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Effect of a Void Remarriage Upon Obligation to Pay Alimony - Sutton v. Leib

EFFECT OF A VOID REMARRIAGE UPON OBLIGATION TO PAY ALIMONY

Sutton v. Leib[1]

Petitioner, Verna Sutton, divorced respondent, Leib, in Illinois in 1919 and a stated monthly alimony was awarded for so long as the petitioner should remain unmarried or for so long as the decree would remain in full force and effect. In 1944, she married Walter Henzel, who had that day obtained a Nevada divorce from his wife, Dorothy Henzel, a resident of New York who had not been served in Nevada and who made no appearance there. One month later, Dorothy Henzel brought a separate maintenance proceeding in New York. Walter Henzel defended in this suit and the proceeding resulted in a decree declaring Walter Henzel's Nevada divorce null and void. In 1945, petitioner filed suit in New York for an annulment and Walter Henzel defended and the petitioner received an interlocutory decree declaring her marriage to Walter Henzel null and void because he had another wife living at the time of said marriage. Petitioner then sued the respondent for alimony due from the date he ceased making regular payments, that is, when the petitioner was married in Reno, Nevada, to a date in 1947 when she validly remarried another person. The lower court gave summary judgment for the defendant-respondent on the basis of purported settlement and release. The Supreme Court of the United States reversed and *Held:* that the New York annulment of the Nevada divorce must be accorded full faith and credit in Illinois and that the effect of the Nevada marriage and the New York annulment upon the obligation of the respondent in the alimony suit must be determined under Illinois law. Upon rehearing in the Court of Appeals for the Seventh Circuit,[2] it was *Held:* that the Illinois law is to the effect that the alleged remarriage of the petitioner to Walter Henzel was completely void, not merely voidable, and that the petitioner was entitled to back alimony payments for the entire period, but not for court costs and attorney's fees, the latter holding being based on the fact that the respondent acted in good faith in contacting the petitioner and her attorneys and therefore it would be inequitable to saddle him with these extra costs.

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[1] 342 U. S. 402 (1952).

[2] Sutton v. Leib, 199 F. 2d 163 (1952).

The scope of this casenote will include a review of previous Supreme Court rulings upon the situation caused by migratory divorces, the applicable Maryland law, plus a few practical considerations of the entire matter.

Under the old English law, divorces could only be had by an act of Parliament. This idea was transported to the colonies and became part of our practice. This was the situation in Maryland until 1841 at which time by legislation, the courts of Equity were empowered with concurrent jurisdiction in divorce.[3] Some ten years elapsed before the Equity courts by constitutional fiat, were granted sole jurisdiction.[4]

When divorces were granted by the legislatures of the states and territories, an early Supreme Court case upheld the validity of a divorce granted without any service or notice whatsoever on the wife.[5] But this situation has been remedied by the requirements of domicile and service.

In migratory divorces, where one party travels to another state to procure a divorce, one of the main points in issue in most cases is whether there is a valid domicile. It is not so much the fact that one wishes to take advantage of another state's less rigid requirements for divorce, but the cases hold that there must be an intent to make that state the domicile for an indefinitely permanent period. Mere residence, that is, living in the state for a short time with intention to return to the previous state, is not sufficient for divorce. Thus to assume jurisdiction, the courts must find a valid domicile. Under the old English Common Law, it was felt that the husband and wife had the same domicile, regardless of where the wife was; but the view is now to recognize the fact that the wife may have a separate and distinct domicile.[6]

As to the procedural requirement of proper service, personal service upon the defendant is the most desirable, but substituted service upon a non-resident is valid in some cases.[7] This is usually done by registered mail with a request for a signed return receipt acknowledging delivery. But it has been held that where a letter was sent by ordinary mail and never returned, that the marking on the envelope requesting that the letter be returned after five days if not delivered, was sufficient to show delivery, since

[3] Md. Laws 1841, Ch. 262, Sec. 1 *et seq.*, Md. Code (1951), Art. 16, Sec. 31 *et seq.*

[4] Md. Constitution 1851, Art. III, Sec. 21; *Cf.* NILES, MARYLAND CONSTITUTIONAL LAW (1915), 181, 409.

[5] Maynard v. Hill, 125 U. S. 190 (1888).

[6] Barber v. Barber, 21 How. 582, 593 *et seq.* (U. S., 1858).

[7] Pennoyer v. Neff, 95 U. S. 714, 727 (1877).

the letter was not returned.[8] But in order to enjoy the benefit of substituted service, the petitioner must be validly domiciled within the state of the forum. One petitioner lost his case because at the time of the trial, it was discovered that he had signed a probate petition in a neighboring state, wherein he affirmed that he was a resident of the latter state.[9] Also one cannot state that he is domiciled in one state, and file divorce proceedings there, and while the action is pending, travel to other states to enjoy a vacation, and then return to that state only long enough to obtain the divorce.[10]

Many states have a strong public policy in regard to the granting of divorces and will not permit a resident to leave the state merely to obtain a divorce, even where the wife appears in the other state and answers the petition, but later withdraws her answer. The theory of such holdings is that the parties to a marriage cannot dissolve the marriage themselves and it would be unjust to allow them to go to another state to circumvent the law.[11] Also, the fact that the defendant may flee the jurisdiction before the verdict is given, will not serve to stay the proceedings, the verdict being given in the absence of the defendant.[12]

This brings us, in point of time, to the controversial case of *Haddock v. Haddock*,[13] which held that where the state court, even of the plaintiff's domicile, did not have jurisdiction either of the subject matter or of the person of the defendant, the decree so issued would not be entitled to full faith and credit. Since this case has been extensively reviewed in an earlier article in the REVIEW[14] it will suffice, for the purposes of this casenote, to say that the *Haddock* case was explicitly overruled by the two Williams cases.[15]

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[8] Atherton v. Atherton, 181 U. S. 155, 171 (1901).

[9] Bell v. Bell, 181 U. S. 175 (1901).

[10] Streitwolf v. Streitwolf, 181 U. S. 179 (1901).

[11] Andrews v. Andrews, 188 U. S. 14 (1903).

[12] German Savings Society v. Dormitzer, 192 U. S. 125, 128 (1904).

[13] 201 U. S. 562 (1906).

[14] STRAHORN and REIBLICH, *The Haddock Case Overruled — The Future of Interstate Divorce*, 7 Md. L. Rev. 29 (1942). *Cf.* also STRAHORN, *A Rationale of the Haddock Case*, 32 Ill. L. Rev. 796 (1938); STRAHORN, *The Supreme Court Revisits Haddock*, 33 Ill. L. Rev. 412 (1938).

[15] *Infra*, ns. 21, 22. Also consider the latest Supreme Court ruling in the Virgin Islands case, Granville-Smith v. Granville-Smith, ... U. S. ..., 75 S. Ct. 553 (1955). In this case the court said that the Virgin Islands had no right to enact a law giving it jurisdiction of divorce cases where there was a residence requirement of six weeks. The court held that Congress never intended the local legislature to enact a law of such scope and authority, to aid outsiders. Justice Clark's dissent recognized the idea that since the divorce could be easily obtained in one of the states, there was no reason to require the parties to travel 2400 miles over land rather than 1500 miles over water to obtain the same result. *Dis. op.*, 561, 568.

The average layman, and sometimes the lawyer, often loses sight of the state's interest in the matter of divorce, feeling that the state need make only certain procedural requirements with which one must comply. The dissent in a Supreme Court case from South Carolina brought this point home and stressed it quite strongly.[16] The majority opinion felt that where a decree of divorce in Georgia granted support to the child of the marriage, then South Carolina could not subsequently alter or increase the decree to provide more money for the child. The dissent felt the state of South Carolina had a sufficient interest in the offspring, in order to prevent the child from becoming a ward of the state, that the decree ought to be modified. They wanted to invoke the police power of the state to protect the child's interests and to allow the attachment of the father's property in South Carolina. The purpose of The Full Faith and Credit clause of the Constitution[17] has been interpreted as follows:

> ". . . to alter the status of the several states as independent foreign sovereignties, each free to ignore obligations created under the laws or by the judicial proceedings of the others, and to make them integral parts of a single nation throughout which a remedy upon a just obligation might be demanded as of right, irrespective of the state of its origin."[18]

However, in binding together the states so as to recognize the decisions of sister states, the forum state is not precluded from inquiring into the question of the jurisdiction of the state where the case originally began and thus to satisfy itself that the parties were properly before the first court. This being so, then, and only then, are they compelled to give full faith and credit to the decision. As the Supreme Court has said:

> "The power of the Idaho Court to examine into the jurisdiction of the Washington Court is beyond question. Even where the decision against the validity of the original judgment is erroneous, it is a valid exercise of judicial power by the second court.
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> "One trial of an issue is enough. 'The principles of *res judicata* apply to questions of jurisdiction as well as

[16] Yarborough v. Yarborough, 290 U. S. 202, 90 A. L. R. 924 (1933), *dis. op.* 213.
[17] U. S. Constitution, Art. IV, Sec. 1, U. S. C. A. 508.
[18] Milwaukee County v. White Co., 296 U. S. 268, 277 (1935).

> to other issues', as well to jurisdiction of the subject matter as of the parties."[19]

And in *Milliken v. Meyer*,[20] the court said:

> "Where a judgment rendered in one state is challenged in another, a want of jurisdiction over either the person or the subject matter is of course open to inquiry. . . . But if the judgment on its face appears to be a 'record of a court of general jurisdiction, such jurisdiction over the cause and the parties is to be presumed unless disproved by extrinsic evidence, or by the record itself'."

Perhaps the two most controversial cases concerning the matter of domicile in divorce are the two *Williams'* cases, hereafter referred to as the first *Williams* case[21] and the second *Williams* case.[22] In both cases the facts were the same. Mr. Williams had lived with his wife for nearly 24 years in North Carolina; Mrs. Hendrix had lived with her husband for about 20 years in North Carolina. In May of 1940, they left their respective spouses and went to Nevada, where they both obtained divorces. The two then were married in Nevada and returned to North Carolina to live. In the first case, they were convicted in North Carolina of bigamous marriage, which conviction was reversed upon appeal to the Supreme Court because the lower court failed to decide the question of the validity of the domicile in Nevada. This mistake was corrected in the second *Williams* case, where the parties were convicted of bigamous cohabitation. The first *Williams* case explicitly overruled the old *Haddock* case.[23] The Court in that case stated that it would not interfere with the policy of the several states, some to grant divorces on more liberal grounds than other states, and that in the absence of legislative action by Congress, the laws of the states would be strictly construed. Thus the Court upheld the validity of the divorce regardless of how offensive it might be to the public policy of North Carolina. But in the second *Williams* case, the issue of domicile was contested and found lacking so as to make the Nevada divorce null and void. Justice Frankfurter in a concurring opinion[24] in the first case pointed out that in Canada and Australia, divorce was regulated by national

[19] Treinies v. Sunshine Mining Co., 308 U. S. 66, 78 (1939).
[20] 311 U. S. 457, 462 (1940).
[21] Williams v. North Carolina, 317 U. S. 287 (1942).
[22] Williams v. North Carolina, 325 U. S. 226 (1945).
[23] *Supra*, n. 13.
[24] *Supra*, n. 21, *conc. op.* 304.

legislation and that many of the problems that confront the American lawyer are remedied. In the second *Williams* case, domicile was lacking because the parties could not show that there was a good faith intent to remain domiciled in Nevada.

The dissents in the second *Williams* case felt that the idea of domicile in divorce was out of place as being too vague, and subject to the whim of the husband. It was felt improper that the test of domicile should revolve around the idea that a man was going to achieve a domicile for "either a permanent or for an indefinite or unlimited length of time".[25] It is felt that there should be a more definite test.

There are many cases involving the attempt to relitigate a divorce and such attempts are almost always held void. The usual practice is to appeal the case in the state where the action occurs, and not to later wait and try to contest the divorce again collaterally.[26] And where one obtains a divorce in another state after failing in an attempt to secure a divorce in the first state, it is fatal if the spouse contests the divorce action in the second state and loses. The losing spouse cannot later press a contempt charge in the first court.[27]

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[25] *Supra*, n. 22, Justice Rutledge dissenting, 244, 256, 257-8:

"The conception (of domicile as a requirement for divorce) has outlived its jurisdictional usefulness unless caprice, confusion and contradiction are the desirable criteria and consequences of jurisdictional conceptions.

"Stripped of its common law gloss, the basic constitutional issue inherent in the problem is whether the states shall have power to adopt so-called 'liberal' divorce policies and grant divorces to persons coming from other states while there transiently or for only short periods not sufficient in themselves, absent other objective criteria, to establish more casual relations with the community. . . .

"He (the husband under domicile) need do no more than decide, by a flash of thought, to stay 'either permanently or for an indefinite or unlimited length of time'. No other connection of permanence is required. All of his belongings, his business, his family, his established interests and intimate relations may remain where they have always been. Yet if he is but physically present elsewhere, without even bag or baggage, and undergoes the mental flash, in a moment he has created a new domicile though hardly a new home." (Parenthetical material added.)

Supra, n. 22, Justice Black dissenting, 261, 278:

"In earlier times, some rulers placed their criminal laws where the common man could not see them, in order that he might be entrapped into their violation. Others imposed standards of conduct impossible of achievement to the end that those obnoxious to the ruling powers might be convicted under the forms of law. No one of them ever provided a more certain entrapment than a statute which prescribes a penitentiary punishment for nothing more than a layman's failure to prophesy what a judge or jury will do. This court's decision of a federal question today does just that."

[26] Sherrer v. Sherrer, 334 U. S. 343 (1948).

[27] Coe v. Coe, 334 U. S. 378 (1948).

Collateral attack, is usually forbidden. A child of a divorced party has no right to attack the validity of the divorce decree after one of the spouses is deceased.[28] The same is true when a husband finds that his wife never had a valid divorce from her first husband. When he sends her to another state to get a valid divorce, probably without intent to acquire domicile, the husband himself cannot later attack the validity of the divorce.[29]

This brings us to the case at issue, *Sutton v. Leib*,[30] which from the point of *stare decisis*, is good law as it reiterates the concepts of domicile as developed in prior cases. There was no personal service in the *Sutton* case and the wife did not appear. It also appears that Walter Henzel went to Nevada solely to obtain a divorce and thus there was no valid domicile in order to give the Nevada Court jurisdiction. Thus Walter Henzel's remarriage was bigamous and void.

In the case at issue, respondent Leib is bound by the various suits and their outcome, even though he never was a part of them nor had a chance to appear. The doctrine of *res judicata* applies to Leib in that the judgment rendered in the annulment suit of petitioner Sutton and Walter Henzel is admitted for the purpose of proving a merely collateral or subordinate fact, revelant to the case at issue. The rule is well recognized that a judgment in one suit is admissible in another one, although against a different person, where the judgment is produced to prove that a certain state of facts exist, where the existence of that state of facts is admissible as to the issue on trial or relevant thereto.[31] Judgments in *rem* are considered binding on third persons, as are judgments or decrees determining the status or relations of individuals, as for instance, decrees of divorce.[32] Thus a decree of divorce might be used to show that there was a valid marriage and also a valid divorce. Or a decree of annulment could be introduced to show that the parties had attempted a void or voidable marriage, as in the case at issue. Such decrees are admitted in Maryland " 'to prove *res ipsam* and the legal incidents and consequences' thereof, but 'not to prove the facts' upon which they are founded".[33] The limitations upon their admittance

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[28] Johnson v. Muelberger, 340 U. S. 581 (1951).
[29] Cook v. Cook, 342 U. S. 126 (1951).
[30] 342 U. S. 402 (1952).
[31] Wilcox v. Bear, 140 Wash. 39, 248 P. 59 (1926), citing JONES ON EVIDENCE (3rd ed., 1950), Sec. 590.
[32] Fitchette v. Sumter Hardwood Co., 145 S. C. 53, 142 S. E. 828, 833 (1928).
[33] Packham v. Glendmeyer, 103 Md. 416, 423, 63 A. 1048 (1906).

are very heavy, and quite often are left to the discretion of the trial judge as to whether their admittance is material. But the authorities are practically unanimous in their holdings to the effect that the decrees are admissible and serve as *res judicata* as against the rest of the world. Here against the respondent Leib, the decree would be admissible only to the extent of judicially establishing the prior existence of the marriage and its dissolution and the status of the parties thereafter under the decree.[34] Thus in the case at issue, the subsequent annulment of the petitioner Sutton's previous void marriage to Walter Henzel serves as *res judicata* and is admissible to show that there was never a valid remarriage by her. Thus respondent Leib is bound by the decision and is forced to pay alimony on the strength of the prior annulment decision even though he was not a material party, but was definitely an interested party.

In remanding the case at issue to the lower Illinois Federal Court, the Supreme Court suggested that the law would be similar to a New York case which allowed the spouse alimony except during that period of her attempted remarriage, since she was being supported by her second spouse and it would be unfair for her to receive support from two men.[35] But the Illinois court, in determining Illinois law, applied another New York case which held that the second marriage was void, not merely voidable, and that there is no duty to support under a void marriage.[36] Thus petitioner Sutton was entitled to alimony, even though she was actually being supported by another man, Walter Henzel. But the Illinois law is to the apparent effect that where there is a remarriage that is prohibited within a one year period, but there is a marriage in that period, and the marriage later annulled, there was no obligation to pay alimony.[37] This case makes the Illinois decision seem improper.

If the case were to arise in Maryland, the probable result would be as follows. Maryland would not recognize the Nevada divorce obtained by Walter Henzel because of lack of jurisdiction in the Nevada Court.[38] The attempted remarriage would be void and the Court of Appeals has hinted that an annulment decree would not be absolutely

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[34] Luick v. Arends, 21 N. D. 614, 132 N. W. 353, 355 (1911), cited 20 A. L. R. 2d 1163, 1174.

[35] Sleicher v. Sleicher, 251 N. Y. 366, 167 N. E. 501, 503 (1929).

[36] Landsman v. Landsman, 302 N. Y. 45, 96 N. E. 2d 81, 82 (1950).

[37] Lehman v. Lehman, 225 Ill. App. 513 (Ill., 1922), cited, 155 A. L. R. 609, 620.

[38] Walker v. Walker, 125 Md. 649, 94 A. 346 (1915).

necessary, only desirable.[39] Alimony ceases automatically when a wife remarries in Maryland,[40] and Maryland has stated that it would be unfair and against the intent of the law that a woman should be entitled to support from two men.[41] While the above cases speak of alimony under a valid remarriage, this writer feels that it would apply to a void remarriage also. The doctrine of support from two men would be equally applicable in both cases during the intervening period of the attempted remarriage, particularly since the action would be in the equity courts, and the court might easily find that it would be inequitable to grant the wife support by two persons at the same time.

Maryland has always given great weight to English decisions and in *Holt v. Holt*,[42] an English judge held that the husband ought not to be called upon to pay alimony for that time during which the wife had other means of support, and said that it was immaterial as far as this question was concerned, whether she was living in adultery. The ground upon which the court proceeded was that she was living in such a manner that she had means of support independent of her husband. While this case was changed by law in 1857, no such law has been passed in Maryland. Thus from a consideration of the facts and cases, the Maryland law ought to be different.

The entire problem of domicile as a requirement of divorce has served to complicate the problem immensely. It seems to revolve around a discussion as to whether some states should be allowed to grant divorces with relative ease, while some states are most strict. The matter of "state's rights" might well be given precedence to the problems of the attorney in attempting to counsel his client. Many states have enacted statutes prohibiting one from going into another state to obtain a divorce.[43]

Several noteworthy persons, among them Senator McCarran of Nevada, as well as some prominent legal authorities, have been pressing for Federal legislation in the field of divorce. This procedure is common in Canada and Australia[44] and has rid those countries of the problems which we encounter continuously.

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[39] Townsend v. Morgan, 192 Md. 168, 173, 63 A. 2d 713 (1949).

[40] Spear v. Spear, 158 Md. 672, 674-5, 149 A. 468 (1930).

[41] Emerson v. Emerson, 120 Md. 584, 595, 87 A. 1033 (1913), cited 30 A. L. R. 79, 82.

[42] (L. R.), 1 Prob. & Div. 610 (1868).

[43] Ann. Laws Mass. (1955), Ch. 208, Sec. 39; *Cf.* also Uniform Divorce Recognition Act, 19 U. L. A. (1951), 367, in effect in several states, but not in Maryland.

[44] *Supra*, n. 24.

It would not be difficult for the government to find an interest to enable it to intervene. The states themselves have many times expressed their own interest in the matter of divorce, particularly in the event that the offspring should become wards of the community.[45] Considering the number of broken homes that result from divorce, the tremendous rate of increase in juvenile delinquency, and the increased crime rate, the Federal government would have a strong argument for the protection of the family life by making divorces more difficult to obtain. Thus if sufficient obstacles were placed in the way to hinder divorce, and thus encourage many couples to remain together and to try to solve their own problems, rather than run to another state to obtain an easy and painless divorce, certainly a great deal could be accomplished. And by thus federalizing the law, a large portion of divorce litigation would be eliminated.

[45] Yarborough v. Yarborough, 290 U. S. 202 (1933), *dis. op.* 213, 220 *et seq.*