

treatment of analogous statutes attaching special disabilities to a sentence of imprisonment.¹⁵ It may finally be justified by the consideration that a state may be unwilling to attach penal consequences to a judgment rendered in proceedings, the fairness of which it cannot control.

The court held correctly that *Jones v. Jones*,¹⁶ on which the defendant relied for applying the statute to the plaintiff, was distinguishable from the instant case. The *Jones* case held that a statute providing that a second marriage was not void if contracted after the first spouse had been finally sentenced to life imprisonment was applicable to a sentence in a foreign jurisdiction. But the decision was motivated by a desire to liberate the spouse of the person sentenced and was not intended to provide an additional penalty.

Conflict of Laws—Divorces Entitled to Full Faith and Credit—Qualification of Haddock Case—[Federal].—In 1925 the District Court of the District of Columbia granted the plaintiff a separation from the defendant, his wife, on ground of the latter's cruelty. In 1929 the plaintiff started suit in Virginia to secure an absolute divorce on the ground of desertion, the defendant being personally served in the District of Columbia. The defendant appeared specially and unsuccessfully contested the plaintiff's Virginia domicile. Upon the defendant's failure to plead to the merits within a ten-day period granted by the court, the case proceeded to judgment for the plaintiff. The husband, the plaintiff, remarried in 1933, and in 1935 sought to set aside the 1925 decree for separate maintenance and to get recognition of the Virginia decree. *Held*, that the defendant could not relitigate the good faith of the plaintiff's Virginia domicile, and also that the Virginia decree was entitled to recognition in the District of Columbia. *Davis v. Davis*.¹⁷

The holding that the Virginia court's decision as to the husband's Virginia domicile was to be regarded as *res judicata* in the principal case is discussed in connection with a separate note in this Review.² This note deals with the question of the recognition of the Virginia decree: Although a foreign divorce will not be recognized unless one spouse at least be domiciled in the jurisdiction granting the divorce,³ according to the

¹⁵ Among the analogous statutes which the courts have refused to apply to convictions or sentences in a foreign jurisdiction are those providing that a conviction of a felony or sentence to imprisonment shall be a ground for divorce, *Leonard v. Leonard*, 151 Mass. 151, 23 N.E. 732 (1890), or shall result in disbarment as an attorney, *In re Ebbs*, 150 N.C. 40, 63 S.E. 190 (1908), or in disqualification as an executor, *In re Cohen's Will*, 164 Misc. 98, 298 N.Y. Supp. 368 (1937), or in increased punishment for subsequent crimes, *People v. Gutterson*, 244 N.Y. 243, 155 N.E. 113 (1926), or in disqualification as a witness, *Sims v. Sims*, 75 N.Y. 466 (1878), *Logan v. United States*, 144 U.S. 263 (1892).

¹⁶ 249 App. Div. 470, 292 N.Y. Supp. 705 (1937), *aff'd* without opinion, 274 N.Y. 574, 10 N.E. (2d) 558 (1937).

¹⁷ 59 S. Ct. 3 (1938). The decision arose from the repeated refusal of the Court of Appeals of the District of Columbia to recognize the Virginia divorce: 57 F. (2d) 414 (App. D.C. 1932), and 96 F. (2d) 512 (App. D.C. 1938).

² 6 Univ. Chi. L. Rev. 293 (1939).

³ *Andrews v. Andrews*, 188 U.S. 14 (1903).

doctrine of *Haddock v. Haddock*⁴ a state is not always bound under the "full faith and credit" clause⁵ to recognize a divorce granted at the domicile of one spouse only.

The present case is significant as a possible modification of the doctrine of the *Haddock* case. In that case the Court decided that the New York courts need not recognize a divorce secured by the husband in Connecticut, his new domicile, where the wife, who remained in New York, the last common domicile, did not receive actual notice of the pendency of the suit. The Court distinguishes the principal case from the *Haddock* case on the basis (1) of the fact that here the wife was actually adjudged at fault by the forum, the District of Columbia court, and (2) of the actual notice received by the wife and the special appearance of the wife. Assuming the wisdom of the *Haddock* case, which has been seriously questioned,⁶ these distinctions seem consistent with the various rationales offered in defense of the decision in the *Haddock* case. The first distinction—that the forum has adjudged the defendant at fault prior to the Virginia decree—leads to the conclusion that a foreign divorce involving a situation of the *Haddock* type is binding everywhere if the defendant spouse in the foreign court is actually the party at fault in the separation of the parties. This is a doctrine about which there has been much debate since the decision in the *Haddock* case. Its apparent acceptance in the principal case would seem to support the position taken by Professor Beale,⁷ who based his conclusions on references in the *Haddock* case to the wrongful actions of the husband. The majority of writers have held that the *Haddock* case left this point undecided.⁸

It is doubtful whether there has been any wholesale acceptance by the individual states of Beale's interpretation. Prior to the *Haddock* case an overwhelming majority of state courts voluntarily recognized decrees of the *Haddock* type, and that practice generally has been continued up to the present time.⁹ The California court in the recent case of *Delanoy v. Delanoy*,¹⁰ citing the *Restatement of Conflict of Laws*,¹¹ held that a divorce decree of the *Haddock* type would be recognized if the defendant spouse

⁴ 201 U.S. 562 (1906).

⁵ U.S. Const. art. 4, § 1. See also *Mills v. Duryee*, 7 Cranch (U.S.) 481 (1813), which extended the application of the clause to federal as well as state courts.

⁶ The wisdom of the *Haddock* case is at present almost universally established. Bingham, *The American Law Institute v. the Supreme Court*, 21 *Corn. L. Q.* 393 (1936); Stumberg, *Conflict of Laws* 272 (1937); 1 Beale, *Conflict of Laws* 503 (1935); Strahorn, *A Rationale of the Haddock Case*, 32 *Ill. L. Rev.* 796 (1938); *cf.* Goodrich, *Conflict of Laws* 345 (1938). At the time of the decision in the *Haddock* case, however, there was an outburst of disapproval as to the wisdom of the Court, principally on the grounds of the resultant lack of uniformity in recognition of divorce decrees. See the dissenting opinion of Mr. Justice Holmes in the *Haddock* case, 201 U.S. 562, 628 (1906); Beale, *Constitutional Protection of Decrees of Divorce*, 19 *Harv. L. Rev.* 586 (1906); Dicey, 22 *Law Q. Rev.* 237 (1906).

⁷ 1 Beale, *Conflict of Laws* § 113.10 (1935).

⁸ Bingham, *op. cit. supra* note 6, at 424; Stumberg, *op. cit. supra* note 6, at 275; Strahorn, *op. cit. supra* note 6, at 803.

⁹ See cases cited in Vreeland, *Validity of Foreign Divorces* 61-208 (1938), and analytical notes in 39 *A. L. R.* 639 (1925) and 86 *A. L. R.* 1332 (1933).

¹⁰ 216 *Cal.* 27, 13 *P.* (2d) 719 (1932); see also *Perkins v. Perkins*, 225 *Mass.* 82, 113 *N.E.* 841 (1916); and *Guiliano v. Guiliano*, 163 *Misc.* 655, 297 *N.Y. Supp.* 238 (1937).

¹¹ *Rest., Conflict of Laws* § 119 (1934).

was actually the party at fault, but the court does not seem to have regarded such action as compulsory under the Constitution.¹²

The second distinction established by the Supreme Court between the present case and the *Haddock* case is the statement that the wife here received actual notice of the suit and entered a special appearance. Some state courts have recognized decrees of the *Haddock* type where the defendant had received actual notice, when recognition would have been improbable without such notice.¹³ It is arguable that any special appearance to contest any aspect of jurisdiction should give the court power to grant a binding decree; to do this, although clearly constitutional,¹⁴ is, however, to deprive the defendant of any practical advantages he might derive from a special appearance, and is contrary to the general rule in most of the states and in the federal courts.¹⁵

The Court asserted further that the wife had entered a general appearance in the Virginia suit, and thus that the decree of that court was clearly binding according to the doctrine of *Cheever v. Wilson*.¹⁶ Although it is not at all clear in the principal case whether the wife was instrumental in obtaining the grant of time within which to plead to the merits, the Court relied on *Hupfeld v. Automaton Piano Co.*,¹⁷ where the defendant entered a motion for the grant of time.

The value of the instant case as a precedent is weakened by the possibility that the Supreme Court could have recognized the Virginia decree in its capacity as the appellate court of last resort of the District of Columbia, aside from any constitutional compulsion. The Court of Appeals of the District of Columbia on that basis recognized a Maryland divorce in a case very similar to the principal case.¹⁸

¹² Beale also argues that, if the spouses have mutually consented to separation, either party should be able to secure a binding decree at his separate domicile, *op. cit. supra* note 6, at 499, and asserts that such a decree is recognized in New York, *op. cit. supra* note 6, at 490. In the case of *Weir v. Weir*, 131 Misc. 13, 226 N.Y. Supp. 115 (1927), which Beale cites for this position, the court states that "the fact that the parties had entered into a separation agreement does not alter the situation."

¹³ *Joyner v. Joyner*, 131 Ga. 217, 62 S.E. 184 (1908). See also *Gildersleeve v. Gildersleeve*, 88 Conn. 689, 92 Atl. 684 (1914), and *Perkins v. Perkins*, 225 Mass. 82, 113 N.E. 841 (1916), where the court refused to recognize a Georgia divorce by constructive service where defendant did not receive actual notice, but expressly reserved the question of recognition if there had been actual notice.

¹⁴ *Chicago Life Ins. Co. v. Cherry*, 244 U.S. 25 (1917).

¹⁵ *York v. Texas*, 137 U.S. 15, 19 (1890). Strahorn, *op. cit. supra* note 6, at 798, asserts that the "common denominator" used in the *Haddock* case as to whether recognition is compulsory is the question of the feasibility for the defendant to defend on the merits. Thus the decision on the point whether the special appearance indicated that it was feasible for the wife to defend would, according to Strahorn's test, be a crucial one in the principal case. See also Strahorn's comments on the instant case, *The Supreme Court Revisits Haddock*, 32 Ill. L. Rev. 412 (1938).

¹⁶ 9 Wall. (U.S.) 108 (1869), approved in *Haddock v. Haddock*, 201 U.S. 562, 570 (1906).

¹⁷ 66 Fed. 788 (D.C. N.Y. 1895).

¹⁸ *Atkinson v. Atkinson*, 82 F. (2d) 847 (App. D.C. 1936); although the Supreme Court failed to discuss voluntary recognition, the Court of Appeals of the District of Columbia distinguished the principal case from the *Atkinson* case, 96 F. (2d) 512, 516 (App. D.C. 1938); *Hellmuth v. Hellmuth*, 98 F. (2d) 431 (App. D.C. 1938), *cert. denied* 59 S. Ct. 92 (1938).