Fifteen Years of Change in Maryland Marriage and Annulment Law and Domestic Relations Procedures

John S. Strahorn Jr.

Follow this and additional works at: http://digitalcommons.law.umaryland.edu/mlr

Part of the Family Law Commons

Recommended Citation
John S. Strahorn Jr., Fifteen Years of Change in Maryland Marriage and Annulment Law and Domestic Relations Procedures, 13 Md. L. Rev. 128 (1953).
Available at: http://digitalcommons.law.umaryland.edu/mlr/vol13/iss2/4
FIFTEEN YEARS OF CHANGE IN MARYLAND MARRIAGE AND ANNULMENT LAW AND DOMESTIC RELATIONS PROCEDURES

By John S. Strahorn, Jr.*

Fifteen years ago the present writer published in the Review an article on Marriage and Annulment Law in Maryland, and shortly thereafter an (unsigned) comment on Domestic Relations Procedures in Maryland. It is proposed herein to bring this material down to date and to discuss the cases decided and the statutes enacted in the interim which either add to or change the law. In doing this the same sequence of topical headings will be observed as in the former two papers which are now being jointly supplemented.

PART ONE

VOID AND VOIDABLE MARRIAGES IN MARYLAND AND THEIR ANNULMENT

THE GENERAL DIFFERENCE BETWEEN TOTAL VOIDNESS AND VOIDABILITY

The only interim change relevant to this general heading concerns the legitimacy of the offspring of void or voidable marriages, which had been discussed at pages 212, 213 and 214 of the original article. That discussion, which

* Professor of Law, University of Maryland, and Faculty Editor of the Review.
1 Strahorn, Void and Voidable Marriages in Maryland and Their Annulment, 2 Md. L. Rev. 211 (1938). This, and the following Comment, have been reprinted and published in a single pamphlet as Reprint Series Number Two, Maryland Law Review.
2 Comment, The Confusing Maryland Domestic Relations Procedures, 4 Md. L. Rev. 275 (1940).
3 Subsequent references herein to the Code of Public General Laws of Maryland (Flack, 1951), will be given as "Code" or "new Code", followed by Article and Section. Whenever a statute has been once or more amended in the interim, the respective Session Laws citations will not be given, save where of especial interest, and the reader is referred to the headings of the respective Code sections for the year and chapter in question.
4 For each heading or sub-heading herein there will be a footnote showing the pages and footnote sequences in the earlier treatment under the same title. The new Code section numbers for Code citations in the old footnotes will there be given, unless given in connection with a note to the following new text. By using the sequence of "old" footnote numbers shown herein, the reader will be able to trace specific topics from the older treatment to the present. Reference to the two papers here supplemented will be only by Volume and Page of the Review, i.e., 2 Rev. 211, etc.
5 2 Rev. 211-216, old notes 2-15.
6 2 Rev. 212-214, old notes 5-10.
asserted the then lack of any statutory preservation of the legitimacy of the offspring of defective marriages, is now irrelevant, due to the enactment of a statute in 1949, amended in a slight connection in 1950, which attempts directly to preserve the legitimacy of such offspring.

The statute still leaves certain questions, for that it provides in effect that whenever any marriage is annulled in an equity court or a criminal court or by a divorce for the "void ab initio" reason, the offspring of such marriage shall be deemed and declared to be the legitimate issue of the parents. This raises two questions. One is, does it apply equally to the annulment of totally void and merely voidable marriages? If only the latter then the other difficulty does not arise, for that the statute then merely changes the rule that the offspring of voidable marriages are illegitimate only if there be an annulment, and then from birth.

But if this statute is meant to apply also to the children of void marriages which are annulled (wherein the annulment is but a declaratory ruling and is not an essential step), then the further difficulty arises, what of the legitimacy of the offspring of such void marriages if there be no annulment. The normal rule is that collateral attack can be made on such marriages and the legitimacy of the offspring thus attacked.

It would be peculiar if the end product of the statute were that the offspring of a bigamous or inter-racial marriage, for example, should be legitimate if the marriage were annulled, but illegitimate if it were not, but this is a possibility as the statute reads.

---

7 Code, Art. 16, Sec. 36. Consider, in connection with this, case of Milton v. Escue, 93 A. 2d 258 (Md., 1953), where the Court Indicated that upon proper amended averments and proof it would recognize either legitimation or legitimacy under the applicable law of Virginia, which declared the issue to be legitimate, even when the marriage of the parents was null in law, or annulled. The parents here had never been married, other than by a possible common law or contract marriage, but the Court found the Virginia law to be that such type of marriage was regarded as one "null in law" for the purpose of the issue being legitimate. The Virginia statute thus goes farther on the surface than does the present Maryland one, although the text above indicates the desirability of so doing. The Review plans to carry a casenote on Milton v. Escue in a forthcoming number.

8 (Old notes 7, 8, and 9). Now Code, Art. 16, Sec. 33. The grounds are now adultery, eighteen months abandonment, three years voluntary separation, imprisonment for eighteen months under a three year felony sentence, as well as "void ab initio" and impotence; and insanity, added by Code, Art. 16, Sec. 35.
THE REQUIREMENTS OF AND IMPEDIMENTS TO A VALID MARRIAGE

(1) Conflict of Laws

While there have been no statutory changes in this area, yet there have been several Court of Appeals cases which have concerned the Conflict of Laws idea of recognizing marriages as valid if valid by the law of the place of performance.

On differences between our formalities and those of other states, there have been two cases in each of which the divergent ceremony requirement of the other state was recognized.11

In Henderson v. Henderson,12 the Court of Appeals recognized as valid under the law of the District of Columbia a common law or simple contract marriage, of a sort not valid had it happened in Maryland, and it did this in order to find the parties married by virtue of having lived together there after an earlier marriage ceremony in Iowa, which was invalid for that one of the parties was then still under an effective ban against remarriage in a Virginia divorce decree.

Likewise in Schmeizl v. Schmeizl,13 an unusual type of marriage ceremony of California was recognized for purposes of the case, that for persons who live together without being validly married and wish to have a marriage ceremony with a minimum of publicity in the matter. Under it a clergyman can perform the ceremony and record it only in his Church records.

Then, on the particular point of the effectiveness of a ban against remarriage in the divorce decree of another state to render invalid a subsequent marriage violating its terms,14 the Henderson case15 gave effect to the law of Virginia, where the divorce was granted, so as to invalidate an attempted marriage prior to the expiration of the ban.

9 2 Rev. 216, old note 16.
10 2 Rev. 216-220, old notes 17-33. Old note 25, last three lines now obsolete. Old note 29, the statute was ratified.
11 (Old note 20). See Milton v. Escue, supra, n. 7, regarding the Virginia rule that a common law marriage is not generally valid, but is sufficient as one "null in law" for purposes of legitimacy.
12 87 A. 2d 403 (Md., 1952).
13 184 Md. 584, 42 A. 2d 106 (1945); same case on second appeal on another point, 186 Md. 371, 46 A. 2d 619 (1946).
14 (Old note 30).
15 Supra, note 12.
Then the Maryland case of *Bannister v. Bannister,*\(^{16}\) which was noted in the *Review,\(^ {17}\) involved a variation of the ban on remarriage. There the wife had procured an interlocutory divorce decree in California, not to be final for a certain period, and after that period, when she could have had it made final but had not done so, she nevertheless in California married her second husband, who sought annulment for bigamy in the Maryland court. In the meanwhile, the California legislature had passed a curative act permitting such divorce decrees to be made final *nunc pro tunc,* and validating marriages performed after the time that they could have been made final, even if not yet made final at the time of the marriage. The Maryland Court of Appeals denied the annulment on the ground that the wife's second marriage was valid, having been validated by the California curative act and the entering up of the divorce decree under its provisions,\(^ {18}\) and held in effect that the law of the place of performance (California) governed as well as to validating marriages as to their initial validity.

In the *Review's* note on the case it was suggested\(^ {19}\) that, in effect, the Maryland Court was failing to apply the normal bigamy exception of public policy to the rule of valid where celebrated valid everywhere. The real effect of the California curative act was to tolerate a form of bigamy, and to legalize a marriage which was bigamous in its inception, although it was argued that this was a substantially desirable result.

The trial court *Fleet* case,\(^ {20}\) also noted in the *Review\(^ {21}\) had an aspect of Conflict of Laws, although it was more concerned with local formalities and it will there be discussed. There was an attempted telephone marriage between Maryland and Oklahoma. The trial court in Maryland granted an annulment of it on the ground that it was not an adequate ceremony by Maryland law, even if that applied. And it could not be rationalized as a valid Oklahoma ceremony even if the contract were made there for the reason that the Oklahoma idea of common law or contract marriage requires cohabitation to follow, and it had not. Therefore, it was impossible to validate this marriage by any Conflict of Laws idea of the applicable law of another state.

\(^{16}\) 181 Md. 177, 29 A. 2d 287 (1942).
\(^{17}\) Note, *Interstate Recognition of Marriage,* 7 Md. L. Rev. 254 (1943).
\(^{18}\) Actually, the California decree was not entered until *after* the Maryland annulment suit had been filed.
\(^{19}\) *Supra,* note 17, *Rev.* 257-8.
(2) Formalities

Most of the changes in this field have been statutory, including some slight technical changes in the provisions as to who may celebrate marriage. With reference to the various unusual types of attempted marriage mentioned in the old article at page 222, the only ruling obtained in the interim has been the trial court Fleet case, mentioned also in the previous section, which ruled that an attempted marriage by telephone from Maryland to Oklahoma was not a valid marriage if governed by Maryland law, which apparently it was, for that such a type ceremony did not comply with our requirement of a religious ceremony, even though the minister took part in the telephone conversation between the bride here and the groom there.

There have been some slight changes in the administrative details of the marriage license laws. The alternative of publication of the banns in lieu of procuring a marriage license has been repealed so that now a marriage license is required in all cases and even if the banns are published, still a marriage license should be procured.

The law requiring a forty eight hour wait between application for a license and issuance thereof, which was pending on referendum before, was ratified and has been several times amended. When a local newspaper published the "scandal" of the too free issuance of waivers of the law in one of our county seats where marriages are more frequently performed, the Legislature amended it to require that one of the parties be a resident of Maryland in order to obtain a waiver. Then, after the United States entered World War II, it was found necessary further to amend

---

22 Rev. 220-224, old notes 34-53.
23 (Old note 40). New Code sections are Art. 62, Sec. 4; Art. 27, Sec. 461; Art. 27, Sec. 464. Art. 62, Sec. 4, has been changed by repealing the reference to publishing the banns, transferring the detail for Quaker marriages to Art. 62, Sec. 5, and reducing the period for return of the certificate to the Clerk to five days.
24 (Old note 45).
25 Supra, notes 20-21.
26 (Old notes 48, 49A, 50). New Code sections are now Art. 62, Secs. 4-15, 18-19; Art. 27, Sec. 462; Art. 27, Sec. 463; Art. 62, Sec. 15; Md. Code (1924), Art. 62, Sec. 12, has been repealed; and Art. 62, Sec. 4. Changes include the administrative detail of the 48 Hour Law and its waiver, and the Marriage Age Law.
27 This was in Md. Code (1939), Art. 62, Secs. 4, 14, 15, repealed by Md. Laws, 1941, Ch. 14.
28 Code, Art. 62, Secs. 6, 7, and 11.
the waiver law to permit waivers for armed forces personnel stationed in Maryland, although not residents. A parallel statute authorized the waiver by the court clerks for such personnel regardless. Furthermore, it is now provided that licenses shall be applied for and issued only during regular office hours.

The recent statute fixing new ages for marriage, discussed below under the substantive heading of Age,\(^9\) also contains considerable detail concerning the issuance of the license and the showing of necessary parental consent, and the like, as is required under the statute.

A new provision for Quaker marriages is now in force, calling for the attestation of two overseers of the ceremony in place of the formerly required twelve witnesses.\(^9\)

On the point of what procedure is available for obtaining an annulment (i.e., a declaratory judgment of voidness) of a marriage defective for lack of proper solemnization, it would seem that the revised annulment procedure, discussed below\(^3\) now gives the answers and resolves some of the doubts expressed before. The revised procedure seems to tolerate annulment for any cause going to the validity of the marriage, and so the statutory-equity procedure now in force would seem to cover it, and, in fact, it was so used in the trial court \textit{Fleet} case\(^2\) discussed twice above, even before the revision of the procedure.

There is still the doubt expressed before\(^3\) whether a divorce for "void ab initio" could be secured. It would seem clear that the criminal method is not available for this impediment.\(^3\)

\section*{(3) Competency of Parties\(^3\)}

\subsection*{A. Subsisting Prior Marriage (Bigamy)\(^3\)}

The crime of bigamy has been involved in one statute and two cases. A recent statute\(^5\) provides a new code section setting forth a short form of indictment for the crime of bigamy.

\footnotesize
\(^{9}\) Code, Art. 62, Secs. 9, 10, 11. \textit{Infra}, notes 54-60.

\(^{9}\) (Old note 51). Art. 62, Sec. 5.

\(^{11}\) Infra, notes 74-104.

\(^{12}\) Supra, notes 20, 21, 25.

\(^{13}\) (Old note 53).

\(^{14}\) Because the only criminal activity involved, such as lack of license, does not defeat the validity of the marriage.

\(^{15}\) 2 Rev. 224, old note 54.

\(^{16}\) 2 Rev. 225-228, old notes 55-68.

\(^{17}\) Code, Art. 27, Sec. 21. Code reference in old note 56 is now Art. 27, Sec. 20.
The case of *Slansky v. State*,\(^8\) (which arose prior to the time that the Court of Appeals had the power to review the sufficiency of the evidence under the new criminal rules) affirmed a conviction of bigamy where the defense was a valid Nevada divorce obtained by the alleged bigamist before he entered into the second ceremony. The jury, by convicting, apparently found the Nevada divorce to be invalid, and the Court of Appeals, lacking the power at that time to review the sufficiency of the evidence, affirmed, without going into the actual validity of the Nevada divorce. Now it could do so, at the level of review of sufficiency.

The other case is that of *Wright v. State*,\(^9\) where the Court of Appeals reversed a conviction of bigamy for marrying a third wife, being still married to the second, for that there was no proof negating that the first wife was still living and undivorced when he married the second. Apparently the Court refused to use the presumption of death or divorce of the first wife so as to make the second marriage valid and the third therefore bigamous and criminal.

The Court ruled that the normal presumption of a divorce of an earlier marriage, raised by proof of a later one, has no place in defense to a bigamy prosecution, that it was not applicable to create a reasonable doubt of the continuation of the second marriage here, nor could the State use it to prove beyond a reasonable doubt the termination of the first marriage so as to make the second valid and the third bigamous.

In the original article there was considerable discussion of this presumption against bigamy, found in the *Bowman v. Little*\(^40\) rule of strict proof of the impediment former marriage; and in the *Shaffer v. Richardson*\(^41\) rule of the presumption of the termination (either by death or divorce) of an impediment former marriage, which presumption is raised by the later marriage, even if the former be sufficiently proved. There are two recent cases on this.

The first was *Schmeizl v. Schmeizl*,\(^42\) where the estate of the intestate husband was trying to defeat the wife's claim to a widow's share on the ground that she had divorced him prior to his death. Their proof of this was that she had eloped with another man to California, had

---

\(^8\) 192 Md. 94, 63 A. 2d 599 (1949).
\(^9\) 81 A. 2d 602 (Md., 1951).
\(^40\) (Old note 60), 101 Md. 273, 61 A. 223 (1905).
\(^41\) (Old note 62), 125 Md. 88, 93 A. 391 (1915).
\(^42\) Supra, note 13.
gone through a peculiar local marriage ceremony allowed there,\textsuperscript{43} which raised a presumption of her having obtained a divorce from the decedent. There was also the Administrator's testimony that she told him that she had obtained a divorce, but this was contradicted by his earlier testimony otherwise and which was the only proof of her second marriage, and the Court disregarded it, accepted her testimony that she had not been divorced, and reversed a finding against her below. In effect, the Court followed the Bowman v. Little rule of strict proof of secret marriages (as this one was under the California peculiar procedure) and also found that any Shaffer v. Richardson presumption of termination of earlier marriage had been rebutted by the administrator's own testimony and his cross-examination of the wife, both of which to his disfavor rebutted any presumption of innocence.

The other case was Dukes v. Eastern Tar Products Corp.,\textsuperscript{44} where the Court affirmed a finding that the claimant was not the lawful widow of the decedent. She had married another man in South Carolina prior to her marriage to the decedent also in South Carolina, at a time when that State granted no divorces. Both marriages were proved by record evidence, and the Court disregarded her testimony that she never really married the first, and found any presumption of divorce of it sufficiently rebutted, as it is not conclusive, therefore her marriage to him was bigamous and she was not his widow.

As was mentioned above under Conflict of Laws, there were bigamy aspects in the cases of Bannister v. Bannister,\textsuperscript{45} where a California marriage was recognized despite its being performed before the divorce had been made final, because the California curative act had been complied with; and Henderson v. Henderson,\textsuperscript{46} where a remarriage within the time limit prohibited by the divorce decree was held valid only because of a subsequent common law marriage in the District of Columbia after the time had expired.

In the case of Townsend v. Morgan,\textsuperscript{47} noted in the Review,\textsuperscript{48} the Court of Appeals ordered the granting of an annulment for bigamy to one who had knowingly committed bigamy in marrying under the circumstances, and

\textsuperscript{43} Discussed and described, Ibid. The case cites and quotes the California law in question.
\textsuperscript{44} 80 A. 2d 39 (Md., 1951).
\textsuperscript{45} Supra, notes 16 and 17.
\textsuperscript{46} Supra, note 12.
\textsuperscript{47} 192 Md. 168, 63 A. 2d 743 (1949).
\textsuperscript{48} Note, "Clean Hands" Not Required for Bigamy Annulment, 10 Md. L. Rev. 84 (1949).
it ruled that "clean hands" were not essential to obtain a bigamy annulment, which was void and that therefore the parties were entitled to a ruling as to the fact of the voidness regardless of guilt in the matter.49

As to the proper procedure for annulling a bigamous marriage, it can probably now be said that the change in annulment procedure now makes available the statutory-equity procedure for annulling for bigamy, although there is still the doubt expressed before as to whether the divorce for "void ab initio" technique may be used.50 The reformed procedure preserves the idea that a criminal conviction for bigamy shall serve as an annulment.

B. Relationship51

C. Race (Miscegenation)52

For both of the above headings the same might be said as to interim developments, that the only changes are in the numbering of the Code sections, and in the clarification of the point of the proper annulment procedures to use for avoiding the former type and for declaring the total voidness of the latter type. It would seem that the statutory-equity procedure clearly is available for both, that the same doubts expressed before as to divorce for "void ab initio" still obtain, and that the new procedure continues the criminal technique for relationship and provides it for the first time for inter-racial marriages and thus puts the two on equal standing with reference to procedure, along with bigamous marriages.

D. Age53

Since the previous article the legislature has passed and then twice amended a statute54 which expands the previous

---

49 In Donnelly v. Donnelly, 84 A. 2d 89 (Md., 1951), it was held that a deed to a man and woman, the latter described as his "wife", created a tenancy in common where the marriage between them was bigamous.

50 The writer is informed that it is occasionally used in trial court cases.

51 2 Rev. 228-231, old notes 69-81. New Code sections now are: (Old 70), Art. 62, Secs. 1, 2. (Old 47), Art. 62, Sec. 1. (Old 45), Art. 27, Secs. 401, 457, 458, and 459. (Old 70), Art. 27, Sec. 457. (Old 77), Art. 62, Sec. 3. (Old 79), Art. 27, Sec. 466.

52 2 Rev. 231-232, old notes 82-88. New Code sections now are: (Old 82), Art. 62, Sec. 17. (Old 83), Art. 27, Sec. 466. (Old 87), Art. 27, Secs. 466 and 460. and see also, Code, Art. 62, Secs. 4, 6, providing that the Clerk shall inquire the color of the applicants for license, and the license shall state it. (Old 88), Art. 27, Sec. 513.

53 2 Rev. 233-235, old notes 89-99.

54 (Old note 93). Code, Art. 62, Secs. 9, 10, 11. The older statute, Md. Code (1924), Art. 27, Sec. 363, which punished the minister for marrying without parental consent was repealed, Md. Laws 1939, Ch. 728.
DOMESTIC RELATIONS CHANGES

statutory rule of parental consent for the marriages of males under 21 and females under 18, and has added to it a further provision that there shall be no marriages at all, even with consent of parents for males under 18 and females under 16, save with reference to the pregnancy of the female. Changing the detail as to this has been the purpose of the numerous amendments.

In a comment published in the REVIEW about the original statute of 1939, the stand was taken as it had been taken in the previous article and in an earlier treatment, that the statute was directory only and did not go to the essential validity of the marriage, so that a marriage in violation of any provision of the statute, if it actually happens, is nevertheless a valid marriage and is neither void nor voidable, lay opinion to the contrary. The arguments for this view have been sufficiently given in the comment on the statute of 1939 and in the earlier treatments. The Maryland Court of Appeals has not yet definitively ruled on the matter, but professional opinion seems to be in accord with the view expressed above.

Furthermore, two cases from other states, ruling on the validity of marriages entered into in Maryland in violation of the new statutory rules, have agreed with the point and have denied annulments, when sought for no other reason then the violation of the statute. In Hitchens v. Hitchens, the trial court of the District of Columbia, in a well-reasoned published opinion denied the annulment of a marriage performed in Maryland without parental consent at ages when parental consent should have been obtained under the statute, and, in effect, ruled that the Maryland law in the matter was only directory and not mandatory, and while the marriage might be criminal yet it was not void or voidable.

The particular provisions of Code, Art. 62, Sec. 9, about pregnancy are:

"... Provided, however, that on the certificate of a licensed physician, presented with the application for a marriage license, to the effect that the girl is pregnant or has given birth to a child, a marriage license may be issued without the consent of her parent or guardian, and if the putative father of the child or prospective child of a girl under eighteen years of age is over sixteen years of age, a marriage license may be issued without the consent of his parents or guardian."

Comment, A Query About the New Marriage Age Law, 3 Md. L. Rev. 340 (1939). This was unsigned, although written by the present writer.


The Supreme Court of Appeals of Virginia, likewise, in Needam v. Needam,60 denied an annulment to a Virginia couple who had gone to Maryland and had wrongfully obtained a license when they should have had parental consent but did not, and the court also felt that the Maryland law was directory. It spoke more of the Virginia law in the matter, which apparently it felt was the same and did not go to the essential validity of the marriage.

While both these cases were concerned with violation of the parental consent ages rather than the basic minimum ages of 16 and 18, yet neither suggested any possible distinction in that regard and both spoke of the Maryland statute on the whole as being merely directory. This is the view that has been advanced heretofore by the Review both as to the new Maryland legislation and as to the law prior to it when there was only the parental consent statute on the books. Thus the view still holds that the essential ages are 12 for females and 14 for males, above which a marriage is completely valid, and below which down to 7 it is only voidable.

The previous speculation about what is the proper procedure can be answered as for the impediments mentioned above, to wit, such marriages as can be annulled (which would be only those under the ages of 12 or 14, unless the Court of Appeals is going to find the new statute mandatory) can so be annulled by the statutory-equity procedure; although it is doubtful that the divorce procedure may be used; and clearly the criminal procedure is not available inasmuch as it is not mentioned, and such marriages as are criminal are not even voidable anyhow, according to the views expressed above.

E. Physical Condition (Impotence)61

There has been no change in this law except in the numbering of the relevant Code section62 and continued doubt whether any other procedure than the divorce procedure, which specially mentions impotence, may be used to annul. Probably the statutory-equity procedure is not available despite the recent reform, for that impotence would probably not be a ground of voidability at law but for the specific mention in the divorce statute. Certainly the criminal technique is not available, because impotence is no crime.

---

60 183 Va. 681, 33 S. E. 2d 288 (1945).
61 2 Rev. 235-236, old notes 100-104.
62 Now Code, Art. 16, Sec. 33.
(4) Intention and Consent
(The Contract Impediments)\textsuperscript{63}

The only changes in general for these impediments consist of the statute mentioned above attempting to preserve the legitimacy of the offspring of marriages which are annulled; and clarification of the procedure.

Whereas, before, a bill in equity, under the general equity practice and the inherent powers of the courts of equity, was the proper procedure for annulling for these impediments, now the equity practice has been woven into the statutory-equity procedure and such sanction has been given to the use of a bill in equity for these impediments as well as for all others. The doubts earlier expressed about the use of the divorce procedure still obtain; and it would seem that the criminal technique is definitely not available, for lack of mention of these impediments, and for lack of any crime concerned with them.

A. Intention\textsuperscript{65}
B. Insanity\textsuperscript{66}
C. Intoxication\textsuperscript{67}
D. Fraud\textsuperscript{68}

There have been two developments on fraud in the interim, one is the statutory repeal\textsuperscript{69} of the ground for a vinculo divorce of the premarital unchastity of the wife, which, while it was on the books, was in effect a technique for coping with the problem of that type of fraud. While so, there was little need for annulments for such fraud, but with its repeal the problem arose as to whether sufficiently strong cases of such fraud would be actionable for equitable annulments.

The Court of Appeals implicitly recognizes that in a strong enough case such a fraud would be actionable, by considering on the merits, in the case of \textit{Behr v. Behr},\textsuperscript{70} a bill for annulment for fraud where the husband alleged that the wife had concealed from him her being pregnant

\begin{footnotes}
\item[63] The only changes in general for these impediments consist of the statute mentioned above attempting to preserve the legitimacy of the offspring of marriages which are annulled; and clarification of the procedure.
\item[64] The only changes in general for these impediments consist of the statute mentioned above attempting to preserve the legitimacy of the offspring of marriages which are annulled; and clarification of the procedure.
\item[65] There have been two developments on fraud in the interim, one is the statutory repeal of the ground for a vinculo divorce of the premarital unchastity of the wife, which, while it was on the books, was in effect a technique for coping with the problem of that type of fraud. While so, there was little need for annulments for such fraud, but with its repeal the problem arose as to whether sufficiently strong cases of such fraud would be actionable for equitable annulments.
\item[66] The Court of Appeals implicitly recognizes that in a strong enough case such a fraud would be actionable, by considering on the merits, in the case of \textit{Behr v. Behr}, a bill for annulment for fraud where the husband alleged that the wife had concealed from him her being pregnant.
\item[67] The Court of Appeals implicitly recognizes that in a strong enough case such a fraud would be actionable, by considering on the merits, in the case of \textit{Behr v. Behr}, a bill for annulment for fraud where the husband alleged that the wife had concealed from him her being pregnant.
\item[68] The Court of Appeals implicitly recognizes that in a strong enough case such a fraud would be actionable, by considering on the merits, in the case of \textit{Behr v. Behr}, a bill for annulment for fraud where the husband alleged that the wife had concealed from him her being pregnant.
\item[69] The Court of Appeals implicitly recognizes that in a strong enough case such a fraud would be actionable, by considering on the merits, in the case of \textit{Behr v. Behr}, a bill for annulment for fraud where the husband alleged that the wife had concealed from him her being pregnant.
\item[70] The Court of Appeals implicitly recognizes that in a strong enough case such a fraud would be actionable, by considering on the merits, in the case of \textit{Behr v. Behr}, a bill for annulment for fraud where the husband alleged that the wife had concealed from him her being pregnant.
\end{footnotes}
by another man at the time of the marriage. The Court
denied the annulment, both on the ground that it found that
he himself had had premarital relations with her, and at
a time making it possible that he was the father of the
child; and also for that he had otherwise ratified the fraud,
if any, by continuing marital relations with her after his
discovery of her being pregnant, too soon to have become
so by him after his marriage to her.

Then in the trial court case of Baldwin v. Baldwin,\textsuperscript{71} the
Anne Arundel County Circuit Court granted an annulment
to a husband for his wife's concealment of having borne an
illegitimate child by another man, prior to his marriage
to her. Thus it regarded this as an actionable fraud of the
sort under discussion. The two cases were jointly noted
in the Review\textsuperscript{72} against the background of the problem of
fraud in the concealment of aspects of the wife's premarital
unchastity, the statutory ground for divorce having been
abolished.

E. Duress\textsuperscript{73}

PROCEDURAL ASPECTS OF ANNULMENT AND
SIMILAR PROCEEDINGS\textsuperscript{74}

There has been considerable revision of the annulment
procedures since the previous article was published, and
almost all of this change and clarification has been dis-
cussed already in a comment in an earlier issue of the
Review.\textsuperscript{75} It is not proposed to reiterate this discussion in
detail, inasmuch as it is up to the moment, save for specific
later items to be mentioned, and the reader is referred to it
for the full treatment of the interim changes in annulment
procedure, but the essence of the changes will be mentioned
in the proper place herein.

One general change has been mentioned above herein,\textsuperscript{76}
the recent statute attempting to preserve the legitimacy of
the issue of annulled marriages. Also, the provision for the
transmission of records of vital statistics from the court
clerk's offices to the State Board of Health has been
amended to include annulments as well as divorces and

\textsuperscript{71} No. 1898 Divorces, Circuit Court for Anne Arundel County, Maryland.
\textsuperscript{72} Note, Annulment of Marriage for Fraud as to Matters Related to Pre-
marital Unchastity, 7 Md. L. Rev. 238 (1943).
\textsuperscript{73} 2 Rev. 248-249, old notes 148-152.
\textsuperscript{74} 2 Rev. 249-250, old note 153.
\textsuperscript{75} Comment, Annulment Jurisdiction Clarified, 9 Md. L. Rev. 63 (1948).
This was unsigned, although written by the present writer.
\textsuperscript{76} Supra, note 7.
marriages in the proceedings required to be recorded again in the central vital statistics offices.\(^7\)

One case, that of Townsend v. Morgan, discussed above herein\(^7\) and also earlier noted in the Review\(^7\) is relevant, in that it ruled that "clean hands" are not necessary for the plaintiff, otherwise entitled, to be granted an annulment for bigamy.

A. The Statutory Method\(^8\)

An important step taken by the clarifying legislation in the interim was to integrate the previous statutory method of annulment\(^8\) and the previous general equity method, which was earlier treated as the third and separate of the methods.\(^8\) It now seems appropriate to regard them as a single method and to set apart the criminal method which, to a limited extent was included in the old statutory method. Now that it has been extended to all possible marriage impediments which are both criminal and affect the essential validity of the marriage, it will be regarded as the third method, distinct from the statutory-equity method.

The recent statute accomplished this reform by assimilating annulments to divorce and by including reference to annulments in equity (for any cause, without stating that specifically) as being granted on bill in equity under the same circumstances as divorces may be granted.\(^8\)

Now any cause entitling to an annulment may be litigated by a civil action between the spouses upon bill in equity as for a divorce, under the provisions of the integrated statutory-equity method, and no longer is there a separate "general equity method" having as its authority only the inherent power of equity with no statute to ratify that.

The criminal method\(^9\) not only extends the technique to a third cause, inter-racial marriages, beyond the former bigamous and incestuous ones, but it has the new procedural detail that the criminal conviction shall serve as an annulment from and after the transcribing of the docket.

\(^7\) Code, Art. 62, Sec. 18.  
\(^8\) Supra, note 47.  
\(^9\) Supra, note 48.  
\(^8\) 2 Rev. 250, old notes 154-157.  
\(^9\) (Old note 154). Now Code, Art. 62, Sec. 16.  
\(^9\) See 2 Rev. 251.  
\(^8\) Code, Art. 16, Sec. 31. This is referred to in Code, Art. 62, Sec. 16, as permitting annulments for "any cause". An earlier statute, Md. Laws, 1945, Ch. 664, had deleted the anomalous reference to the Superior Court of Baltimore City.  
\(^9\) Code, Art. 62, Sec. 16; and see 2 Rev. 250.
entries to the equity docket of the same court or, in Baltimore City, to the docket of one of the equity courts, presumably where normal annulment cases would be docketed in those courts. The criminal provision, as it now reads, extends the technique to all marriage impediments which are also indictable crimes, to wit, the three mentioned.

B. The Divorce Method

There has been no change in the divorce method of annulment, i.e., divorce for "void ab initio" or impotence, other than the statutory repeal of the former third basis, the pre-marital unchastity of the wife. Thus, save for this, the discussion in the previous article still stands as to the details of this method, as the clarifying legislation made no change in the method, although it has been mentioned in other legislation impinging on annulment in recognition of its being an alternative technique.

C. The General Equity Method

As mentioned above, this former method is now integrated by legislation into what is now called the statutory-equity method, and no longer does the power to annul certain types of marriage depend merely on the inherent power of equity but all annulments (at least the civil ones upon bill in equity) are based upon positive legislation, as is also the case for the divorce method and the criminal method.

Rather, if a third separate method were to be named now it would be the criminal method, formerly under the old statutory one, and itself further established as a result of the clarifying legislation in the meanwhile.

D. Miscellaneous Methods

In connection with the case of *Ridgely v. Ridgely*, discussed before as to the capacity of a third person to bring an annulment suit in his own right, there should be men-

---

55 2 Rev. 251, old notes 158-163.
56 (Old note 158). Code, Art. 16, Sec. 33, particular provision repealed by Md. Laws, 1939, Ch. 553.
57 2 Rev. 251-252, old notes 164-165.
58 2 Rev. 252-256, old notes 166-175. New Code sections are: (Old 170), Art. 62, Sec. 16. (Old 174), Md. Code (1924), Art. 16, Secs. 28-34, have been repealed, Md. Laws, 1947, Ch. 108. (Old 175), Art. 62, Sec. 16.
59 (Old note 167), 79 Md. 298, 29 A. 597, 25 L. R. A. 800 (1894), discussed 2 Rev. 253-256.
tioned an aspect of the Ewald case\(^9\) overlooked in the previous discussion.

In that case the woman had been married twice and had obtained a divorce from her first husband and married her second husband, and the first husband had himself married a new wife and had had children by her. The second husband brought a suit to annul the marriage to the woman on the ground that the divorce from her first husband was defective and that therefore the second marriage to him was bigamous. The first husband sought to intervene and oppose the annulment to protect the validity of his own remarriage and the legitimacy of his second group of children. Whether he was lawfully entitled to intervene became moot because the Court denied the second husband the annulment for bigamy on the merits of the case, and so the first husband obtained the relief he sought incidentally, without the Court having to decide the difficult question of his standing to intervene and oppose the granting of the annulment to the second husband.

The speculation at page 255 of the former article about the use of declaratory judgment procedure as a way of at least obtaining a ruling in favor of the validity of a marriage has had some light shed upon it by the interim legislation. In the meanwhile the Legislature has adopted\(^9\) and then re-enacted\(^9\) the Uniform Declaratory Judgments Act\(^9\) and in the course of the latter added a special provision\(^9\) specifically declaring that declaratory judgments should not be used for obtaining divorces or annulments. So it is made clear that declaratory procedure is not another type of annulment procedure.

But there is still left open the possibility of using declaratory procedure, not to annul a marriage, which means a ruling against its validity, but to declare its validity or continued existence as the case may be. This may depend on whether the question be validity to begin with, or the validity of a questioned divorce that, if valid, would have terminated it. It is to be hoped that the declaratory procedure will be interpreted to allow persons to litigate in favor of marriages, either from the start or their continuance, because otherwise, there is no procedure for so obtaining a ruling short of making a test case out of some other

\(^{90}\) 167 Md. 594, 175 A. 464 (1934).
\(^{91}\) Md. Laws, 1939, Ch. 294.
\(^{92}\) Md. Laws, 1945, Ch. 724.
\(^{93}\) Code, Art. 31A.
\(^{94}\) Ibid, Sec. 6.
type of procedure where the validity of the marriage would only be collaterally in focus.

E. Territorial Jurisdiction to Annul\textsuperscript{95}

Many of the doubts expressed in the old text at pages 256, 257 and 258, about the jurisdictional basis to annul marriages have been resolved by the provisions of the new statute\textsuperscript{96} assimilating annulments to divorces for purposes of territorial jurisdiction and notice by publication. It is now clearly provided that an annulment procedure may be brought either where the plaintiff resides or the defendant resides or the marriage was performed; and that notice by publication is equally adequate as in cases of divorce. Thus, much clarification on this score has been accomplished. It is still left uncertain whether annulment jurisdiction can be asserted, lacking domicile of either or place of ceremony, upon mere personal service, although it might be argued that now, because of the explicit setting up of the three alternatives for annulment, the Legislature meant to exclude the exercise of jurisdiction otherwise on any fourth basis, as was speculated about before.

On the question of use of constructive notice by publication,\textsuperscript{97} long established for divorce and now clarified for annulments, it might be remarked that General Equity Rule 10A, promulgated in the interim, requiring an attempt to give actual notice in addition to notice by publication, and a showing of such attempt in the proceedings, was, when first promulgated prior to the statutory clarification of annulments, made applicable to both divorce and annulment proceedings. Thus it inferentially assumed that orders of publication could be used in annulment proceedings, and this has been made certain by the subsequent legislation.\textsuperscript{98}

This Rule 10A may be the final outcome of the controversy over requiring registered mail notice. This was once put in the divorce statute\textsuperscript{99} in 1941\textsuperscript{100} and then repealed in 1943,\textsuperscript{101} both prior to Rule 10A and the clarification of annulment procedure.\textsuperscript{102}

\textsuperscript{95} Code, Art. 16, Sec. 31.
\textsuperscript{96} Code, Art. 16, Sec. 31.
\textsuperscript{97} Ibid.
\textsuperscript{98} Ibid.
\textsuperscript{99} Md. Laws, 1941, Ch. 516.
\textsuperscript{100} Md. Laws, 1943, Ch. 18.
\textsuperscript{101} This sequence was really a case of history repeating itself, for that Md. Laws, 1929, Ch. 559, had apparently provided for registered mail notice, but it was understood to have been defectively enacted, and it was completely repealed by Md. Laws, 1931, Ch. 451.
The clarifying legislation also assimilated annulments to divorces for the purpose of recognizing residence on federal reservations as tantamount to complete Maryland residence. This had been thrown in doubt by an early case and had first led to legislation for divorce and then to this legislation for annulment under the same provisions as amended.

**PART TWO**

**THE CONFUSING MARYLAND DOMESTIC RELATIONS PROCEDURES**

The only general changes appertaining to the introductory part of the former (unsigned) comment on the confusing Maryland domestic relations procedures concern two things that were mentioned only in footnotes.

Furthermore, the last paragraph of the introductory part could be amended to read that there are now three (rather than four or five) procedures available for directly attacking (and perhaps one for asserting) the validity of a questionable marriage; that these procedures are assigned to two (rather than three) basic types of courts (equity and criminal); and that there are four (rather than three) types of criminal procedures for non-support situations.

**Declaring the Validity or Invalidity of Marriage**

This portion of the supplemental treatment of the former comment on procedures has already adequately been covered, both by the earlier comment published in the Review concerning the clarification of annulment, and by the portion of this comment next preceding the introduction which this part follows. It is not proposed to reiterate in detail, any more than to give a skeleton outline of the reforms accomplished in the interim.

---

104 Code, Art. 16, Sec. 32.
105 Concerning the old introduction, 4 Md. L. Rev. 275-277, old notes 1-7.
106 (Old note 1). Maryland has now adopted a statute abolishing breach of promise and alienation of affections actions, Code, Art. 75C. (Old note 7). See, infra, circa, notes 137-142.
107 4 Rev. 277-280, old notes 8-31. New Code sections are: (Old note 9), Art. 62, Sec. 16. (Old note 12). This is now provided for, see supra, note 84. (Old note 13), Code, Art. 16, Sec. 33. (Old note 20), Code, Art. 31A. (Old note 24), Art. 35, Sec. 4. (Old note 25), Art. 16, Sec. 39. (Old note 26), Art. 16, Sec. 31, now also including annulment.
108 9 Rev. 63, supra, note 75.
109 Supra, notes 74-104.
The procedures should now be broken down into the statutory-equity type, the divorce type, and the criminal type, in lieu of the former breakdown of the statutory (including criminal), divorce, and general equity types.

It is now clear that declaratory procedure, although enacted in the meanwhile, may not be used as another way of annulment, but it is still to be hoped that it may be used as a way of obtaining rulings in favor of the validity of marriage.

Use of orders of publication has been clarified, not only by Rule 10A but by the assimilation of statutory-equity annulment to the divorce procedure, which also clarifies the question of territorial jurisdiction, in that it permits the cases to be brought either at the residence of the plaintiff, the residence of the defendant, or where the ceremony was performed; and it is even more doubtful now that any other basis of jurisdiction, such as merely personal service, will suffice.

Residence on federal reservations has been clarified; and likewise the legitimacy of the children of annulled marriages has been declared by recent legislation.

**Legally Terminating Marital Relations**

In the interim there has been considerable change in the a vinculo divorce statute. The pre-marital unchastity ground was repealed in 1939. The period of desertion or abandonment was reduced from three years to eighteen months in 1941. The period of voluntary separation was reduced from five years to three years in 1947. There was added in 1949 the new ground of eighteen months imprisonment under a three year felony sentence. In a separate Code section there was provided in 1941 the ground of insanity, permanent and incurable, with at least three years confinement in a mental institution.

This last named ground has itself considerable special procedural detail in many respects different from the general procedural detail that obtains for other divorce grounds. For instance, the residence period is two years on the part of at least one of the parties, regardless. There

---

110 Rev. 281-285, old notes 32-52. New Code sections are: (Old 37), Art. 16, Sec. 33. (Old 38), Art. 16, Sec. 37. (Old 40), Art. 16, Sec. 34. (Old 41), Art. 16, Sec. 14. (Old 43), Art. 16, Sec. 14. (Old 47), Art. 16, Sec. 40. (Old 51), Art. 16, Sec. 37.

111 Code, Art. 16, Sec. 33.

112 Code, Art. 16, Sec. 35.
are special provisions for serving notice on the insane person and/or his representative, and for a guardian ad litem, and for the necessary evidence, and for the support of the insane wife, and for the custody of the children, and other detail especially adjusted to this unusual type of ground.

There have been no changes in the grounds for a mensa divorce, although certain other provisions of the section\textsuperscript{113} which do not concern a mensa divorce entirely have been changed, particularly the provision permitting custody pendente lite to be awarded.\textsuperscript{114} This provision governs all types of divorce and is merely put in the a mensa section by some historical accident.

As mentioned above for annulment,\textsuperscript{115} the new General Equity Rule 10A which requires an attempt to give actual notice to the defendant in addition to using an order of publication, followed by a showing to the court of such attempt, equally applies to divorce; and this rule takes the place of the abortive attempt to require notice by registered mail, which had been put in the divorce statute in 1941 and then repealed in 1943.\textsuperscript{116}

The residence requirement, where the grounds, other than insanity, occur outside the State was reduced from two years to one year in 1941.\textsuperscript{117}

In 1947 there was passed a provision\textsuperscript{118} permitting the divorce courts to make distribution of the personal property of the spouses (other than chattels real) which provision was necessary because the case of \textit{Hall v. Hall},\textsuperscript{119} decided that there was then no jurisdiction in the divorce courts to make such distribution, and thus the statute was passed to provide authority therefor. The statute was applied in the later case of \textit{Hahn v. Hahn}.\textsuperscript{120}

The case of \textit{Croyle v. Croyle},\textsuperscript{121} noted in the \textit{Review},\textsuperscript{122} threw some light on the difficult question of setting aside a divorce decree for fraud in its obtention, and the Review's discussion of it was particularly concerned with the jurisdictional problem.

\textsuperscript{113} Code, Art. 16, Sec. 34.
\textsuperscript{114} Added, Md. Laws, 1949, Ch. 370.
\textsuperscript{115} Supra, note 97.
\textsuperscript{116} Supra, notes 99-102.
\textsuperscript{117} Code, Art. 16, Sec. 39.
\textsuperscript{118} Code, Art. 16, Sec. 38.
\textsuperscript{119} 180 Md. 353, 24 A. 2d 415 (1942).
\textsuperscript{120} 192 Md. 561, 64 A. 2d 730 (1949).
\textsuperscript{121} 184 Md. 126, 40 A. 2d 374 (1944).
\textsuperscript{122} Note, \textit{Alternative Reasons for Setting Aside a Divorce Obtained by Fraud}, 8 Md. L. Rev. 253 (1944).
The cases of Brooks v. Brooks\textsuperscript{123} and Ritz v. Ritz\textsuperscript{124} also noted in the \textit{Review},\textsuperscript{125} were concerned with amending divorce cases; and the case of Lickle v. Boone,\textsuperscript{126} established the rule that a co-respondent in a divorce case has no standing to intervene and participate in the litigation.

\textit{Adjudicating the Custody of Children}\textsuperscript{127}

In the interim since the previous comment, considerable legislation has been passed that falls into this area. Two of the sections of the habeas corpus article\textsuperscript{128} have been repealed, apparently the two giving jurisdiction in habeas corpus to determine the custody of children as such. Seemingly the problem is now referred to the general equity procedure for adjudicating custody\textsuperscript{129} and/or to the Juvenile Courts or other provisions for delinquent children.

The general equity procedure\textsuperscript{130} and likewise that for adjudicating custody in divorce cases,\textsuperscript{131} whether a divorce is granted or denied, have both been amended so as to permit the award of custody pendente lite as well as at the conclusion of the proceedings. This was apparently motivated by a case\textsuperscript{132} which had interpreted the divorce power as being limited to awarding custody at the termination of the case, even though, since 1920, it has been possible to award custody then whether the divorce be decreed or denied. Before 1920, it could only be awarded if the divorce were decreed.\textsuperscript{133}

The apparent abolition of the use of habeas corpus as a way of adjudicating the custody of children, implicit in the repeal of the two sections mentioned above, is further

\textsuperscript{123} 184 Md. 419, 41 A. 2d 367 (1945).
\textsuperscript{124} 188 Md. 336, 52 A. 2d 729 (1947).
\textsuperscript{125} Note, \textit{The Amending of Alimony and Divorce Cases in Maryland}, 9 Md. L. Rev. 184 (1948).
\textsuperscript{126} 187 Md. 479, 51 A. 2d 162 (1947).
\textsuperscript{127} 4 Rev. 285-288, old notes 53-65. New Code sections are: (Old 52A), Art. 4, Sec. 3; Art. 27, Sec. 787. (Old 53), Art. 42, Sec. 22 (formerly 19; former 20-21 have been repealed). (Old 54), Art. 16, Sec. 75. (Old 55), Repealed. (Old 56), Art. 42, Sec. 19; Art. 5, Sec. 31. (Old 57), Art. 16, Sec. 75; former Art. 42, Sec. 21, repealed. (Old 58), Art. 16, Sec. 34. (Old 59), Art. 93, Secs. 158-218. (Old 64), Art. 16, Sec. 37. (Old 65), Art. 72A, Sec. 4; Art. 93, Sec. 162.
\textsuperscript{128} (Old 55), Md. Code (1924), Art. 42, Secs. 20, 21, repealed by Maryland Laws, 1945, Ch. 797.
\textsuperscript{129} Code, Art. 16, Sec. 75.
\textsuperscript{130} Ibid.
\textsuperscript{131} Code, Art. 16, Sec. 34.
\textsuperscript{133} Murray v. Murray, 134 Md. 653, 107 A. 550 (1919), the rule of which was changed by Md. Laws, 1920, Ch. 574, amending what is now Code, Art. 16, Sec. 34.
complicated by the fact that certain counties of the state were specifically exempted from the law.

This exemption has still further been complicated by the Court of Appeals case of Anderson v. Barkman, which so interpreted the exemption of one of those counties as precluding the use of the habeas corpus writ for adjudicating custody, because of the exemption; whereas a reading of the statute convinces this writer that it was the purpose of the exemption to preserve the previous practice in the exempt counties. It remains to be seen what will be further interpretation of this situation.

The recently enacted insanity divorce law has special provision for the court assuming normal custody jurisdiction and also for modifying a custody provision.

In connection with the custody aspects of adoption it should be mentioned that in the interim the adoption laws of the State have been completely revamped and therefore the incidental custody aspect is subject to the changed procedures now found in the new legislation. The adoption law of the state prior to the revising was discussed by the present writer in an article in the REVIEW and then, after the revision, the changes were discussed in another article

---

134 Allegany, Garrett, Prince Georges, Montgomery and Washington Counties.

135 72 A. 2d 709 (Md., 1950). The Court apparently regarded the exemption as only from the continued Art. 42, Sec. 22, formerly 19, and that the repeal of old Secs. 20, 21, was State-wide. From the language this writer concludes that the exemption from “the provisions of this Act” means the entire Chapter, so that all three of the old sections would be still in force in the exempt counties. The exemption clause appears in a basic section (4A) of the entire Act, Md. Laws, 1945, Ch. 797, and not as a sub-division of either of the other sections (4, 5) concerning habeas corpus. The Court cited, on the repeal, Cockerham v. Children’s Aid Society, 185 Md. 97, 43 A. 2d 197 (1945); and Burns v. Bines, 189 Md. 157, 55 A. 2d 487, 57 A. 2d 188 (1947).

136 Code, Art. 16, Sec. 35.

137 (Old notes 60, 63).

138 Code, Art. 16, Secs. 76-94. Sec. 77 was later amended by Md. Laws, 1949, Ch. 446, to add a fourth basis of territorial jurisdiction, i.e., for a county where there is already pending a custody case involving the child. This amendment was overlooked in including the revised adoption law in Article 16 of the 1951 Code. See, for a case involving this amended basis of jurisdiction, Anderson v. Barkman, supra, note 135, which dismissed an adoption proceeding based only on this factor for the reason that the custody proceeding itself was without jurisdictional basis in the county. Consider also that Md. Laws, 1947, Ch. 600, added Code, Art. 88A, Secs. 19-31, concerning placement for foster care and adoption, and that this was amended by Md. Laws, 1950, Ch. 63, changing various sections so as to forbid placements by individuals except for certain close relatives, and repealing Sec. 16H as enacted in 1947.

139 Strahorn, Adoption in Maryland, 7 Md. L. Rev. 275 (1943).

140 Strahorn, Changes Made by the New Adoption Law, 10 Md. L. Rev. 20 (1949).
also by the present writer, and it is not proposed herein to repeat the treatment made in the latter article, reference to which is here made for purposes of complete detail.

Suffice it to say, that the substantive and procedural adoption provisions were completely revised, and certain counties of the State were exempted from the procedural provisions, as was the original intent. Because of obscurity in the exemption provision, a curative act\textsuperscript{141} was shortly passed to make it clear that the said counties were exempt only from the procedural provisions. Therefore, the procedural provisions of the old law\textsuperscript{142} still apply therein, but the substantive provisions are state-wide.

The Juvenile Court procedures have been drastically changed in the interim.\textsuperscript{143} A new general statute for the counties outside of Baltimore City has been enacted,\textsuperscript{144} although there are always being passed and amended local statutes applicable to certain counties, and no attempt is made herein to tabulate those.

Likewise, for Baltimore City, by legislation\textsuperscript{145} adding to the local laws and charter of Baltimore City, the Juvenile Court of Baltimore City has been elevated from a mere Justice of the Peace court to a branch of one of the Circuit (Equity) courts of Baltimore City and it now functions at that level.

One interim case is of procedural interest, that of Stirn \textit{v.} Stirn,\textsuperscript{146} which permits the joinder in a single proceeding in equity of a suit for alimony on behalf of the wife and one concerning the custody of the children of the marriage.

\textit{Compelling the Support of Dependents}\textsuperscript{147}

There has been some change in the procedures for support of dependents, both in the equity and the criminal types, although there has been no change in the common law type of suit for reimbursement for necessaries advanced others.\textsuperscript{148}

\textsuperscript{141} Md. Laws, (Sp. Sess.), 1947, Ch. 19.
\textsuperscript{142} Md. Code (1939), Art. 16, Secs. 78, 82.
\textsuperscript{143} (Old note 61).
\textsuperscript{144} Code, Art. 26, Secs. 50-70.
\textsuperscript{145} Md. Laws, 1943, Ch. 818, amending and adding to Baltimore Charter and Public Local Laws (Flack, 1949), Secs. 239-257.
\textsuperscript{146} 188 Md. 59, 36 A. 2d 695 (1944).
\textsuperscript{147} 4 Rev. 289-295, old notes 66-62. New Code sections are: (Old 66A), Art. 72A, Sec. 1. (Old 68), Art. 16, Sec. 15. (Old 70), Art. 72A, Sec. 1. (Old 71), Art. 16, Sec. 34. (Old 72), Art. 16, Sec. 75.
\textsuperscript{148} Consider Gregg \textit{v.} Gregg, 87 A. 2d 581 (Md., 1952), which held that a wife may not sue her husband for reimbursement for expending her own money on her own necessaries.
With reference to the equity types, a recent constitutional amendment has abolished the distinction between true alimony on the one hand and contractual alimony and equitable orders for children on the other, with reference to the contempt power. It is now possible to punish for contempt of court for violation of any equity order of any of the sorts mentioned above, inasmuch as the constitutional prohibition against imprisonment for debt was amended to exclude from that idea alimony or equitable orders for the support of wives or children or equitable ratification of consent arrangements therefor in equity decrees.

There are special provisions in the new insanity divorce statute concerning alimony and support, and these are radically different from the ordinary understanding of alimony in divorce cases. For instance, the plaintiff husband may be required to put up a lump sum or give bond to provide for the future support of his wife from the time of divorce until the probable time of her death; and as well may be required to pay periodically, even though he obtains the divorce. The statute is a bit obscure as to whether a plaintiff wife may be awarded alimony from the insane estate of her defendant husband when she divorces him, but it is arguable that that is the intent of the statute, although it has not yet been so decided.

With reference to the difficult problem of enforcing support where the husband or father is in one state and the wife or child is in another, the Legislature has passed several statutes attempting to provide a working procedure. First, in 1950, they enacted one version of a Uniform Interstate Support Act, which did not prove satisfactory and so in 1951, there was substituted for it another version of a uniform type act, which was slightly amended at the 1952 Session, and, as so amended purports to provide a procedure for reciprocity between the courts of this state and the courts of another state when the person under duty to support is located in one and the person entitled to receive the support is located in the other.

On the criminal side there were three different statutes of this sort and there are now four. There were the three respectively for non-support of wife and child, non-support of destitute parents, and the bastardy laws, and now there

---

149 (Old note 74). Md. Const. (1867), Art. 3, Sec. 38, as amended by Md. Laws, 1950, Ch. 14, ratified at the election.
150 Code, Art. 16, Sec. 35.
151 Md. Laws, 1950, Ch. 13.
152 Code, Art. 89C, enacted by Md. Laws, 1951, Ch. 301.
has been added non-support of destitute adult child, the last resulting from the case of Borchert v. Borchert,154 which had previously decided that there was no jurisdiction as the law then stood to compel one to support his destitute adult child. Legislation155 soon followed, of the same sort that has been on the books for the other three purposes. The general approach is to make it a crime not to support, and provide for conviction for not having supported, with suspended sentence upon making contributions in the future, together with provisions for consent procedures in the offices of the State's Attorney.

The oldest one of these, for non-support of wife and child,156 has been drastically changed in the interim not only with numerous local provisions for concurrent jurisdiction in various named counties between different courts therein; but also to clarify for concurrent jurisdiction as between the county where the recipient lives and the county where the one under the duty lives, so that the prosecution may be brought in either county. A minor change also applies to payments by institutions having custody of the convicted persons. The most drastic change was that which completely clarified the applicable non-support of child law to make it clear that the wife as well as the husband is under a duty, enforceable by the criminal procedure, to support the children of the marriage.

There has been a slight change in the statute for non-support for destitute parents157 in that the former requirement that the person under duty be "adult" and "resident" of the state has been deleted, so that now any person having a destitute parent in this state is under the duty as provided by the statute.

The bastardy statute158 has been twice amended, once in 1941 to provide for blood tests in bastardy prosecutions,159 and again in 1947 to provide that the swearing out of a warrant or the filing of a case with the State's Attorney shall stay limitations in those cases.160

There has been some case law, most of it noted in the pages of the Review heretofore, on certain points of the support procedure. The case of Winkel v. Winkel,161 deficiencies.
cided that the Maryland courts have power to modify alimony decrees even as to overdue installments. As pointed out in the Review’s casenote on this, it cast considerable doubt on the mandatory enforceability of Maryland alimony decrees in other states, if the defendant removes himself and/or his property, and it is necessary to enforce the decree at the level of suing on a foreign judgment.

Two cases have involved the enforceability of alimony against a spendthrift trust, one is Robertson v. Robertson, and the other is Hitchens v. Hitchens. The former case apparently allowed the income from the spendthrift trust to be reached to satisfy a true alimony decree, but the latter case apparently qualified it by not permitting support agreements, possibly even though incorporated into divorce decrees, similarly to have access to spendthrift trusts.

Two other cases also contributed to the matter of the procedure for collecting alimony, one is the case of Keen v. Keen, and the other is the case of Langville v. Langville. The former case was concerned with making the award against the property of a non-resident, immune from personal service but who had property in the state; and in the latter case it was held that the non-resident attachment procedure could be used for the enforcement of overdue equity support payments already properly awarded in a case where there was jurisdiction over the husband-father.

Conclusion

This concludes the bringing down to date of the previous article and comment, and, appropos the sentiments mentioned in the concluding portion of the former comment about necessary reforms, be it mentioned that there has

---

162 Note, Power to Modify Overdue Installments of Alimony, 6 Md. L. Rev. 238 (1942).
163 193 Md. 1, 65 A. 2d 297 (1949), noted in Further on Whether a Spendthrift Trust May be Reached for Alimony or Support, 10 Md. L. Rev. 359 (1949). See also Note, May a Spendthrift Trust be Reached for Alimony or Support, 4 Md. L. Rev. 417 (1940), noting Bauernschmidt v. S. D. & Tr. Co., 176 Md. 351, 4 A. 2d 712 (1939).
164 193 Md. 53, 193 Md. 62, 66 A. 2d 93, 66 A. 2d 97 (1949), noted in Still Further on Whether a Spendthrift Trust may be Reached for Alimony or Support, 11 Md. L. Rev. 70 (1950).
165 191 Md. 31, 60 A. 2d 200 (1948), noted in Award of Alimony Against Non-Resident Defendant Having Property Within State, 10 Md. L. Rev. 277 (1949). See also, Note, Enforceability of Foreign Decrees for Alimony or Support, 4 Md. L. Rev. 422 (1949), noting Bauernschmidt v. S. D. & Tr. Co., supra, note 163.
166 191 Md. 103, 60 A. 2d 206 (1948), noted in Non-resident Attachment for Overdue Support Payments, 11 Md. L. Rev. 251 (1950).
167 4 Rev. 295-296.
been no drastic overall reform of the whole procedural picture, but that there has been considerable improvement in detail, particularly in the annulment field, where the most thoroughgoing revision of an entire area was accomplished. The prospect of a unified domestic relations court in Baltimore City seems still in the future, but there has been a revival of the movement to consolidate the trial courts of Baltimore City, and out of such reform, if achieved, could come the setting up of a unified division of the unified court for handling domestic relations problems in one place.

CONDITIONAL SALES CONTRACT- CONFLICT OF LAWS - EXTRATERRITORIAL EFFECT

Third National Bank in Nashville v. Handy Janey

In a recent lower court case the following set of facts confronted the court. One England had purchased an automobile from an automobile dealer in Nashville, Tennessee. The conditional sales contract was subsequently assigned to the plaintiff bank. Without the plaintiff's permission, England drove the car to Baltimore where he applied to the Commissioner of Motor Vehicles for a title certificate and as evidence of his right he presented a bill of sale. The certificate was issued showing no liens or encumbrances. England thereupon sold the car to Bankart, a bona fide purchaser for value and without notice of the prior conditional sales contract. Bankart in turn sold the car to Back, who in turn sold the car to Martin Brothers, Inc., who sold it to the defendant. The conditional sales contract being in default the plaintiff brought an action of replevin against the defendant. Tennessee, where the conditional sale was executed, has no recording provisions for conditional sales. The Court was called upon to decide whose rights were superior, those of the conditional vendor or a bona fide purchaser for value without notice who had purchased the car in a direct chain from the original vendee. The court held that the valid title of the conditional vendor in Tennessee should be recognized in Maryland as superior to the rights of a subsequent innocent purchaser. Under our Maryland statutes the conditional vendor merely requires evidence of a writing in order to retain title in the conditional vendor.

1 Superior Court of Baltimore City, Daily Record, Jan. 17, 1951.
2 Michie's Tennessee Code of 1938, Sec. 7286, merely requires evidence of a writing in order to retain title in the conditional vendor.
3 Md. Code (1951), Art. 21, Sec. 71.