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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

DORIS JONAS FREED*

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. 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.

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. This control is similar to, but not identical with that of

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* The author, a member of the New York and Maryland Bars, holds a J.S.D. degree from New York University. In addition to contributing many articles on French law and procedure to this section, she has written, together with Henry H. Foster, Jr., several volumes on family law.


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

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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. 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, or whose marriage was annulled abroad.

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. 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.

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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.


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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. 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.

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, 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.

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. As a prerequisite to a grant of exequatur of the foreign judgment involving status or capacity, it is necessary to sue in France for alimony, support, or custody of children, prior exequatur of the foreign judgment must always be obtained.8

10 Comment, Batiffol, supra note 3, 577, 578.
19 For a full discussion of the endorsement of foreign judgments in France, see: Delaume, "American-French Private International Law," 160-165 (2d Ed.

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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. Thus, exequatur will not be granted to a foreign divorce decree when the divorcing court lacked jurisdiction or when the defendant lacked the opportunity to be heard in the foreign divorce suit.

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. 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.

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


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.


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