

Michigan Law Review

Volume 29 | Issue 8

1931

MARRIAGE-INSANITY AS GROUND FOR ANNULMENT

Follow this and additional works at: <https://repository.law.umich.edu/mlr>



Part of the [Family Law Commons](#)

Recommended Citation

MARRIAGE-INSANITY AS GROUND FOR ANNULMENT, 29 MICH. L. REV. 1089 (1931).

Available at: <https://repository.law.umich.edu/mlr/vol29/iss8/29>

This Recent Important Decisions is brought to you for free and open access by the Michigan Law Review at University of Michigan Law School Scholarship Repository. It has been accepted for inclusion in Michigan Law Review by an authorized editor of University of Michigan Law School Scholarship Repository. For more information, please contact mlaw.repository@umich.edu.

MARRIAGE—INSANITY AS GROUND FOR ANNULMENT.—Complainants sought to annul the marriage of their deceased brother on the ground that defendant, his widow, knowing him to be insane at the time, fraudulently procured the marriage. A statute provided for divorce on the ground, among others, of insanity at the time of marriage. On demurrer, *held* that the marriage was, under the statute, voidable only, could only be attacked directly in the life-time of the parties, and hence was not subject to collateral attack by the relatives after the death of the incompetent spouse. *White v. Williams* (Miss. 1931) 132 So. 573.

In the absence of statute, courts generally follow the common law rule and declare a marriage to an insane person absolutely void, on the theory of ordinary contract law requiring intelligent assent of both parties to form a binding agreement. *Rawdon v. Rawdon*, 28 Ala. 565; TIFFANY, DOMESTIC RELATIONS, 17. In a few jurisdictions such a marriage is declared void by express statutory provision. *Pence v. Aughe*, 101 Ind. 317; *Winslow v. Troy*, 97 Me. 130, 53 Atl. 1008. But most statutes dealing with the subject render marriages of mental incompetents voidable only, either expressly or by implication. These statutes take widely varying forms. Thus, where some marriages are expressly declared void, and others are enumerated, including that of an insane person, which may be annulled, the marriage to the incompetent is voidable. *Mackey v. Peters*, 22 App. D. C. 341. Likewise, a statute providing that the validity of a marriage may be attacked on account of insanity only in a direct process instituted during the lifetime of the parties, renders the marriage voidable. *Goshen v. Richmond*, 4 Allen (Mass.) 458. And under a provision that marriage of a mental incompetent may be annulled before the death of either party, the marriage is not void, but only voidable. *Re Gregerson*, 160 Cal. 21, 116 Pac. 60. There seems, however, to be an obvious difference

between such legislation and that under examination in the instant case. In the majority of jurisdictions where the common law rule has been modified, the statutes, as in the aforementioned instances, deal expressly with the subject of annulment. Here, the theory of voidability is derived, not from an annulment statute, but by implication from the divorce laws. As is pointed out by the dissenting judge in the principal case, the statutes on divorce do not refer to annulment suits. *Antoine v. Antoine*, 132 Miss. 442, 96 So. 305. See *Davis v. Whitlock*, 90 S. C. 233, 73 S.E. 171. So it would seem that the common law rule should be in force except so far as the statute makes a marriage to an incompetent valid where the complaining party knows of the insanity. But here the suit for annulment was instituted by representatives of the insane party, a situation not covered by the statute. Logically, the court appears to have erred in not applying the common law rule making such a marriage void and subject to collateral attack. On principle, the decision is also to be questioned, for the act of the defendant in marrying the deceased incompetent was admittedly fraudulent. According to one writer, fraud and insanity together sometimes produce a nullity that neither of them alone could effect. 1 BISHOP, MARRIAGE, DIVORCE & SEPARATION, sec. 613. Further, it contravenes the universal principle of law and equity, that no person can gain a right by his or her conscious wrong.