

Matrimonial Causes (War Marriages) Act, 1944, c. 43
Matrimonial Causes (Judgment Summons) Rules, 1952
Matrimonial Causes Rules, 1957, operative 4/3/57
Matrimonial Proceedings (Children) Act, 1958 c. 40
Matrimonial Proceedings (Magistrates' Courts) Act, 1960, c. 48
Supreme Court of Judicature (Consolidation) Act, 1925, c. 49
The Divorce (Scotland) Act, 1938

FRANCE

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Recognition in France of Foreign Divorce Decrees—In General

For a number of years the principle has been enunciated by the French Court of Cassation that foreign judgments relating to personal status and capacity will be recognized in France without prior exequatur, as long as such recognition does not involve granting execution on property or forcing a person to do any specific act or thing. This limited recognition permits a spouse who has been properly divorced in a foreign country to remarry in France without first obtaining exequatur for the foreign divorce decree.¹ A foreign judgment of divorce has also been held to be a bar, without prior exequatur, to a subsequent action for divorce instituted in France.²

Nevertheless, a foreign divorce decree is always subject to control by the French Court when an objection to the judgment is made by a party.³ This control is similar to, but not identical with that of

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¹ *Bulkley v. Defresne*, Cour de Cassation (ch. Civ.) Feb. 28, 1860 (1860) *Dalloz* I 5 7 (hereinafter called D) & note. See also *Époux Russel v. Weiller*, Cour de Cassation (ch. Civ.) Jan. 22, 1951 (1961) *Sirey* I 187 (hereinafter called S); *Renoir v. Renoir*, Cour de Cassation, (ch. Civ.) Feb. 19, 1952 (1953) *Revue Critique de Droit International Privé* 806 (hereinafter called *Revue Critique*); *Rivière v. Roumiantzoff*, Cour de Cassation (ch. Civ.) April 17, 1953 (1953) *S.I.* 181; *Dame S v. G*, Cour d'Appel de Paris, Nov. 7, 1957 (1959) *Revue Critique* 319 & note by P. Bellet.

² *William v. X*, Cour d'Appel de Paris, July 2, 1934 (1935) *Clunet* 367; *Renoir v. Renoir*, *supra*, note 1. *Patino v. Madame Patino*, Cour d'Appel de Paris, July 1, 1959 (1960) *Clunet* 413.

³ *Sloutsky v. Dame Sloutsky*, Cour de Cassation (ch. Civ.) Feb. 21, 1933 (1933) *S.I.* 361 and note by J. P. Niboyet.

the Court in a proceeding for exequatur. The difference between the two is that in exequatur proceedings, the French Court may review the substance of the judgment and refuse to grant exequatur if it finds an error of fact or law, whereas this cannot be done in its review of a foreign status judgment.

When a foreign judgment of divorce is reviewed, the French Court examines the jurisdiction of the foreign court which granted the divorce as well as the procedure which it followed; it looks to see whether the foreign court applied the law in accordance with French rules of conflicts of laws, and whether the foreign judgment is compatible with French public policy. Although the French court may go further in its scrutiny of foreign judgments in exequatur proceedings, it may nevertheless refuse and often does refuse recognition to foreign judgments of status or capacity where it finds that they were obtained under conditions not compatible with French conflicts of law rules.⁴ As has been noted, where recognition is not opposed, and execution against property or coercive measures are not involved, exequatur will be unnecessary for the remarriage in France of a person who was divorced elsewhere,⁵ or whose marriage was annulled abroad.⁶

Applicability of French Law to Foreign Divorces

Where a foreign divorce decree has been obtained by spouses who are of the same nationality, the French Court looks to the national law of the parties to resolve the question of the divorce's validity and the capacity of the parties to remarry.⁷ If the parties do not have a national law but have a common domicile, as in the case of citizens of the United States, the law of the state of their common domicile is applied.⁸

⁴ Rivière v. Roumiantzoff, *supra* No. 1; Back v. Blankendorff, Cour de Cassation (ch. Civ.) April 11, 1945 (1945) D. 245; Renoir v. Renoir, *supra* N.1; Patino v. Madame Patino, *supra* N.2; Comment Batiffol, "Recognition in France of Foreign Decrees Divorcing Spouses of Different Nationality" 4 *Am. J. Comp. L.* 574, 576 (1955).

⁵ Bulkley v. Dufresne, *supra* note 1.

⁶ Prince v. Wrède v. Maldaner, Cour de Cassation (ch. Civ.) May 9, 1900 (1901) S. I. 185.

⁷ Figue v. Figue, Cour de Cassation (ch. Civ.), (1954) S. I. 172 & note; Époux Russel v. Weiller, cited *supra* N. 1 2 Planiol et Rupert, "Traité Pratique de Droit Civil Français," N. 398 (2d Ed 1952).

⁸ Grant v. Dame Grant Scott, Cour d'Appel de Paris, June 6, 1904, 1905 *Revue Critique* 146; Weill v. Weill, Cour d'Appel de Paris, Nov. 9, 1935, 1936 *Revue Critique* 151; (1963) *Clunet* 117, note by Bredin.

A different rule prevails if the spouses are of different nationality. Formerly, where spouses of different nationality were divorced outside France, there was a conflict as to the proper law to be used by the French Court in making its determination of the validity of the foreign divorce. Some decisions held that if one of the parties was French, French law alone governed.⁹ Other cases decided on the contrary that French law did not apply. This led to the determination that where one of the spouses was a national of a country where divorce was not permitted, recognition in France of a foreign decree must be denied even if the other spouse was French.¹⁰

Today, however, a different principle is applied where the spouses are not of the same nationality. The decision which gave rise to this new rule was enunciated in the case of *Rivière v. Roumiantzoff*,¹¹ wherein the French Court of Cassation decided that where spouses are of different nationality, the validity of a divorce obtained by them is governed by the law of their common domicile, and that French law does not apply for the sole reason that one of the spouses is French.¹²

Exequatur of Foreign Divorce Judgments

Where there has been a foreign judgment involving status or capacity, such as a divorce or annulment, and thereafter it becomes necessary to sue in France for alimony, support, or custody of children, prior exequatur of the foreign judgment must always be obtained.¹³ As a prerequisite to a grant of exequatur of the foreign

⁹ Comment, Batiffol, *supra*, note 4, 574, 578 (1955). *Ferrari v. Ferrari*, Cour de Cassation, (ch. Civ.), March 14, 1928 (1929) S. I. 92.

¹⁰ Comment, Batiffol, *supra* note 3, 577, 578.

¹¹ Cour de Cassation (ch. Civ.) April 17, 1953 (1953) S. I. 181. See also *Guinle v. Sherwood*, Trib. Civ. Seine, Nov. 28, 1956 (1957) Clunet 158 and *Ali Khan v. Rita Hayworth*, Trib. Civ. Seine, Jan. 11, 1956 (1956) Clunet 1022. Batiffol, Comment 4 *Am. J. Comp. L.* 575, 578 (1955).

¹² Delaume, "American-French Private Intl. Law," 100, 101 (1961); *Lombardine v. Lombardine*, Trib. Civ. de la Seine, Dec. 24, 1957, (1958) Clunet 978; *Dame Amat, épouse Corcos v. Corcos*, Cour d'Appel de Paris, June 25, 1959, (1960) Clunet 474; *Madame Defeins v. Tahoun*, Trib. de Grande Instance de la Seine, May 23, 1960 (1960) Clunet 751. See also *Lewandowski v. Lewandowski*, Cour de Cassation (ch. Civ.), March 15, 1955 (1955) D. 540; *Del Torchio v. Del Torchio*, Cour de Cassation (ch. Civ.), Nov. 17, 1958 (1959) D. 80.

¹³ (1964) Clunet 815, note by Bredin; *Munzer v. Dame Jacoby Munzer*, Cour de Cassation, (ch. Civ.) Jan. 7, 1964 (1964) Clunet 302.

For a full discussion of the endorsement of foreign judgments in France, see: Delaume, "American-French Private International Law," 160-165 (2d Ed.

decree, French courts insist that certain conditions be met. The foreign court which rendered the judgment must have had jurisdiction; its procedure must have been regular; the judgment must have been valid and enforceable where rendered; the law applied must have been competent according to French rules of conflicts of law; there must have been no fraud of law involved; and the foreign judgment must have been compatible with French public policy.¹⁴ Thus, exequatur will not be granted to a foreign divorce decree when the divorcing court lacked jurisdiction¹⁵ or when the defendant lacked the opportunity to be heard in the foreign divorce suit.¹⁶

Where the spouses are of different nationality, exequatur has been granted to a foreign divorce decree even though it was obtained by mutual consent of the spouses, despite the fact that French theory predicates divorce upon fault. For example, in the case of *Mason v. Madame Henrioux*, involving a divorce by mutual consent granted in Lebanon (the common domicile of the parties), the divorce was held valid and not in contravention of French public policy.¹⁷ Similarly, a Swedish divorce obtained by mutual consent was recognized by the French court where both spouses had their common domicile in that country even though the wife was French.¹⁸

The French Court may give only partial recognition to a foreign judgment if it sees fit, by granting exequatur for a foreign divorce

1961); Freed, "Enforcement of American Money Judgments and Arbitration Awards Abroad" (France), 1958-1959 Proceedings American Bar Association, Section of International and Comparative Law," 103-107; Lorenzen, "The Enforcement of American Judgments Abroad," 29 *Yale L. J.* 188, 196 (1919); Lorenzen, "The French Rules of Conflict of Laws," 36 *Yale L. J.* 731, 751-755 (1927); Comment, Nadelman, "Recognition of Foreign Money Judgments in France," 5 *Am. J. Comp. L.* 248 (1956); Batiffol, "Traité Élémentaire de Droit International Privé" 741 (1949).

¹⁴ *Époux Russel v. Weiller*, *supra* note 1; Patino de Bourbon, Cour d'Appel de Paris, July 1, 1959 (1959) D. 431 & note by P. Malaurie. See *Martin v. Martin*, Cour d'Appel de Paris, December 12, 1963 (1965) Clunet 122 (French Court held no fraud in husband's acquiring French nationality).

¹⁵ *Époux Russel v. Weiller*, *supra* note 1.

¹⁶ *Ibid*; *Le Goaster v. Dame Deringer*, Cour de Cassation (ch. Peq), Nov. 11, 1908 (1909) Clunet 137; *Dame Renoir v. Renoir*, *supra* note 1.

¹⁷ Trib. de Grande Instance de la Seine, Oct. 17, 1961 (1962) Clunet 711, and note by A. Ponsard.

¹⁸ *M. v S.* —, Trib. de Grande Instance de la Seine, April 2, 1959 (1960) Clunet 162. See also *Lundwall v. Dame Villada y Sanchez*, Cour d'Appel de Paris, Feb. 4, 1958 (1958) D. Sommaire 126 (Common domicile Austria, divorce in Cuba, exequatur granted).

decree, but reducing the amount of alimony awarded by the foreign court.¹⁹

Mexican Bilateral Divorce Decrees

Where spouses of different nationality have a bona fide domicile in Mexico, the French courts recognize and will grant exequatur to a bilateral divorce granted by a Mexican court.²⁰

A traditional hostility, however, has existed in France toward the migratory type of Mexican divorce obtained there by nondomiciliaries, and French Courts have sought and found a variety of reasons for denying exequatur to these judgments.²¹

In the case of *Gunzburg v. Dame Schrey*, the French Court of Appeals,²² in accordance with this general policy, affirmed the lower court's dismissal of an application for exequatur of a Mexican divorce decree.²³ The husband and wife, who were of different nationality, were domiciled in New York. A separation agreement was entered into by the spouses, followed by a Mexican divorce, the wife having appeared personally in the Mexican Court, and the husband, by attorney. Rejecting the husband's appeal from the refusal to grant exequatur for the Mexican divorce decree, the French Appellate Court held that there was no bona fide domicile in Mexico,²⁴ and that therefore the Mexican court did not have jurisdiction and was not competent to grant the divorce under French principles of conflict

¹⁹ Drichemont v. Schmitt, Cour de Cassation, July 29, 1929 (1930) Clunet 377.

²⁰ Fabre v. Le Roy, Cour d'Appel de Paris, October 30, 1954 (1954) Clunet 825; See also Gomez de Silva v. Madame Finkelstein, Trib. de Grande Instance de la Seine, June 13, 1960 (1961) Clunet 751 and note by Bredin (French public policy held not offended by a divorce granted in Mexico to a Mexican national husband and a French wife, where their common domicile was Mexico, the Mexican Court being competent.)

²¹ Dame Foure v. Picard, Trib. de Grande Instance de la Seine, June 6, 1962 (1962) D. 655, note by P. Malaurie; Algaz v. Scharf, Cour d'Appel de Paris, Feb. 19, 1960 (1960) Revue Critique 182 and note by P. Lagarde; Ermolieff v. sa femme, Cour d'Appel de Paris, Nov. 15, 1960 (1961) Revue Critique 397 and note by Loussouarn. *Époux Russel v. Weiller*, *supra* note 1.

²² Cour d'Appel de Paris, June 18, 1964 (1964) Clunet 810 and note by J. Bredin. See also Patino v. Dame Cristina de Bourbon y Bosch Labrus, Cour d'Appel de Paris, July 1, 1959 (1959) D. 431, (Mexican Court held incompetent under rules of French conflicts of law and exequatur refused); Ermolieff v. sa femme, Cour d'Appel de Paris, Nov. 15, 1960 (1961) Revue Critique 397 and note by Loussouarn.

²³ *Gunsburg v. Dame Schrey*, Trib. de Grande Instance de la Seine, May 14, 1962 (1962) D. 653 and note by P. Malaurie.

²⁴ Cour d'Appel de Paris, June 18, 1964 (1964) Clunet 810.