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# The "Clean Hands" Doctrine as Applied to Marriage Annulment Proceedings

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# NOTES

## THE "CLEAN HANDS" DOCTRINE AS APPLIED TO MARRIAGE ANNULMENT PROCEEDINGS

A marriage annulment occasionally is sought by a person who alleges the invalidity of the marriage because of a prior marriage undissolved, or because of consanguinity. Often the plaintiff in such proceedings was aware of the impediment at the time of the marriage ceremony. Since the annulment of a marriage is in the nature of a proceeding in equity, the question arises: Is the equitable maxim to be applied that "he who comes into equity must come with clean hands"?

It is an elementary principle of the common law that a marriage entered into, when one of the parties has a spouse living at the time and not divorced, is absolutely void.[1] However, the reported decisions are in conflict as to whether the courts should judicially declare such marriages to be void. Some courts insist that the "clean hands" doctrine must be applied and refuse to act, leaving the parties where it finds them.[2] Others, concluding that the interest of society intervenes, and that public policy requires the status of the parties to be determined, have accordingly refused to apply the equitable doctrine.[3]

Illustrative of the first type of case is the New Jersey decision of *Tyll* v. *Keller*.[4] Here the plaintiff married the defendant who had a former husband still living and undivorced. Then he sought to have the second marriage annulled, basing his claim on the fact that his wife was already married when she went through the marriage ceremony with him. The court refused relief and held the plaintiff would have to prove by preponderance of the evidence not only the former marriage of his wife and the fact that she had never been divorced, but that he married defendant in ignorance of these facts, and that he was innocent of any intentional violation of the law.

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[1] Graham v. Bennett, 2 Cal. 503; Randlett v. Rice, 141 Mass. 385, 6 N.E. 238 (1886); Reenes v. Reenes, 51 Ill. 332 (1870); Adams v. Adams, 154 Mass. 190, 28 N.E. 260 (1891).

[2] Tyll v. Keller, 92 N.J.Eq. 426, 120 Atl. 6 (1922); White v. Kessler, 101 N.J.Eq. 369, 139 Atl. 24 (1927); Ancrum v. Ancrum, 9 N.J. Misc. 795, 156 Atl. 22 (1931); Rooney v. Rooney, 54 N.J.Eq. 231, 34 Atl. 682 (1896); Whitehouse v. Whitehouse, 129 Me. 24, 149 Atl. 572 (1930); Berry v. Berry, 114 N.Y. Supp. 497, 130 App. Div. 53 (1909); Brown v. Brown, 138 N.Y. Supp. 602, 153 App. Div. 645 (1912); Thompson v. Thompson, 10 Phila. 131 (1874); Tefft v. Tefft, 35 Ind. 44 (1871).

[3] Lynch v. Lynch, 34 R.I. 261, 83 Atl. 83 (1912); Simmons v. Simmons, 19 F. (2d) 690 (Wash. D.C.) (1927); Pain v. Pain, 37 Mo. App. 100 (1889); Hunt v. Hunt, 252 Ill. App. 490 (1929); Seacord v. Seacord, 33 W. W. Harr. (Del.) 485, 139 Atl. 80 (1927).

[4] 92 N.J.Eq. 426, 120 Atl. 6 (1922).

In a similar holding, *Whitehouse* v *Whitehouse*,[5] the Maine Court held that a husband who was guilty of illicit sexual intercourse with a woman before marriage, could not, after marriage and more than four months cohabitation with her, in equity and good conscience put her from him by annulment, even if she induced the marriage through fraud.

As an example of cases holding the opposite view and refusing to apply the "clean hands" doctrine, we have *Simmons* v *Simmons*.[6] Here the plaintiff and defendant were living together as husband and wife although it was known at the time that the plaintiff was a married woman. The plaintiff brought suit for a divorce, and the defendant husband in his answer asked for an annulment on the theory that his marriage to the plaintiff was void because of her prior marriage. The annulment was granted, the court reasoning that in a proceeding to annul a marriage the equitable principle of "clean hands" is inapplicable. In such cases the interest of society intervenes, and the state is regarded as a third party to the action. Likewise, in *Lynch* v. *Lynch*,[7] the court granted an annulment to the plaintiff who was already married when she went through a marriage ceremony with defendant. This case held the second marriage was a nullity and the fact that the parties were in *pari delicto* made no difference, since their legal status is "something in which the state as well as the parties is interested."

The New York Court has evidently made a distinction and will grant relief only at the suit of the party not under the disability. Thus, in *Berry* v. *Berry*,[8] the plaintiff, receiving information by letter that his wife was dead and without making further inquiry, married the defendant, stating to her at the time that he was single rather than widowed, and that this was his first marriage. The parties continued to cohabit even after ascertaining that the first wife was still alive. The court held the plaintiff could not maintain the action for annulment of the second marriage. This was held to be true even though by statute it was provided that an action for annulment could be maintained where the former husband or wife of one of the parties to the marriage was living, and the former marriage was in force at the time of the second marriage. It was stated that while the jurisdiction of the court acting as a court of chancery in matrimonial matters is conferred and regulated by statute, yet, in the exercise of that jurisdiction, unless controlled by positive enactments, it proceeds as a court of equity, and the maxim, "the plaintiff must come into equity with clean

[5] 129 Me. 24, 149 Atl. 572 (1930).
[6] 19 F. (2d), (Wash. D.C.) (1927).
[7] 34 R.I. 261, 83 Atl. 83 (1912).
[8] 114 N.Y. Supp. 497, 130 App. Div. 53 (1909).

hands," applies to prevent maintenance of the action. It was further held that the statute providing that the action under such circumstances could be maintained by either of the parties during the lifetime of the other, or by the former husband or wife, "did not operate in favor of a guilty husband, who has knowingly and wickedly contracted a bigamous marriage and subsequently grown tired of the new wife." The court under the general principles of equity will give him no aid.

The same court, one year later, in the case of *Stokes* v. *Stokes*,[9] granted an annulment to the plaintiff who after learning that his wife's first husband was alive continued to cohabit with her. The court stated: "While it may well be that there are extreme cases where the position of the party seeking relief of the kind here sought is so inequitable that a court of equity will refuse to interfere, no such defense was sufficiently proved in the case before us."

From the above cases it is apparent that the New York Courts have made a distinction between the case of the one under disability seeking relief, and that of the one not under disability seeking relief, granting relief only to the latter. This distinction is further pointed out in *Brown* v. *Brown*,[10] where a woman commenced an action to annul her marriage upon the ground that her husband had a wife living and undivorced at the time it was contracted. It was held the relief asked for would be granted even though she knew of the former marriage, and that the wife of that marriage was still alive. The court commented on *Stokes* v. *Stokes*[11] and *Berry* v. *Berry*[12] stating: "While the equitable principle made the basis of our decision in *Berry* v. *Berry* seems to be recognized in the opinion of Judge Vann in the *Stokes* case, yet, he declined to apply it to the facts then before the court. In view of that decision of the court of last resort, we feel bound to limit the *Berry* case to the facts there before the court, to wit, where a guilty party asks the aid of the court to relieve himself of the consequences of his own wrongdoing." "Guilty," according to the New York cases, thus means "guilty of bigamy."

The question as to whether the "clean hands" maxim should be applied arises also in proceedings wherein annulment of a marriage is sought because of consanguinity. In the case of *Weisberg* v. *Weisberg*,[13] the plaintiff's complaint alleged she and the defendant were married and voluntarily lived together as husband and wife for fourteen years. She asked the court to annul the marriage on the ground that it was incestuous and void owing to the fact that the parties stood in relation-

[9] 198 N.Y. 301, 91 N.E. 793 (1910).
[10] 139 N.Y. Supp. 602 (1912).
[11] *Supra* note 9.
[12] *Supra* note 8.
[13] 98 N.Y. Supp. 260, 112 App. Div. 231 (1906).

ship to each other of uncle and niece. The decree was refused, the court deciding that the plaintiff contracted the marriage voluntarily and with full knowledge of her relationship to the defendant, and could not have the same annulled after cohabiting with defendant as his wife for over fourteen years. In further discussing the problem the court stated that in the absence of statute it would not be warranted in going further in declaring marriages void than those in the direct line of consanguinity and between brothers and sisters in the collateral line. Marriages between uncles and nieces, although prohibited by statute, were not so prohibited until after this marriage took place.

In an Illinois Case, *Arado* v. *Arado,*[14] the wife sued the husband for a divorce and the husband filed a cross bill alleging the illegality of the marriage by reason of the parties being first cousins. The question in the case was whether or not a statute declaring marriages of first cousins to be void should be interpreted as declaring that such a marriage is void in the sense of a nullity, or as being voidable and possessing validity until disaffirmed by the act of one or both parties to the marriage, so that the right to disaffirm might be lost by conduct creating an equitable estoppel. It was finally decided that the general rule that equity will not entertain the complaint of one who comes into equity with unclean hands does not apply to this type of case, and there could be no estoppel against the right of the defendant to allege the illegality of the marriage.

The fact that the parties to the marriage cannot continue their relationship without engaging in open immorality, and without repeatedly committing a criminal act, is a strong reason for unhesitatingly declaring it void. This idea is well expressed in *Martin* v. *Martin,*[15] where it appeared that the parties, being prohibited from marrying in West Virginia because of relationship by blood, were married in Pennsylvania. After living together for eighteen years, the husband brought suit to annul the marriage. The lower court dismissed the bill upon the ground that equity should not entertain a litigant who through his own iniquity would bring further disgrace upon his child, his wife, and himself. An appeal was taken and the upper court in reversing the decree said: "If the parties could continue the marriage relationship without violating the criminal laws of the state, then the court might be justified in refusing to entertain the plaintiff's bill. But, when the law forbids the continuance of their marriage relation, notwithstanding its inception may have been a misdemeanor, it is the duty of both parties to make restitution by having the marriage annulled promptly. Their hands may be unclean, but it is the duty of the court of equity to permit them to

[14] 281 Ill. 123, 117 N.E. 816 (1917).
[15] 53 W.Va. 301, 46 S.E. 120 (1903).

clean them, when it can do so, and not permit such uncleanness to continue as a stench in the nostrils of the people."

In conclusion, it is suggested that the marriages should be declared void by the court at the suit of either party. The marriage is no more or less a nullity, and the weight of the claims of society is not diminished, simply because the disqualified party seeks the relief. In many cases, the lapse of time will render it difficult, if not impossible, to ascertain the true status of the illegal marriage by reason of loss of evidence. It seems that the subversion of public policy to the equitable maxim must inevitably be attended by social detriment, with very little, if any, social benefit.

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