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Domestic Relations

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DOMESTIC RELATIONS

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The most interesting case decided by the Supreme Court during the review period in the field of Domestic Relations was *The Peoples National Bank of Greenville v. Manos Brothers, Inc., et al.*,[1] dealing as it does with (a) foreign divorces; (b) estoppel by participating in them; and (c) the stringency of the rule against attacking the legitimacy of a child born during wedlock.

The action started as a simple foreclosure of a real estate mortgage with all parties possibly interested in the real estate being joined as defendants, but the answers of the defendants promptly turned the cause into a contest as to inheritance between the deceased landowner's divorced wife and the child of that marriage on one hand and his second wife on the other. The decedent had married his first wife in Greece in 1904, brought her to Greenville, South Carolina, in 1905, returned to Greece with her in 1913, and left her there in 1915 to return to Greenville alone. He visited her in 1919-20, and when he left her to return to Greenville she was pregnant. Four months later she gave birth to the son who was to become a defendant in this case. Neither she nor the boy ever came to the United States until after the present action was pending.

In 1923 the decedent obtained a divorce from the first wife in the courts of Georgia upon what purported to be service by publication In 1925 he married the woman who considered herself his wife at the time of his death and to whom his will left a substantial interest in the property under foreclosure.

The first wife set up the invalidity of the Georgia divorce, and the court had little difficulty in finding it invalid. As typical in such cases, the husband was not truly domiciled in Georgia; and furthermore, as the court held, the wife was not properly served, the only evidence of service by publication being publication of the summons in a Georgia newspaper with no evidence of any attempt to give actual notice to the wife in Greece. The court further found that there was such confusion between English and Greek proper names in the published notice as to make it bad on that score.

The contention was then made that the first wife and her son were estopped from questioning the validity of the Georgia divorce.

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1. 226 S.C. 257, 84 S.E. 2d 857 (1954).

Reliance was had upon *Watson v. Watson*[2] and *Ex Parte Nimmer*.[3] In those cases there had been participation or acquiescence in the invalid divorce proceedings by the divorced spouse. This element was entirely lacking in the present case. The court held that the doctrine of estoppel must have flexible application in such situations; that there is no inflexible rule that "wherever a decedent would have been estopped to question the validity of a divorce obtained by him or with his help, his heirs are likewise estopped"; and that, furthermore, neither the first wife nor her son was subject to the doctrine of estoppel — she, because she was claiming dower rather than as an heir, and the son, because he was invoking a statute[4] expressly passed for his protection in limiting the property which a decedent may leave to a mistress or illigitimate child.

The second wife had attempted to prove that the Greece-born son was in truth not the decedent's child. The only proof that she had on this was the decedent's statement in his will that he did not recognize the boy in Greece "as my true son" and the allegation in his Georgia divorce complaint that when he returned to Greece in 1919 he found his wife pregnant — an allegation which the decedent himself had modified by an amendment. The court held, quite soundly under the decision in *Barr's Next of Kin v. Cherokee, Inc.*,[5] that since both of these written statements were by the husband they must be excluded from consideration because of the rule that neither a husband nor a wife may testify as to non-access between them in any case where the legitimacy of a child born in wedlock is in issue.

The only general significance of *Miller v. Miller*[6] lies in the application of the "clean hands" doctrine to divorce cases. The wife in that case had sued for separate maintenance and alimony on the ground of physical cruelty, and the husband had counterclaimed for a divorce on the grounds of physical cruelty, habitual drunkenness and desertion. The master and the circuit court found that the husband had no basis for his charges, but granted the wife's prayer for separate maintenance and alimony with some apparent reluctance, the circuit judge stating that "no one can read the record here and reach the conclusion that either (of the parties) is wholly blameless in this controversy." The husband seized upon this statement to argue on his appeal that the "clean hands" doctrine must be applied to deny alimony to the wife. The court, in an Opinion by Mr. Justice Oxner,

2. 172 S.C. 362, 174 S.E. 33 (1934).
3. 212 S.C. 311, 47 S.E. 2d 716 (1948).
4. Code of Laws of South Carolina, 1952 §§ 19-238 and 57-310.
5. 220 S.C. 447, 68 S.E. 2d 440 (1951).
6. 225 S.C. 274, 82 S.E. 2d 119 (1954).

held that the "clean hands" doctrine did generally apply in divorce cases[7] but that it did not apply so as to require a party who otherwise would be entitled to a divorce or separate maintenance to be "entirely blameless." The court said that it must be recognized that most marital difficulties are to some extent the fault of both parties and that a rule requiring a completely blameless life on the part of a person seeking marital relief would be unreasonably harsh.

Rodgers v. Herron[8] was a most interesting decision upon the duty of a trustee to investigate reports concerning the common law marriage of a trust beneficiary entitled to income only during her widowhood; but from the viewpoint of the law of Domestic Relations the only importance of the decision lies in its recognition that since a common law marriage "depends upon facts and circumstances evidencing a mutual agreement to live together as husband and wife, and not in concubinage", the existence of such a marriage, and particularly the time of its creation, is extremely difficult of ascertainment. The court said:

> Somewhat analogous is the situation that exists where the issue is insanity. Circumstances may indicate insanity, but ordinarily the fact cannot be established for certainty until there is an adjudication.

The only other Domestic Relations cases which the court decided during the review period were run-of-the-mine. In *Lyon v. Lyon*[9] the court held that an allegation, that "the defendant has on occasion applied physical violence and force to her, even going so far as choking her on one occasion, when plaintiff's brother stopped him", was good against demurrer to allege physical cruelty as a ground for divorce. In *Forester v. Forester*[10] the court reversed an award of separate maintenance and support in favor of a wife on the ground that although the evidence established the husband to be "a jealous and at least occasionally inconsiderate husband" it did not show his conduct towards his wife to be of such a nature as to justify her leaving his home and claiming support elsewhere.

7. Citing Nicholson v. Nicholson, 115 S.C. 326, 105 S.E. 700 (1921).
8. 226 S.C. 317, 85 S.E. 2d 104 (1954).
9. 86 S.E. 2d 606 (S.C. 1955).
10. 226 S.C. 311, 85 S.E. 2d 187 (1954).