Marquette Law Review

Volume 13
Issue 1 *December 1928*

Article 9

1928

# Conflicts of Laws: Divorce; Marriage in Another State Before the Expiration of One Year after Entry of Divorce

Sam Goldenberg

decisions in this connection have been noted under the uniform *conditional sales act.*

ROGER SHERMAN HOAR*

**Conflicts of Laws: Divorce: Marriage in another state before the expiration of one year after entry of divorce.**

A case of interest to Wisconsin as a whole was recently decided by the Supreme Court of Illinois, in *Mosholder* v. *Industrial Commission et al,* 160 N.E. 835.

This was a proceeding under the Workman's Compensation Act before the Industrial Commission by one Hannah Wilcox, who claims to be the widow of William Wilcox for compensation for the latter's death. The lower court awarded compensation to Hannah Wilcox, and the employer, Ralph Mosholder, brought the cause before the Supreme Court on a writ of error.

The exact question in the case was whether Hannah Wilcox at the time of the accident and death of William Wilcox was the lawful wife of deceased. The facts leading up to the question were these: Claimant married Wilcox in Wisconsin in 1890 and they were divorced in 1896. In the latter part of 1896 he married one known in the record as Mary Wilcox. On June 21, 1922, Mary Wilcox procured a divorce from Wilcox in Milwaukee, Wisconsin. On October 2, 1922, the divorce was granted, claimant remarried Wilcox in Illinois. There is no question as to her good faith in this marriage.

Sec. 247.37 of the Wisconsin Statutes declares that where a judgment of divorce from the bonds of matrimony is granted so far as it affects the status of the parties, it shall not be effective until the expiration of one year from the date of entry of such judgment. By subsection 3 of this section it is made the duty of every judge who enters a judgment of divorce to inform the parties appearing in court that the judgment so far as it affects the status of the parties will not become effective until one year from the date when such judgment is entered.

Counsel for the claimant argued vigorously on the question whether the decree of Wisconsin was binding on William Wilcox in Illinois. The Court considered the Wisconsin cases of *White* v. *White*[1] and *Hiller* v. *Johnson.*[2] In the first case our Supreme Court held that under sec. 247.37 of the statutes, the marriage is not absolutely severed until one year has expired from the entry of judgment and that under subsection 2 of sec. 245.03 if either party marries again during the year, such marriage shall be null and void even though contracted in another

* Member of the Milwaukee Bar.

[1] 167 Wis. 615; 168 N. W. 704.

[2] 162 Wis. 19; 154 N. W. 845.

state. In the second case the Court ruled that a divorced wife for all purposes of giving testimony "was still the wife of the plaintiff notwithstanding the decree of divorce had been entered a few weeks previously."

The Illinois court of last resort held that William could not again marry anywhere until this divorce became absolute. Hence, his attempted remarriage was void and Hannah Wilcox was not the lawful wife of her ex-husband. A similar statute prevails in Illinois.[3]

We quote the Illinois court as follows: "It follows, therefore, that under the laws of this state on October 2, 1922, when the marriage ceremony was last performed between Hannah and William Wilcox, the courts of this state would not recognize as valid an attempted marriage of one who was defendant in a divorce proceeding in the State of Wisconsin, where such attempted marriage took place within one year from the date of the decree of divorce.

*Stevens* v. *Stevens*[4] and *Wilson* v. *Cook*[5] are two Illinois cases cited by that court in support of its contentions. The *Stevens* case held that a marriage contracted in another state in violation of the section of the statute quoted was absolutely void. The second case[6] cites cases about which the court says: "these cases sustain the principle that where a state has enacted a statute lawfully imposing upon its citizens an incapacity to contract marriage by reason of a positive policy of the state for the protection of the morals and good order of society, against serious social evils, a marriage contracted in disregard of the prohibition of the statute, wherever celebrated, will be void." The award was set aside by the Supreme Court and the judgment reversed.

SAM GOLDENBERG

**Constitutional Law—Due process:**

A recent decision of the United States Supreme Court[1] has caused a great deal of comment and discussion not only among members of the bar, but also among a large number of thinking Americans; who fear that this decision is a step in the wrong direction, and leads to the belittling and crumbling of that bulwark of personal liberty which the courts have so zealously preserved against the mistaken efforts of those who have believed that the end justifies the means in the con-

[3] Sec. 1a of the Divorce Act, Hurd's Revised Stat. 1921, C. 40.

[4] 304 Ill. 297. 136 N.E. 785.

[5] 256 Ill. 460. 100 N.E. 222. 43 L.A.R. (N.S.) 315.

[6] *Brook* v. *Brook* 9 H.L. Cas. 193; *Lussex Peerage Case*, II Cl. & F. 85; *State* v. *Tuhy* (c.c.), 41 Fed. 753. 7 L.R.A. 50; *Pennegar* v. *State*, 87 Tenn. 244, S.W. 309, 2 L.R.A. 703, 10; *McLennan* v. *McLennan*, 31 Or. 480; 50 Pac. 802; *Stulls Estate*, 183 Pa. 625, 39 Atl. 16.

[1] *Olmstead* v. *U.S.* Sup. ct. Advance Sheets Jul. 2, 1928, p. 662.