Volume 54
Issue 3 *Dickinson Law Review - Volume 54, 1949-1950*

3-1-1950

# Fall v. Eastin Revisited: Extraterritorial Effect of Foreign Land Decrees

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# *FALL v. EASTIN* REVISITED: EXTRATERRITORIAL EFFECT OF FOREIGN LAND DECREES

By

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It is generally conceded that the courts of a state have sole jurisdiction over land situated within the state. "The interest of a state in controlling all the legal incidents of real property located within its boundaries is deemed so complete and so final to the exercise of sovereign government within its own territory as to exclude any control over them by the statutes or judgments of other states."[1]

This is not to say, however, that the courts of a state have no jurisdiction whenever an action before them involves land located in another state. That a court having jurisdiction over the parties can render a decree, binding upon the person of the parties, which requires the conveyance of land outside the state has, indeed, been settled law since *Penn v. Lord Baltimore*.[2] In that case, the plaintiff sought a decree for the specific performance of an agreement concerning the boundaries of land in America. The defendant objected that the English Court of Chancery was without jurisdiction in a matter involving foreign land, for "this court cannot make an effectual decree in the cause, nor enforce the execution of their own judgment."[3]

The question of jurisdiction was resolved in favor of the plaintiff. "As to the court's not enforcing the execution of their judgment," said Lord Hardwicke, L.C., "if they could not at all, I agree, it would be in vain to make a decree; . . . but that is not an objection against making a decree in the cause; for the strict primary decree in this court as a court of equity is *in personam*."[4] Reliance was thus placed upon the characteristic mode and enforcement of equity decrees, which command the party to do, or refain from doing, some act, enforced by coercion applied to the person, as distinguished from the ordinary judgment at law which establishes a right in the plaintiff.[5] "The conscience of the party was bound by this agreement; and being within the jurisdiction of this court . . ., which acts *in personam*, the court may properly decree it as an agreement."[6] Under this view, since the court's decree acts only upon the person of parties admittedly within its jurisdiction, its

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1 McRary v. McRary, 47 S. E.2d 27, 30 (N. C. 1948). See similarly, Yarborough v. Yarborough, 290 U. S. 181, 217 (1933).

2 1 Ves. Sen. 444 (1750).

3 Id. at 446.

4 Id. at 454.

5 MCCLINTOCK ON EQUITY 84 (2d ed. 1948).

6 1 Ves. Sen. at 447.

decree is valid even though the person is ordered to act with regard to land outside the jurisdiction. As stated by Mr. Chief Justice Marshall, "the principles of equity give a court jurisdiction wherever the person may be found, and the circumstance, that a question of title may be involved in the inquiry, and may even constitute the essential point on which the case depends, does not seem sufficient to arrest that jurisdiction."[7]

If the defendant complies with the decree of a court having jurisdiction under the principle of *Penn v. Lord Baltimore* by executing a conveyance to plaintiff, such conveyance will clearly be recognized and given effect by the courts of the state where the land is located. Though the courts of a state cannot affect by their judgment the title to land in another jurisdiction, "still when all the parties in interest are before the court, there the court may settle their rights, and a deed made by one of the parties pursuant to the judgment of the court passes the title."[8] This is true even though the conveyance is made under the compulsion of the decree directed against the defendant's person. "A conveyance executed by the owner, though under the duress of an order of court requiring the owner, as a party, to do so, is held to be a voluntary conveyance."[9]

Let us suppose, however, that the defendant refuses to comply with the court's decree. In such cases, the court can itself order the execution of a deed pursuant to its decree by a master appointed by the court. If the land involved is within the jurisdiction, there is of course no difficulty. The deed executed by the court officer would of itself pass good title. If the land is outside the state, there is a different result. Such a deed by a court officer is held insufficient to transmit title to real estate situated in a jurisdiction other than that of the forum.[10] "The deed executed by the commissioner in this case must be considered as forming part of the proceedings in the court of chancery, and no greater effect can be given to it than if the decree itself, by statute, was made to operate as a conveyance [at the situs] as it does [at the forum]."[11]

It may be, as Mr. Justice McKenna once implied, that "the doctrine that a decree of a court rendered in consummation of equities, or the deed of a master under it, will not convey title, and that the deed of a party coerced by the decree will have such effect is illogical or inconsequent."[12] The reason usually given for the rule that the court's decree or the master's deed cannot operate directly to transfer title to land outside the jurisdiction is that title to land can only be controlled by the courts of the situs. Yet, does not the forum in effect control such title if a convey-

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7 Massie v. Watts, 6 Cranch 148, 158 (U. S. 1810).

8 Steele v. Bryant, 116 S. W. 755, 757 (Ky. 1909). See Bullock v. Bullock, 30 A. 676, 677 (N. J. 1894). Cf. Carpenter v. Strange, 141 U. S. 87, 106 (1891); Corbett v. Nutt, 10 Wall. 464, 475 (U. S. 1870); Watkins v. Holman, 16 Pet. 25, 57 (U. S. 1842).

9 Groom v. Mortimer Land Co., 192 Fed. 849, 852 (5th Cir. 1912).

10 Ibid.

11 Watts v. Waddle, 6 Pet. 389, 400 (U. S. 1832).

12 Fall v. Eastin, 215 U. S. 1, 10 (1909).

ance by the defendant executed under the compulsion of a decree of the forum is operative to pass the title? In the normal case, the defendant does comply with the decree of a court having personal jurisdiction over him, and, in such a case, it can be said that the decree acts directly upon the title, just as it does where a deed is executed by a court officer pursuant to the court's decree.

Even if the above argument is valid in theory, the question is no longer an open one. The distinction between conveyances executed by the owner and those executed by a master is by now firmly established. The basis usually given for the distinction is that stated by Chief Judge Cardozo. A conveyance executed by the owner is valid, says he, even though he act under compulsion, for "the conveyance, and not the judgment, is then the source of title. . . The distinction is between a judgment directed against the *res* itself, and one directed against the person of the owner, who acts upon the *res*. His deed transmits the title irrespective of the pressure exerted on his will."[13]

Under the principles just discussed, although a court of equity can decree the conveyance of land situated in another state where it has personal jurisdiction over the parties, "neither the decree itself nor any conveyance under it, except by the person in whom the title is vested, can operate beyond the jurisdiction."[14] It does not, however, follow from this that such a decree is of no effect whatsoever at the situs. Even though such a decree cannot by its own force operate upon the title to land in another state, it may still be considered as conclusive upon the parties insofar as the rights established by it are concerned, and may furnish the basis for a cause of action or defense at the situs.

"It is familiar law that a judgment at law takes the place of the chose in action on which it was recovered, and that an action may be maintained on the judgment in the same state or in any other state against the judgment debtor whenever there may be occasion to recover a new judgment in order more effectively to enforce the obligation."[15] If the first judgment is rendered by a court in the United States, this result would appear to be compelled by Article IV, Section 1, of the Federal Constitution which provides that "full faith and credit shall be given in each state to the public acts, records, and judicial proceedings of every other state." The full faith and credit clause, as Mr. Justice Reed has pointed out, "brings to our Union a useful means for ending litigation. Matters once decided between adverse parties in any state or territory are at rest. . . By the Constitutional provision for full faith and credit, the local doctrines of res judicata, speaking generally, become a part of national jurisprudence."[16]

Under the full faith and credit clause, the judgment of a state court with jurisdiction over the parties and subject matter must be "given in the courts of every

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13 Deschenes v. Tallman, 248 N. Y. 33, 37 (1928).
14 Watkins v. Holman, 16 Pet. 25, 57 (U. S. 1842).
15 WALSH ON EQUITY 67 (1930).
16 Riley v. New York Trust Co., 315 U. S. 343, 348-49 (1942).

other State the same credit, validity and effect which it has in the State where it was rendered, and be equally conclusive upon the merits."[17] This is true even though the cause of action merged in the judgment could not have been enforced in the state where the enforcement of the judgment is sought.[18] Thus, in *Fauntleroy v. Lum,*[19] a Mississippi court was required to grant recovery on a Missouri money judgment, although the original cause of action arose in Mississippi out of a transaction in cotton futures, which was illegal by statute and hence unenforceable there.[20]

Do equitable decrees requiring the conveyance of land situated in another state come within the purview of the full faith and credit clause? If they do, they must be recognized as conclusive insofar as the rights of the parties to the land are concerned in an action at the situs involving rights in that land.[21] Under *Fauntleroy v. Lum,* indeed, this must be their effect even if the law and policy of the situs would not permit the enforcement of the original cause of action.

*Burnley v. Stevenson*[22] is the leading case supporting the view that equitable decrees of the type we are considering are entitled to the same respect under the constitutional provision as are money judgments. In that case, a Kentucky court, with personal jurisdiction over the parties, had decreed the specific performance of a contract to convey land in Ohio. In a subsequent action in Ohio to recover possession of the land against persons claiming title through the plaintiff in the Kentucky action, the defendants set up the Kentucky decree as a defense. The court held that this constituted a sufficient defense in equity, for the Kentucky decree had to be regarded as conclusive of all the rights and equities settled therein. This result, McIlvaine, J., implied, was compelled by the full faith and credit clause. Under the constitutional provision, when "a decree rendered by a court in a sister state, having jurisdiction of the parties and of the subject-matter, is offered as evidence, or pleaded as the foundation of a right, in any action in the courts of this state, it is entitled to the same force and effect which it had in the state where it was pronounced. . . . That this decree had the effect in Kentucky of determining the equities of the parties to the land in this state, we have already shown; hence the courts of this state must accord to it the same effect. True, the courts of this state cannot enforce the performance of that decree by compelling the conveyance through its process of attachment; but when pleaded in our courts as a cause of action, or as a ground of defense, it must be regarded as conclusive of all the rights and equities which were adjudicated and settled therein, unless it be impeached for fraud."[23]

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17 Roche v. McDonald, 275 U. S. 449, 451 (1928).
18 Riley v. New York Trust Co., 315 U. S. at 349.
19 210 U. S. 230 (1908).
20 See, similarly, Beal v. Carpenter, 235 Fed. 273 (8th Cir. 1916).
21 See Mallette v. Scheerer, 160 N. W. 182, 183 (Wis. 1916).
22 24 Ohio St. 474 (1873).
23 Id. at 479.

Strong arguments can be made to support Justice McIlvaine's holding that an equitable decree for the conveyance of land is entitled to full faith and credit at the situs of the land. The constitutional provision speaks of "judicial proceedings," and there is no reason to suppose from the bare language of Article IV, Section 1, that this refers only to proceedings which result in a money judgment. Likewise, it is clearly not intended that any distinction be drawn between proceedings at law and in equity for the purposes of full faith and credit, for money decrees are treated like judgments at law insofar as the constitutional provision is concerned.[24] Why, then, should a line be drawn if a decree for the conveyance of land in another state is involved?

Professor Walsh has answered this question by referring to the well-established principle that the courts of each state have sole jurisdiction over land situated within the state. "If in the above case, the court is bound to make a decree upon the decree of the foreign state without going back of that decree and inquiring into the merits of the case, the decree of the foreign state would be the real operating power, and it would operate to compel the transfer of title to land outside of the jurisdiction of the court making the decree, the court of the state where the land is situated merely rubber-stamping the decree without the right to review the litigation or to pass upon the questions of law and fact involved in the case."[25]

On its face, the full faith and credit clause does not differentiate between the types of judicial proceedings which come within its purview. Yet, as Mr. Chief Justice Stone has pointed out, the constitutional command is not all-embracing and there may be exceptional cases in which the judgment of one state may not override the laws and policy of another.[26] That equitable decrees for the conveyance of land in another state come within the class of exceptions referred to despite their seeming inclusion within the full faith and credit clause is shown by *Fall v. Eastin*.[27]

In that case, a Washington court, having jurisdiction of the parties in an action for divorce, had decreed a dissolution of the marriage and had ordered that certain property of the husband in Nebraska be set aside as the separate propty of the wife and that the husband convey such property to her. The husband executed a deed and mortgage of the premises to defendant, who apparently had notice. The wife, then brought an action in Nebraska, setting up the Washington decree, and prayed that defendant's deed and mortgage be cancelled as a cloud on her title and that title be quieted in her. A decree was made in favor of the wife, and this was at first affirmed by the highest court of Nebraska on the ground that such a result was compelled by the full faith and credit clause.[28] A rehearing was

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[24] Michigan Trust Co. v. Ferry, 228 U. S. 346 (1913).
[25] WALSH ON EQUITY 69.
[26] Magnolia Petroleum Co. v. Hunt, 320 U. S. 430, 438 (1943).
[27] 215 U. S. 1 (1909).
[28] Fall v. Fall, 75 Neb. 104 (1905).

subsequently granted and the decree in the wife's favor was reversed.[29] The Washington decree, said the Nebraska court, "is inoperative to affect the title to the Nebraska land, and is given no binding force or effect, so far as the courts of this state are concerned, by the provisions of the Constitution of the United States with reference to full faith and credit."[30]

Upon writ of error to the United States Supreme Court, the final judgment of the Nebraska court was affirmed. It is important to bear in mind just what the Court did decide in *Fall v. Eastin,* as the opinion in that case is not notable for its clarity. "The question is in narrow compass", as Mr. Justice McKenna pointed out.[31] Since the only federal question involved arose out of plaintiff in error's claim that the Nebraska court had failed to give full faith and credit to the Washington decree in violation of Article IV, Section 1, of the Federal Constitution, the Supreme Court, in affirming, must have held that a decree such as that at issue did not come within the purview of the constitutional provision. "As the ruling of the [Nebraska] court, that the decree in Washington gave no such equities as could be recognized in Nebraska as justifying an action to quiet title does not offend the Constitution of the United States, we are constrained to affirm its judgment."[32]

The holding of *Fall v. Eastin* is thus directly contrary to that of the Ohio court in *Burnley v. Stevenson* on the applicability of the full faith and credit clause to equitable decrees for the conveyance of land located outside the jurisdiction. Full faith and credit does not require the courts of one state to allow acts or judgments of another to control the disposition or devolution of realty in the former. This results from the doctrine that the state where the land is located is "sole mistress" of its rules of real property.[33] As expressed by Mr. Justice Murphy, under *Fall v. Eastin,* the interest of the state in the devolution of property within its boundaries frees her of the compulsions of the full faith and credit clause.[34]

If equitable decrees of the type involved in *Fall v. Eastin* need not be given full faith and credit at the situs, does that necessarily mean that they are to be given no effect whatsoever by the courts of the situs? According to Mr. Justice Gray, "The decisions of this court have clearly recognized that judgments of a foreign state are *prima facie* evidence only, and that, but for [the full faith and credit clause] judgments of a State of the Union, when sued upon in another State, would have no greater effect."[35] Under this view, a decree which is not entitled to full faith and credit is not conclusive of the rights of the parties determined by it, but can be re-examined upon the merits in a subsequent action.

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29 Id. at 120 (1907).
30 Id. at 135.
31 215 U. S. at 4.
32 Id. at 14.
33 Williams v. North Carolina, 317 U. S. 287, 294 n. (1942).
34 Id. at 310.
35 Hilton v. Guyot, 159 U. S. 113, 182 (1895).

If Justice Gray's view is followed, an equitable decree for the conveyance of land located in another jurisdiction is in a practical sense of no effect at the situs. Yet this is clearly an undesirable result. Why should a defendant who has had a full hearing in a court which had personal jurisdiction over him be permitted to relitigate the whole controversy simply because he has been able to avoid enforcement of the court's decree? The reasons that should lead the courts of the situs to refuse to allow this result are well-stated in an Iowa case involving a Washington decree for the conveyance of land in Iowa. "Of course, if the defendant Matson had remained in the state of Washington, the courts there could have coerced him into executing a deed as directed by the decree. That is impossible now. We have no doubt but that this was a fraud upon the courts in that state, and under the circumstances shown, we have no doubt but that his purpose was to prevent his wife from obtaining the full relief to which she was entitled. This was also a fraud. Ought he, in equity, to be allowed to profit by his own wrong? . . . This being so, why ought not his conscience to be bound? In the instant case, the equities are clearly with the plaintiff."[36]

That the courts of the situs will normally give more that *prima facie* effect to a decree of a court of another state affecting land of the situs, although they are not compelled to do so by the full faith and credit clause, is shown by *Redwood Investment Co. v. Exley*,[37] where the facts were basically similar to those in *Burnley v. Stevenson*. After admitting that, under *Fall v. Eastin*, the constitutional provision does not require it to recognize the decree of the other court, the California court goes on to assert that "this does not mean that a decree directing a conveyance is without its effect per se. It may be pleaded as a basis or cause of action or defense in the courts of the state where the land is situated, and is entitled in such a court to the force and effect of record evidence of the equities therein, unless it be impeached for fraud."[38]

We are thus brought back to the result in *Burnley v. Stevenson*—though this time without the compulsion of the full faith and credit clause. Even though they are not compelled to do so by the constitutional provision, courts of the situs should recognize a decree of the type we are considering, if the defendant has had a full opportunity to litigate the merits of the controversy prior to the granting of such decree. Why then did the Nebraska court refuse so to recognize the Washington decree involved in *Fall v. Eastin?*

The Nebraska court appears to have been strongly influenced by the fact that the Washington court in ordering the husband to convey a part of his property to his wife was exercising an authority which was not vested in the courts of Nebraska in a divorce action. "Under the laws of this state the courts have no

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[36] Matson v. Matson, 173 N. W. 127, 131 (Iowa 1919).
[37] 221 Pac. 973 (Calif. 1923).
[38] Id. at 975.

power or jurisdiction in a divorce proceeding, except as derived from the statute providing for such actions, and in such an action have no power or jurisdiction to divide or apportion the real estate of the parties."[39] In *Fall v. Eastin,* the law of the situs was thus materially different from the law of the state where the original decree was granted and the wife's right to the land which the Washington decree recognized was one which could not have been enforced if the original action had been brought at the situs. If the Washington decree came within the purview of the full faith and credit clause, this would make no difference, under *Fauntleroy v. Lum.*[40] However, since they are not compelled to recognize such decrees by the constitutional provision, the courts of the situs need not treat them as conclusively settling the rights in its land where the law of the forum on the point is not substantially the same as the law of the situs. As stated by the Nebraska court, "We know of no rule which compels us to give to a decree of the courts of Washington a force and effect we would deny to a decree of our own courts upon the same cause of action. . . . we are not compelled to recognize a decree affecting the title . . . where the act directed by the Washington court is in opposition to the public policy of this state, in relation to the enforcement of the duty of marital support."[41]

A decree for the conveyance of land located outside the jurisdiction will thus be recognized at the situs in an action for enforcement, where the law is substantially the same in both states. Since the full faith and credit clause does not compel the recognition of such decrees, a different result follows where, as in *Fall v. Eastin,* the decree gives effect to a right which is not recognized by the law of the situs.

If the above principles are not influenced by the full faith and credit clause, they should apply to decrees of foreign courts with the same force that they apply to decrees of courts of sister states. Foreign judgments are enforced not as a courtesy due to the foreign sovereign, but on the ground that a valid judgment by his courts raises an obligation to obey it which can be enforced by action thereon.[42] As stated by Parke, B., with regard to a money judgment, "The principle on which this action is founded is that, where a court of competent jurisdiction has adjudicated a certain sum to be due from one person to another, a legal obligation arises to pay that sum, on which an action of debt to enforce the judgment may be maintained. It is in this way that the judgments of foreign and colonial courts are supported and enforced."[43] Should not the same rule apply to decrees for the conveyance of land where the law of the foreign state is substantially the same as the law of the situs?

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39 Fall v. Fall, 75 Neb. at 133.
40 Supra, note 19.
41 75 Neb. at 134.
42 Note, 11 CAN. B. REV. 211, 214 (1933).
43 Williams v. Jones, 13 M. & W. 628, 633 (1845).

In *Duke v. Andler,*[44] this question was answered in the negative by the highest court of Canada. The plaintiff there had entered into a contract in California to sell certain land located in British Columbia to defendant, and had executed a conveyance pursuant thereto. Plaintiff then brought an action in California seeking rescission of the contract on the ground of fraud and a decree for reconveyance of the land. The California court, which had personal jurisdiction over the parties, upheld plaintiff's claim and decreed that defendant execute a conveyance to plaintiff. Defendant refused to obey this decree and plaintiff brought an action in British Columbia on the California decree. The trial court and the Court of Appeal in British Columbia[45] held that the action lay and that the California decree was to be recognized as finally determining the rights of the parties in the land. The Supreme Court of Canada reversed, asserting that a decree such as that involved in this case represented an exception to the ordinary principles governing the enforcement of foreign judgments. "In my opinion," said Smith, J., "the rule . . . that the courts of a foreign country have no jurisdiction to adjudicate upon the title or the right to the possession of any immovable not situate in such country, and the statement in the authorities referred to, that controversies in reference to land can only be decided in the state in which it depends, and that judgments of foreign courts purporting to deal with the title and with rights to lands in another country can only be enforced by proceedings *in personam,* show that the judgment of the court of California here in question . . . is not a judgment that should be enforced by the courts of British Columbia as binding there on the parties."[46]

Unless *Duke v. Andler* can be said to rest upon the ground that the Canadian court was not convinced that the "grounds upon which, and the circumstances under which a conveyance would be set aside under the law of California may [not] differ from those under which it would be set aside under the law of British Columbia,"[47] it in effect amounts to a holding that foreign judgments affecting local realty should be considered of no validity.[48] In this respect, decrees involving local realty are to be treated differently than all other foreign judgments. But why should decrees involving land stand upon a different footing? The reasons which lead courts to enforce other foreign judgments are present as well in realty decree cases, at least where foreign and local law are substantially the same. Why should the defendant in *Duke v. Andler,* who has had a full hearing before the courts of the state where he resided, be permitted to relitigate the merits of the entire controversy solely because he has escaped from the jurisdiction without obeying the decree?

In this country, at any rate, our discussion has shown that the view of the Canadian court is not the prevailing view. Decrees for the conveyance of land

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[44] [1932] S. C. R. 734.
[45] [1932] 2 D. L. R. 19.
[46] [1932] S. C. R. at 744.
[47] Id. at 741.
[48] See Gordon, *The Converse of Penn v. Lord Baltimore,* 49 L. Q. REV. 547, 554 (1933).

located outside the jurisdiction will be treated as conclusively settling the rights of the parties in an action at the situs where the law is substantially the same in both jurisdictions.

It is often stated that it is not enough that the law be the same in both jurisdictions. For the situs to enforce a foreign decree involving local land, it is said, such decree must be based upon a preexisting obligation involving the land. "When, however, no antecedent obligation exists by the law of the situs, a decree of another state is without force, for it cannot create such an obligation as to land outside its jurisdiction."[49] Thus, in the specific performance cases, the purchaser becomes the equitable owner of the land upon the making of the contract, and his right to obtain the land pursuant to the contract is one which comes into existence at that time. In a case like *Fall v. Eastin,* on the other hand, prior to the decree of the Washington court, the wife had no right which a court would enforce in the husband's Nebraska land.

If the law of both jurisdictions is substantially the same, it is not clear why the result in cases such as those we have been considering should depend upon the existence of an antecedent obligation involving the land. What difference should it make that the right in this particular land is one which is created by the decree, if the right would similarly have been created if the original action had been brought at the situs? That this factor makes no difference in most cases is shown by *Dunlap v. Byers,*[50] where suit had been brought in Ohio for the dissolution of a partnership. The court, having personal jurisdiction over the parties, appointed a receiver, decreed the dissolution of the partnership, and directed the receiver to sell certain land in Michigan as partnership assets. The decree ordered the partners to quitclaim to the purchaser from the receiver. In a subsequent action in Michigan against the heirs of one of the partners who had died without having conveyed, the Ohio decree was held to be conclusive on the rights of the parties to the land. "While the decree itself, in such cases, would not directly effect the transfer of title, the decree of the court would bind the consciences of the parties, and could be enforced by the court within the territory where the property is located."[51] This is true, it should be noted, even though the rights of the partners as individuals in this particular land were created by the decree of the Ohio court. In this respect, the interest of each partner prior to dissolution of the partnership can be compared to the interest of the wife in a state like Washington in community property prior to dissolution of the marriage.

*Dunlap v. Byers* indicates that the key factor in determining whether a decree for the conveyance of foreign land should be given effect at the situs is that of the similarity of the applicable law in the two jurisdictions. If the law is substantially

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[49] Note, 21 HARV. L. REV. 210 (1908).
[50] 67 N. W. 1067 (Mich. 1896).
[51] Id. at 1070.

the same, it should make no difference that the decree is not based upon a preexisting obligation in respect of the land.

The above principle appears adequate to explain the result in most of the reported cases. The greatest difficulty in applying it is encountered in the divorce cases, where the courts by their decrees seek to affect the title to realty of the defendant located in another state. It is, of course, clear that, as in the other cases we have discussed, the situs need not recognize such decrees if they give effect to rights which are not recognized by the law of the situs. This is shown by *Fall v. Eastin,* as well as other cases.[52] Where the law of both jurisdictions is substantially the same, the cases are not uniform. It is true that under our guiding principle such decrees should be given effect if there is no difference in law, but the decisions go both ways.[53]

Although one must recognize the existence of this conflict in judicial opinion in these divorce cases, it would appear that there is no valid reason, other than the mere fact that they are divorce cases, for not applying the normal rule with regard to the recognition of decrees for the conveyance of land by the courts of the situs. If, as has been indicated, the result in these cases does not depend upon the existence of an antecedent obligation with respect to the land, then such decrees should be recognized by the situs even though they have been issued in connection with divorce proceedings, where the court issuing the decree had personal jurisdiction over the defendant and the law in both jurisdictions is substantially the same.

The confusion which obtains at present in the cases involving divorce decrees can, it is believed, best be eliminated by treating such decrees like any other decrees for the conveyance of foreign land. The rule which is generally followed in the case of decrees of the latter type, *i.e.,* that which treats them as conclusive upon the rights of the parties to the land in an action at the situs unless there is a material difference in law, represents a compromise between two fundamental policies of our law. Firstly, there is the principle that a defendant who has had a full hearing should not be permitted to relitigate the controversy on the merits—which Mr. Justice Miller referred to as "one of the most beneficial principles of our jurisprudence."[54] At the same time, however, there is the principle that rights in land are created by the law of the situs, and it is this latter principle which leads us to say that a foreign decree involving its land need not be recognized by the situs where the right enforced by the decree is one which would not be so enforced by the law of the situs.

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[52] McLaughlin v. McLaughlin, 79 So. 354 (Ala. 1918); De Graffenreid v. De Graffenreid, 132 N. Y. Supp. 1107 (1st Dept. 1911).

[53] See cases cited, Note, 51 A. L. R. 1081 (1927). For more recent cases refusing to enforce such decrees, Tolley v. Tolley, 194 S. W.2d 687 (Ark. 1946); Launer v. Griffin, 141 P.2d 236 (Calif. 1943); McRary v. McRary, 47 S. E.2d 27 (N. C. 1948); Clouse v. Clouse, 207 S. W.2d 576 (Tenn. 1948).

[54] Aurora City v. West, 7 Wall. 82, 105 (1868).