

50 S.Ct. 154
Supreme Court of the United States.

STATE OF OHIO ex rel. POPOVICI, Vice Consul of Roumania,
v.
AGLER et al., Judges of Court of Common Pleas of Stark County, Ohio.

No. 35.

|
Argued Jan. 7-8, 1930.

|
Decided Jan. 20, 1930.

Synopsis

On Writ of Certiorari to the Supreme Court of the State of Ohio.

Prohibition by the State of Ohio, on the relation of John C. Popovici, Vice Consul of Roumania, against Abram W. Agler and others, Judges of the Court of Common Pleas of Stark County, Ohio. A writ of prohibition was denied by the Supreme Court of Ohio (119 Ohio St. 484, 164 N. E. 524), and petitioner brings certiorari. Affirmed.

West Headnotes (6)

[1] Courts → Actions affecting consuls and ambassadors

106 Courts

106VII Concurrent and Conflicting Jurisdiction

106VII(B) State Courts and United States Courts

106k489 Exclusive or Concurrent Jurisdiction

106k489(15) Actions affecting consuls and ambassadors

Provisions of Const. art. 3, s 2, that judicial power shall extend to, and that Supreme Court shall have original jurisdiction in, all cases affecting ambassadors or other public ministers and consuls, and Judicial Code (Act March 3, 1911, c. 231) ss 24, 233, 256 (28 USCA ss 41(18), 341, 371), that jurisdiction vested in federal courts in all suits and proceedings against ambassadors or other public ministers or consuls shall be exclusive of state courts must be interpreted in light of tacit assumptions on which it is reasonable to suppose that language was used, including fact that whole subject of domestic relations belongs exclusively to laws of states, and that

jurisdiction of federal courts over divorces and alimony always has been denied.

[109 Cases that cite this headnote](#)

[2] Courts  **Actions affecting consuls and ambassadors**

106 Courts

106VII Concurrent and Conflicting Jurisdiction

106VII(B) State Courts and United States Courts

106k489 Exclusive or Concurrent Jurisdiction

106k489(15) Actions affecting consuls and ambassadors

Provisions of Const. art. 3, s 2, that judicial power shall extend to all cases affecting ambassadors, other public ministers, and consuls, and that in all such cases Supreme Court shall have original jurisdiction, held not in themselves and without more to exclude jurisdiction of state.

[Cases that cite this headnote](#)

[3] Courts  **Actions affecting consuls and ambassadors**

106 Courts

106VII Concurrent and Conflicting Jurisdiction

106VII(B) State Courts and United States Courts

106k489 Exclusive or Concurrent Jurisdiction

106k489(15) Actions affecting consuls and ambassadors

Provisions of Judicial Code (Act March 3, 1911, c. 231) ss 24, 233, 256 ([28 USCA ss 41\(18\)](#), [341](#), [371](#)), vesting federal courts with exclusive jurisdiction of all suits and proceedings against ambassadors, ministers, and consuls, do not purport to exclude state courts from jurisdiction except where they grant jurisdiction to federal courts, and therefore do not deprive state court of jurisdiction of suit for divorce and alimony against foreign vice consul; words “suits against consuls and vice consuls” referring to ordinary civil proceedings and not including what formerly would have belonged to ecclesiastical courts.

[26 Cases that cite this headnote](#)

[4] Ambassadors and Consuls  **Actions**

Courts  **Actions affecting consuls and ambassadors**

26 Ambassadors and Consuls

26k8 Actions

106 Courts

106VII Concurrent and Conflicting Jurisdiction

[106VII\(B\)](#) State Courts and United States Courts
[106k489](#) Exclusive or Concurrent Jurisdiction
[106k489\(15\)](#) Actions affecting consuls and ambassadors

Constitutional and statutory provisions giving federal courts exclusive jurisdiction of proceedings against ambassadors and consuls must be interpreted in light of tacit assumptions on which language was used. U.S.C.A.Const. art. 3, § 2; Jud.Code, §§ 24, 233, 256, [28 U.S.C.A. §§ 1351, 1251](#).

[9 Cases that cite this headnote](#)

[5] [Ambassadors and Consuls](#)  [Actions](#)

[Courts](#)  [Actions affecting consuls and ambassadors](#)

[26](#) Ambassadors and Consuls
[26k8](#) Actions
[106](#) Courts
[106VII](#) Concurrent and Conflicting Jurisdiction
[106VII\(B\)](#) State Courts and United States Courts
[106k489](#) Exclusive or Concurrent Jurisdiction
[106k489\(15\)](#) Actions affecting consuls and ambassadors

Constitutional provisions giving Supreme Court original jurisdiction in cases affecting ambassadors and consuls held not to exclude state's jurisdiction. U.S.C.A.Const. art. 3, § 2.

[3 Cases that cite this headnote](#)

[6] [Ambassadors and Consuls](#)  [Actions](#)

[Courts](#)  [Actions affecting consuls and ambassadors](#)

[26](#) Ambassadors and Consuls
[26k8](#) Actions
[106](#) Courts
[106VII](#) Concurrent and Conflicting Jurisdiction
[106VII\(B\)](#) State Courts and United States Courts
[106k489](#) Exclusive or Concurrent Jurisdiction
[106k489\(15\)](#) Actions affecting consuls and ambassadors

Statutes giving federal courts exclusive jurisdiction of “suits against consuls and vice consuls” held not to deprive state court of jurisdiction of divorce suit against vice consul. Jud.Code §§ 24, 233, 256, [28 U.S.C.A. §§ 1351, 1251](#).

[8 Cases that cite this headnote](#)

Attorneys and Law Firms

****154 *380** Messrs. Atlee Pomerene and Malcolm Y. Yost, both of Cleveland, Ohio, for petitioner.

***382** Mr. Harry Nusbaum, of Canton, Ohio, for respondents.

Opinion

Mr. Justice HOLMES delivered the opinion of the Court.

The relator was sued for divorce and alimony in a Court of the State of Ohio. He objected to the jurisdiction of the Court, but the objection was overruled and an order for temporary alimony was made. He thereupon applied to the Supreme Court of the State for a writ of prohibition, but upon demurrer to the petition the writ was denied. [119 Ohio St. 484](#), [164 N. E. 524](#). A writ of certiorari was granted by this Court. [279 U. S. 828](#), [49 S. Ct. 265](#), [73 L. Ed. 979](#).

The facts alleged are that the relator is Vice-Consul of Roumania and a citizen of that country, stationed and now residing at Cleveland, Ohio, and it is said by the Supreme Court to have been conceded at the argument that he was married to Helen Popovici, the plaintiff in the original suit, in Stark county, Ohio, where she resided. The relator invokes article 3, section 2, of the Constitution: 'The judicial Power shall extend * * * to all Cases affecting Ambassadors, other public Ministers and Consuls.' 'In all Cases affecting Ambassadors, other public Ministers and Consuls * * * the supreme Court shall have original jurisdiction'; and also the Judicial Code (Act of March 3, 1911, c. 231) s 256 ([28 USCA s 371](#)). 'The jurisdiction vested in the courts of the United States in the cases and proceedings hereinafter mentioned, shall be exclusive of the courts of the several States: * * * ***383** Eighth. Of all suits and proceedings against ambassadors, or other public ministers, or their domestics, or domestic servants, or against consuls or vice consuls.' To this may be added section 24 ([28 USCA s 41\(18\)](#)) giving to the District Court original jurisdiction: 'Eighteenth. Of all suits against consuls and vice consuls'; the Supreme Court by section 233 ([28 USCA s 341](#)) being given 'exclusively all such jurisdiction of suits or proceedings against ambassadors or other public ministers, or their domestics or domestic servants, as a court of ****155** law can have consistently with the law of nations.'

[1] The language so far as it affects the present case is pretty sweeping, but like all language it has to be interpreted in the light of the tacit assumptions upon which it is reasonable to suppose that the language was used. It has been understood that, 'the whole subject of the domestic relations of husband and wife, parent and

child, belongs to the laws of the states and not to the laws of the United States,' Ex parte [Burrus](#), 136 U. S. 586, 583, 594, 10 S. Ct. 850, 853, 34 L. Ed. 500, and the jurisdiction of the Courts of the United States over divorces and alimony always has been denied. [Barber v. Barber](#), 21 How. 582, 16 L. Ed. 226. [Simms v. Simms](#), 175 U. S. 162, 167, 20 S. Ct. 58, 44 L. Ed. 115; [De La Rama v. De La Rama](#), 201 U. S. 303, 307, 26 S. Ct. 485, 50 L. Ed. 765. A suit for divorce between the present parties brought in the District Court of the United States was dismissed. [Popovici v. Popovici](#) (D. C.) 30 F.(2d) 185.

[2] [3] The words quoted from the Constitution do not of themselves and without more exclude the jurisdiction of the State. [Plaquemines Tropical Fruit Co. v. Henderson](#), 170 U. S. 511, 18 S. Ct. 685, 42 L. Ed. 1126. The statutes do not purport to exclude the State Courts from jurisdiction except where they grant it to Courts of the United States. Therefore they do not affect the present case if it be true as has been unquestioned for three-quarters of a century that the Courts of the United States have no jurisdiction over divorce. If when the Constitution was adopted the common understanding *384 was that the domestic relations of husband and wife and parent and child were matters reserved to the States, there is no difficulty in construing the instrument accordingly and not much in dealing with the statutes. 'Suits against consuls and vice-consuls' must be taken to refer to ordinary civil proceedings and not to include what formerly would have belonged to the ecclesiastical Courts.

It is true that there may be objections of policy to one of our States intermeddling with the domestic relations of an official and subject of a foreign power that conceivably might regard jurisdiction as determined by nationality and not by domicil. But on the other hand if, as seems likely, the wife was an American citizen, probably she remained one notwithstanding her marriage. Act Sept. 22, 1922, c. 411, s 3, 42 Stat. 1021, 1022 (8 USCA s 9). Her position certainly is not less to be considered than her husband's, and at all events these considerations are not for us.

In the absence of any prohibition in the Constitution or laws of the United States it is for the State to decide how far it will go.

Judgment affirmed.

All Citations

280 U.S. 379, 50 S.Ct. 154, 74 L.Ed. 489

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