the basis for an action for enforcement through the courts of a sister state but merely as a defense in a collateral action? As the law stood in 1873, it apparently could not.[45] All difficulties, nevertheless, to its consideration of the challenge to jurisdiction in the case were brushed aside by the Court. Whenever, it said, the record of a judgment rendered in a state court is offered "in evidence" by either of the parties to an action in another state, it may be contradicted as to the facts necessary to sustain the former court's jurisdiction; "and if it be shown that such facts did not exist, the record will be a nullity, notwithstanding the claim that they did exist."[46]

Divorce Decrees: Domicile as the Jurisdictional Prerequisite

This, however, was only the beginning of the Court's lawmaking in cases *in rem*. The most important class of such cases is that in which the respondent to a suit for divorce offers in defense an earlier decree from the courts of a sister state. By the almost universally accepted view prior to 1906, a proceeding in divorce was one against the marriage status, *i.e.*, *in rem*, and hence might be validly brought by either party in any state where he or she was *bona fide* domiciled;[47] and, conversely, when the plaintiff did not have a *bona fide* domicile in the state, a court could not render a decree binding in other states even if the nonresident defendant entered a personal appearance.[48]

Divorce Suit: In Rem or in Personam; Judicial Indecision.—In 1906, however, by a vote of five to four, the Court departed from its earlier ruling, rendered five years previously in *Atherton v. Atherton*,[49] and in *Haddock v. Haddock*,[50] it announced that a divorce proceeding might be viewed as one *in personam*. In the former case it was held, in the latter case denied, that a divorce granted a husband without personal service upon the wife, who at the time was residing in another state, was entitled to rec-

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[45] 1 H. Black, A Treatise on the Law of Judgments § 246 (1891).

[46] *See also* Simmons v. Saul, 138 U.S. 439, 448 (1891). In other words, the challenge to jurisdiction is treated as equivalent to the plea nul tiel record, a plea that was recognized even in Mills v. Duryee as available against an attempted invocation of the full faith and credit clause. What is not pointed out by the Court is that it was also assumed in the earlier case that such a plea could always be rebutted by producing a transcript, properly authenticated in accordance with the act of Congress, of the judgment in the original case. *See also* Brown v. Fletcher's Estate, 210 U.S. 82 (1908); German Savings Soc'y v. Dormitzer, 192 U.S. 125, 128 (1904); Grover & Baker Machine Co. v. Radcliffe, 137 U.S. 287, 294 (1890).

[47] Cheever v. Wilson, 76 U.S. (9 Wall.) 108 (1870).

[48] Andrews v. Andrews, 188 U.S. 14 (1903). *See also* German Savings Soc'y v. Dormitzer, 192 U.S. 125 (1904).

[49] 181 U.S. 155, 162 (1901).

[50] 201 U.S. 562 (1906).