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Alternative Reasons for Setting Aside Divorce Obtained by Fraud - Croyle v. Croyle

ALTERNATIVE REASONS FOR SETTING ASIDE DIVORCE OBTAINED BY FRAUD

Croyle v. Croyle[1]

This is an original bill in equity whereby the plaintiff first wife seeks to set aside, as having been obtained by fraud, a decree for divorce *a vinculo matrimonii* which her late husband had obtained against her in his lifetime in the same court wherein this bill was filed. The defendant is the second wife of the late husband, who is sued both in her individual capacity and as administratrix of the decedent husband. The bill seeks, *inter alia,* a declaration that the plaintiff, not the defendant, is the "lawful widow" of the decedent.

The plaintiff and the late husband had been married for thirty-three years and were living together in the District of Columbia when, because of his cruelty, they separated, and entered into a separation agreement under which the husband was to make payments for the wife's support. The wife continued to reside in the former home in the District and the husband (supposedly) removed his residence to Prince George's County, Maryland.

Subsequently, in Prince George's County, he filed against the now plaintiff wife a suit for divorce *a vinculo matrimonii,* alleging her desertion of him. While know-

[1] 40 A. (2d) 374 (Md. 1944).

ing her actual whereabouts at their former home in the District, he made no attempt actually to apprise her of the pendency of the suit, and proceeded merely by order of publication as against a non-resident, and caused notice of the suit to be published in a Prince George's County newspaper. As a result of this obscure notice, the now plaintiff did not learn of the pendency of the suit until well after its successful conclusion by a decree in his favor for divorce.

Immediately upon learning of the Maryland divorce decree, the now plaintiff instituted a proceeding in the District of Columbia against the husband for a divorce *a mensa et thoro* and to set aside the Maryland decree. The husband appeared in that suit and thus became personally subject to the jurisdiction of that court. After a lengthy trial the court of the District awarded her a divorce *a mensa,* made a finding that the Maryland divorce had been awarded on fraudulent grounds, and awarded the now plaintiff regular alimony, which the husband paid until the time of his death. He did not appeal that case.

During the pendency of the District of Columbia proceeding, the husband married the now defendant and, in fact, continued to live with her after the *a mensa* decree and until the time of his death, when the now defendant had herself appointed administratrix.

When the now plaintiff made claim for a pension as the widow of a veteran, the Veteran's Bureau ruled that she could not receive one until the Maryland decree of divorce had been set aside. In order thus to obtain the pension and, as well, to become entitled to the husband's other property, the plaintiff first wife thereupon filed the instant case for the purpose of setting aside the Maryland decree of divorce.[2]

The Chancellor sustained the defendant's demurrer and dismissed the bill without leave to amend, on the two grounds that the bill did not set forth a cause entitling to relief in equity, and that the plaintiff was barred by laches and estoppel. On appeal the Court of Appeals reversed and remanded and held the plaintiff to be entitled to the relief and that laches provided no bar herein.

[2] In all probability, inasmuch as the defendant was also the administratrix of the decedent husband in a Maryland proceeding, personal jurisdiction was obtained over the defendant for purposes of the principal case. At least any objection was waived by her appearance and defenses on the merits. *Quaere*: If it is not possible to obtain service of process on the defendant in an original bill for fraud case, and if there be no voluntary appearance, might the case be brought by advertisement of an order of publication under the usual procedure therefor?

The Court found that the combination of his completely false allegation that she had deserted him and his deliberate concealment of the pendency of the action from her when it would have been most simple to have apprised her of it sufficiently worked fraud in the obtention of the divorce so as to entitle her to have it set aside. Furthermore, the Court disposed of the contention of laches by pointing out that she had promptly proceeded in the District, under advice of counsel, to protect her rights immediately upon learning of the Maryland divorce, and that the now defendant could not claim estoppel inasmuch as she had never changed her position because she had married the husband with full knowledge of an attack on the Maryland divorce.

It should be emphasized that the defect, if any, in the original Maryland divorce, did not concern the lack of necessary jurisdictional domicil on the part of the then plaintiff husband. Thus the case has nothing to do with the problem, recently brought into focus by the two *Williams* cases[3] in the Supreme Court of the United States, of necessary jurisdictional domicil to entitle a divorce suit to be brought in a jurisdiction into which the moving party has recently come. In the instant case neither the District of Columbia Court nor the Maryland one put the defect of the divorce on lack of domicil.[4] Rather it went to fraud in the obtention, conceding the presence of bona fide residence of the late husband in Prince George's County at the time of the suit. It is perfectly plausible in this case that the late husband did actually remove his residence to Maryland, the while continuing to work in the District. Thus he could have had necessary jurisdictional domicil for the Maryland divorce and still have been subjected to process for personal jurisdiction in the first wife's District of Columbia proceeding.

While conceding the correctness of the Court of Appeals' ruling on the merits of the principal case, i. e., that

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[3] Williams et al v. North Carolina, 63 S. Ct. 207 (U. S. 1942); and *Ibid.*, 65 S. Ct. 1092 (U. S. 1945). The former case is discussed in Strahorn and Reiblich, *The Haddock Case Overruled—The Future of Interstate Divorce* (1942) 7 Md. L. Rev. 29.

[4] Consider the discussion in the text, *infra*, concerning the res adjudicata effect of a finding of invalidity of a given divorce in the courts of another state. Thus, if after the grant of a divorce by one state, the courts of another state made a finding of non-recognition under the *Williams* doctrine, based on a finding of lack of bona fide domicil in the granting state, that decision should be res adjudicata on the parties thereto, even in the courts of the granting state in any third proceeding wherein the initial validity of the divorce might be attacked.

there was sufficient fraud in the obtention of the divorce to entitle it to be set aside on an original bill, yet this note does not propose to go into that aspect of the problem. Rather, it is proposed to pursue the thought that a proposition of law that the Court apparently overlooked entitled it more easily to reach the same conclusion, in favor of setting the divorce aside, without attacking the merits of the problem whether the fraud was sufficiently serious and whether laches were present.

The proposition is that, regardless whether the plaintiff could make out sufficient fraud in the original obtention in a contest thereabout in this case, the invalidity of the Maryland divorce decree was already res adjudicata against the late husband and those claiming under him, including the now defendant, because of the determination to that effect in the earlier District of Columbia case in which the late husband was subject to jurisdiction. If this be so, then it follows that the Maryland courts, on an original bill for fraud to set aside the divorce, should have granted the relief merely upon the proper filing of a transcript of the District proceedings, without inquiring into either the facts or the law of the alleged fraud practiced on the plaintiff first wife. Thus would necessary full faith and credit be given to the District limited divorce, the granting of which implied a finding that the there plaintiff wife was still a wife and that any pretended divorce between the parties was a nullity.

Principal authority for this proposition is to be found in the Restatement of Judgments, Section 42: "Where in two successive actions between the same parties inconsistent judgments are rendered, the judgment in the second action is controlling in a third action between the parties." In the *Croyle* situation, the *a vinculo* divorce case was the first action, the District *a mensa* case was the second, and the instant original bill was the third. Certainly, the grant of *a mensa* divorce to the first Mrs. Croyle in the second case in the District was inconsistent with the grant of *a vinculo* to him in the first case; it determined the first divorce to have been a nullity; and, therefore, it predominates to reach that conclusion in the third case, brought to have the fact of the nullity of the first case properly entered on the records.

Case authority for this proposition is to be found at the level of the Supreme Court of the United States in a case much like this one, in that the first and third cases were in one jurisdiction and the second one in another.

This was the case of *Treinies v. Sunshine Mining Co.*,[5] where, in the first case in the State of Washington, the Washington probate court determined that it did have jurisdiction after contest to that effect. Then, in the second case in Idaho the Idaho court later (although perhaps improperly as a matter of full faith and credit to the Washington ruling) determined that the Washington court had not had jurisdiction. On appeal from the third case in the Federal court for Washington, the Supreme Court ruled that Washington, in that case, would have to give full faith and credit to Idaho's determination that Washington had not, in the first case, had jurisdiction in the premises.

One possible objection to the applicability of the "later judgment" rule in this case would be that, while Mr. Croyle might have been bound by the District adjudication had he lived, yet the now defendant, the second wife, not having been a party to it, is not bound. But it would be hard to imagine a more appropriate situation than is involved here for applying the rule that a judgment binds those in privity with the losing party. Here, the now defendant succeds to the interests of Mr. Croyle either as widow, devisee, heir, or administratrix, as the case may be. The provisions of Restatement of Judgments, Section 89, covering one who, "after the beginning of an action, succeeds to the interest of one of the parties * * *" are in point, insofar as any contention might be made that the now defendant is less bound by the judgment than would have been Mr. Croyle had he survived.

Furthermore, even if there were no such privity between the now defendant and the husband, the rule of Restatement of Judgments, Section 74, might dictate the conclusion that she is bound, nevertheless. This provides, in part (1), that "in a proceeding in rem with respect to a status the judgment is conclusive upon all persons as to the existence of the status."[6] But, part (2) is more specific to the effect that such a judgment "is not conclusive as to a fact upon which the judgment is based except between

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[5] 308 U. S. 66 (1939).

[6] Per contra, consider I AUSTIN, LECTURES ON JURISPRUDENCE (Campbell, Ed. 1874) 274, n. where Mr. Campbell, the Editor, observes in one of his footnotes: "It may be observed as a principle of general jurisprudence that a judgment or decree in an action of status (like every other judgment or decree) is conclusive only between the parties to the action in which it is pronounced, and persons in privity with them." At this point Mr. Campbell had been discussing the fact that the "Legitimacy Declaration Act, 1858" was self-limited in its effect to parties to the action and their privies.

persons who have actually litigated the question of the existence of the fact." This last phase would, thus, return us to the question of the second wife's privity if the "fact" of the fraud, rather than the continuance of the "status" be the salient feature of the District judgment. But, it might be argued, the now plaintiff is as much seeking to set up her status as erstwhile continuing wife, as the fact of the fraud in the divorce. Perhaps, however, were she proceeding in the Orphan's Court, the status aspect of the District proceeding would loom larger, whereas when she proceeds on this original bill the fact aspect is the important one.

Another possible obstacle to the District judgment's being entitled to full faith and credit as having determined the invalidity of the Maryland decree would be the argument that the District of Columbia court exceeded its jurisdiction in making a finding that the Maryland decree had been obtained by fraud. This would entail the idea that it was only proper to litigate that in the Maryland court where the divorce was obtained, on a direct attack such as was ultimately brought,[7] and that such a defect (unlike lack of jurisdictional domicil) was not a proper subject of the apparently collateral attack that was allowed in the District court. The import of this would then be that it is not necessary for Maryland to give full faith and credit to that aspect of the District judgment wherein the rendering court exceeded its jurisdiction.

But, the answer to that, in support of necessary full faith and credit, is that (correctly or otherwise) the District court did find that it had jurisdiction to inquire into the fraudulent nature of the Maryland divorce and, he not having appealed on *that* ground, Mr. Croyle and his privies are bound by the determination that the District court possessed jurisdiction to inquire into the fraud. Restatement of Judgments, Section 10, supports this idea, with the caveat that a consideration of policy against permitting a court to act beyond its jurisdiction may outweigh the res adjudicata effect of its finding that it did have jurisdiction. It is hard to see any consideration of policy in this situation sufficient to outweigh the secondary res adjudicata aspect of the District judgment, to the effect that the court did have jurisdiction to make a finding that there was fraud in Maryland.

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[7] *Quaere*: May an original bill for fraud to strike a divorce decree once granted be brought elsewhere than in the State and in the very court where it was originally entered?

It is arguable that, had Mr. Croyle pressed the point in the District court and had he appealed the grant of a limited divorce, he might have had the proceeding dismissed on the ground that the District had to give full faith and credit to the Maryland divorce as long as it stood unrevoked on the books of the Maryland court. But, not having appealed, the implication of Section 10 of the Restatement is that he is bound by the (possibly erroneous) finding that the District court had jurisdiction to look into the fraud just as much as he became bound by the finding about the fraud, whether right or wrong, when made by a court which had jurisdiction so to find, whether it had it as of right or because of his mistakenly allowing it to assert it to his disfavor.

The point remains, therefore, that because Mr. Croyle did not contest the jurisdictional power of the District Court, he became bound by its finding where, had he so contested, he might have forced his first wife immediately to go to the Maryland courts on original bill, as a condition precedent to her obtaining a District award of alimony, just as the Veteran's Bureau ultimately did so force her to do so as a condition of obtaining an administrative award of a pension from them.

The final point to be made is that the Veteran's Bureau was in error in so forcing her to litigate the third case in Maryland. They, too, should have accepted the later District limited divorce as res adjudicata that she, the first wife, was widow and so entitled to the pension, rather than any one else. But they apparently were blinded by the apparently valid Maryland *a vinculo* decree, and followed the line of least resistance and forced her to straighten out the record by the proceeding now under discussion.

The writer realizes that the law of res adjudicata and full faith and credit is full of pitfalls for the unwary; and that there may be flaws in the above generalizations. But, assuming them all to be accurate, this litigation presents the kind of comedy of errors that this branch of the law is given to. We see, in turn, first, the obtention of a divorce decree by fraud on the defendant; then the District of Columbia court exceeding its jurisdiction in finding about the fraud, but achieving a binding judgment in so doing; then the Veteran's Bureau failing to apply the proper rule as to the effect of a judgment, forcing the first wife to an unnecessary third court proceeding in Maryland; where,

finally, on appeal the correct result was reached, but for the wrong reason, after the trial court had declined to reach the correct result for any reason. *Sic gloria transit mundi!*