Marquette Law Review

Volume 16
Issue 2 *February 1932*

Article 7

Divorce and Marriages - When May a Divorcee Remarry?

Nathan W. Heller

NOTES AND COMMENT

DIVORCE AND MARRIAGES—"When May a Divorcee Remarry?"* The passage (May 18th) of Chapter 117 of the Session Laws of 1931 amending Section 247.37 of the Wisconsin Statutes, relating to judgments or decrees of divorce, created a irreconcilable conflict between that section and Section 245.03 relating to persons who may not marry.

Sec. 247.37 before it was amended provided that the decree granting a divorce did not become effective until one year after the *entry* of judgment. People granted a divorce were often misled to believe that they could re-marry one year after the *granting* of the decree, where in reality if their attorney had failed to duly enter judgment until some time after the *granting* of the decree the year had not fully elapsed. There are numerous reasons why many Attorneys fail or "neglect" to have judgments entered, which will not be discussed—but suffice to say, that there was an unfortunate situation created for many divorcees because of the general misunderstanding or misinterpretation of the Statutes. Accordingly, it must be concluded that it was the purpose of the Legislature to remedy this situation which they sought to do by ammending Sec. 247.37 to read (1) "When a judgment or decree 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 the * * * *granting* of such judgment or decree."

(4) * * * "At the expiration of such year such judgment or decree shall become final and conclusive without further proceedings." It is clearly ascertainable that the Legislative purpose in ammending said Section 247.37 was to make it possible for divorced persons to remarry after one year from the *granting* of the judgment or decree. But the Legislature failed in its purpose by an oversight in not ammending at the same time, Section 245.03 which provides, "Sec. 2—It shall not be lawful for any person who is a party to an action for divorce from the bonds of matrimony, in any court in this State to marry again—until one year after judgment of divorce is *entered,* and the marriage of any such persons solemnized before the expiration of one year from the date of the *entry* of judgment of divorce shall be null and void."

Laws pari materia must be construed with reference to each other (Bouvier's Law Dic.). What, then, is the situation with reference to

---

*The discrepancy discussed in this article was discovered by Professor Lang of the faculty of Marquette Law School.

the status of people now being granted a divorce, or having been granted a divorce since May 18, 1931? Relative to the construction and operation of Statutes, one of the earliest Wisconsin Cases held: "Where two acts are apparently conflicting, they should if possible be so construed as to give operation to both without doing violence to either." (*Att. Gen. ex rel. Taylor* v. *Brown,* 1 Wis. 442. And in *State ex rel. Plowman* v. *Lear* (176 Wis. 406) the court said, "Statutes in pari materia must be construed together and recourse must also be had to the object of the Legislature and the rights obviously sought to be safeguarded." But in the present instance if the courts construe and give operation to both Sec. 247.37 and Sec. 245.03, which they must do, the very purpose of the Legislature in ammending Sec. 247.37 is defeated. Tracing the history of both Sec. 247.37 and 245.03, we find that both of these sections had their inception in the Wisconsin Statutes of 1849 (245.03 see Stat. 1849,C.78,S.3; 247.37 see Stat. 1849,C.79,S.35). It was not until 1901 that Sec. 245.03 was ammended to the form that closely resembles the section as it is today.

Historically speaking, Chapter 239 of the Laws of 1911 provide us with the clearest proof that the legislature originally intended that both Sec. 245.03 and Sec. 247.37 were to be interpreted in the light of, and in relation to each other. Said Chapter 239 provides for the ammendment of Sub. 2 of Sec. 245.03 and further provides for, what was then, a new section, numbered 247.37 (Note: Chapter 4 of the Laws of 1925 provided in part that Sec. 2330 and 2374 be renumbered Sec. 245.03 and Sec. 247.37 respectively). The ammendment referred to, ammends Sec. 245.03 to its present form (see above) and the new section established provided "When a judgment from the bonds of matrimony is granted in this State by a court, such judgment, so far as it determines the status of the parties shall not be effective, * * * until the expiration of one year from the date of *entry* of such judgment." Sec. 247.37 therefore, was the direct outgrowth of Sec. 245.03 and as such must be viewed with the Legislature's original intent as laws pari materia. Both of these sections are so closely inter-related in their effect that to ammend one practically necessitates the same ammendment in the other.

My conclusion is that Sec. 247.37 as it stands today in its ammended form, restores the status of a divorced person, one year after the granting of the decree, to that of an unmarried person in every respect, except that such divorced person *cannot* re-marry one year after the *granting* of the decree but must wait until one year after the *entry* of judgment.

We must therefore conclude that the evil misapprehension re-

ferred to in the second paragraph of this article has not been remedied and still exists. Perhaps the confusion has been increased by the very act that was meant to remove it.

NATHAN W. HELLER.

WILLS—UNDUE INFLUENCE. Undue influence in the law of Wills is a subject of vital importance, in that the validity or non-validity of the instrument purporting to be a will is dependent on the existence or non-existence of the various elements essential to constitute such undue influence.

The supreme court of Wisconsin In re Jackman's Will, 26 Wis. 104, held that undue influence sufficient to invalidate a will, must be of such a nature as to in some degree destroy the free agency of the testator and constrain him to do something against his will, so as to virtually render the testamentary act the will of another rather than that of the testator. That is, to constitute undue influence in the eyes of the law sufficient to set aside a will there must not only be an opportunity to influence, a disposition to influence and the coveted result, but the obtaining of the result must be by coercion of the testator.[1] In stressing the fact that coercion was a necessary element to establish undue influence many cases have held that such influence must be so exercised as to amount to moral coercion; resulting in destroying the testator's free will and independent action.[2]

In re Slinger's Will, 72 Wis. 22, 37 N.W. 236, the evidence showed that the testator, a man about 70 years of age, who had been a habitual drunkard for 50 years and had become a victim of an uncontrolable appetite for drinking, suddenly inherited considerable property from a daughter whom he had not seen since she was a child; that he was placed under guardianship as a spendthrift; that he went, against the will of his guardian, to live with his younger brother, who was a saloon keeper and had offered him a home as long as he lived, with full and free opportunity to drink when and what he pleased while there; and that after drinking to some extent, he made a will giving all property to such brother. The court held that there was sufficient evidence to sustain a finding that such will was the result of undue influence and refused probate of the instrument as the will of the testator, laying down the well-settled rule, that where the party to be benefited by the

---

[1] In re Bocker's Will, 167 Wis. 100, 166. N.W. 660.

[2] Anderson v. Laugen, 122 Wis. 57, 99 N.W. 437. In re Evenson's Will, 152 Wis. 113, 139 N.W. 766.