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Marriage Performed by Telephone Invalid - Fleet v. Fleet

MARRIAGE PERFORMED BY TELEPHONE INVALID

Fleet v. Fleet[1]

The plaintiff, a member of the armed forces, was stationed in Oklahoma, and, being alerted for overseas service, could not return to Baltimore, Maryland. It was his desire to do so to wed the defendant, who had given birth, out of wedlock, to the plaintiff's child in May, 1943. It was arranged between the parties that they be married by telephone, with the plaintiff in Oklahoma and the defendant in Baltimore, Maryland. The defendant procured a license in Baltimore on February 5, 1944, and on February 7, 1944, the parties conversed with one another by telephone and the minister in Baltimore read the marriage ceremony to the parties, to the plaintiff in Oklahoma over the telephone, with the defendant standing beside the minister in Baltimore. The marriage was never consummated. On the contrary, when the plaintiff did return home, he found the defendant again pregnant, and she confessed that the plaintiff was not the father of the prospective child. The plaintiff then filed a bill asking for a divorce a vinculo matrimonii on the ground of adultery, or, in the alternative, for an annulment of the purported marriage on the ground that it was void *ab initio*.

The Court granted an annulment of the purported marriage, saying that a marriage by telephone could not be valid in Maryland. The Court decided to apply the law of Maryland to the problem of whether or not this was a valid marriage, and in doing so found that it was not. To constitute a lawful marriage in this state, it is necessary to have a religious ceremony in addition to the civil contract between the parties, and a proper religious ceremony necessarily contemplates the presence of both parties be-

[1] Ct. Ct. No. 2 of Baltimore City, Baltimore Daily Record, October 23, 1946.

fore the minister. There being no lawful religious ceremony, then there was no valid marriage.

The Master's report, which the Court in its opinion approved, stated that this particular Equity Court, under its general equity power, had jurisdiction to annul this marriage. This means that the Court had jurisdiction over the subject matter before it. The general equity power referred to above is that power of the Equity Court to rescind or reform any civil contract for defects concerned with intention and consent, such as fraud, duress, insanity and intoxication.[2] The theory of a marriage in Maryland is that it is a civil contract entered into by the parties and that the parties marry themselves by their contractual offer and acceptance.[3] Thus if any impediment exist to prevent the intent to contract by the parties to a marriage, the Equity Court would have jurisdiction to declare it void.

A question might have been raised concerning the source of power in the Court to annul for this particular impediment, i. e., lack of sufficient ceremony. In an article earlier published in the Review, it was said: "The availability of the general procedure for annulment in equity is doubtful unless lack of formality be considered one of the contract impediments for which that annulment route is available".[4] The Court apparently felt that the lack of a valid religious ceremony was such an impediment to a marriage contract, as did give Maryland Equity Courts power to annul the marriage, and probably rightfully so. The theory is that a proper religious ceremony is necessary to show the required intent for a valid contract of marriage between the parties. The question has never been decided by the Court of Appeals, although under the subsequent legislation mentioned below, the point is now clarified.

The territorial jurisdiction of the Maryland Equity Courts to annul has never been definitely defined by the Court of Appeals of Maryland either. That Court has impliedly ruled, in previous cases, that the Courts of this state could annul marriages if the parties were domiciled here at the time of the annulment proceedings,[5] or (possi-

[2] LeBrun v. LeBrun, 55 Md. 496 (1880); Ridgely v. Ridgely, 79 Md. 298, 29 A. 597 (1894); Samuelson v. Samuelson, 155 Md. 639, 142 A. 97 (1928); Elfont v. Elfont, 161 Md. 458, 157 A. 741 (1931); Montgomery v. U'Nertle, 143 Md. 200, 122 A. 357 (1923).

[3] Strahorn, *Void and Voidable Marriages in Maryland and Their Annulment* (1938) 2 Md. L. Rev. 211.

[4] *Ibid*, 224.

[5] Fensterwald v. Burk, 129 Md. 131, 98 A. 358 (1916); Elfont v. Elfont, 161 Md. 458, 157 A. 741 (1931).

bly) if they have personal jurisdiction over the parties at the time of the proceedings,[6] and they have taken jurisdiction when the marriage ceremony was performed here.[7] All three of these conditions existed in this case before the Baltimore Circuit Court No. 2. What ceremony there was took place in Maryland, the parties were domiciled here at the time, and the defendant was personally served. The Court then clearly, under the implied rulings of our Court of Appeals, had territorial jurisdiction over the marriage and the parties.

Since the time of this case, the Maryland Legislature has amended the annulment laws of the State so as to clarify the territorial jurisdiction point theretofore in doubt, and this clarifying legislation is discussed elsewhere in this issue of the REVIEW.[7a]

The next question that presented itself to the Court, and probably presents itself to the reader, is one of conflict of laws. Which state's law should be applied in determining the validity of the marriage, the law of Maryland or the law of Oklahoma? The grounds for the annulment should be determined according to the law of the state whose law determined the validity of the marriage; that is the place of celebration, subject to the exception that the public policy of the forum might make such marriage void no matter where performed.[8] A marriage valid where performed is valid in the State of Maryland, unless it violates our public policy.[9] Under the rule just stated it is submitted that even if the Maryland court had applied Oklahoma law, it would have reached the same result. In spite of statutes in Oklahoma which require a ceremony[10] and a license[11] before the parties become married, the courts of that state have held that a common-law marriage which takes place there is valid.[12] But, for a valid common-law marriage in Oklahoma, it is necessary that parties capable of entering into the marital relation agree to be, and hold themselves out as husband and wife, and in the pursuance of such agreement that cohabitation take

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[6] Corder v. Corder, 141 Md. 114, 117 A. 119 (1922).

[7] *Ibid.* See also, Montgomery v. U'Nertle, *supra*, n. 2.

[7a] Comment, *Annulment Jurisdiction Clarified* (1948) 9 Md. L. Rev. 63.

[8] RESTATEMENT, CONFLICT OF LAWS, Sec. 136.

[9] Jackson v. Jackson, 80 Md. 176, 30 A. 752 (1894); Whitehurst v. Whitehurst, 156 Md. 610, 145 A. 204 (1928).

[10] Okla. Stat. (1941) Title 43, Sec. 7.

[11] Okla. Stat. (1941) Title 43, Sec. 4.

[12] In re Love's Estate, 42 Okla. 478, 142 Pac. 305 (1914).

place.[13] From the evidence in this case, it is quite clear that no cohabitation took place in Oklahoma, the wife never having left Maryland; so, no valid common-law marriage could have been completed in compliance with Oklahoma law. Even if the parties had later cohabited in Maryland, which they did not in this case, that would not have been sufficient for a valid common-law marriage in Oklahoma. All of the essential elements of celebration must be performed at the place of celebration before the parties become legally married there.

What would the result be if the Oklahoma law did recognize a common law marriage simply by an agreement of the parties without the further requirement of cohabitation. Some states and foreign countries recognize marriages by offer and acceptance through the mails. The law is that a marriage by means of mutual consent given by letter or other means of securing consent between persons in different places is valid everywhere if it is valid by the law of the state from which the acceptance is dispatched.[14] This is the same as the general rule applicable to ordinary contracts; the place of making the contract is that place where the acceptance is posted.[15] If the Oklahoma law were as stated above, the question in the *Fleet* case would then arise which party made the offer and which posted the acceptance. If the wife made the offer and the husband posted his acceptance in Oklahoma, then the contract was made in Oklahoma and the law of that state would be applied, and the marriage would be valid. On the other hand, if the husband made the offer and the wife posted her acceptance by phone in Maryland, then the contract was made in Maryland, and the law of this state should be applied; and the marriage held invalid. If the Court were unable to find from the facts where the acceptance was posted, then the law of Maryland, the state of domicile of the parties should be applied and the marriage held invalid. Where there is proof of a marriage, although it is not possible to determine within a reasonable degree of probability where the contract was effectuated, the law of the domicile of the parties will govern as to its validity.[16]

It is felt that the Maryland court was right in applying its own law to this marriage; for certainly the State of

[13] Hughes v. Kano, 68 Okla. 203, 173 Pac. 447 (1918); Draughn v. State, 12 Okla. Cr. App. 479, 158 Pac. 890 (1916); Palmer v. Cully, 52 Okla. 454, 153 Pac. 154 (1915).

[14] *Supra*, n. 8.

[15] 11 Am. Jur., CONSTITUTIONAL LAW, Sec. 115.

[16] 38 C. J. MARRIAGE, Sec. 6.

Maryland had sufficient contacts with the parties and the ceremony to say that this was an attempted Maryland contract. The parties, plaintiff and defendant, were domicilliaries of Maryland, as well as the child that was bastardized by the annulment of the purported marriage. If any marital domicile could be said to exist, then certainly that was in Maryland. All the evidence points to the intention of the parties to be married in Maryland in compliance with the laws of this state. They secured a license from the Clerk of the Court of Common Pleas of Baltimore, and the certificate of marriage signed by the minister was returned to, and filed in, that office. Such ceremony as was conducted took place in Maryland; the parties had the minister present in Maryland as required by state statute,[17] and everything that was done in the way of conducting a marriage ceremony, was done in Maryland. The only contact that Oklahoma had was the plaintiff's presence there, and his saying of his part of the ceremony took place there. The State of Maryland, therefore, had the most interest in the relationship of the parties as to their marital status; and, that, coupled with the fact that Maryland was the place of attempted celebration, was quite sufficient to give the court jurisdiction to annul and to apply their own law in doing so.

This state and any others have a right to decide for themselves their regulations and requirements for a valid marriage within their limits.[18] Maryland has decided that to constitute a valid marriage, there must be superadded to the civil contract a religious ceremony.[19] The Court in this case felt that a religious ceremony as intended by this state contemplated the presence of both parties before the minister, which did not occur. The reason for the religious ceremony is that it gives solemnity to the acts of the parties. It shows a seriousness of intent to be married, and without the presence of both parties, that indication of intent is lost. Further, the fact of the ceremony gives evidence that the marriage exists; that is, it is evidence of the contract, and prevents fraud as to the parties to it. If both parties are present before the minister, there is much less possibility of fraud by substitution of parties, or otherwise. As all of the elements necessary to a religious ceremony were not present, the Court was justified in voiding this marriage.

[17] Md. Code (1939) Art. 62, Sec. 4.
[18] State v. Clay, 182 Md. 639, 35 A. 2d 821 (1944).
[19] Denison v. Denison, 35 Md. 361 (1872).