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Divorce-Effect of Decree Prohibiting Remarriage

Divorce—Effect of Decree Prohibiting Remarriage. Plaintiff brought suit in equity in the District of Columbia alleging that she was the widow of Daniel Loughran, Jr., deceased, whose estate was beneficiary of the trust in question. Plaintiff originally had been married to Henry Daye in the District of Columbia but had there been divorced by him in 1924 on the grounds of adultery, and under the Code of the District was prohibited from remarrying. Plaintiff, however, married Loughran in Florida in 1926, after both parties had lived there for over two years, but later, in 1929, obtained a divorce from him a mensa et thoro in Virginia. She sought to enforce in the District of Columbia, as Loughran's widow, certain rights in the nature of dower and to recover unpaid alimony. Held, that a statute of the domicile forbidding remarriage of a spouse has only territorial effect and does not invalidate a marriage solemnized in another State in conformity with the laws thereof,

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29 This presumption extends to both reasonableness of purpose and the reasonable character of the relation between the statute or ordinance and the policy to be subserved. See Terrace v. Thompson (1923), 263 U. S. 197, 44 S. Ct. 15; Mack v. Westbrook (1919), 148 Ga. 690, 98 S. E. 339; Bowman v. Virginia State Entomologist (1920), 128 Va. 351, 105 S. E. 141; Ex Parte Farb (1918), 178 Cal. 592, 174 P. 320; Union Fishermen's Co-Operative Packing Co. v. Shoemaker (1921), 98 Or. 659, 194 P. 854; Lawton v. Steele (1894), 152 U. S. 133, 14 S. Ct. 499.

30 Literary Digest, Dec. 15, 1934, at 7.

31 Ibid.

32 Chicago Tribune (editorial), Weds., Jan. 2, 1935.

thereby affording no obstacle to plaintiff's assertion in the courts of the District of rights to dower arising from her subsequent marriage.[1]

As a general rule, marriages not polygamous or incestuous, or otherwise declared void by statute, will, if valid by the law of the state where entered into, be recognized as valid in every other jurisdiction.[2] Statutes, however, sometimes impose restrictions upon marriage in some cases. Such a statute prohibiting or restricting marriage of divorced persons is very common and takes a variety of forms. The statute may forbid the marriage of both parties within a stated time from rendition of the decree, may impose a prohibition upon the guilty party only, or may leave it to the court to impose or remove such restrictions.[3] A restriction of some sort exists in about three-fourths of the American states and territories; but few, if any, states now prohibit remarriage of divorced spouses between themselves.[4]

As in the instant case, the question often arises whether such a restriction in the state where the divorce was rendered has any extraterritorial effect upon marriage subsequently entered into by the prohibited party in another state, so as to prevent recognition of the marriage by the state imposing the restriction. The general weight of authority, in accord with the principal case, probably is that such a subsequent remarriage, if valid in the state where entered into, is valid everywhere, even in the state where the divorce was granted.[5] This rule, however, is applicable where the statute imposing the restriction prohibits only marriages within the state. It is the law of the domicile at the time of the remarriage of the prohibited party, however, which determines the validity of the remarriage;[7] and cases which have declared the foreign marriage invalid, seemingly contra to the above rule, actually all involved the recognition of the foreign marriage at the domicile of the restricted party.[8] If the statute prohibits remarriage after divorce either within or without the state, and a person remaining domiciled in that state remarries elsewhere, such marriage is invalid everywhere.[9] But when a person so forbidden to remarry by such a statute changes his domicile, the statute will no longer be applicable to his remarriage, and the marriage is valid everywhere.[10]

Statutes prohibiting remarriage have been criticized as against sound public policy, as generally ineffectual, and as conducive to litigation and uncertainty.[11] It would seem that these objections are well taken. The present

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1 Loughran v. Loughran (1934), 292 U. S. 216.

2 Meister v. Moore (1877), 96 U. S. 76; Travers v. Reinhardt (1907), 205 U. S. 423; Restatement of Conflict of Laws (1934), secs. 121, 132; Goodrich, Conflict of Laws (1927, 1st ed.), sec. 113, p. 252.

3 Goodrich, Conflict of Laws (1927, 1st ed.), sec. 114, p. 259.

4 Weidlich, Rationale of Restraint Upon Remarriage After Divorce (1933), 19 Am. Bar Assoc. J. 529.

5 In re Wood's Estate (1902), 137 Cal. 129, 69 Pac. 900; Dudley v. Dudley (1911), 151 Iowa 142, 130 N. W. 785; Commonwealth v. Lane (1873), 113 Mass. 458; Van Voorhis v. Brintnall (1881), 86 N. Y. 18, 40 Am. Rep. 505; Restatement of Conflict of Laws (1934), sec. 131; Goodrich, Conflict of Laws (1927, 1st ed.), sec. 114, p. 260.

6 Restatement of Conflict of Laws (1934), sec. 131.

7 Restatement of Conflict of Laws (1934), sec. 131b; Goodrich, Conflict of Laws (1927, 1st ed.), sec. 114, p. 262.

8 Wilson v. Cook (1912), 256 Ill. 460, 100 N. E. 222; Succession of Gabisso (1907), 119 La. 704, 44 So. 438; In re Stull's Estate (1898), 183 Pa. 625, 39 Atl. 16; Pennegar v. State (1889), 87 Tenn. 244, 10 S. W. 305; Knoll v. Knoll (1918), 104 Wash. 110, 176 Pac 22; Lanham v. Lanham (1908), 136 Wis. 306, 117 N. W. 787; Goodrich, Conflict of Laws (1927, 1st ed.), sec. 114, p. 260.

9 Restatement of Conflict of Laws (1934), sec. 131.

10 Restatement of Conflict of Laws (1934), sec. 131.

11 Weidlich, Rationale of Restraint Upon Remarriage After Divorce (1933), 19 Am. Bar Assoc. J. 529.

Indiana statute is unique, inasmuch as it prohibits for two years after decree the remarriage of the successful plaintiff where divorce has been obtained through notice by publication.[12] The purpose of this statute is to allow a decree obtained by such substituted service to be reopened by the absent defendant, and represents good sense, in spite of comments[13] to the contrary.

R. S. O.

Negligence—As a Matter of Law or a Question of Fact—Contributory Negligence of Customers. Appellant sued appellee to recover damages for injuries alleged to have been sustained as a result of falling over weighing scales negligently placed in the aisle near the entrance of appellee's store. Appellant alleged that on December 23, 1930 she was trading in said store; that appellee had placed the said scales near the entrance of said store in such a manner that a portion of the platform thereof extended into the aisle "where customers walked and passed, thereby obstructing the passageway"; that as she started to leave the store she could not and did not see the scales because of the crowded condition of the aisles, and as she was walking along the aisle she caught her foot under the said platform and fell, thereby sustaining the injuries for which she seeks to recover damages. Appellee's demurrer was overruled and verdict was rendered for appellant for $2000. Upon appellee's request, the court submitted sixteen interrogatories to the jury, and upon appellee's motion rendered judgment for appellee upon the answers notwithstanding the verdict. The interrogatories brought forth the following facts:

1. Appellant on entering the store walked past the scales.

2. Appellant on entering the store could have seen the scales had she looked along the aisle where she was walking.

3. Appellant as she was leaving the store could have seen the scales just prior to her injury had she looked along the aisle where she was walking.

4. Appellant was not carrying her baby in such a position as to prevent her from seeing the aisle where she was walking.

5. Appellant, prior to December 23, 1930, had frequently been along the aisle in question.

6. There was no one between appellant and the scales as she was walking along the aisle prior to the accident.

7. There was no evidence that appellant looked along the aisle where she was walking prior to the accident.

Appellant appealed, assigning the rendition of judgment on the answers to the interrogatories as error. Held, the failure to observe the condition of an aisle in a store does not constitute contributory negligence as a matter of law on the part of a customer who falls over an obstruction negligently placed in said aisle.[1]

Two important phases of the law of negligence form the basis of the above decision; namely, negligence as a matter of law, as distinguished from negligence as a question for the jury, and contributory negligence on the part of customers in stores. The fundamental factor in each is, of course, negligence. The former involves only the problem of determining whether

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12 Baldwin's Ind. Stat. (1934), sec. 903.

13 Weidlich, Rationale of Restraint Upon Remarriage After Divorce (1933), 19 Am. Bar Assoc. J. 529.

1 Thompson v. F. W. Woolworth Co. (1934), 192 N. E. 893 (Ind.).