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FOREIGN MARRIAGES AND THE CONFLICT OF LAWS

By HERBERT F. GOODRICH*

Marriage as a Contract and a Status

IT is common these days to speak of marriage as a contract. Not only do we use the term "marriage contract" as meaning a promise to marry in the future, but also to describe the contract or expression of consent by which the parties take each other for husband and wife. The statutes of many of our states declare marriage to be a "civil contract."¹ A moment's thought will show great differences between marriage and the ordinary civil contract. A marriage contract can be contracted only between a man and a woman; it has no validity if one of the parties has already entered into a similar contract with someone else. A minor may, under certain restrictions, enter into and be bound by it. It is, in many states, hedged about with formal requirements. If one of the parties breaks his promise to "love and honor," no damages are recoverable for the breach. Nor can the parties to this transaction withdraw when they please. The only way they can get out, once having entered into a valid marriage, is through legal proceedings, or death of one spouse. And there are numerous rights and duties arising out of marriage (such as support by the husband, services by the wife) of which no mention is made in the contract.

It is clear that marriage is much more than a contract. It is a contract, to be sure; the element of mutual assent must be present; it is a consensual transaction. It is a "civil" contract because for the purposes of the law no ecclesiastical element enters in. The law does not now look upon it as a sacrament. If civil requirements are complied with, that is sufficient, whatever else a church may demand of its members. But once the contract is executed, marriage becomes a domestic relation. "When formed, this relation is no more a contract than 'fatherhood' or 'sonship' is a contract."² The relation of husband and wife is one of personal status, a relation created and destroyed by act of law, not by the mere consent of

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¹ Iowa Compiled Code, 1919, § 6587. See STIMSON, AMERICAN STATUTE LAW, § 6101.

² Ames, C. J., in *Ditson v. Ditson*, 4 R. I. 87.

the parties, and of legal importance to all the world.³ As applied here, at any rate, the quality of permanence distinguishes this matter of status from a purely consensual transaction.

Marriage is the most important of the domestic relations. The state has an interest in it as well as the immediate parties, for marriage is the foundation of the family, and around the family many of our present day social institutions are built.

With the purely local phases of the law governing the relation of husband and wife, Conflict of Laws has no concern. Nor do we deal with Public International Law problems, such as the question of expatriation by marriage. We are concerned with two questions: first, what law governs the creation of the marriage relation; and second, the recognition and protection to be given the relation and incidents arising therefrom, under the law of states other than that in which the relationship was created.

Rules of Domicile and Nationality as Governing Status

It is conceivable that rules governing the creation of legal relations like marriage should be controlled by whatever law happened to have authority over the parties at the time, as is the case with rights of action for tort. The law where the parties happened to be might declare them married or declare their marriage at an end. But this would largely do away with the permanent quality characteristic of matters of status. Some one law ought to control in matters of this nature. In common law jurisdictions the law of the domicile of the party involved is the one which controls status. In most of the civil law countries the rule has been changed, and the governing law is that of nationality.⁴ In the Anglo-American view of the matter, it is the sovereign at the domicile, the place where the person has his permanent abode, who is most concerned in affairs like his domestic relations.

How far will the sovereign of the domicile go in regulating the marriage of its citizens? The law of one state might say to a person domiciled there: If you want to be validly married, you must, within this state, make the kind of a contract herein prescribed. Something like this is required in divorce proceedings, which have

³ BEALE on the CONFLICT OF LAWS, § 143 gives this description of personal status.

⁴ BEALE, § 148.

for their object the termination of the marriage relation. But such a rule would make it impossible for an Iowa man to marry a Wisconsin woman at the bride's home, and is not the law.

As an alternative, the domiciliary law might say: You may be married outside our borders, but you must be authorized to marry under our rules, and conform to the essentials which we lay down. If we forbid you to marry, you cannot, by going elsewhere, contract valid marriage. The rules governing the subject of marriage in European civil-law states come, it seems, pretty close to such a statement of the law, except that it is the national, instead of the domiciliary, law which controls.⁵ Indeed, as a practical matter, it is perilous practice for an American to marry a foreigner without a thorough investigation of the matrimonial requirements of the foreigner's national law.⁶

Finally, the domiciliary law might declare that if a person goes through a marriage ceremony, valid where performed, then this creates the marriage status by the domiciliary law. The American law is not a great way from such a rule, as will appear from subsequent paragraphs.

Law Governing Validity—The Orthodox Statement

The usual method of statement of the common law doctrine on the rule governing the validity of a marriage is well set out by Judge Story. The general principle, he says, is that between persons, *suis juris*,⁷ the validity of a marriage is to be decided by the law of the place where it is celebrated. If valid there it is valid everywhere. If invalid there it is equally invalid everywhere. The most prominent if not the only known exceptions to the rule, Judge Story says, are those marriages involving polygamy and incest, those positively prohibited by the public law of a country from motives of policy and those celebrated in a foreign country by persons who, under special circumstances, are entitled to the benefit of the laws of their own country.⁸

⁵ Continental authorities are cited by Professor Lorenzen in his *CASES ON CONFLICT OF LAWS*, 536 note.

⁶ J. H. Beale, "The Law of Capacity in International Marriages," 15 *HARV. L. REV.* 382.

⁷ This is a question-begging phrase. By what law is the question whether the person is "*suis juris*" to be determined?

⁸ STORY, *CONFLICT OF LAWS*, (Ed. 7); § 113, et seq.

It is not doubted that this statement sets out the effect of the authorities with substantial accuracy, though the third exception mentioned by Judge Story needs to be carefully limited. Indeed, it may be said on abundant authority that the general American rule is that a marriage good where contracted is good everywhere, or, as it is sometimes phrased, that the validity of a marriage is governed by the *lex loci contractus*.⁹ It is desirable to analyze the problem further, however, especially in regard to the situations where a marriage, valid where contracted, is denied recognition at the domicile of the parties or elsewhere. First may be considered what is necessary to make a marriage "good where contracted."

Requirements of the Law of Place of Contracting

The validity of a marriage will depend, first, upon compliance with the requirements of the marriage law where the alleged marriage takes place. If that law prescribes compliances with certain formalities as essential, omission to meet these requirements will be fatal to the recognition of the marriage elsewhere.¹⁰ Possible exceptions to this rule are discussed below. Conversely, if the parties comply with the rules governing entrance into the relation at the place of marriage, they will be recognized elsewhere as husband and wife, even in a state where stricter or different rules concerning

⁹ *Petras v. Petras*, (Del.) 105 Atl. 835; *Reifschneider v. Reifschneider*, 241 Ill. 92, 89 N. E. 255; *Dumarely v. Fishly*, 10 Ky. (3 A. K. Marsh) 198; *Loring v. Thorndike*, 87 Mass. 257; *Hutchins v. Kimmell*, 31 Mich. 126; *McHenry v. Brackin*, 93 Minn. 510, 101 N. W. 960; *Jordan v. Tel. Co.*, 136 Mo. App. 192, 116 S. W. 432; *Hills v. State*, 61 Neb. 589, 85 N. W. 836, 57 L. R. A. 155 and note; *Bolmer v. Edsall* (N. J.), 106 Atl. 646; *In re Hall*, 70 N. Y. Supp. 406; *Miller v. Miller*, 76 W. Va. 352, 85 S. E. 542; *Lyannes v. Lyannes* (Wis.), 177 N. W. 683. Sometimes a statute so provides. See *Darling v. Dent*, 82 Ark. 76, 100 S. W. 747; *Hilton v. Stewart*, 15 Idaho 150, 96 Pac. 579; *Griswold v. Griswold*, 23 Colo. App. 365; *State v. Hand*, (Neb.), 126 N. W. 1002, 28 L. R. A. (N. S.) 753. Reference should be made to annotations upon the general subject in 57 L. R. A. 155, 11 *ib.* (N. S.) 1082; 17 *ib.* 800; 26 *ib.* 177; 28 *ib.* 753 and 43 *ib.* 356.

¹⁰ *Canale v. People*, 177 Ill. 219, 52 N. E. 310; *Jordan v. M. K. Tel. Co.*, 136 Mo. App. 192, 116 S. W. 432; *In re Hall*, 70 N. Y. S. 406. It is assumed that compliance with the statute is obligatory if the marriage is to be valid. Many statutes laying down formal requirements are interpreted as directory merely; non-compliance does not invalidate the marriage. *Dumarely v. Fishly* (Ky.), 3 A. K. Marsh, 1198; *Hiram v. Pierce*, 45 Mo. 367, 71 Am. Dec. 555. *Reaves v. Reaves*, 15 Okl. 240, 92 Pac. 490, 2 L. R. A. (N. S.) 353.

formality are in force.¹¹ This is shown in the frequent recognition of foreign "common law" marriages in states which do not permit this informal method of entering the matrimonial status.¹²

An interesting application of the general rule came up in a recent federal case. A man in Minnesota sent to the woman, who was living in Missouri, a written agreement in duplicate, signed by him, whereby the parties undertook to assume from that date henceforth the relation of husband and wife. The woman signed the papers and sent one back to the man. It was held that this acceptance constituted a valid marriage in Missouri and the woman could recover damages, as widow, in Minnesota for a wrongful act resulting in the death of the husband.¹³ The validity of the marriage depended upon compliance with the laws of Missouri, and presumably would have been decided the other way had Missouri been a state which required cohabitation as well as consent for a common law marriage.

The same principles are applicable, it is believed, to the question of the validity of a marriage by proxy. If such a marriage is permitted by the *lex loci contractus*, and it probably is permitted unless positive legislation forbids it, the marriage so contracted is good everywhere, at least so far as formal requirements are concerned.¹⁴

Exceptions to Compliance with Lex Loci Contractus

Statements may be found to the effect that, while a marriage good by the *lex loci contractus* is good elsewhere, it does not follow that if it is not good by that law it is not good elsewhere.¹⁵ Such

¹¹ *Hallett v. Collins*, 51 U. S. 174; *Miller v. Miller*, 76 W. Va. 352, 85 S. E. 542; *Dalrymple v. Dalrymple* (Eng.), 2 Hagg. Con. 54.

¹² *Darling v. Dent*, 82 Ark. 7, 100 S. W. 747; *Petrus v. Petrus* (Del.), 105 Atl. 835; *Travers v. Reinhardt*, 25 App. D. C. 567; *Clark v. Clark*, 52 N. J. Eq. 650, 30 Atl. 181; *Nelson v. Carlson*, 48 Wash. 651, 94 Pac. 477.

¹³ *G. N. Ry. Co. v. Johnson* (C. C. A.), 254 Fed. 683. Comments approving the decision are found in 32 HARV. L. REV. 848, and by Prof. Beale, 33 HARV. L. REV. 13.

¹⁴ See the discussion, "Marriage by Proxy and the Conflict of Laws" by Prof. Lorenzen, 32 HARV. L. REV. 473. The question of the validity of marriages in Chinese fashion without personal presence of the parties has been raised but not decided, because the performance of the proper ceremony in that country, based on consent, was not shown. In *re Lum Lin Ying*, 59 Fed. 682; *Republic v. Li Shee*, 12 Hawaii 329.

¹⁵ *Canale v. People*, 177 Ill. 219, 52 N. E. 310; *Phillips v. Gregg*, 10 Watts 158, 36 Am. Dec. 158 (cf. *City v. Williamson*, 10 Phila. 177); *Ruding v.*

assertions must be received with caution, for they are contrary to the general rule as set out above. An apparent, though not real, exception is found in those situations where the local requirements have been held inapplicable to foreigners temporarily within the jurisdiction.¹⁶ No question of a valid marriage in violation of the *lex loci contractus* is involved in them, however.

More difficult is the problem presented by a federal statute providing that marriages in a foreign country, in the presence of a consular officer of the United States, between persons who would be authorized to marry if residing in the District of Columbia, shall be valid for all purposes.¹⁷ Suppose parties are married in a consulate in a foreign country, without complying with the provisions of the local law. Can this statute validate their marriage in New York? Marriage has been said to be a matter for state law to determine,¹⁸ and the general language of the federal statute, it has been suggested, should be construed with reference to those persons only who are under the direct legislative jurisdiction of the United States, such as the inhabitants of the District of Columbia or the territories. State legislation to the same effect has been recommended.¹⁹ Such legislation, it may be noted, would have the effect of declaring valid a marriage which was not good by the *lex loci contractus*.

Are marriages performed on the high seas an exception to the rule requiring compliance with the *lex loci contractus*? It has been said that since on the high seas there is no law, the marriage will be valid or not according to the law of the domicile.²⁰ Since it has been held that a ship takes with it the law of its state,²¹ it might well

Smith, 2 Hagg. Con. 371, 390. In *Hynes v. McDermott*, 91 N. Y. 451, 43 Am. Dec. 677, the question was raised but not decided.

¹⁶ *Loring v. Thorndyke*, 87 Mass. 257; In re *Lando's Estate*, 112 Minn. 257, 127 N. W. 1125; *Davis v. Davis*, 1 Abb. N. C. 140.

¹⁷ U. S. Comp. Stat., § 7632.

¹⁸ *G. N. Ry. Co. v. Johnson*, 254 Fed. 683.

¹⁹ See a discussion of the point in 11 *REPORTS OF AMER. BAR ASSN.*, 313 et seq., and see also 2 *MOORE'S INTERNATIONAL LAW DIGEST* 490. Whether the federal government could accomplish the result under the treaty making power involves a question of constitutional law beyond the scope of this discussion.

²⁰ *Norman v. Norman*, 121 Cal. 62, 54 Pac. 143, 42 L. R. A. 343, 66 Am. St. Rep. 74; comment in 12 *HARV. L. REV.* 273; and see 60 Am. St. Rep. 947, note.

²¹ *Crapo v. Kelly*, 16 Wall. 610; *McDonald v. Mallory*, 77 N. Y. 546.

be said that the marriage, to be valid, must conform to the law of the state where the vessel, if American, was registered, and it has been so decided.²²

Form and Capacity

The statement of the general rule that a marriage good where celebrated is good everywhere makes no distinction between the form of the ceremony and capacity of the parties to enter the marriage relation. While there is abundant authority which upholds the validity of marriages by this broad test, there is a substantial body of cases denying validity to a foreign marriage contracted by a party who was forbidden to marry, or forbidden to contract the particular marriage in question, by the law of his domicile. Further inquiry is necessary to determine the significance of this growing body of decisions, various examples of which are set out below.

The current English doctrine may first be mentioned. In the famous case of *Brook v. Brook*,²³ a widower and the sister of his deceased wife, being lawfully domiciled in England, while on a temporary visit to Denmark had a marriage solemnized between them, which was by the laws of Denmark lawful and valid. In a suit in equity, brought after the death of both parties to ascertain the rights of the children in their father's property, the House of Lords held that the marriage in Denmark was wholly void and that the children of the marriage were illegitimate. Of *Brook v. Brook* and cases like it, it could be said that, "A long series of decided cases had made it almost certain that the personal law (*i. e.*, the law of the domicile) would be held in England to decide the capacity of one person to marry another."²⁴ In 1908, however, the English Court

²² *Bolmer v. Edsall* (N. J. Eq.), 106 Atl. 646. See *Hynes v. McDermott*, 7 Abb. N. C. 98, *affd.*, 82 N. Y. 41. For a discussion of the question in England as regards English legislation, see J. Dundas White in 17 LAW Q. REV. 283.

²³ 9 H. L. Cas. 193.

²⁴ BATY, *POLARIZED LAW*, 40. Thus in *Mette v. Mette*, 1 Sw. & Tr. 416, a man domiciled in England purported to marry his deceased wife's sister in Frankfort. The German law did not prohibit the marriage; the English law did and the marriage was held invalid. In *Sottomayer v. De Barres*, 3 P. Div. 1, cousins supposedly domiciled in Portugal were married in England, but were incapable by the law of this domicile. It was held that the marriage was invalid, on the basis that capacity was a matter for the dom-

of Appeal held that a man domiciled in France, and by its law incapable of marriage, was validly married for English purposes when he went through a marriage ceremony with an Englishwoman in England.²⁵ The result then, according to a distinguished English writer, is that "Apparently an Englishman takes his personal law abroad in this matter and a foreigner deposits his in bond at the Dover Customs House." "We will use the personal law," this writer continues, "to impose our own restrictions, and perhaps to confer our own tolerances, abroad, but * * * we decline to use it in order to introduce foreign restrictions and tolerances here."²⁶

Extraterritorial Effect of Prohibitions on Marriage by Law of Domicile

A man domiciled in Michigan wishes to marry a Michigan woman, but such marriage is forbidden by Michigan law. Can he, by crossing the state line into Indiana, where, it may be assumed, his marriage would be legal, contract a marriage which will be good at his domicile or in a third state? It may be assumed that he follows the forms prescribed by Indiana law.

The question arises in cases involving several types of prohibition upon marriage. Chief among them are provisions forbidding remarriage after divorce, provisions against marriage of relatives within certain degrees, miscegenation statutes, or those establishing a certain age below which parties are declared incapable of marrying.

It will make for clearness if there is set out here what is believed to be the underlying legal principle back of what is an apparent con-

iciliary law. On the second trial of the cause, it being found that the respondent was domiciled in England, the marriage was declared valid.

²⁵ *Ogden v. Ogden* [1908], Prob. 46. See also *Chetti v. Chetti* [1909], Prob. 67, commented upon by Prof. Dicey in 25 *LAW Q. REV.* 202. A Hindu was held (in effect) not to have brought his incapacity with him, when he married in England.

²⁶ *BATY, POLARIZED LAW*, 41, and 61. See also 53, et seq. Dr. Baty calls *Ogden's* case, "a distinct repudiation by the Court of Appeal in 1907 of the express views of the Court of Appeal in 1877, and of the House of Lords in 1861." p. 59. See further, by the same learned author,—"*Capacity and Form of Marriage in the Conflict of Laws*"; 26 *YALE L. JOUR.* 444, in which he says, 456, "The worst solution of all . . . is that of enforcing one's own law as a personal law abroad, while refusing, or grudgingly according recognition to foreign laws at home."

fusion of authorities. It is as follows: The place where a man and a woman happen casually to be at the time of the performance of a marriage ceremony cannot finally determine the question of the validity of their marriage.²⁷ The marriage relation, both in its creation and in its termination, is a matter of importance to the state with which one is most intimately connected—*i. e.*, where he has his domicile—as well as to the party himself. The law insists vigorously upon adherence to the law of the domicile in terminating the marriage relation. Is the domiciliary law to be ignored in the equally important matter of creating the relation? Surely not. The real settlement of the validity of the marriage should depend upon the law of the domicile when the alleged marriage takes place. But there is a strong public policy, often expressed, for upholding the validity of marriage wherever possible. So in most cases compliance with the law at the place of celebration results in a marriage whose validity is universally recognized. And so general is this recognition that we have the broadly stated rule, “good where contracted, good everywhere.” But if the union in question is one forbidden by the law of the domicile, there is a clash between the general policy of upholding the validity of marriage agreements and that of sustaining the state’s ideas of propriety and good morals in the marriage relation. Often the foreign marriage is sustained. But if the legislative prohibition is explicit in declaring the marriage void, or if the violation of the domiciliary notion of good morals is flagrant, the attempt at marriage may fail. If void by the law of the domicile, it should follow that it is void elsewhere as well. The soundness of this position is tested in the cases immediately to be discussed.²⁸

²⁷ Conformity with the *lex loci contractus* will, in general, be the first test however. That has already been shown with regard to formal requirements; presumably it is also true as to capacity. *McIlvain v. Scheibley*, 109 Ky. 455, 59 S. W. 498; *Blaisdell v. Bickum*, 139 Mass. 250, 1 N. E. 281; *Schaffer v. Krestovnikow* (N. J.), 102 Atl. 246. But see *City of Williamson*, 10 Phila. 176.

²⁸ Substantially this view is taken in a note in 26 HARV. L. REV. 536. The following language seems in point also: Werner, J., (dissenting), in *Cunningham v. Cunningham*, 206 N. Y. 341, 353, 99 N. E. 845: “But marriage, although initiated by contract, creates a *status* with manifold continuing rights, duties and obligations. These . . . must necessarily be subject to the law of the domicile, for otherwise the state would have no control over its subjects or citizens.”

Refusal to recognize the validity of foreign marriages has unfortunate results, for it tends to render uncertain one of the most important of human relations, a relationship in which certainty is surely as imperatively demanded as in commercial transactions. The only methods of avoiding the confusion would seem to be either a uniform statute on the subject of capacity (or incapacity) to marry or a general recognition, without exceptions, of the validity of a marriage good where celebrated. Neither seems immediately in prospect.

Prohibitions Upon Remarriage After Divorce

Statutes restricting further marriage of divorced persons are very common and take a variety of forms. They may forbid the marriage of both innocent and guilty parties within a given time from the 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 restriction. The question here involved is raised when parties are divorced in a state having such restrictions and one of them, in evasion of the domiciliary law, goes outside the state and contracts a marriage valid by the *lex loci contractus*. Will the marriage be recognized at home?

One situation should be distinguished at the outset. Under the divorce practice in some jurisdictions, an absolute decree is not first entered, but merely an interlocutory order or decree nisi, which is made absolute at some later date, if in the meantime the court has not become convinced that a divorce should not be granted.²⁹ Until this decree is made final, the parties are not divorced; a second marriage is bigamous because the first one still exists.³⁰ Statutory provisions declaring divorced persons incapable of marrying until the expiration of the period in which an appeal from the divorce decree may be taken might conceivably be construed to operate as making that decree conditional and thus preventing remarriage until such time had elapsed. There is authority for and against this construction.³¹ It may be said in comment that if the law-making body

²⁹ This is the method provided in the Uniform Divorce Act, §§ 16 and 17.

³⁰ *Pettit v. Pettit*, 93 N. Y. S. 1001; *Earle v. Earle*, 126 N. Y. S. 317; *Warter v. Warter* (Eng.), L. R. 15 Prob. Div. 152. See *Knoll v. Knoll*, 104 Wash. 110, 176 Pac. 22.

³¹ For it: *Eaton v. Eaton*, 66 Neb. 678, 92 N. W. 995; *McLennan v. McLennan*, 31 Or. 480, 50 Pac. 802; *Hooper v. Hooper*, 67 Or. 187, 135 Pac.

desires to make the original decree interlocutory merely it is not difficult so to provide in express terms.

Upon the main question—recognition at home of the foreign marriage of a divorced person forbidden to remarry by his domiciliary law—the authorities are sharply divided. What is probably the weight of authority follows the general rule that a marriage valid where contracted is valid everywhere, and upholds the validity of the type of union under consideration.³² But very respectable courts, some of them in modern decisions, take the opposite view.³³ The statutes forbidding the marriage vary, as has been said, and this has naturally affected some of the results. Thus, if the prohibition against marriage is applicable only to the guilty party in the divorce suit, it may be called penal, to be narrowly construed and not effective outside the state.³⁴ Or there may be a statutory recognition of the "good where contracted, good everywhere" rule,³⁵ equally a declaration of legislative policy with the prohibition against this particular marriage. But in other cases reaching opposite conclusions on the question there is no real distinction in the statutes involved, which accounts for the results.

325. It was suggested, though not decided, by the Wisconsin court, that this rule might be applicable to a general prohibition upon remarriage within a year from the decree. *Lanham v. Lanham*, 136 Wis. 360, 117 N. W. 787, 17 L. R. A. (N. S.) 804. Contra: *Re Wood*, 137 Cal. 129, 69 Pac. 900; *Griswold v. Griswold* (Colo. App.), 129 Pac. 560; *Willey v. Willey*, 22 Wash. 115, 60 Pac. 145; *State v. Fenn*, 47 Wash. 561, 92 Pac. 417, 17 L. R. A. (N. S.) 800.

³² *Re Wood's Estate*, 137 Cal. 129, 69 Pac. 900; *Griswold v. Griswold*, 23 Colo. App. 365, 129 Pac. 560; *Loth v. Loth's Est.* (Colo.), 129 Pac. 827; *Dudley v. Dudley*, 151 Iowa 142, 130 N. W. 785; *Farrell v. Farrell* (Ia.), 181 N. W. 12; *Comm. v. Lane*, 113 Mass. 458; *Woodward v. Blake* (N. D.), 164 N. W. 156; *Van Voorhis v. Brintall*, 86 N. Y. 18; *In re Eichler*, 146 N. Y. S. 846; *State v. Shattuck*, 69 Vt. 403, 38 Atl. 81. See also the L. R. A. notes cited in note 9, *supra*.

³³ *Wilson v. Cook*, 256 Ill. 460, 100 N. E. 222; *Succession of Gabisso*, 119 La. 704, 44 So. 438, 11 L. R. A. (N. S.) 1082; *In re Stull's Est.*, 183 Pa. 625, 39 Atl. 16, 63 Am. St. Rep. 776; *Pennegar v. State*, 87 Tenn. 204, 10 S. W. 305; *Knoll v. Knoll*, 104 Wash. 110, 176 Pac. 22 and Washington cases cited (but see *Willey v. Willey*, 22 Wash. 115, 60 Pac. 145); *Lanham v. Lanham*, 136 Wis. 360, 117 N. W. 787, 17 L. R. A. (N. S.) 804.

³⁴ *Comm. v. Lane*, *supra*; *Van Voorhis v. Brintall*, *supra*; but see *Pennegar v. State*, *supra*.

³⁵ *Griswold v. Griswold*, *supra*.

The issue on which the decision turns is not, it is believed, whether the statute prohibiting the marriage is an expression of the public policy of the state enacting the statute.³⁶ A policy against such marriage is surely shown by the legislative declaration prohibiting it.³⁷ But the policy thus expressed runs afoul, in these cases, of another policy which is well settled, whether expressed in positive terms by statute or not. That is the policy of upholding a marriage where possible. To deny the marriage may relieve one from an obligation solemnly entered into; it may bastardize innocent children born of the union. So the issue is whether the policy of prohibition, as expressed by the legislative body, is strong enough to prevail over the policy demanding the upholding of the marriage. If the language is unmistakable the court must follow it. If not, the answer will in a measure depend upon which policy has the greater weight with the court, and opinions will and do differ.

It has been held that if a divorced person leaves the state and acquires a domicile elsewhere, and then marries (the marriage being valid by the law of the new domicile) within the prohibited time, his marriage is nevertheless good and will be so recognized in the jurisdiction where the divorce was granted, even though it would have been declared void had he remained domiciled in the latter state.³⁸ Further, the cases cited above which have declared the foreign marriage invalid all involved the recognition of the foreign marriage at the domicile of the divorced party. This lends support to the view that it is in reality the domiciliary law which determines the validity of a marriage.

Statutes Forbidding Miscegenation

An act which may bring the individual sharply into conflict with the policy of his domiciliary law regarding the institution of marriage is the violation of a statute against miscegenation. A white person and a negro, domiciled in a state where such marriage is forbidden, go into a state where it is allowed, go through a marriage

³⁶ As is said in 57 L. R. A. 171, note.

³⁷ See the language of the court in *Lanham v. Lanham*, *supra*.

³⁸ *State v. Fenn*, 47 Wash. 561, 92 Pac. 417, 17 L. R. A. (N. S.) 800; *ton*, 18 Mass. (1 Pick.) 506; *People v. Steere*, 184 Mich. 556, 151 N. W. 617; *Scott v. Atty. Gen.*, L. R. 11 P. D. 128. Reaching the same result, though the decision is not put expressly on this ground, is *Webster v. Modern Woodmen* (Iowa), 186 N. W. 659.

ceremony, and return to their domicile. It is not surprising to find that the decisions from the southern states uniformly declare such an attempted union void.³⁹ Local abhorrence of such a mating outweighs any general policy of upholding marriage.⁴⁰ There is less basis, however, for such decisions criticising, as some of them do, a contrary result in a northern state⁴¹ where the social question is viewed in a different light.

Foreign "Incestuous" Marriages

While prohibitions against incest are general, legislative policy differs in defining that degree of relationship within which an attempted marriage is regarded as incestuous. If the various statutes are to be taken as announcing that infringements thereof are "in violation of the Divine law,"⁴² there certainly is a difference of legislative opinion as to what that law is. The problem for the court is the same as that involved in the cases where there was a remarriage outside the state of domicile within the prohibited time after divorce. Is the local prohibition so strong, either by express language or necessary implication, that the court at the domicile will declare the attempted marriage void, instead of applying the usual "good where

³⁹ *State v. Tutty*, 41 Fed. 753 (federal court, Ga.); *Dupre v. Boulard's Ex'r*, 10 La. Ann. 411; *Succession of Gabisso*, 119 La. 704, 44 So. 438, 11 L. R. A. (N. S.) 1082; *State v. Kennedy*, 76 N. C. 251, 22 Am. Rep. 683; *State v. Bell*, 66 Tenn. (7 Baxt.) 9; *Kinney v. Comm.*, 30 Gratt (Va.) 858, 32 Am. Rep. 690.

⁴⁰ Sometimes this abhorrence is shown in very fervent terms, as shown in the *Kinney* case, *supra*, where the court says: "The purity of public morals, the moral and physical development of both races, and the highest advancement of our cherished Southern civilization, under which two distinct races are to work out and accomplish the destiny to which the Almighty has assigned them on this continent—all require that they should be kept separate and distinct, and that connections and alliances so unnatural that God and nature seem to forbid them, should be prohibited by positive law, and be subject to no evasion."

⁴¹ *Inhabitants of Medway v. Inhabitants of Needham*, 16 Mass. 157. Cf. § 11, 367 Comp. Laws Mich. 1915, expressly declaring valid marriages of this type which had taken place prior to the statute. In *Wilbur's Est.*, 8 Wash. 35, 40 Am. St. Rep. 886, the court declared a marriage between a white man and an Indian void, the man being domiciled in Washington though the marriage was valid according to the Indian custom on the reservation.

⁴² Per Lord Wensleydale in *Brook v. Brook*, 9 H. L. Cas. 193, the famous deceased wife's sister case.

contracted, good everywhere" rule. Instances where a marriage good where contracted has been declared void at the domicile because of relationship of the parties are not frequent.⁴³ Indeed, some of the states which refuse recognition to foreign marriages of their divorced citizens nevertheless hold this type good.⁴⁴ This may be because, in most of these rules covering prohibited degrees, the various laws cover common ground and differences which exist are matters of degree rather than divergencies in policy.

Lack of Consent of Parent or Guardian

Statutes frequently require consent by parents to the marriage of minors, and young people desiring to marry not infrequently seek to avoid the effect of refusal of such consent by a journey to another jurisdiction for the performance of the marriage ceremony. Then arises the same question whether the marriage, good where entered into, will be valid at home. Generally, the answer is in the affirmative,⁴⁵ though there is some dissent.⁴⁶ The "good where performed, good everywhere" rule has been applied also to the foreign marriage of one under guardianship as a spendthrift who marries without his guardian's consent.⁴⁷

⁴³ *Johnson v. Johnson*, 57 Wash. 89, 106 Pac. 500, 26 L. R. A. (N. S.) 179. See also L. R. A. notes cited, note 9.

⁴⁴ *People v. Siems*, 198 Ill. App. 342, (this concerned the marriage of cousins in Wisconsin. The man was from Minnesota, the woman from Illinois, by whose law cousins could not lawfully marry. Her "disability" did not prevent a valid marriage); *Leefeld v. Leefeld*, 85 Ore. 287, 166 Pac. 953, where the court emphasized the wording of the statute declaring the marriage void if solemnized in this state"; *Schofield v. Schofield*, 51 Pa. Sup. Ct. 564. Accord: *Stevenson v. Gray*, 56 Ky. (17 B. Mon.) 193; *Fensterwald v. Burk*, 129 Md. 131, 89 Atl. 358; 3 A. L. R. 1562; *State v. Hand* (Neb.), 126 N. W. 1002, 28 L. R. A. (N. S.) 753. (See L. R. A. note for ground of attack on the marriage in this case.)

⁴⁵ *Levy v. Downing*, 213 Mass. 334, 100 N. E. 638 (which turns largely on jurisdiction to annul); *Comm. v. Graham*, 157 Mass. 73, 31 N. E. 706, *semble*; *Donahue v. Donahue*, 116 N. Y. S. 241; *Reid v. Reid*, 129 N. Y. S. 529 (but see next note); *Courtright v. Courtright*, 11 Ohio Dec. 412.

⁴⁶ *Cunningham v. Cunningham*, 206 N. Y. 341, 99 N. E. 845, 43 L. R. A. (N. S.) 355; *Mitchell v. Mitchell*, 117 N. Y. S. 671. In this case the court seems to think it can give a decree of annulment without declaring the marriage void in the first place. See *Smith v. Smith*, 84 Ga. 440, 11 S. E. 496.

⁴⁷ *Sturgis v. Sturgis*, 51 Ore. 10, 93 Pac. 696, 15 L. R. A. (N. S.) 1034; *Ex parte Chace*, 26 R. I. 351, 58 Atl. 978, 69 L. R. A. 493.

Uniform Marriage Evasion Act

Mention should be made of the uniform statute⁴⁸ on this subject, approved by the Uniform Law Commissioners in 1912 and now adopted in several states. This act provides in its first section, "That if any person residing and intending to continue to reside in this state who is disabled or prohibited from contracting marriage under the laws of this state shall go into another state or country and there contract a marriage prohibited and declared void by the laws of this state, such marriage shall be null and void for all purposes in this state. * * *" The second section makes void a marriage contracted within the state where it would be void by the law of the party's residence. As between two states which have enacted this legislation, no change is made in the "good where contracted, good everywhere" rule, for the prohibited marriage is ineffective where entered into. But if a person goes from a state which has passed the statute to one which has not, and then contracts a marriage prohibited by his domiciliary law but allowed in the second state, the effect seems to be to codify what has been heretofore the minority rule. Under the statute, the domiciliary law will in all cases refuse the marriage relationship to one forbidden to marry under its law. In this respect the statute marks a serious change in policy with regard to marriage. Whether such change in policy is required is a question outside the scope of this discussion.

Effect in Third State of Marriage Void by Law of Domicile

The cases cited above are those in which a marriage, forbidden by the law of the domicile, has taken place in a state where it is good by the local law and the question has been raised at the domicile whether the marriage is valid. The underlying principle is believed to be that while the domiciliary law generally allows the relationship it may refuse to do so if it is opposed to local policy. If the domicile refuses to recognize the parties as married, assuming the view set out is correct, a court in another state should give the same answer. The point is seldom presented. A recent Wisconsin case, however, involved the question. An Illinois woman, under prohibition to marry after divorce, went with an Illinois man to

⁴⁸ A copy of the statute and other facts concerning it may be found in Terry, *Uniform State Laws*, pp. 401, et seq.

Indiana, where they married. By Illinois law the attempted marriage was void. The Wisconsin court held that the woman could not recover as widow under the Compensation Act for the man's death.⁴⁹ The Illinois rule, by which the foreign marriage of a divorced party within the prohibited time is considered void, found further recognition in a Michigan case. After an Illinois man had been divorced he and an Illinois woman went through a marriage in Michigan within the prohibited time. He having left her, it was held that he could not be prosecuted in Michigan for wife desertion.⁵⁰ If it is the law of the domicile which finally governs the creation of the marriage relation, these cases are correct. There being no marriage by that law, there is none to recognize in another state.⁵¹

Recognition of Valid Foreign Marriage

A marriage which is good by the law where contracted and which does not fail because of positive rules of domiciliary law against it will generally be recognized elsewhere. As stated above, a party after divorce who acquires a new domicile and contracts a valid marriage under its laws will be recognized as validly married even at

⁴⁹ *Hall v. Ind. Comm.*, 165 Wis. 364, 162 N. W. 312, L. R. A. 1917 D. 829. The fact that the Wisconsin law on remarriage outside the state after divorce was the same as that of Illinois while mentioned by the court, seems immaterial.

⁵⁰ *People v. Steere*, 184 Mich. 556, 151 N. W. 617. The grounds for so holding are not clearly set out. On the view suggested here, the result is correct. See, for adverse criticism, 13 MICHIGAN L. REV. 592.

⁵¹ A more recent Wisconsin case gives more trouble. *Owen v. Owen*, 190 N. W. 363. The plaintiff, who seeks annulment of his marriage, was a Wisconsin man who induced defendant to marry him in Michigan the day after she got her divorce in Illinois, where such remarriage was forbidden. The court refused annulment, and said the marriage was valid. The case, at first sight, appears opposed to the *Hall* case, *supra*. May it be said, as upholding it: (1) the plaintiff did not come into court with clean hands. It was his inducement which caused defendant to act. See *Ewald v. Ewald*, 219 Mass. 111. (2) The woman abandoned her residence in Illinois, prior to the marriage, in Michigan, and did live with the plaintiff in Wisconsin. If she had acquired a new domicile prior to the marriage, the Illinois prohibition would no longer be applicable. See note 38. The Illinois restriction might well be held not to apply to one whose home in Illinois is abandoned, and who, unless the marriage is invalid because of the restriction, will by the act of marriage immediately acquire a domicile in another state. Compare the language in section one of the Uniform Statute, *supra*.

his former home.⁵² Parties within the degrees of relationship prohibited by the forum will be recognized as married if their marriage was valid under their domiciliary law.⁵³ In like manner, states prohibiting marriage of whites and negroes have recognized the validity of such union when valid by the domiciliary law.⁵⁴

Conceivably, there might be a situation where any recognition of the foreign marriage would run so contrary to notions of decency or policy in a state that a court should refuse to grant it. There is no way, aside from questions which may arise under the federal Constitution, that a state can be compelled to give effect to any foreign marriage against its will. But it seems hardly conceivable that among the states of this nation, where differences relate "to the minor morals of expediency, and to debatable questions of internal policy,"⁵⁵ a marriage valid by the law creating it should be denied all recognition in a sister state. In a situation where differences in policy are pronounced, as perhaps the marriage of white persons and negroes, might not some recognition be given to a valid union of this kind where the parties come from another state, even though local policy frowned on such a marriage? Cohabitation between such persons might have a deleterious effect on local morals, and be forbidden even though they were validly married, while the inheritance of property by a surviving spouse or child of the union would be entirely innocuous and might well be allowed.^{55a} Some kinds of recognition may be afforded, though it might not be possible to recognize the marriage for every purpose.

"Non-Christian Marriages"

In a leading English case an eminent judge states "that marriage, as understood in Christendom, may * * * be defined as the voluntary

⁵² See note 38, *supra*.

⁵³ *Sutton v. Warren*, 51 Mass. (10 Metc.) 451; *Garcia v. Garcia*, 25 S. D. 645, 127 N. W. 586, 32 L. R. A. (N. S.) 424 (there the court denied annulment but did not commit itself upon the question whether the parties could lawfully cohabit in South Dakota); *contra*, *U. S. v. Rodgers*, 109 Fed. 886.

⁵⁴ *Pearson v. Pearson*, 51 Cal. 120; *State v. Ross*, 76 N. C. 242; *Whittington v. McCaskill*, 65 Fla. 162, 61 So. 236, 44 L. R. A. (N. S.) 630.

⁵⁵ See Mr. Justice Beach, "Uniform Interstate Enforcement of Vested Rights," 27 YALE L. JOUR. 656, 662.

^{55a} See "The Extraterritorial Force of Personal Statutes," F. G. Munson, 13 COL. L. REV. 314.

union for life of one man and one woman to the exclusion of all others."⁵⁶ Does that mean that an English court will not recognize legal consequences of relations between men and women arising from any other kind of matrimonial institution than that of Christendom? Language may be found to this effect. In another case⁵⁷ it is said: "I am bound to hold that a union formed between a man and woman in a foreign country, although it may there bear the name of marriage * * * is not a valid marriage according to the law of England, unless it be formed on the same basis as marriages throughout Christendom. * * *" It is hard to think that if a Mohammedan paid a visit to London with his wife their cohabitation would be considered unlawful and make them subject to punishment.⁵⁸ But it is not difficult to support a conclusion that an English court for matrimonial causes, applying ecclesiastical law with its statutory modifications, is not designed to afford relief in cases where marital rights and duties are of a different sort from that known to the ecclesiastical law.⁵⁹ A recent Court of Appeal decision

⁵⁶ Lord Penzance in *Hyde v. Hyde*, L. R. 1 P. & D. 130.

⁵⁷ In *re Bethell*, 38 Ch. Div. 220. This is an interesting case. An Englishman in Africa, contracted a union with a woman of a native tribe, according to its rites. He was domiciled in England, but no point was made of that, the case turning on the point whether this was a "marriage." The court said not, and thought a child born to the parties was not legitimate. Compare the decision with the American decisions in Indian cases, *infra*, and the language of Judge Campbell in *Kobogum v. Jackson Iron Co.*, 76 Mich. 498, 507, 43 N. W. 602: "While most civilized nations in our day very wisely discard polygamy . . . yet it is a recognized and valid institution among many nations, and in no way universally unlawful. We must either hold that there can be no valid Indian marriage, or must hold that all marriages are valid which by Indian usage are so regarded." Even in England the marriage need not be "Christian," however, if monogamous, and the validity of a Japanese marriage has been upheld. *Brinkley v. Atty. General*, L. R. 15, P. Div. 76.

⁵⁸ See the language of the court in the federal case of *Polydore v. Prince*, Ware 402: "If a Turkish or Hindoo husband were travelling in this country with his wife, or temporarily resident here, we should, without hesitation, acknowledge the relation of husband and wife between them . . ."

⁵⁹ The statute of 20 and 21 Vict. c. 85 vested the jurisdiction of the ecclesiastical courts in a court of record known as "The Court for Divorce and Matrimonial Causes." In denying an application for restitution of conjugal rights to a party to a Mohammedan marriage, the court makes the following remarks in point here: "We must remember that the English Eccle-

recognized the right of inheritance of a "t'sip" or secondary wife of a Chinese merchant of Penang.⁶⁰ The woman could inherit, even though not the wife by a type of marriage known in Christendom.

It was stated by Story, whose language has been repeated by many courts, that one exception to the rule recognizing the validity of a marriage valid where performed is that of a polygamous marriage. It is interesting to see what happens to this statement when a court is actually confronted with facts involving this kind of matrimonial association or other union not of the type of a monogamous union for life. The point has most frequently arisen, in the American cases, with regard to the marriage institution among the Indians. More often than not it arises in connection with the inheritance of property, and turns on the question of the legitimacy of the children who claim, or through whom claim is made, to a government allotment of land.

It appears from the cases that marriage among the Indians was a somewhat casual and very informal affair. Spouses became "husband and wife" by living together, sometimes the cohabitation being preceded by a gift to the bride's parents or payment of purchase money by the groom. Divorce, if such it may be called, was equally simple. When the parties ceased to live together the marriage was at an end. Polygamy, in some instances at least, was allowed. The tribes were not subject to the laws of the states. An almost unanimous line of decisions holds that marriages contracted between tribal Indians, according to the laws and customs of their tribe, at a time when the tribal relations and government were existing, are to be upheld in the absence of a federal statute rendering such tribal laws and customs invalid.⁶¹ This is not a recognition of the informal

siastical Law is founded on the assumption that all the parties litigant are Christians; indeed originally, more strictly speaking, Christians professing the doctrines of the church." *Ardasee Cursetjee v. Perozeboye*, 10 Moore P. C. 375. *Hyde v. Hyde*, *supra*, was a suit for divorce from a Mormon marriage assumed to be polygamous.

⁶⁰ *Cheang Thye Phin v. Tan AhLoy* (1920), A. C. 369. In *Hyde v. Hyde*, *supra*, and in *Re Ullee*, 53 L. T. Rep. 711 (Mohammedan marriage) the court carefully refrained from passing on the question of succession or legitimacy. But what of *In re Bethell*, *supra*? For an extensive discussion of the subject from an English writer, see Fitzpatrick, "Non-Christian Marriage," 2 JOUR. COMP. LEGIS. (N. S.) 359, 3 *ib.* 157.

⁶¹ *Yakima Joe v. To-Is-Lap*, 191 Fed. 516; *Wall v. Williamson*, 8 Ala. 48; *Moore v. Wa-me-go*, 72 Kan. 169, 83 Pac. 400; *Kobogum v. Jackson Iron*

agreement of parties to take each other as husband and wife known to our law as a common law marriage, but a marriage according to the customs of the Indians, something quite different.⁶² Courts have likewise regarded as valid the marriage of a white man who, in the Indian country and in accordance with Indian customs, has taken an Indian woman to wife.⁶³ Where the Indians are no longer living with the tribe at the time of the alleged marriage the customs of the tribe have been held inapplicable and the marriage not good unless it complied with the state law.⁶⁴ The same limitation has been applied to cohabitation of white and Indian which commenced outside the Indian country.⁶⁵

The question of the validity of the Indian "divorce" by separation has also been passed upon in determining the legitimacy of offspring from a later cohabitation with another spouse. There is little doubt that such a divorce is recognized as valid when the separation took place in Indian country and when the marriage was contracted there.⁶⁶ Divorce in this fashion is not recognized, how-

Co., 76 Mich. 498, 43 N. W. 602; Earl v. Godley, 42 Minn. 361, 44 N. W. 254; La Framboise v. Day (Minn.), 161 N. W. 529; People v. Rubin, 98 N. Y. S. 787; Ortleby v. Ross, 78 Neb. 339, 110 N. W. 982; Oklahoma Land Co. v. Thomas, 34 Okla. 681, 127 Pac. 8; James v. Adams (Okla.), 155 Pac. 1121; Meagher v. Harjo (Okla.), 179 Pac. 757; Morgan v. McGhee, 24 Tenn. 13; First Nat. Bank v. Sharpe, 12 Tex. Civ. App. 223, 33 S. W. 676; In re Wogin-up, (Utah), 192 Pac. 267; Connolly v. Woolrich, 3 Low CAN. L. JOUR, 14. Contra, *semble*, Roche v. Washington, 19 Ind. 53.

⁶² La Framboise v. Day (Minn.), 161 N. W. 529; Buck v. Branson, 34 Okla. 807, 127 Pac. 436, 50 L. R. A. (N. S.) 876. The court seemed, at least, to overlook this in Henry v. Taylor, 16 S. D. 424, 93 N. W. 641.

⁶³ La Framboise v. Day, *supra* (half breed); Johnson v. Johnson's Admr., 30 Mo. 72, 77 Am. Dec. 598; Morgan v. McGhee, 24 Tenn. 13; Connolly v. Woolrich, 3 Low. CAN. L. JOUR. 14. Contra, Follansbee v. Wilbur, 14 Wash. 242, 44 Pac. 262 (under miscegenation statute).

⁶⁴ Roche v. Washington, 19 Ind. 53, 81 Am. Dec. 376; State v. Ta-chana-tah, 64 N. C. 614.

⁶⁵ Banks v. Galbraith, 149 Mo. 529, 51 S. W. 105, holding that where an Indian woman, with her parents, leaves the tribe and goes to Missouri, and is there sold to a white man with whom she lives, there is no Indian marriage, but Missouri law controls. The decision seems a limitation upon La Riviere v. La Riviere, 97 Mo. 10, 80 S. W. 840 and Boyer v. Dively, 58 Mo. 510.

⁶⁶ Wall v. Williamson, 8 Ala. 48; La Framboise v. Day (Minn.), 161 N. W. 529; Buck v. Branson, 34 Okla. 807, 127 Pac. 436, 50 L. R. A. (N. S.) 876; James v. Adams (Okla.), 155 Pac. 1121. See also the cases in following

ever, when the parties are no longer subject to tribal law and customs, but have come under the municipal law of a state.⁶⁷

Instances where American courts have been called upon to recognize other types of non-monogamous marriages are less common. The Supreme Court of Iowa recently recognized the wife of a Mohammedan marriage to be entitled to compensation as a widow under the Workmen's Compensation Act.⁶⁸ The deceased had but one wife, though he could lawfully have had four under Mohammedan law. There is a difference, then, between circumstances under which a state will create a marriage relation for its citizens, or recognize the existence of that status when raised with reference to those domiciled elsewhere. Presumably, no one of our states would create the marriage status for a man domiciled there with two women at the same time,^{68a} though it should be repeated that the more or less temporary union of white man and squaw has been recognized as valid marriage. In none of these cases did it appear that the white man purported to have more than one wife at one time. Our courts do recognize the legal fact of and give effect to for-

notes. In *Cyr. v. Walker*, 29 Okla. 281, 116 Pac. 931, the court went so far as to declare a divorce by tribal custom effective though the man married the woman, who was not a member of the tribe, in Illinois.

⁶⁷ In *re Wo-gin-up* (Utah), 192 Pac. 267; *Connolly v. Woolrich*, 3 Low CAN. L. JOUR. 14. In this case the marriage was in the Indian country according to tribal custom and good. The separation was after the husband (a white man) had brought the wife back to lower Canada to live. The attempted divorce was invalid. Cf. *Johnson v. Johnson's Admr.*, 30 Mo. 72, 77 Am. Dec. 598, where the white man abandoned the woman prior to his return, and the divorce was good. *Moore v. Wa-me-go*, 72 Kan. 169, 83 Pac. 400, held that after land allotment proceedings the Indians were citizens of Kansas and an informal divorce was ineffective. Contra, *Yakima Joe v. To-Is-Lap*, 191 Fed. 516. See, on Indian divorces, 35 L. R. A. (N. S.) 795, and L. R. A. 1917 D 574.

⁶⁸ *Royal v. Cudahy Packing Co.* (Iowa), 190 N. W. 427. See *Kapigian v. Der Minassian*, 212 Mass. 412, 99 N. E. 264. In this case the marriage was between two Christians, domiciled in Turkey. The marriage was ended by the wife turning Moslem and marrying another. The court recognized both the marriage and its termination.

^{68a} Thus, in the case of *In re Look Wong*, 4 Haw. Fed. Dist. Ct. 568, the court refused to recognize as valid the polygamous marriage of a Chinese merchant who was resident in Hawaii with a woman in China, even though the marriage was valid by Chinese law. It is not clear, however, that the legitimacy of the child should have been denied. See comment, 31 HARV. L. REV. 892.

eign matrimonial unions that do not conform to requirements for the relationship among our people. How far we can go in giving recognition, not only to the fact of this status but to its incidents, is not clear. It may well be doubted whether a Mohammedan visitor would be permitted to cohabit here with his four wives. Children of the union could, and probably would, be recognized as legitimate, as they are in the Indian cases. One widow has been held entitled to rights as a surviving spouse. What a court should do if there were four is a harder question. If the case involved devolution of personalty, it might be referred to the domiciliary law of the deceased and distribution made accordingly. A claim by four bereft spouses under a Workmen's Compensation Act would not be so easily disposed of.⁶⁹

⁶⁹ The foregoing discussion forms the basis of a chapter on Marriage for a text-book in *CONFLICT OF LAWS*, in preparation for the West Publishing Company, St. Paul. It appears by permission of the publishers.