORCE IN PENNSYLVANIA

It might be well, at the outset, to state the general rule of the Commonwealth as to when a court has the right to restrain a person over whom the court has jurisdiction. It has generally been held in Pennsylvania that there is no question as to the right to restrain a person over whom the court has jurisdiction from bringing a suit in a foreign state.[32] An action in another state may be enjoined because it: (1) interferes inequitably with local litigation, (2) inequitably evades local litigation or (3) otherwise requires the interposition of equity to prevent manifest wrong or injustice.[33]

The first case in Pennsylvania which involved the restraining of an action for divorce was *Young v. Young*.[34] The Common Pleas Court of Philadelphia exercised its equitable power to issue an injunction against the divorce litigation in a foreign country notwithstanding the absence of reported precedents in the state. The court found that the facts fully justified their action since the husband realized that he was not entitled to a divorce in Pennsylvania and travelled to Mexico to secure a sham divorce decree. The court based its injunction on four factors: (1) the defendant's attempt to evade the laws of Pennsylvania; (2) the hardship to the plaintiff in defending against the defendant's suit in a foreign country; (3) the jeopardy of a questionable marital status; and (4) the prevention of the defendant from gaining an unfair advantage over the wife if he were to succeed in the Mexican action.

This precedent was followed in the case of *Meng v. Meng*,[35] where the husband had started a divorce action in Pennsylvania. This was discontinued and the husband subsequently went to Reno, Nevada, to obtain a divorce decree. His wife then brought a bill in equity to prevent the Nevada divorce. The court, in granting the injunction, was leery of the hardship of a sister state divorce decree. This is exemplified by Judge P. J. Gordon when he stated, "The effects of a final decree in divorce on the rights of a wife are radical and far reaching; it deprives her of her right of support,[36] extinguishes her dower rights, forces upon her a complete change in her social status, and profoundly alters the whole environment of her life."[37] The logic of this statement is unassailable. A party should not be permitted to consummate a scheme of evasion of the laws of the Commonwealth and place the aggrieved spouse in a situation where she must defend herself against a judgment fraudulently obtained.

32. Delaware, L. & W. Ry. Co. v. Ashelman, 300 Pa. 291, 150 Atl. 475 (1930).
33. *Id.* at 295-96, 150 Atl. at 476.
34. 16 Pa. D & C. 287 (1932).
35. 47 Pa. D. & C. 429 (1943).
36. Commonwealth *ex rel.* Kurniker v. Kurniker, 96 Pa. Super. 553 (1929).
37. 47 Pa. D. & C. 429, 436 (1943).

The reasoning of *Meng* was accepted by the Supreme Court of Pennsylvania in *Janney v. Janney*,[38] and has subsequently been embedded in the substantive law of Pennsylvania.[39] Thus, the law of Pennsylvania from the time that the question was initially raised and decided has never permitted the entertainment of any doubt as to the protection which the marital status of a Pennsylvania domiciliary is entitled. The courts will exercise its jurisdiction so as to curtail the injustices afforded a party who makes a responsible appeal to the conscience and discretion of the court.

Although the existence of injunctive relief is a certainty, the metes and bounds concerning the application of this remedy are not so well settled in the Commonwealth. One of the major problems concerns the time for the bringing of the injunction.

The case of *Smith v. Smith*[40] exemplifies the situation where an injunction will not be issued because of plaintiff's delay in bringing the action. In *Smith*, the plaintiff-wife brought a suit to enjoin the defendant-husband from prosecuting divorce proceedings in the State of Florida. The husband had not received the sister state decree at the time of the Pennsylvania proceeding. The Supreme Court held that the evidence established that defendant was no longer domiciled within Pennsylvania and therefore the Courts of Pennsylvania had no power to restrain him. The court analyzed that ". . . a divorce granted by a court of the bona fide domicile of either spouse is valid and must be given full faith and credit. The only ground upon which a divorce decree of another jurisdiction may be attacked is that it was not the bona fide domicile of either spouse. . . . Since equity has no power to restrain a person from obtaining a lawful divorce, it follows that an injunction may only be granted where the spouse has not established a bona fide domicile in the state in which the divorce is sought."[41]

This analysis has merit for two reasons. First, since a married spouse may acquire a new domicile for the purpose of divorce,[42] the original marital state loses some of its interest in the marriage. Second, and more important, if there has been a valid assertion of domicile (the factor on which the right to maintain a divorce action is predicated),[43] the act that the spouse is attempting is perfectly valid. It would be anamolous to

38. 350 Pa. 133, 38 A.2d 235 (1944).

39. The following Pennsylvania cases were concerned with this issue: Wallace v. Wallace, 371 Pa. 404, 89 A.2d 769 (1952); Smith v. Smith, 364 Pa. 1, 70 A.2d 630 (1950); Robinson v. Robinson, 362 Pa. 554, 67 A.2d 273 (1949); Janney v. Janney, 350 Pa. 133, 38 A.2d 235 (1944); Murtagh v. Murtagh, 10 Chester 591 (1962); Wenz v. Wenz, 28 Lehigh L.J. 468 (1960); Zuroff v. Zuroff, 58 Pa. D. & C. 325 (1947); Huyett v. Huyett, 38 Berks. 175 (1946); Mianulli v. Mianulli, 51 Pa. D. & C. 497 (1944); Meng v. Meng, 47 Pa. D. & C. 429 (1943); Young v. Young, 16 Pa. D. & C. 287 (1932).

40. 364 Pa. 1, 70 A.2d 630 (1950).

41. *Id.* at 4, 70 A.2d at 632.

42. Harrison v. Harrison, 107 Pa. Super. 161, 163 Atl. 62 (1932); Starr v. Starr, 78 Pa. Super. 579 (1922).

43. Williams v. North Carolina, 325 U.S. 226, 229 (1945). "Under our system of law, judicial power to grant a divorce — jurisdiction, strictly speaking — is founded on domicil."

place a party in jeopardy for an act which the enjoining state would subsequently be bound to recognize. It therefore seems a proper decision not to enjoin a party who has acquired a new bona fide domicile.

Whether an injunction against a divorce action will be awarded where the spouse has already been awarded the divorce decree has never been decided by an appellate court in the Commonwealth. Two lower court opinions[44] presume that an injunction could be granted even after the divorce action is culminated. These courts felt that an injunction may still be issued even after the divorce decree, since there was no bona fide domicile established in the divorce state and therefore the decree is invalid. This reasoning may be legally valid but its practical effect is ridiculous. How can injunctive relief be granted against a fact accomplished? The enjoining state is telling the defendant not to do an act which he has already done. It may be perfectly logical to nullify the foreign divorce, but it is absurd to enjoin against it. Two New York cases[45] have stated that injunctive relief should not be granted after a divorce decree has already been awarded. However, in both these cases the procurer of the divorce decree was a bona fide domiciliary of the granting state so that the divorce was valid. It will be interesting to see if any appellate court will uphold an injunction against a divorce after an invalid decree is granted. It is submitted that it should not.

Another problem in this area is the situation where an action for injunction against divorce is premature. This issue has recently been decided to some extent by the lower court case of *Murtagh v. Murtagh*.[46] In *Murtagh*, the defendant-husband went to Nevada. It was concluded that he was still domiciled in Pennsylvania. He threatened to get a divorce and had attempted some negotiations through his attorneys. He had not brought a divorce action in Nevada at the time his wife brought the instant injunctive proceeding. The court held that no injunction could be granted merely upon proof of a marital disturbance and physical presence of one spouse in a state that facilitates divorce. There must be at least a showing that a divorce action has been commenced or that there is an intention to initiate a divorce action in the immediate future.

There is a split of authority in the United States on the issue of whether there must be more than mere talk or threats of a proposed divorce action to justify the injunction.[47] Those that have refused to grant the injunctions rest their opinions on the old equity adage that the preliminary injunction should not be granted unless there is a showing

44. Wallace v. Wallace, 67 Montg. Co. L.R. 232 (1951), *rev'd on other grounds*, 371 Pa. 404, 89 A.2d 769 (1952); Meng v. Meng, 47 Pa. D. & C. 429 (1943).

45. Sivakoff v. Sivakoff, 280 App. Div. 106, 111 N.Y.S.2d 864 (1952); Philipson v. Philipson, 191 Misc. 913, 80 N.Y.S.2d 581 (1948).

46. 10 Chester 591 (1962).

47. DeRaay v. DeRaay, 255 App. Div. 544, 8 N.Y.S.2d 361 (1938), *aff'd without opinion*, 280 N.Y. 822, 21 N.E.2d 879 (1938), holding that mere threat to bring a divorce action is not enough to warrant injunctive relief. For a contrary view see, Kahn v. Kahn, 325 Ill. App. 137, 59 N.E.2d 874 (1945).

of imminent danger of irreparable harm.[48] This is well reasoned since a court should not interfere with the liberty of a citizen to compel him to maintain a particular domicile.[49] If the divorce seeker establishes a bona fide domicile during the period between the threat and the commencement of the suit, the injunction would be nugatory since the spouse would be lawfully obtaining the divorce. Since domicile is so dependent upon intent, and intent may easily fluctuate, it is obvious that the enjoining court should wait until the commencement of the divorce to determine the domicile, since that is the time the intent is determinative to the action. Until some affirmative act towards divorce is taken which would affect the plaintiff's rights, it is submitted that the time of the injunction relief is premature.

IV.

CONCLUSION

No comment on this topic would be complete without a discussion of the effect of this remedy. Since the injunction acts upon the party rather than the court in which the enjoined action is pending, the divorce court has the power to proceed with the litigation despite the injunction.[50] This is true since it has generally been assumed that such an injunction is not entitled to full faith and credit under the United States Constitution, although there has been no Supreme Court decision on this issue.[51] Furthermore, if the local state does not recognize the injunction, this will not have a detrimental effect upon the divorce decree's validity.[52] These principles severely undermine the deterrent factor of the injunction. However, the divorce court could and should as a matter of comity recognize the injunction and take cognizance of the judicial policy of the enjoining state. If this fails, there is still a deterrent to the wrongful spouse. If he returns to the enjoining state, he would be subject to a contempt proceeding[53] and his local property might be sequestered.[54]

It is important to note that even if the injunction was erroneously issued any defendant violating that order would still be in contempt and subject to prosecution so long as the enjoining court had jurisdiction. The injunction would not be void, but only voidable on proper application; and until it is set aside or revoked, it is entitled to obedience.[55] This would

48. DeRaay v. DeRaay, 255 App. Div. 544, 8 N.Y.S.2d 361 (1938), *aff'd without opinion*, 280 N.Y. 822, 21 N.E.2d 879 (1938).

49. Ballard v. Ballard, 199 Miss. 316, 24 So. 2d 335 (1946). Boston v. Boston, 205 Misc. 561, 129 N.Y.S.2d 580 (1954).

50. Kleinschmidt v. Kleinschmidt, 343 Ill. App. 539, 99 N.E.2d 623 (1951).

51. CHEATHAM, GRISWOLD, REESE & ROSENBERG, CASES AND MATERIALS ON CONFLICT OF LAWS 266 (5th ed. 1964).

52. Hall v. Milligan, 221 Ala. 233, 128 So. 438 (1930); Kleinschmidt v. Kleinschmidt, 343 Ill. App. 539, 99 N.E.2d 623 (1951); Com. *ex rel.* Messing v. Messing, 195 Pa. Super. 334, 171 A.2d 893 (1961).

53. Janney v. Janney, 350 Pa. 133, 38 A.2d 235 (1944).

54. See Jacobs, *The Utility of Injunctions and Declaratory Judgments in Migratory Divorce*, 2 LAW & COMTEMP. PROB. 370, 386-91 (1935), for an analysis of this problem.

55. 12 AM. JUR., *Contempt* § 26 (1938).