bribe.[23] Assuming this explanation, it is suggested that when two persons agree to execute one side of a transaction with a third person, the two who combine may be indicted for conspiracy, provided that the single member involved in the other half of the transaction is not also indicted.[24] Unless the rule of the *Wettengel* case does allow such an indictment, the law of conspiracy, which has been recognized as a useful social control, will be unavailable in large classes of cases.

Divorce—Procedure—Injunction to Restrain Domiciliary from Prosecuting a Foreign Divorce Proceeding—[New York].—A wife brought an action in New York, the matrimonial domicil of the parties, to restrain her husband from further prosecuting divorce proceedings which he had instituted in Florida. The wife had not been personally served in Florida nor had the husband, a property owner in New York, acquired a bona fide domicil in Florida. Upon appeal from an order granting an injunction, *held*, that there were no grounds for equitable intervention as the Florida court was without jurisdiction to enter a valid divorce decree, and as no substantial rights of the wife were prejudiced. Order reversed and complaint dismissed. *Goldstein v. Goldstein.*[1]

In cases similar to the instant case the lower courts of New York,[2] and the courts of New Jersey,[3] Rhode Island,[4] and Maine[5] have in the past granted injunctions. Equitable relief has been predicated on various grounds: evasion of the divorce laws of the marital domicil;[6] burden and expense of defending an out-of-state divorce action;[7] and inconvenience of collaterally attacking a foreign decree not entitled to full faith and credit.[8] In addition, the injunction may serve to enhance the possibility of recon-

[23] United States v. Dietrich, 126 Fed. 664 (C.C. Neb. 1904).

[24] Cf. Rex v. Meyrich and Ribuffi, 21 Cr. App. R. 94 (1929).

[1] 283 N.Y. 146, 27 N.E. (2d) 969 (1940).

[2] Forrest v. Forrest, 2 Edm. Sel. Cas. (N.Y.) 180 (1850); Gwathmey v. Gwathmey, 116 Misc. 85, 190 N.Y. Supp. 199 (S. Ct. 1921), aff'd 201 App. Div. 843, 193 N.Y. Supp. 935 (1922); Greenberg v. Greenberg, 218 App. Div. 104, 218 N.Y. Supp. 767 (1926); Johnson v. Johnson, 146 Misc. 93, 261 N.Y. Supp. 523 (S. Ct. 1933); Richman v. Richman, 148 Misc. 387, 266 N.Y. Supp. 513 (S. Ct. 1933); Dublin v. Dublin, 150 Misc. 694, 270 N.Y. Supp. 23 (S. Ct. 1934); Jeffe v. Jeffe, 4 N.Y.S. (2d) 628 (S. Ct. 1938). But see DeRaay v. DeRaay, 265 App. Div. 544, 8 N.Y. S. (2d) 361 (1938), where the propriety of granting an injunction was doubted.

[3] Kempson v. Kempson, 58 N.J. Eq. 94, 43 Atl. 97 (1899); Knapp v. Knapp, 12 N.J. Misc. 599, 173 Atl. 343 (1934); Gross v. Gross, 13 N.J. Misc. 499, 180 Atl. 204 (1935).

[4] Borda v. Borda, 44 R.I. 337, 117 Atl. 362 (1922).

[5] Usen v. Usen, 13 A. (2d) 738 (Me. S. Ct. 1940).

[6] Greenberg v. Greenberg, 218 App. Div. 104, 218 N.Y. Supp. 767 (1926).

[7] Gwathmey v. Gwathmey, 116 Misc. 85, 190 N.Y. Supp. 199 (S. Ct. 1921), aff'd 201 App. Div. 843, 193 N.Y. Supp. 935 (1922); Kempson v. Kempson, 58 N.J. Eq. 94, 43 Atl. 97 (1899); Usen v. Usen, 13 A. (2d) 738 (Me. S. Ct. 1940).

[8] Gwathmey v. Gwathmey, 116 Misc. 85, 190 N.Y. Supp. 199 (S. Ct. 1921), aff'd 201 App. Div. 843, 193 N.Y. Supp. 935 (1922); Kempson v. Kempson, 58 N.J. Eq. 94, 43 Atl. 97 (1899); see Pound, The Progress of the Law, 1918–1919, 33 Harv. L. Rev. 420, 426 (1920).

ciliation[9] by preventing a spouse from obtaining a foreign decree which may create in the "divorced" spouse an attitude of having completely severed relations. By discouraging the divorce, the injunction also acts to prevent defeating the expectations of an innocent third party who marries one of the spouses[10] or purchases what appears to be dower-free property on the strength of the foreign decree. Implicit in the foregoing considerations is the effect of the injunction in aiding to produce a uniformity of marital status throughout the states and in preventing "limping marriages."[11]

An injunction, however, may not be necessary to protect the wife's rights, for, assuming the husband's return to New York,[12] her legal remedies are formally adequate[13] even though a foreign divorce decree was obtained by the husband. That decree is not entitled to,[14] and is not given, full faith and credit in New York,[15] and the wife can dispel any doubts as to her status by a declaratory judgment action.[16] The wife's right to a decree for separation and support would be unimpaired,[17] and her right to administer and to share in the husband's estate would exist even if the husband "remarried."[18] There is, however, a possibility that if the husband has property outside of New York and Florida, the wife will have difficulty in establishing her right to ancillary administration. Moreover, the wife may encounter practical difficulties

[9] But see Jacobs, The Utility of Injunctions and Declaratory Judgments in Migratory Divorce, 2 Law & Contemp. Prob. 370, 390 (1935).

[10] A person who has married on the strength of the foreign decree may to his surprise find himself considered an adulterer in the eyes of the law. See Hoffman v. Hoffman, 46 N.Y. 30 (1871); Baumann v. Baumann, 250 N.Y. 382, 165 N.E. 819 (1929). He may be deprived of statutory dower and his inheritance rights or his right to administer the estate of the deceased spouse. Andrews v. Andrews, 188 U.S. 14 (1903).

[11] By deterring the defendant spouse from obtaining an out-of-state divorce, the issuance of an injunction would help prevent a situation where a man may be considered married to a woman in one state and divorced from the same woman in another state.

[12] If the husband had instituted the foreign divorce proceedings intending never to return to New York, the issuance of an injunction would have been an idle gesture, because the husband would be immune from contempt proceedings as long as he remained outside of New York. See May v. May, 233 App. Div. 519, 253 N.Y. Supp. 606 (1931), where the court refused to grant an injunction restraining the defendant spouse from prosecuting a foreign divorce action, as the defendant could not be personally served within the jurisdiction.

[13] The wife's legal remedies can be employed after the husband has obtained his foreign divorce. If the wife appears in the foreign court to attack its jurisdiction, she runs the risk of an adverse ruling which would give the foreign court power to render a divorce decree that would be entitled to full faith and credit in New York. Davis v. Davis, 305 U.S. 32 (1938), noted in 6 Univ. Chi. L. Rev. 290 (1939); Tiedemann v. Tiedemann, 172 App. Div. 819, 158 N.Y. Supp. 851 (1916), aff'd 225 N.Y. 709, 122 N.E. 892 (1919); Tatum v. Maloney, 226 App. Div. 62, 234 N.Y. Supp. 614 (1929).

[14] Haddock v. Haddock, 201 U.S. 562 (1906).

[15] Dean v. Dean, 241 N.Y. 240, 149 N.E. 844 (1925); Ball v. Cross, 231 N.Y. 329, 132 N.E. 106 (1921); McCall v. McCall, 223 App. Div. 124, 228 N.Y. Supp. 347 (1928).

[16] Lowe v. Lowe, 265 N.Y. 197, 192 N.E. 291 (1934); Baumann v. Baumann, 250 N.Y. 382, 165 N.E. 819 (1929).

[17] Even if the husband had "remarried," the first wife's right to support would be given prior consideration. See Krause v. Krause, 282 N.Y. 355, 26 N.E. (2d) 290 (1940).

[18] Andrews v. Andrews, 180 U.S. 14 (1903).

in obtaining support if the husband remarries, since the second wife would be in a better position to get at the husband's assets.

Apart from the formal adequacy of the wife's legal remedies, the injunction may nevertheless be necessary to protect the interest of the state in the marriage relationship.[19] Although New York courts would not give full faith and credit to the Florida decree, the validity of the decree in New York may never be litigated, for a wife who asks for an injunction may not be willing to bring a declaratory judgment action. In that case, the foreign decree would in effect dissolve the marriage. By deterring the husband from procuring the out-of-state divorce, the injunction serves to prevent the state's interest from so being circumvented.[20] This consideration should be of paramount importance in New York where the underlying domestic relations policy has been a strict enforcement of marital status, as evidenced by strict divorce laws and refusal to give full faith and credit to "Reno" divorces. Denial of an injunction in the present case stands in marked contrast to this policy.

Federal Jurisdiction—Erie Railroad Co. v. Tompkins—"Federal Field" Doctrine—[Federal].—In a suit by an employee against an interstate railroad for back pay, the Supreme Court of Mississippi held that the cause of action was based upon the collective agreement between the Brotherhood of Railroad Trainmen and the railroad, rather than upon the oral contract of employment between the plaintiff employee and the defendant; and that therefore the six-year state statute of limitations was applicable.[1] Following the remand of the case for trial, plaintiff amended his pleadings so that an amount of more than $3000 was involved, whereupon defendant secured a removal to a federal court. The federal district court, holding itself bound under *Erie R. Co. v. Tompkins*[2] by the state court decision as to the foundation of the cause of action, rendered judgment for the plaintiff.[3] Upon appeal to the circuit court of appeals, *held*, the Congressional statute regulating some aspects of interstate railroad labor relations should be considered as making the entire matter a "federal field." Consequently even though there was no federal statute applicable to the particular situation, the federal court was not bound to follow the state court decision, but was free to make an independent determination. The cause of action was based upon the oral contract, and the three-year state statute of limitations should have been applied. Reversed and remanded.[4] *Illinois Central R. Co. v. Moore.*[5]

[19] 1 Beale, Conflict of Laws 502–3 (1935).

[20] However, in Baumann v. Baumann, 250 N.Y. 382, 165 N.E. 819 (1929), and Lowe v. Lowe, 265 N.Y. 197, 192 N.E. 291 (1934), the courts have shown an unwillingness to use the injunction to prevent adultery, or to stop an adulteress from acting as if she were the wife of a husband who had obtained a foreign divorce.

[1] Moore v. Illinois Central R. Co., 180 Miss. 276, 176 So. 593 (1937).

[2] 304 U.S. 64 (1938).

[3] Moore v. Illinois Central R. Co., 24 F. Supp. 731 (Miss. 1938).

[4] The remand was for the purpose of giving the plaintiff an opportunity to produce additional documents to show that the contract of employment between himself and the defendant was a written contract.

[5] 112 F. (2d) 959 (C.C.A. 5th 1940).