Indiana Law Journal

Volume 14 | Issue 6 Article 4

8-1939

Common Law Marriage-Divorce-Support Pendente Lite

RECENT CASE NOTES

COMMON-LAW MARRIAGE—DIVORCE—SUPPORT PENDENTE LITE.—Plaintiff, claiming to be the common-law wife of defendant, sued for divorce and asked for temporary alimony. The parties had lived together since 1929 and were known as husband and wife. Defendant denied the marriage and contended that support pendente lite could be allowed only when a marriage had been solemnized pursuant to the statutes of the state. Held, judgment that defendant pay plaintiff $10 per week pendente lite affirmed. *Argiroff v. Argiroff* (Ind. 1939), 19 N. E. (2d) 560.

Legislative bodies have from early times enacted measures to restrict common-law marriages. In 1563 the Council of Trent decreed that marriage by simple contract without more should be invalid in Civil law countries.[1] In 1753 Lord Hardwick's act declared void all marriages in England which did not observe all the specified formalities.[2] All the states likewise have statutes prescribing formalities for marriage and divorce.[3]

While the legislatures have been enacting statutes to restrict common-law marriages, the courts, aided by rules of presumption in favor of the validity of marriage, have consistently sustained their validity unless the statute contains express words of nullity.[4] This attitude of the courts in England has resulted in giving limited effect only to common-law marriages.[5] However, "a marriage in America is full and complete in every respect or it does not exist at all".[6]

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[1] "The 'Decretum de Reformatio Matrimonii' was passed November 11, 1563. Of course, this applied only to Roman Catholic countries, and, therefore, was inapplicable in England". Jacobs, Cases and Materials on Domestic Relations (1939), p. 99, n. (2). Cf. Hallett v. Collins (1852), 51 U. S. 174, 13 L. ed. 376.

[2] 26 Geo. II, c. 33 (1753). England recognized common-law marriages contracted in Scotland. As a result the famous "Gretna Green" marriages began. Lord Hardwick's act was avoided by English couples crossing the border and entering into common-law marriages at "Gretna Green" Scotland. This act did not apply to the American colonies. Cheney v. Arnold (1857), 15 N. Y. 345, 69 Am. Dec. 609.

[3] For the statutes affecting common-law marriage in the various jurisdictions see: I Vernier, American Family Laws (1931), p. 108. For the Indiana statutes see: Burns Ind. Stat. (1933), § 44-101 ff. (marriage) and § 3-1201 ff. (divorce).

[4] Meister v. Moore (1877), 96 U. S. 76, 24 L. ed. 826; Mathewson v. Phoenix Iron Foundry (1884), 20 Fed. 281. But see: Milford v. Worcester (1810), 7 Mass. 48.

[5] Lavery v. Hutchinson (1911), 249 Ill. 86, 94 N. E. 6, states that a wife in a common-law marriage was not entitled to dower. Denison v. Denison (1872), 35 Md. 361, states that such contracts could be carried into effect and execution by the Ecclesiastical courts. In Dalrymple v. Dalrymple (Consistancy Court of London, 1811), 161 Eng. Rep. 665, the court said, "All marriages not celebrated according to the prescribed form, are mere nullities; there is and can be no such thing in this country as an irregular marriage". See: Regina v. Millis (1843), 9 H. of L. Cas. 319, 8 Eng. Rep. 844; Beamish v. Beamish (1861), 9 H. of L. Cas. 274, 11 Eng. Rep. 735.

[6] Black, "Common Law Marriage" (1928), 2 U. Cinn. L. Rev. 113. In Vincennes Bridge Co. v. Vardaman (1930), 91 Ind. App. 363, 364, 171 N. E. 241, the court said, "Such contracting parties are husband and wife as fully and to the same effect and extent as if there had been a statutory and ceremonial marriage". Accord: Lavery v. Hutchinson (1911), 249 Ill. 86, 94 N. E. 6.

The Indiana decisions holding that the statutes regulating marriage are not exclusive are in accord with the tendency indicated.[7] Thus property right[8] and rights under workmen's compensation statutes[9] have been enforced on the basis of a common-law marriage. The principal case is apparently the first in Indiana and one of the few in the United States to raise the issue of the validity of common-law marriage when one of the parties brings an action for divorce.[10] The language used indicates a leniency in determining there was a marriage when one of the most important incidents of marriage, alimony pendente lite, is involved.[11] If common-law marriages are to be abolished a statute with express words of nullity will be necessary.[12] E. O. C.

DEFAMATION—LIBEL OF EMPLOYEE—PRIVILEGE.—Plaintiff was discharged from his position as defendant's ticket agent because of unsatisfactory service. Defendant filed claims with plaintiff's surety for alleged shortages in plaintiff's account. Plaintiff was not advised of alleged shortages until after he had left defendant's employ. Evidence was introduced tending to show that plaintiff's efforts to adjust the claims met with indifference on the part of defendant's officers and that a thorough investigation was not made prior to filing claim with the surety company. Plaintiff suffered loss of subsequent employment because the surety company refused to re-bond him. Action for

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7 "This general doctrine extends so far as to sustain the validity of marriage made without complying with forms prescribed by statute, for it is held that such marriages will be sustained unless the statute expressly declares them void". Teter v. Teter (1885), 101 Ind. 129, 135.

8 Langdon v. Langdon (1932), 204 Ind. 321, 183 N. E. 400; Compton v. Benhan (1909), 44 Ind. App. 51, 85 N. E. 365; Roche v. Washington (1862), 19 Ind. 53, 81 Am. Dec. 376; Lawrance v. Lawrance (1932), 95 Ind. App. 345, 182 N. E. 273.

9 Dunlap v. Dunlap (1935), 101 Ind. App. 43, 198 N. E. 95; Meehan v. Edward Valve and Manufacturing Co. (1917), 65 Ind. App. 342, 117 N. E. 265; Vincennes Bridge Co. v. Vardaman (1930), 91 Ind. App. 363, 171 N. E. 241.

10 Becker v. Becker (1913), 153 Wis. 226, 140 N. W. 1082 (divorce and alimony); Brinkley v. Brinkley (1872), 50 N. Y. 184, 10 Am. Rep. 460 (alimony pendente lite); Cooper v. Cooper (N. J. Juvenile and Domestic Relations Ct., Essex Co., 1933), 168 A. 153 (support); Puntka v. Puntka (1935), 174 Okla. 517, 50 P. (2d) 1092 (Divorce); Strum v. Strum (1932), 111 N. J. Eq. 579, 163 A. 5 (separate maintenance); State v. Superior Court (1909), 55 Wash. 347, 104 P. 771 (separate maintenance); White v. White (1890), 82 Cal. 427, 23 P. 276 (divorce). Cf. Jones v. Jones (1935), 119 Fla. 824, 161 So. 836.

11 The court quoted extensively language from Brinkley v. Brinkley (1872), 50 N. Y. 184, 10 Am. Rep. 460, which in substance said that in applications for temporary alimony the fact of marriage need not be so conclusively established as for purpose of permanent alimony.

12 "The American Bar Association, the Commission on Uniform State Laws, and practically all authorities in the field of social reform favor the abolition of common-law marriage". I Vernier, American Family Laws (1931), p. 108. One writer states that "common-law marriages are on their way out without question". Van Winkle, "Common-law Marriage" (1936), 59 N. J. Law Jl. 145, 153. Kentucky abolished common-law marriage in 1852. New York amended its statute in 1933 so as to contain express words of nullity. The District of Columbia and 23 states still recognize common-law marriages. I Vernier, American Family Laws (1931), p. 108.