

Annulment Jurisdiction Clarified

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Comment and Casenotes

ANNULMENT JURISDICTION CLARIFIED

Certain doubts about, and short-comings of, the previous Maryland Law as to annulment jurisdiction were clarified by a statute passed by the 1947 Legislature.¹ These included various doubts as to jurisdiction, not only in the sense of territorial jurisdiction, but also in the other sense in which the word can be used.

The new statute accomplished this clarification principally by assimilating annulment jurisdiction to that for divorce, as theretofore provided for. It did so by revising Sections 38² and 39³ of Article 16 so as to provide that they should apply to annulment as well as divorce, in their provisions for jurisdiction in courts of equity of certain counties, for the use of orders of publication, and in jurisdiction over Federal reservations.

Furthermore, a new Section 16 of Article 62⁴ was enacted which clarifies the previous practice whereby criminal conviction of one or both of the spouses may serve also as an automatic annulment of the defective marriage, concerning which the conviction was had.

Prior to the clarifying statute, there was considerable doubt as to where was the appropriate court in which to bring an annulment suit about a marriage not entirely

¹ Md. Laws 1947, Ch. 849, amending Md. Code Supp. (1947) Art. 16, Secs. 38, 39; Art. 62, Sec. 16. For citations to the legal materials applicable to the state of the law prior to the recent clarification, reference will be made to specific pages of the following previous treatments in the REVIEW: Strahorn, *Void and Voidable Marriages in Maryland and Their Annulment* (1938) 2 Md. L. Rev. 211; and Comment, *The Confusing Maryland Domestic Relations Procedures* (1940) 4 Md. L. Rev. 275. See also, in the same issue with this, noting a case which arose under the previous law: (Note) *Marriage Performed by Telephone Invalid* (1948) 9 Md. L. Rev. 79 noting *Fleet v. Fleet*, Ct. Ct. No. 2, Balto. City.

² Which theretofore had provided for equity jurisdiction over divorce, in the court of the county either where the plaintiff or the defendant resided, for the use of orders of publication, or other substituted service, and for the taking of testimony in pro confesso cases.

³ Which theretofore had provided that residence on Federal reservations within Maryland should be tantamount to Maryland residence for divorce purposes.

⁴ This Section had also been revised two years earlier, Md. Laws 1945, Ch. 664. Both the 1945 revision and the 1947 one, now under discussion, had been proposed by the Bar Association of Baltimore City, at the motion of its Committee on Amendment of the Law. On the history of this procedure for automatic annulment as a result of criminal conviction, see (1938) 2 Md. L. Rev. 211, 250, and (1940) 4 Md. L. Rev. 275, 278.

localized in one county.⁵ There was doubt whether it should be brought where the plaintiff lived, or the defendant lived, or where the ceremony had been performed, as could arise if those three phases involved as many counties or states. In fact, there was one trial court ruling⁶ requiring the case to be brought in the county where the defendant lived, if he lived anywhere in Maryland, although, as a matter of practice, cases had been brought previously on any one alone of the factors mentioned above. The new statute makes it clear that annulment cases may be brought in any county where any one of these factors occurs.

Of course, if the annulment be granted as an incident of a criminal conviction under the revised Article 62, Section 16, the requisite jurisdictional basis for the proceeding would have to be that necessary to confer criminal jurisdiction, i. e., that the marriage in question had occurred in the very county where the indictment was returned. Similarly, because of the criminal nature of the basic proceeding, it would be necessary actually to arrest the defendant and bring him to trial—the order of publication basis would not be available for this method.

Furthermore, there was previous doubt whether orders of publication or other forms of substituted service could be used in civil annulment cases, although they were customarily so used, and the implication of Rule 10A⁷ of the Court of Appeals General Equity Rules was that they could be used. There was, however, no other authority in case or statute to sustain this practice, but the new statute makes it clear that it is permissible.

Then there was considerable doubt whether residence on Federal reservations would alone suffice to confer Mary-

⁵ On this, see (1938) 2 Md. L. Rev. 211, 256-59, and (1940) 4 Md. L. Rev. 275, 279-80.

⁶ No. 2494 Divorces, Ct. Co. A. A. Co., 1945. This ruling held that Md. Code Supp. (1947) Art. 75, Sec. 157, which requires, with certain exceptions, suits to be brought where the defendant resides, applied to annulment cases as the law then stood, by analogy to the similar rule for alimony, as distinguished from divorce, on which see *Woodcock v. Woodcock*, 169 Md. 40, 179 A. 826 (1935) noted (1936) 1 Md. L. Rev. 81.

⁷ I. e., the rule of court which requires the plaintiff, beyond use of order of publication or other attempt at substituted service, to make a showing of an actual attempt to give notice to an absent defendant of the pendency of a divorce or annulment suit. On the history of the sporadic legislation formerly requiring the use of registered mail, see Strahorn and Reiblich, *The Haddock Case Overruled—The Future of Interstate Divorce* (1942) 7 Md. L. Rev. 29, 44-48. See also, on the lack of explicit authority for using orders of publication in annulment cases prior to the clarifying statute, (1938) 2 Md. L. Rev. 211, 257, and (1940) 4 Md. L. Rev. 275, 280.

land jurisdiction, even conceding that Maryland residence would do so.⁸ This, too, has been straightened out, so that it now does.

There was a question as to whether any procedure was available for annulling marriages for the grounds of miscegenation, lack of sufficient ceremony, non-age or lack of marital intention.⁹ This was because the only stated sources of annulment jurisdiction lay in the old statute applicable only to bigamy and incest on the one hand,¹⁰ and in the case law rule of the inherent power of equity over the contract impediments on the other.¹¹ The new statute broadly refers to annulment, and so covers all grounds for attacking the validity of a marriage.

Furthermore, the new statute consolidates the various annulment procedures under one heading and thus simplifies matters, as well as clarifies doubts. It brings together the older statutory procedure and the inherent equity procedure, and makes the consolidated procedure cover any defect in marriage.

To be sure, there is still preserved the anomalous blurring of annulment and divorce whereby divorces, so-called, may be granted either for impotence, or for any ground making the marriage void *ab initio*.¹² If the reform had been as extensive as it could have been, this jurisdiction might also have been transferred to the consolidated annulment jurisdiction.

There was still preserved, and sensibly so, the idea that a criminal conviction for marrying criminally should also serve as an annulment of such marriages as could otherwise be annulled. This provision had been in force for some time, had been particularly improved at the previous session of the Legislature,¹³ and was further refined in the

⁸ This was because it had taken explicit legislation to make this clear for divorce purposes, and it was not until the clarifying statute under discussion that such a step was taken for annulment purposes. The revised Md. Code Supp. (1947) Art. 16, Sec. 39 so provides.

⁹ On this, see (1938) 2 Md. L. Rev. 211, 252, and (1940) 4 Md. L. Rev. 275, 280.

¹⁰ Md. Code (1939) Art. 62, Sec. 16, prior to the current revision and that of two years before. This, until the time of the current revision had provided an alternative of a civil proceeding by petition (now merged with the divorce and equity procedure) and the criminal proceeding, still in force.

¹¹ See (1938) 2 Md. L. Rev. 211, 251-2, and (1940) 4 Md. L. Rev. 275, 278.

¹² Md. Code Supp. (1947) Art. 16, Sec. 40. This procedure might, perhaps, have been available for the grounds of miscegenation, lack of sufficient ceremony, non-age, or lack of marital intention, mentioned just above. See (1938) 2 Md. L. Rev. 211, 252.

¹³ Md. Laws 1945, Ch. 664, amending Md. Code Supp. (1947) Art. 62, Sec. 16.

recent statute. Whereas, formerly it had only applied to bigamy and incest, the new statute now extends to prohibited inter-racial marriages. These three grounds are the only ones for which the marriage is both criminal and capable of annulment.¹⁴ So it is that the new statute completed the picture in that regard.

The new statute provides that a conviction of one or both of the spouses shall serve as an annulment from and after there being docketed on an equity docket a transcript of the docket entries in the case leading to the criminal conviction.¹⁵

The new statute does not purport to solve a problem which was implicit in the pre-statutory law, whether it was permissible to entertain annulment suits in Maryland lacking either domicile of either party or place of ceremony in Maryland, merely because personal jurisdiction could be obtained over the defendant by service of process in Maryland.¹⁶ There have been suggestions, lacking Court of Appeals authority, that personal jurisdiction alone over the defendant would suffice to entitle an annulment case to be tried in Maryland even though the other factors were lacking.¹⁷

It could be argued, of course, that the new statute asserts exclusive jurisdiction on the basis only of the factors mentioned therein, i. e., domicile of either party or place of ceremony and, therefore, means to negate further jurisdiction based on mere personal jurisdiction over the defendant alone. This, of course, remains to be seen after future interpretation of what the new statute means.

Furthermore, the new statute does not attempt to solve the possible constitutional question as to whether personal jurisdiction over the defendant is necessary in order for the case to be brought properly, even if some of the

¹⁴ For all the other grounds, the situation is either that an annulment may be obtained but there is no criminality involved, or there is a possibility of criminal conviction but the criminality does not affect the validity of the marriage. Thus it is that only in the three situations now included in the statute can a criminal conviction also serve as an annulment.

¹⁵ This particular detail was first put into the statute in the revision of 1945, and prior thereto there was doubt as to just how the provision for automatic annulment upon criminal conviction really worked. Since the 1945 revision, there is a record of such annulments in the same places as would be found docket entries of normal annulments in equity.

¹⁶ Apparently answering this question in the negative was the trial court case of *Archer v. McManamon*, Ct. Ct. Prince George's County, Baltimore Daily Record, February 8, 1944, dismissing a bill to annul a marriage performed in Cecil County, on the ground that neither party was a resident of Prince George's County.

¹⁷ See (1938) 2 Md. L. Rev. 211, 258, and (1940) 4 Md. L. Rev. 275, 280.

three alternative factors the statute asserts as a minimum basis of jurisdiction be present. The statute assumes that personal service is not a constitutional necessity (and that annulment jurisdiction may be exercised on an *in rem* basis) by providing for the use of orders of publication where personal service of process is impossible, i. e., against non-residents and residents who are twice returned non est. The REVIEW has elsewhere discussed the broader phases of this problem.¹⁸

The new statute does not touch on the question whether a legal defect in marriage has the impact of making it totally void on the one hand, or merely voidable on the other.¹⁹ There was no need for this to be done, inasmuch as an available annulment procedure for a given defect equally may be used to annul, whether the marriage is only voidable, and needs annulment, or is totally void and could be attacked collaterally, even lacking any annulment.

Furthermore, the new statute makes no contribution to the solution of the problem as to whether there are available any procedures in Maryland law for the purpose of asserting the validity of a marriage, as contrasted with asserting its invalidity, which is the normal purpose of annulment procedure.²⁰ The question is thus still open as to the availability of the former type of procedure, probably now to be litigated by way of Declaratory Judgment procedure, enacted, and more recently clarified, by the Maryland Legislature.²¹

To be sure, the clarification statute as to the Declaratory Judgment law specifically provides²² that the declaratory procedure shall not be used for obtaining a divorce or an annulment of a marriage. Yet nevertheless there would still be the possibility of using that procedure for the purpose of asserting the validity of a marriage, which is the opposite of annulment, inasmuch as there is no other direct procedure for so doing.

The new statute is concerned with annulment "jurisdiction" in various senses of that latter word. First, it is concerned with territorial jurisdiction of annulment procedure, as that phrase means variously (1) what are the

¹⁸ Note, *Action to Impress Trust on Stock is In Personam* (1944) 8 Md. L. Rev. 289, 292-93.

¹⁹ The distinction between voidness and voidability of defective marriages was the basic theme of the article cited herein throughout, *supra* n. 1. (1938) 2 Md. L. Rev. 211.

²⁰ See (1938) 2 Md. L. Rev. 211, 252-56, and (1940) 4 Md. L. Rev. 275, 279-80.

²¹ Md. Code Supp. (1947) Art. 31A.

²² *Ibid.*, Sec. 6.

requisite contacts between the facts of the case and particular area, state or county in which it is brought, in order to permit the case there to be brought; and (2) also as to what is the requisite minimum contact between the proceeding and the defendant who is being sued, in order to permit the case to be a valid one so far as the defendant's interests are concerned. Furthermore, the statute is also concerned with the idea of "jurisdiction" in the other sense, of the proper court amongst various courts in which the case may be brought in the appropriate area. Thus, it clarifies the law to the effect that annulment cases of any and all sorts may properly be brought in equity courts of the appropriate counties in Maryland.

This carries forward the reform of an earlier Legislature²³ which had clarified the archaic reference to the Superior Court of Baltimore City²⁴ as the appropriate court for certain types of annulment, and also makes it clear that any type of annulment may be brought in equity, beyond those formerly thought to belong there. It also removes doubts as to there being any appropriate court for certain marriage impediments, as to which uncertainty had prevailed.

There was one further routine clarification, to an effect that was probably accepted as the divorce rule prior thereto. This has to do with orders of publication against both non-residents and persons who may be proceeded against as non-residents, i. e., residents who are not subject to process after two attempts of service by the sheriff, and two returns of non est, under the general statute in that regard.²⁵ It is now specifically provided²⁶ that orders of publication may as well be used against resident persons who may be proceeded against as non-residents, as against actual non-residents, and the law is thus clarified in that connection.

Whereas the divorce law still requires a period of one year's residence in order for a divorce suit to be filed, if the grounds occurred outside of the state,²⁷ the newly clarified annulment procedure does not so require, even where the marriage was performed outside Maryland, and local jurisdiction is based only on residence of one or the other of the parties in Maryland. As the clarifying law was pro-

²³ See *supra*, n. 4.

²⁴ The Superior Court at one time had equity jurisdiction. See (1938) 2 Md. L. Rev. 211, 250, and (1940) 4 Md. L. Rev. 275, 278.

²⁵ Md. Code (1939) Art. 16, Sec. 141.

²⁶ Md. Code Supp. (1947) Art. 16, Sec. 38.

²⁷ Md. Code Supp. (1947) Art. 16, Sec. 43.

posed to the legislature the one year requirement would have been imposed for marriages performed outside of Maryland, but the legislature saw fit to delete that requirement so that as the law actually reads, a person who is a resident of Maryland may sue or be sued for annulment whether the marriage was performed here or elsewhere, and regardless of the duration of Maryland residence, so long as it is a bona fide residence. If the marriage was performed in Maryland then, under the new statute, the parties may litigate without residence of either and without waiting any particular period.

As pointed out above,²⁸ the requirements of the Court of Appeals Rule 10A, as to giving of actual notice, if possible, whenever a divorce or annulment suit is prosecuted by order of publication or the equivalent, still apply. Rule 10A was promulgated prior to the enactment of the clarifying statute and it assumed the propriety of using orders of publication in annulment cases as well as in divorce cases, although, as pointed out above, there was no other statutory or case law authority for so using orders of publication in annulment cases.

The new statute thus serves to ratify the assumption of the Court of Appeals rule that orders of publication are proper or were proper to be used in annulment cases as well as in divorce cases.

Thus, it is that the new statute has suitably clarified the pre-existing and confusing law as to annulment jurisdiction in Maryland. It has done this by assimilating annulment jurisdiction to that for divorce wherever that was feasible. While the law is now considerably clearer than it was before, yet one thing could still be done for accomplishing complete clarification of annulment jurisdiction in Maryland.

That would be to repeal the present law²⁹ whereby divorces *a vinculo matrimonii* may be granted for either impotence or "for any ground making the marriage void ab initio" and to transfer jurisdiction thereof to the annulment jurisdiction, so that all annulments, so called or substantially so, would be granted under the same procedure. It still remains an historical anomaly to grant divorces, so called, for those two nominal reasons, when annulment of marriage is what is being really accomplished, although under the name of divorce.

²⁸ *Supra*, n. 7.

²⁹ *Supra*, n. 12.