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LACK OF JURISDICTION AND ERRONEOUS DECISION  
DISTINGUISHED\*

Jurisdiction and collateral attack have long been recognized as being among the more uncertain propositions in the law.<sup>1</sup> These two fundamental concepts were again demonstrated to be susceptible of varying interpretations in a recent Illinois decision.<sup>2</sup>

The case of *Collins v. Collins*<sup>3</sup> presents the somewhat anomalous situation of a plaintiff seeking to vacate a divorce decree which she herself had originally obtained. In the initial divorce proceeding, an uncontested action in the circuit court of Cook County, the chancellor dissolved plaintiff's nineteen-month-old marriage to William Collins on the ground of his habitual drunkenness, although the parties had not been married two years, a prerequisite to divorce on the ground.<sup>4</sup> Nevertheless, this decree was not challenged until Mrs. Collins' second husband, whom she had married approximately two weeks after her "divorce" from William Collins, sought to have his marriage to Mrs. Collins annulled on the ground that the first marriage was still valid. In dissolving this second marriage, the superior court ruled that the initial divorce decree granted to Mrs. Collins by the circuit court was void for lack of jurisdiction over the subject matter since it affirmatively appeared from the complaint that the parties had not been married two years. After this decision, Mrs. Collins filed a petition to have the circuit court vacate its previous decree. It is interesting to note that William Collins, plaintiff's first husband, had died and his heirs,

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\*Ed. Note: The citation to the principal case in the advance sheets was 150 N.E.2d 361; however, the case appears in the bound Northeastern 2d Reporter in volume 151, page 813. This discrepancy is apparently due to a modification of the opinion which occurred at the time that the petition for rehearing was denied and which probably delayed delivery of the revised, final opinion to the West Publishing Company. This comment is based on the case as it appeared in the advance sheets; hence citations to the principal case do not correspond to the case as it is reported in the permanent volume. The official citation is 14 Ill. 2d 178 (1958).

<sup>1</sup>"It has been well said that there is perhaps, no word or legal terminology so frequently used as the word 'jurisdiction,' so capable of use in a general and vague sense, and which is used so often by men learned in the law without a due regard to precision in its application." *Friend v. Northern Trust Co.*, 314 Ill. App. 596, 42 N.E.2d 330, 334 (1942). "It is safe to say that there is no proposition of the law that is involved in more doubt and affected with greater variety of judicial opinion than the subject of collateral attack upon judicial proceedings." 1 Bailey, *Jurisdiction* § 165a (1899).

<sup>2</sup>*Collins v. Collins*, 150 N.E.2d 361 (1958). [This citation is to the opinion which appeared in the advance sheets. Permanent citation is 151 N.E.2d 813 (1958).]

<sup>3</sup>*Ibid.*

<sup>4</sup>Ill. Rev. Stat. ch. 40 § 1 (1955).

who had their interests in the deceased's estate to protect, were substituted as defendants, in this action by Mrs. Collins. The circuit court found it had been without jurisdiction in the original divorce action and vacated the decree. Although the appellate court disagreed and reversed the circuit court's finding,<sup>5</sup> the Illinois Supreme Court overruled the appellate court's ruling and affirmed the holding of the circuit court. Hence the final result is that Mrs. Collins has the same status she would have had if she had never instituted any divorce suit; that is, she is the widow of William Collins.<sup>6</sup>

In the principal case the majority found that the insertion in the record of the dates of marriage and filing of the decree resulted in an affirmative showing of no jurisdiction over the subject matter.<sup>7</sup> These specific allegations<sup>8</sup> of dates were held to prevent any possibility that jurisdiction had attached in the original action, for anyone examining the record could determine by these patently insufficient pleadings that the court below did not have the power to hear the case.<sup>9</sup> The majority apparently considered the sufficiency of the pleadings as a condition precedent to the existence of jurisdiction over the subject matter. Such a position has been upheld by several courts;<sup>10</sup> however, the viewpoint

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<sup>5</sup>In all proceedings with reference to the principal case, the circuit court of Cook County was the trial court. It was this court which originally granted Mrs. Collins her divorce and which, upon the petition of Mrs. Collins, vacated its previous decree in the principal action. The appellate court, an intermediate court in the Illinois court system, reversed the action of the trial court in the principal case; however, it was in turn reversed by the Supreme Court, the highest court of Illinois. The other court mentioned in this comment is the superior court of Cook County which annulled the second marriage of Mrs. Collins.

<sup>6</sup>It is impossible to ascertain to what degree, if any, the opinions were influenced by the property settlement involved in the present case. The dissent did not even mention this consideration. The majority did not allow the property awards in the original action to constitute an estoppel in the principal proceeding. 150 N.E.2d at 365. [In the revised opinion the dissent did contend that plaintiff in the present action should be estopped by her acceptance of the property settlement in the original divorce proceeding. 14 Ill. 2d 178, 151 N.E.2d 813, 818 (1958).]

<sup>7</sup>150 N.E.2d at 364.

<sup>8</sup>The majority stated that a general allegation, without more, would have been sufficient to invoke the court's jurisdiction. *Ibid.* The reasoning apparently was that such general allegations do not evidence a lack of jurisdiction from the face of the record.

<sup>9</sup>The classical description of jurisdiction over the subject matter has been in terms of power of the court to decide a case. *Foltz v. St. Louis & S.F. Ry.*, 60 Fed. 316 (8th Cir. 1894); *Manley v. Park*, 62 Kan. 553, 64 Pac. 28 (1901); *People ex rel. Davis v. Sturtevant*, 9 N.Y. 263, 59 Am. Dec. 536 (1853). "Jurisdiction is simply power." *Van Fleet, The Law of Collateral Attack on Judicial Proceedings* § 70 (1892).

<sup>10</sup>There are cases holding that where a court, even of general jurisdiction, is exercising a limited statutory power, and a statute conferring the power declares that it may be exercised upon the presentation of a petition stating certain facts,

of the dissent appears to be the more prevalent one. The dissent denied any interdependence of pleading and jurisdiction and argued that the jurisdiction of the circuit court in the *Collins* case was unaffected by the adequacy of the pleadings.<sup>11</sup> In other words, the minority was not concerned that the dates alleged in the pleadings showed the parties had not been married two years; it was satisfied that jurisdiction had attached from a complaint which set forth, though imperfectly, a statutory ground for divorce.<sup>12</sup>

One of the most frequently stated descriptions of jurisdiction over the subject matter is jurisdiction over the general class of cases to which the case at bar belongs.<sup>13</sup> Such a definition could validly be attacked as the use of an ambiguity to clear up an ambiguity. The difficulty is a proper determination of what is meant by "general class of cases." This problem plagued both the majority and the minority in the *Collins* case. The majority evidently felt it meant "each divorce action as qualified by its particular statutory conditions."<sup>14</sup> Under such a view, if desertion for one year were a statutory divorce ground, any specific allegation which showed that the time requirement was not fulfilled would mean the court had never had jurisdiction, because any case on the ground of desertion for less than one year was never within the "general class of cases" which the court could decide. There is support for this position,<sup>15</sup> but the more liberal interpreta-

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the failure to allege such facts is fatal to the jurisdiction of the court and renders its judgment and orders in the proceeding void, even on collateral attack." In re Hughes, 159 Cal. 360, 113 Pac. 684, 687 (1911). Cf. Bennett v. Bennett, 137 W. Va. 179, 70 S.E.2d 894 (1952); 27 C.J.S. Divorce § 108 (1941).

<sup>11</sup>See In re Keet's Estate, 15 Cal. 2d 328, 100 P.2d 1045 (1940); State ex rel, Delmoe v. District Court of Fifth Judicial Dist., 100 Mont. 131, 46 P.2d 39 (1935); Annot., 1916E L.R.A. 316; 1 Freeman, Judgments § 363 (5th ed. 1925); 9 Texas L. Rev. 254 (1931).

<sup>12</sup>150 N.E.2d at 365.

<sup>13</sup>See Foltz v. St. Louis & S.F. Ry., 60 Fed. 316, 318 (8th Cir. 1894); Olson v. Hoffman, 4 F.2d 263, 264 (N.D. Ill. 1924); Greenwood v. Greenwood, 112 Cal. App. 691, 297 Pac. 589, 591 (Dist. Ct. App. 1931); Friend v. Northern Trust Co., 314 Ill. App. 596, 42 N.E.2d 330, 334-35 (1942); 1 Freeman, Judgments § 365 (5th ed. 1925); 1 Black, Judgments § 171 (1891); 14 Am. Jur. Courts § 162 (1938).

<sup>14</sup>"The complaint thus shows affirmatively on its face that the habitual drunkenness alleged could not possibly have existed for the space of two years subsequent to the marriage and prior to the date of filing the complaint for divorce and the granting of a decree therefor. Hence the complaint does not allege a 'case for divorce' allowed by our Divorce Act, and the circuit court did not have jurisdiction of the cause." 150 N.E.2d at 364.

<sup>15</sup>Though stated in terms of statement of a cause of action, this authority seems applicable as it refers to statutory enactments, or indicates they may so apply. "As a general rule, sometimes expressed in statutory enactments, the nature and circumstances of the offense relied on as a ground for divorce or separation should be

tion advanced by the dissenting judges seems to reflect the orthodox view of jurisdiction over the subject matter. They apparently construed the general class of cases to mean simply "a divorce action."<sup>16</sup> Under this construction of the term, any ground which sufficiently informs the court that a divorce is the relief sought would bring a case within that general class of cases. In other words, factual averments in the pleadings which satisfy or fail to satisfy specific statutory conditions to the divorce ground are immaterial in any consideration of jurisdiction of subject matter.<sup>17</sup> Of course, the court may err with reference to its rulings on these statutory modifications, as it did in the principal case, but such error does not affect the jurisdiction of the court.<sup>18</sup>

Although the majority and the minority speak primarily in terms of the statement of, or failure to state, a cause of action,<sup>19</sup> it would appear this is simply another method of determining what is meant by jurisdiction over the subject matter. The majority, which espoused the narrow construction of "the general class of cases," required the statement of a good cause of action in the pleadings before jurisdiction attached.<sup>20</sup> In order for a good cause of action to be stated, the

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specifically alleged . . ." 27 C.J.S. Divorce § 108 (1941). See also *Jacobs v. Jacobs*, 45 Del. 544, 76 A.2d 742 (Super. Ct. 1950); *Jones v. Jones*, 38 Del. 162, 189 Atl. 588 (Super. Ct. 1937); *Kellogg v. Kellogg*, 93 Fla. 261, 111 So. 637 (1927); *Crenshaw v. Crenshaw*, 120 Mont. 190, 182 P.2d 477 (1947).

<sup>16</sup>After stating that the trial court had jurisdiction of persons in the principal case, the dissent disclosed that the trial court had "general jurisdiction over divorce proceedings by statute." 150 N.E.2d at 365. The dissent then admitted the error in the decree which was due to the improper measurement of the period of drunkenness; but declared such error not of the nature to void the decree. It would seem reasonable to conclude that the dissent did not believe the statutory time period annexed to the divorce ground essential to the above-mentioned general jurisdiction over divorce.

<sup>17</sup>"Jurisdiction of a court to hear and determine a cause does not depend upon actual facts alleged but upon authority to determine the existence or nonexistence of such facts and render judgment according to such finding." *People ex rel. Courtney v. Prystalski*, 358 Ill. 198, 192 N.E. 908, 912 (1934). Cf. *Chernow v. Chernow*, 128 Cal. App. 2d 816, 276 P.2d 622 (Dist. Ct. App. 1954).

<sup>18</sup>"It would not be logical to say that jurisdiction attached only where the decision was right. It can make no difference how erroneous the decision may be; if the court has jurisdiction of the parties and subject-matter, its determination of the controversy is not void. . . ." *Texas Employers' Ins. Ass'n v. Ezell*, 14 S.W.2d 1018, 1019 (Tex. Comm'n App. 1929). See *Parker Bros. v. Fagan*, 68 F.2d 616 (5th Cir. 1934); *In re James Estate*, 99 Cal. 374, 33 Pac. 1122 (1893); *Friend v. Northern Trust Co.*, 314 Ill. App. 596, 42 N.E.2d 330 (1942); *Head v. Daniels*, 38 Kan. 1, 15 Pac. 911 (1887); *Honaker v. Honaker*, 218 Ky. 212, 291 S.W. 42 (1927); *Frankfurth v. Anderson*, 61 Wis. 107, 20 N.W. 662 (1884); *Van Fleet, Collateral Attack* § 61 (1892).

<sup>19</sup>150 N.E.2d at 364, 366.

<sup>20</sup>Cases cited note 15 supra. See particularly *Bennett v. Bennett*, 133 W. Va. 179, 70 S.E.2d 894 (1952).

court required that the specific allegations satisfy the statutory conditions attached to any divorce ground. The dissent maintained that the statement of a good cause of action, or of any cause of action at all, was unrelated to any issue of jurisdiction and only required the pleadings to show that a case for divorce was intended.<sup>21</sup> Such a broad view of the pleadings parallels the dissent's liberal interpretation of "the general class of cases" terminology used in the definition of jurisdiction over the subject matter. When a court, therefore, is deciding whether a cause of action must be stated before jurisdiction can attach, it is in truth announcing its meaning of jurisdiction over the subject matter.

While lack of jurisdiction is one of the grounds for a collateral attack on a decree, it does not, of course, follow that every attack on jurisdiction is necessarily collateral in nature.<sup>22</sup> In the principal case both the majority and the minority treated the action as a collateral attack on the original circuit court decree. Such an interpretation appears debateable. An Illinois statute did prohibit the setting aside of any judgment after the expiration of thirty days unless the judgment was void.<sup>23</sup> It is true that this statute necessitated the use of some ground by the plaintiff which would render the decree null and void: lack of jurisdiction over the subject matter in this case. But the fact that jurisdiction was utilized as the basis for the suit cannot, of itself, change an attack from direct to collateral.

A direct attack on a decree is usually described as one with the exclusive purpose of vacating the decree,<sup>24</sup> whereas a collateral attack is one in which the vacating is secondary—collateral—to the relief desired.<sup>25</sup> Of all the factors which have been advanced to ascertain the

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<sup>21</sup>150 N.E.2d at 366. This position is consistent with the prevailing view. *Foltz v. St. Louis & S.F. Ry.*, 60 Fed. 316 (8th Cir. 1894); *Manley v. Park*, 62 Kan. 553, 64 Pac. 28 (1901); 1 Black, *Judgments* § 269 (1891). However, there is contra authority that at least some cause of action must be stated. See *Annot.*, 1916E L.R.A. 316, 323 & n.18.

<sup>22</sup>*Mitchell v. Village Creek Drainage Dist.*, 158 F.2d 475 (8th Cir. 1946); *In re Baender's Will*, 81 N.Y.S.2d 689 (Surr. Ct. 1948).

<sup>23</sup>Ill. Rev. Stat. ch. 110, § 72 (1955).

<sup>24</sup>*City of Des Plaines v. Boeckenhauer*, 383 Ill. 475, 50 N.E.2d 483 (1943); *Lucas v. Lucas*, 65 Okla. 96, 163 Pac. 943 (1916); 1 *Freeman, Judgments* § 306 (5th ed. 1925). See generally *Annot.*, 1918D L.R.A. 470.

<sup>25</sup>*Annot.*, 1918D L.R.A. 470, 472 n.5. But the definition of collateral attack given in the Restatement of Judgments is extremely broad: "Where a judgment is attacked in other ways than by proceedings in the original action to have it vacated or reversed or modified or by a proceeding in equity to prevent its enforcement, the attack is a 'collateral attack.'" *Restatement, Judgments* § 11, comment a (1942).

character of the proceeding,<sup>26</sup> this purpose test is probably the most common.<sup>27</sup> Since the express purpose of the principal case was to vacate the initial divorce decree in the very court in which it was entered, it would appear that *Collins v. Collins* constituted a direct attack on the original decree.<sup>28</sup> However, in applying this same test to the action by plaintiff's second husband to dissolve their marriage, there would seem to be little doubt that his action was a collateral attack on the original decree obtained by plaintiff from William Collins. In the latter proceeding, the vacating of the original decree was collateral to the annulment of the second marriage.

The principal case indicates that some of the inconsistency and vagueness surrounding these basic terms can be traced to judicial interpretation of procedural statutes. Mr. Justice Holmes, in speaking of the possible difficulty which a court encounters in determining whether a statute applies to jurisdiction or the substantive rules which guide its decision, stated that the courts are slow to interpret the statute as one affecting jurisdiction.<sup>29</sup> If the court in the principal case had taken this attitude in interpreting the affect of the two-year provision in the Illinois divorce statute, a different result might have been reached.

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#### ADDENDUM

Both the majority and minority opinions were modified following the denial of a petition for rehearing.<sup>30</sup> The revised opinion of the court omitted entirely the "lack of jurisdiction" argument and based its conclusion on the narrower ground that the decree evidenced error on its face. The revised dissenting opinion admitted that the omission of the jurisdictional ground by the majority eliminated the point at which the original dissent was directed, but it still did not agree that error appeared on the face of the record. Although the

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<sup>26</sup>Freeman lists the impeaching of a prior action by fact allegations outside the record as a feature of a collateral attack according to many decisions, as well as an attack outside the original proceedings or after the period required by law to bring an attack. 1 Freeman, *Judgments* § 306 (5th ed. 1925).

<sup>27</sup>*Combs v. Deaton*, 199 Ky. 477, 251 S.W. 638 (1923). The difficulty in properly designating proceedings as direct or collateral has caused writers to comment that "[e]xcept in the light of some . . . particular purpose, attempted distinctions are probably futile." Arnold & James, *Cases on Trials, Judgments and Appeals* 137 (1936).

<sup>28</sup>See Annot., 1918D L.R.A. 470, 474 n.10.

<sup>29</sup>*Fauntleroy v. Lum*, 210 U.S. 230, 234-35 (1908).

<sup>30</sup>14 Ill. 2d 178, 151 N.E.2d 813 (1958).