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"Quick Divorce" Revisited

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[Since publication of the article, "Quick Divorce," by Basil H. Pollitt in the March issue of the *Journal*, the Supreme Court of the United States has rendered its decision in *Johnson* v *Muelberger*, 71 S. Ct. 474, and the following letter, printed herewith for the information of our readers, has been received from Mr. Pollitt.]

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The case of *Johnson* v. *Muelberger*, 19 L. W 4177 71 S. Ct. 474, is indeed an astonishing and bewildering decision. It piles confusion upon confusion in a field of law already replete with uncertainty It now seems fairly apparent that the Supreme Court of the United States is doing all it legitimately can to forward the cause of Quick Divorce just as I predicted it would in my article under that name in the March issue (see 39 Ky L. J. 289, at 310). The court is doing this by invoking the device known to lawyers, particularly New York lawyers, as *Estoppel*. The estoppel device was first used by the court as a major weapon in the *Davis* case. The victory for Quick Divorce, however, was won at a fearful cost—the price being the sacrifice of collateral attack upon a Florida divorce decree absolutely void under Florida law

The facts in the *Johnson* case were as follows:

A married X, wife. X died.

A married Y. Y went to Florida in June and on July 29 filed suit for divorce. A appeared in the suit and contested the case on the merits, but said nothing about the jurisdiction. Y obtained the divorce. A then married Z. A died, leaving his entire estate to his daughter, Sophronia, a child of X. Z applied to the Surrogate s Court in New York (where A had lived all the time) for her statutory dower interest in A s estate. The charming Sophronia pleaded the invalidity of the Florida decree obtained by Y.

Held, against Sophronia, that the Florida divorce against husband after his general appearance and contest on the merits, which is not subject to collateral attack by his daughter in Florida, is not subject to collateral attack by her in New York after his death.

By the law in Florida the jurisdiction of the courts in a suit for divorce depends entirely upon 90 days residence in that state immediately preceding the institution of the suit. Two witnesses must be

produced by the plaintiff to prove this point. In a sense they represent the state's interest in seeing that no fraud is perpetrated upon the Florida Circuit Courts. The Special Masters in the Miami area are more concerned with the problem of jurisdiction than with the merits of the matter. The decision now under scrutiny opens the door very widely for the perpetration of all kinds of fraud upon the Florida courts.

It is submitted that the Supreme Court took the *De Marigny* (43 So. 2d 442, Florida) case too literally The daughter had some sort of interest in her father's estate at the time Y got her decree of divorce. Appreciating the maxim that "no one can be the heir of a living person," the daughter's interest (which might be likened to a contingent remainder) should have been held enough for her to make the collateral attack. It seems that Justice Reed was not familiar with Professor Jacobs (the leading authority) article on Attacks on Divorce Decrees. See 34 Mich. L. Rev 749, 950 at 965-971. There should be a rehearing and Florida should be represented.

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