

California Law Review

Volume XVIII

JANUARY, 1930

Number 2

Jurisdiction to Pronounce Null a Marriage Celebrated in Another State or Foreign Country

THE Supreme Court of California in *Mayer v. Mayer*¹ has given utterance to a *dictum* that deserves more than passing mention. It is as follows: "Since the validity of marriage is generally determined by the law of the state where the marriage took place, there are cogent reasons why annulment should be sought in the tribunals of that state." It is the latter part of the statement that we believe merits attention. If the learned Justice in the *Mayer* case means that a court of the state or country where the marriage was celebrated may set it aside, provided both parties are properly before that court, one may not be tempted to quarrel with his statement, but if he means to give support to the opinion that it should have exclusive jurisdiction to annul such marriages irrespective of the residence or domicile of the parties to the suit, he lends some approval to a highly questionable proposition. Unfortunately that proposition has been championed by a few American writers of great learning and ability, and has been tentatively adopted by the American Law Institute in its *Restatement of Conflict of Laws*.² It is, we believe, a doctrine that, notwithstanding its distinguished defenders, is without substantial support in adjudicated cases; that rests on no solid reason in theory or convenience; and that is calculated, if it should be given credence, to effect much practical injustice. Though the doctrine has been ably discussed in a recent number of this *Review*,³ it is of sufficient importance, in view of the eminence and ability of its sponsors, to warrant again some discussion of the law respecting the proper jurisdiction for annulment proceedings.

So far as concerns the law in California, we might leave the subject with the citation of the case of *McCormack v. McCormack*.⁴ That case decides but one point, the precise proposition involved in the *dictum* in the *Mayer* case, and squarely holds that a Washington court had juris-

¹ (July 31, 1929) 78 Cal. Dec. 191, 279 Pac. 783.

² CONFLICT OF LAWS RESTATEMENT (Am. L. Inst. 1926) No. 2, §§ 121, 122.

³ Note (1927) 16 CALIF. L. REV. 38.

⁴ (1917) 175 Cal. 292, 165 Pac. 930.

diction to annul a marriage celebrated in British Columbia upon the ground that it was in violation of the law of that province.

The view that the courts of the state where the parties are domiciled have jurisdiction to annul a marriage entered into in another state or country has found almost universal support in the judgments of the courts before which the question has been presented.⁵ "The fact that the parties were married in the state of Michigan," says the Indiana Appellate Court,⁶ "can be no defense to a suit brought in Indiana to have the marriage annulled for appellant's fraud." And the Mississippi court says, in a suit to annul a marriage celebrated in Mississippi, the parties to which lived in Alabama: "Both of these parties being domiciled in Alabama, that court, and not this one, has jurisdiction in this cause."⁷ The English courts, too, have spoken, with more elaborate discussion of the question, to the same effect. In the case of *Salvesen v. Administrator of Austrian Property*,⁸ which has been discussed in the able note in this *Review* to which reference has already been made, the House of Lords sustained the jurisdiction of a court in Germany, where both parties were domiciled, to declare void a marriage celebrated in France, and sustained the action of a Scottish court in giving it full recognition. Lord Haldane thought that the jurisdiction of the parties' domicile "ought on principle to be regarded as exclusive."⁹

⁵ 2 BISHOP, MARRIAGE, DIVORCE AND SEPARATION (1891) § 73; 2 SCHOULER, MARRIAGE, DIVORCE AND SEPARATION (6th ed. 1921) § 1154; WHARTON, CONFLICT OF LAWS (3d ed. 1905) § 213, and authorities cited in Note (1927) 16 CALIF. L. REV. 41, n. 13. See also the following cases, many of them of recent date: Gwin v. Gwin (June 13, 1929) 219 Ala. 552, 122 So. 648; McCormack v. McCormack (1917) 175 Cal. 292, 165 Pac. 930; Roth v. Roth (1882) 104 Ill. 35; Christlieb v. Christlieb (1919) 71 Ind. App. 682, 125 N. E. 486; Wilson v. Wilson (1905) 95 Minn. 464, 104 N. W. 300; Antoine v. Antoine (1923) 132 Miss. 442, 96 So. 305; Pennello v. Pennello (1925) 97 N. J. Eq. 421, 128 Atl. 596; Cunningham v. Cunningham (1912) 206 N. Y. 341, 99 N. E. 845; Ball v. Cross (1921) 231 N. Y. 329, 132 N. E. 106; Baumann v. Baumann (March 19, 1929) 250 N. Y. 382, 165 N. E. 819; Mitchell v. Mitchell (1909) 63 Misc. 580, 117 N. Y. Supp. 671; Ross v. Bryant (1923) 90 Okla. 300, 217 Pac. 364; Montague v. Montague (1910) 25 S. D. 471, 127 N. W. 639; Schneider v. Rabb (1906) 100 Tex. 211, 97 S. W. 463; Barney v. Cunyes (1895) 68 Vt. 51, 33 Atl. 897; Johnson v. Johnson (1910) 57 Wash. 89, 106 Pac. 500; Kitzman v. Kitzman (1918) 167 Wis. 308, 166 N. W. 789.

⁶ Christlieb v. Christlieb (1919) 71 Ind. App. 682, 688, 125 N. E. 486, 488.

⁷ Antoine v. Antoine (1923) 132 Miss. 442, 446, 96 So. 305, 306.

⁸ [1927] A. C. 641.

⁹ *Ibid.* at 654. In the recent case of *Berthiaume v. Dastous* (July 16, 1929) 45 T. L. R. 607; [1929] W. N. 196; 93 JUST. PEACE 467; 68 L. J. (Magazine) 104; 168 L. T. (Jour.) 70, a marriage between persons domiciled in Quebec, celebrated in France, was annulled because of absence of a civil ceremony required by French law. The Court of Kings Bench in Quebec and the Superior Court held the marriage valid, because, in compliance with the law of Quebec, it was celebrated by a Roman Catholic priest. (1928) 45 Quebec Official Law Reports 391, affirming 66 Quebec Super. Ct. 241. In all the courts, the power of the court of the domicile

Judicial support in the decisions of courts in the United States for the proposition tentatively adopted by the American Law Institute, that the courts of the place of celebration should have exclusive jurisdiction in annulment cases, is practically non-existent. Three cases are usually cited by the advocates of the view: *Cummington v. Belcher-town*¹⁰ and *Levy v. Downing*¹¹ from Massachusetts, and *Garcia v. Garcia*¹² from South Dakota. They fail to justify the proposition for which they are cited. *Garcia v. Garcia* has no bearing on the question; it holds valid a marriage between first cousins celebrated in California, though the marriage would not have been valid if entered into in South Dakota. The question of "jurisdiction" to annul a voidable marriage entered into in another state or foreign country is not involved or mentioned. Twenty-five days before *Garcia v. Garcia* was decided, the same court annulled a marriage entered into in New York, under whose laws it was voidable.¹³ It did not occur to the judges of that court, nor apparently to counsel, that New York should have been the sole judge of the validity of all marriages celebrated in that state. In *Levy v. Downing*, also cited in support of the proposition asserted in the American Law Institute's *Restatement*, the Massachusetts court declined to annul a marriage between minors celebrated in New Hampshire. But the New Hampshire statute did not declare the marriage null; it said that such a marriage might "in the discretion of the Superior Court be

(Quebec) to entertain the suit was conceded. The English writers on conflict of laws recognize that the courts of the present domicile of the parties have jurisdiction to annul foreign marriages, though other courts may also have such power. DICEY, *CONFLICT OF LAWS* (4th ed. 1927) 303; WESTLAKE, *PRIVATE INTERNATIONAL LAW* (5th ed. 1912) 97; FOOTE, *PRIVATE INTERNATIONAL JURISPRUDENCE* (4th ed. 1914) 123; NELSON, *PRIVATE INTERNATIONAL LAW* (1889) 125-126.

¹⁰ (1889) 149 Mass. 223, 21 N. E. 435.

¹¹ (1912) 213 Mass. 334, 100 N. E. 638.

¹² (1910) 25 S. D. 645, 127 N. W. 586. See (1927) 26 MICH. L. REV. 211, where the writer not only says that the "logic of the situation" favors jurisdiction of the courts at the place of celebration, but that the view "seems to represent the weight of authority." (Citing *Levy v. Downing*, *supra* n. 11, and *Garcia v. Garcia*, *supra*.)

A writer of an able note in (1929) 7 N. CAR. L. REV. 458, 459, says of the "place of celebration" theory: "This argument is logically unassailable, but its pragmatic efficacy is more doubtful. To require the parties to return to the place of performance of the marriage ceremony in order to have it annulled would be needlessly inconvenient. Then too, how could the plaintiff force the defendant to appear in such a court unless the defendant voluntarily submitted to the jurisdiction?"

The author of a comment in the *Harvard Law Review* for December, 1927, however, admits that the weight of authority and the convenience of the parties are in favor of placing jurisdiction at the domicile of the parties. (1927) 41 HARV. L. REV. 253.

¹³ *Montague v. Montague* (1910) 25 S. D. 471, 127 N. W. 639.

annulled." A discretion was left to courts in New Hampshire, which the Massachusetts court might properly decline to exercise. It refused to interfere with a marriage so nearly perfect, that it was left by statute exclusively to the discretion of New Hampshire magistrates to approve or disapprove.¹⁴

The case of *Cummington v. Belchertown*¹⁵ involved the recognition by a Massachusetts court of a decree pronounced in New York, where the husband had taken up his domicile, upon constructive service, against an insane woman domiciled in Massachusetts, which declared null a marriage entered into in Massachusetts. The utmost that could possibly have been involved in the decision was the proposition that a state may refuse to recognize an annulment decree of a sister state, just as it may the divorce decree of a sister state, against one of its own domiciled citizens, under certain circumstances.¹⁶ Mr. Justice Devens in the course of his opinion says: "The right of a state to declare the present or future status, so far as its own limits are concerned, of persons there lawfully domiciled, cannot be extended so as to enable it to determine absolutely what such status was at a previous time, and while they were subject to the laws of another state. The decrees of its courts in the latter respect must be subject to revision in the state where rights were then existing, or had been acquired." The court recognized that the state of New York might exert the power to adjudge the *status* of its own citizens, prospectively and even retrospectively. Justice Devens merely expressed the opinion that a court in the commonwealth of Massachusetts might refuse recognition to the decree so far as it operated retrospectively. No decision has been found in that jurisdiction to support the statement, which may be correct. Some loose statements, favoring the *forum* of the place of celebration, made by inferior English courts have been definitely overruled by the House of Lords.

The view that the courts of a state should determine the *status* of persons domiciled there, whether by decree of divorce, or annulment, seems to be the most convenient rule. This is conceded by some of the supporters of the place of celebration theory, and is the view taken by the Commissioners on Uniform State Laws.¹⁷ In many cases, possibly

¹⁴ A similar statute exists in New York. N. Y. Stat. 1922, c. 313, § 7; Retan v. Mathewson (1927) 131 Misc. 106, 226 N. Y. Supp. 80.

¹⁵ *Supra* n. 10.

¹⁶ *Haddock v. Haddock* (1906) 201 U. S. 562, 26 Sup. Ct. 525.

¹⁷ TERRY, UNIFORM STATE LAWS (1920) 299, 300, 303-304 (UNIFORM ANNULMENT OF MARRIAGE AND DIVORCE ACT §§ 6, 9, 22). Section 6 recognizes as sufficient foundation for an annulment decree, service on the defendant within the state, where either party is a *bona fide* resident of the state, and section 9 provides for publication and substituted service, if it is not practicable to make such

in some states in the greater number of instances, it might be impracticable to secure the presence of both parties in an annulment suit brought at the place of celebration, and it would be unfair to attempt to serve process by publication against the absent defendant. Indeed, there can be no doubt that such attempt, where neither party is domiciled in the state of celebration, would, in the United States, fall under the ban of the due process clause, and in any country would be regarded as unfair. Most of the cases found in the reports of American states, where resort was made to the courts at the place of celebration to secure a decree of nullity, renounce the claim of jurisdiction and remit the parties to their domicile.¹⁸

The open minded searcher after truth may well be puzzled to find some of the "cogent reasons" which are referred to by the California Supreme Court, in favor of sending a plaintiff who seeks annulment to the courts of the state where the alleged void marriage took place, and upon which, presumably, the American Law Institute's statement is founded. He will read Professor Goodrich's statement that "the jurisdiction governing the marriage and no other should pronounce it annulled."¹⁹ He will discover Professor Beale's remark that "theoretically, the law that created the marriage should alone have power to declare effectively and *in rem* that it never existed," though the last named writer admits that "practically, the courts are confused in the matter."²⁰ Notes in some of the law reviews will reiterate the theory, the author of which Professor Goodrich acknowledges to have been

personal service. Section 22 provides for the recognition of annulment decrees of sister states and territories, where secured in accordance with sections 6 and 9; and also leaves to each state the recognition of foreign decrees on principles of international comity.

¹⁸ *Antoine v. Antoine*, *supra* n. 7; *Blumenthal v. Tannenholz* (1879) 31 N. J. Eq. 194. In *Berlinsky v. Berlinsky* (1923) 204 App. Div. 480, 198 N. Y. Supp. 402, the court denied its power to annul a marriage except by personal service within New York, or by voluntary appearance. In *G— v. G—* (1928) 22 Saskatchewan L. R. 376, jurisdiction was sustained on the basis of the law of the place of celebration in an action for declaration of nullity brought by a plaintiff domiciled in Alberta against a defendant residing in Manitoba. In *Sawyer v. Slack* (1929) 196 N. C. 697, 146 S. E. 864, the North Carolina Supreme Court annulled a marriage celebrated in North Carolina, though both parties were domiciled in Virginia. The defendant appeared in the case. See, also, *Reid v. Francis* [1929] 4 D. L. R. 311 (Saskatchewan C. A.).

¹⁹ Goodrich, *Jurisdiction to Annul a Marriage* (1919) 32 HARV. L. REV. 806, 812. See also GOODRICH, *CONFLICT OF LAWS* (1927) 303.

²⁰ Beale, *Progress of the Law* (1919) 33 HARV. L. REV. 1, 12. Professor Beale refers to the case of *Bays v. Bays* (1918) 105 Misc. 492, 174 N. Y. Supp. 212, as having "avoided the difficulty," presumably adding to the confusion he finds in the authorities. In fact the court in that case posits its jurisdiction to determine the validity or invalidity of a Pennsylvania marriage, though it finds the marriage valid.

Professor Beale. Thus, a writer in the *Harvard Law Review* for November, 1923, repeats the statement that "only the jurisdiction which creates the *status* can dissolve it."²¹ Another, who it appears is E. M. Dodd, then a student, now a professor in Harvard Law School, contributes to the same *Review* a brief discussion which Mr. Goodrich terms "a well written note," for the ideas in which Mr. Dodd was probably indebted, as was Mr. Goodrich, to Professor Beale.²² But Professor Dodd, though he confesses to have expressed Mr. Beale's opinion as a student in 1923, admits in May, 1928, that the arguments in its favor "do not seem unexceptionable," and thinks that we might "recognize the decree of annulment [pronounced at the parties' domicile] as invalidating the marriage *ab initio* as between the parties."²³ At this point the searcher for reasons, may well be surprised that a doctrine, which one of its ablest exponents, following Hegel's illustrious example, confesses he cannot understand, should have secured recognition in a serious restatement of the existing law on the subject of jurisdiction.

Professor Dodd's recantation, it is true, continues to assert that the American cases are in "hopeless confusion," and contains an admission that the reasoning in the House of Lords' decision in the *Salvesen* case may not have full effect because of the authority of the American Law Institute.²⁴ Mr. Goodrich, too, admits that "providing for annulment jurisdiction where the complaining party lives has great advantages over compelling him to go to the place where the marriage was created. It is expedient, convenient, certain." But he continues to maintain, as late as 1927, that "jurisdiction to annul a marriage by declaring it ineffective from its inception, is, on principle, vested only in the courts of the state which determines the validity of the marriage."²⁵ In other words, he believes that legal doctrines may be true "theoretically," or "on principle," but practically bad. Lord Haldane, whose life-long experience, as a serious student of philosophy and as the English translator of Schopenhauer, qualifies him to testify as an expert on questions of logic, thinks that "on principle" the courts of the domicile are the best ones to determine the question of nullity *ab initio*. Apparently, at the bottom of the matter, are differing conceptions of "law" and "logic."²⁶

²¹ Note (1923) 37 HARV. L. REV. 150.

²² *Supra* n. 19 at 811, n. 25; Note (1928) 23 ILL. L. REV. 75, 76, n. 8; Note (1913) 26 HARV. L. REV. 253.

²³ 23 ILL. L. REV. at 76, 77, 78.

²⁴ *Ibid.* at 78.

²⁵ *Supra* n. 19 at 824; GOODRICH, *op. cit. supra* n. 19 at 301, 304.

²⁶ It is impossible to refer to the whole polemical literature in the law reviews upon the subject. A few articles, more directly affecting the field of conflict of

It is believed that a workable system for the protection and recognition of rights arising from legal transactions in other jurisdictions must recognize that the courts of the *forum* where parties are domiciled should give relief to parties properly before it, even though the relief be only partial and incomplete. Such words as "*res*" and "*status*" do not afford formulæ to serve as bases for universal principles, however convenient the words may at times be in connection with the discussion of problems that come before courts and lawyers. An abstract notion like a *res* or a *status* is not a thing that courts can deal with effectively as they can with a ship or a person in the custody of their officers.²⁷ One sometimes fears that our juristic Sir Launfal, while hunting the Holy Grail of legal certainty, too often spurn the beggar at their gates, the litigant claiming justice. For example, in this matter of annulment or declaration of nullity, primarily a question of power and policy, there is no reasonable justification for denying relief on a theory that only one country or state must have exclusive power. There is room for action by several states.

If we may paraphrase Laurence Sterne, they manage these things better in England. The English judge asks himself the question, why should not his court, where the parties are domiciled, give the relief of annulment? Why not, he says, pronounce such a decree even where the defendant is merely residing in England? And why even should he deny jurisdiction, as the courts of Mississippi and New Jersey have done, to his own court, in cases where the marriage was celebrated in England, provided the defendant appears or fair notice of the proceeding is given to him?²⁸ On the other hand, no inexorable "logic" com-

laws may be cited: F. J. de Sloovere, *The Local Law Theory and its Implications in the Conflict of Laws* (1928) 41 HARV. L. REV. 421; Cook, *The Logical and Legal Bases of the Conflict of Laws* (1924) 33 YALE L. J. 457; Book Review (1927) 41 HARV. L. REV. 108 (Isaacs reviewing GOODRICH, *CONFLICT OF LAWS* (1927)); Yntema, *The Hornbook Method and the Conflict of Laws* (1928) 37 YALE L. J. 468; Lorenzen, *Territoriality, Public Policy and the Conflict of Laws* (1924) 33 YALE L. J. 736; Book Review (1927) 27 COL. L. REV. 762 (Lorenzen reviewing GOODRICH, *op. cit. supra*); Book Review (1928) 28 COL. L. REV. 673 (Yntema reviewing BEALE, *CASES ON CONFLICT OF LAWS*).

²⁷ See opinion of Viscount Dunedin in *Salvesen v. Administrator of Austrian Property* [1927] A. C. at 662.

²⁸ DICEY, *CONFLICT OF LAWS* (4th ed. 1927) 302, 426. Mr. Dicey states that the English High Court has jurisdiction to entertain nullity suits in three cases: (1) where the marriage was celebrated in England; (2) where the respondent is resident in England; or (3) where the parties are domiciled in England. It should be noted that under the Matrimonial Causes Rule (1924) §§ 9 and 10, service may be made within or without the British dominions. DICEY, *op. cit. supra* at 302, n. r. Dicey believes that the courts of the domicile are "obviously the best qualified to pronounce a decree affecting status." With respect to the recognition of foreign judgments, the rules of the English courts are stricter than those of our

pels him to recognize annulment decrees pronounced by foreign courts, though their theories of jurisdiction be identical with those adopted by his court. It is no doubt desirable that there should be increasing respect paid to foreign judgments, but it is a quixotic ideal that precise equality must be established between the decisions of foreign courts and those of the *forum*.

It is better, we believe, that the student of conflict of laws should concede to courts administering that branch of law something of the elasticity that such courts exercise, let us say, in substantive matters of contract or tort law, than that he should yield to the suggestion of Professor Goodrich, endorsed by Professor Beale, that proceedings for divorce and those for annulment should be placed on precisely the same footing,²⁹ in order to avoid a logical principle of jurisdiction. The things are essentially different. Indeed, there are really three proceedings, which are sometimes confused, rather than two. Frequently a decree of nullity does not change rights; it merely makes "the fact of nullity . . . a matter of record which cannot be disputed."³⁰ To use a distinction made by the French jurists, some decrees are "constitutive" and some are "declaratory."³¹ A proceeding to annul for fraud may well fall within the first class, one to secure a declaration that a marriage was null, because incestuous or because one of the parties was already married, may in many jurisdictions fall within the second

own courts. Dicey says (page 426) that courts of a foreign country have jurisdiction to declare nullity of a marriage celebrated in that country, to which the Salvesen case has recently added the duty of recognition of such judgments pronounced at the parties' domicile. Dicey declares that foreign courts have not jurisdiction to declare null marriages celebrated in England upon the ground of informality in the celebration. This is questionable, in the wider sense, since the Salvesen case. But see *Papadopoulos v. Papadopoulos* (July 6, 1929, Bow Street Police Court, Mr. Graham Campbell) 93 JUST. PEACE 434. The case has been overruled by the Divisional Court, which finds that the court in Cyprus was not vested with the power over matrimonial causes of this character. *Papadopoulos v. Papadopoulos* (Prob. Div., Nov. 5, 1929) 168 L. T. 372.

²⁹ Professor Beale says, *supra* n. 20, 33 HARV. L. REV. 1, 12: "The subject of 'Jurisdiction to Annul a Marriage' has been illuminated by an article by Professor Herbert F. Goodrich (32 HARV. L. REV., *supra* n. 19). He finds an irreconcilable conflict in the decisions, both English and American, and makes the interesting suggestion that 'nullity of marriage' be abolished, and that all actions to free parties from a marriage, actual or alleged, be actions for divorce." See Note (1929) 43 HARV. L. REV. 109 ("Consequences of the Annulment of a Voidable Marriage").

³⁰ *McDade v. McDade* (1929) — Tex. Civ. App. —, 16 S. W. (2d) 304. In *Baumann v. Baumann* (1929) 250 N. Y. 382, 165 N. E. 819, the New York Court of Appeals sustained a declaratory judgment adjudging null and void a marriage in Connecticut.

³¹ JOSSERAND, *COURS DE DROIT CIVIL POSITIF FRANÇAIS* (1930) 427; Léon Mazeaud, *De la distinction des jugements déclaratifs et des jugements constitutifs de droits* (1929) 28 REVUE TRIMESTRIELLE DE DROIT CIVIL 17.

class. Is there any sound argument in favor of breaking down existing distinctions in an effort to fit the situation into a Procrustean bed of logic? One may be permitted to differ with Professor Goodrich in his condemnation of the doctrine of "relation back" for the purpose of avoiding the "bastardizing of innocent children."³² Civilized states may by legislation avoid bastardizing innocent children, as many of them have done, and, in the absence of legislation, courts may often achieve desirable results by means not always consonant with formal logic.³³ As between the parties to an irregular marriage, the doctrine of "relation back" may have its practical uses. If one but recognizes that the doctrine should be treated as a fiction, designed to serve justice, as was done so admirably and with such appreciation of the elegancies of the judicial process in the recent opinion of Chief Judge Cardozo in *Sleicher v. Sleicher*,³⁴ he will patiently suffer the doctrine to exist, until some better and more realistic formula may be found to take its place.

The decision in the *Salvesen* case has elicited almost universal approval from those who have commented upon it, including a writer in the *Harvard Law Review*, who says that the House of Lords "properly held" that the decree of domiciliary court in Wiesbaden, holding the French marriage void, was "*in rem*, conclusively determining the appellant's status as unmarried."³⁵ One need not go so far as that in one's approval of the rule justifying the domiciliary *forum* as the proper tribunal to annul marriages, wherever celebrated, nor would one care to predict that in the case of foreign annulment decrees, the English courts would admit that every such decree pronounced at the domicile of the parties conclusively established their *status* for all purposes and everywhere. Already an English police magistrate has felt himself forced to decline to apply the general rule laid down by the House of Lords to a decree of a court in Cyprus, where both parties were domiciled at the time of the proceeding, declaring a marriage in England void because no Greek orthodox priest was present at the

³² *Supra* n. 19 at 824.

³³ CAL. CIV. CODE § 84.

³⁴ (July 11, 1929) 251 N. Y. 366, 167 N. E. 501.

³⁵ (1927) 41 HARV. L. REV. 253. See also, in addition to Note (1927) 16 CALIF. L. REV. 38, the following: Note (1927) 76 UNIV. OF PA. L. REV. 206; Note (1928) 23 ILL. L. REV. 75; Hewitt, *Foreign Decrees of Nullity* (1927) 71 SOL. J. 772. A writer in (1927) 26 MICH. L. REV. 211 is a *vox clamantis in deserto*. He thinks the *Salvesen* case reopens the "controversy" between the *lex domicilii* and the *lex loci contractus*. Logic is still with the latter view, he believes, since the courts of the country whose acts "created the status" are the only ones which are "authorized to declare it void," and finally he finds "the weight of authority in the United States" to lie with the view he defends, though he fails to cite judicial decisions to support the statement.

ceremony.³⁶ Possibly the magistrate erred, though there is good sense in denial by an English court of the power of a foreign court to annul an English marriage for formal defects, upon grounds that appear on the face of the decree to be wholly erroneous. At least, he has ventured to assert that the *Salvesen* case, reasonable though it be, does not establish a universal principle without exceptions, and that it cannot be said, as a necessary corollary from that decision, that any foreign court may pronounce a decree of annulment, conclusively and for all purposes determining the *status* of the parties. In other words, he has not mistaken words and symbols for realities.

Orrin Kip McMurray.

S. Warren Cunningham, II.

SCHOOL OF JURISPRUDENCE,
UNIVERSITY OF CALIFORNIA.

³⁶ *Papadopoulos v. Papadopoulos*, *supra* n. 28.