

1959

Marriage to a Paramour after Divorce: The Conflict of Laws

Charles W. Taintor II

Follow this and additional works at: <https://scholarship.law.umn.edu/mlr>



Part of the [Law Commons](#)

Recommended Citation

Taintor, Charles W. II, "Marriage to a Paramour after Divorce: The Conflict of Laws" (1959). *Minnesota Law Review*. 1018.
<https://scholarship.law.umn.edu/mlr/1018>

This Article is brought to you for free and open access by the University of Minnesota Law School. It has been accepted for inclusion in Minnesota Law Review collection by an authorized administrator of the Scholarship Repository. For more information, please contact lenzx009@umn.edu.

Marriage to a Paramour After Divorce: The Conflict of Laws

Professor Taintor here examines the extent of the extraterritorial effect of statutes which prohibit marriage by a divorced person to his paramour if the basis for dissolution of the prior marriage was adultery. He concludes that the interests of uniformity and sound policy require that the statutes have effect only in the states which proscribe such marriages, and that an otherwise valid marriage should not be nullified unless the divorcing state was the intended domicile at the time of the second marriage.

Charles W. Taintor II*

STATUTES in some of the States¹ forbid the remarriage of a divorced libellee for various periods after the decree is granted. I shall consider in detail herein only the type which is found in Louisiana, Pennsylvania and Tennessee: statutes forbidding the marriage of the libellee and the paramour after a divorce for adultery and during the lifetime of the former spouse.²

These are old,³ or are re-enactments⁴ of old statutes and, in spite of differences in their terms, have been construed in substantially the same way in all three States. Marriages forbidden by them

* Professor of Law, University of Pittsburgh School of Law

1. The word "State," capitalized, will throughout be used to mean state of the union; without the capitalization, the word "state" will mean state in the conflict of laws sense—a geographical subdivision of the surface of the earth having its own laws.

2. In each of these States the prohibition applies only to marriage to the person for adultery with whom the divorce was granted.

3. The Pennsylvania statute was enacted as Act of March 13, 1815, 6 Sm. L. 286, § 9, and is now PA. STAT. ANN. tit. 48, § 169 (Purdon 1930). It might be argued that the Pennsylvania marriage law, PA. STAT. ANN. tit. 48, §§ 1-5 (Purdon 1930), impliedly repealed the absolute prohibition of the earlier statute, since the only reference in the present statute is to forbidding the issuance of a marriage license under the circumstances the 1815 law proscribed. This seems improbable, however. The Court of Appeals for the Third Circuit was of the opinion that repeal was not intended. *Warrenberger v. Folsom*, 239 F.2d 846 (3d Cir. 1956) (Pa.) [subsequent similar references to states are meant to indicate the State whose laws were applied].

4. The Louisiana statute stems from CODE NAPOLEON art. 298, was first enacted in that state in 1827, and is now LA. CIV. CODE ANN. art. 161 (West 1952). The Tennessee statute was first enacted in 1835-1836, and is now TENN. CODE ANN. § 36-831 (1955).

are void in the sense that they are subject to collateral attack, though, in Louisiana and Pennsylvania and probably in Tennessee, either party may have a decree of annulment.⁵ Neither party can derive any rights from such marriages⁶ and, without the aid of other statutory provisions, children born to such unions are illegitimate.⁷

The complete invalidity of such forbidden marriages arises from the terms of the Louisiana statute⁸ and, in that State and the others is explained in terms of morality and public policy.⁹

To what marriages do these statutes apply? Obviously they make void any intrastate marriages between persons domiciled in the state who intend to remain there.

In all three of the States, they apply to extrastate ceremonies in

5. *Rhodes v. Miller*, 189 La. 288, 179 So. 430 (1938); *Maurer v. Maurer*, 163 Pa. Super. 264, 60 A.2d 440 (1948); *Kalmbacher v. Kalmbacher*, 63 Pa. D. & C. 195 (Pa. C.P. 1945).

I have found no Tennessee case directly in point, but since a decree of annulment in a case of this kind amounts only to a declaration of nullity and its only effect is to get the fact on record, I see no reason why such a decree should not be available in Tennessee. Any argument directed to estoppel or unclean hands is well answered in the *Rhodes* and *Maurer* cases *supra*.

6. *Warrenberger v. Folsom*, 239 F.2d 846 (3d Cir. 1956) (Pa.) (second "wife" not a widow for the purpose of Social Security benefits); *In re Mayall's Naturalization*, 154 F. Supp. 556 (E.D. Pa. 1957) (no marriage which would establish "good moral character" for the purpose of naturalization); *In re Stull's Estate*, 183 Pa. 625, 39 Atl. 16 (1898) (letters of administration denied to the second "wife"); *Pennegar v. State*, 87 Tenn. 244, 10 S.W. 305 (1889) (conviction of lewdness); *Owen v. Bracket*, 7 Lea 448 (Tenn. 1881) (homestead right denied).

7. *Succession of Gabisso*, 119 La. 704, 44 So. 438 (1907); *Jennings v. Jennings*, 165 Tenn. 295, 54 S.W.2d 961 (1932).

An amendment to TENN. CODE ANN. § 36-832 (1955), adding the italicized words, "the annulment or dissolution of the marriage shall not in any wise affect the legitimacy of the children of the same," appears to have protected the children born to such prohibited unions. See *Taliaferro v. Rogers*, 35 Tenn. App. 521, 248 S.W.2d 835 (1951) (*semble*).

The situation in Pennsylvania is not clear. After forbidding the marriages, the statute continues: "but nothing herein contained shall be construed to extend to or affect or render illegitimate any children born of the body of the wife during coverture." PA. STAT. ANN. tit. 48, § 169 (Purdon 1930). Since the marriages are void, there is technically no coverture; yet it is probable that this was intended to make legitimate the children born to these void marriages. Otherwise, it is difficult to see to what facts the provision would apply.

8. "In case of divorce, on account of adultery, the guilty party can never contract matrimony with his or her accomplice in adultery, under the penalty of being considered and prosecuted as guilty of the crime of bigamy, and under the penalty of nullity of the new marriage." LA. CIV. CODE ANN. art. 161 (West 1952).

9. Such marriages are forbidden for reasons "of public policy" and are in "derogation of good morals." *Succession of Gabisso*, 119 La. 704, 713-14, 44 So. 438, 441 (1907).

Such a marriage is "contrary to the public policy of the government of the domicile, in that it offends against the prevailing sense of good morals among the people there dwelling." *In re Stull's Estate*, 183 Pa. 625, 632, 39 Atl. 16, 18 (1898).

The statute "accords with public policy . . . and tends to assure a decent propagation of the human race." *Owen v. Bracket*, 7 Lea 448, 449 (Tenn. 1881). "[T]he

states which have enacted no such statutes, if the prohibiting state was the domicile and the intended family domicile.¹⁰ In Louisiana the statute was applied where the man was domiciled in Louisiana which was the intended family domicile, while the woman was domiciled in Mississippi, where the ceremony was performed.¹¹

The stated reasons vary. In *Succession of Gabisso*¹² there was a short statement that a citizen and resident of a state cannot contract a valid marriage in another state when such a marriage is forbidden by the law of his home state "from considerations of morality and public policy." The most complete statement of the reasons is to be found in *Pennegar v. State*¹³ in language which was directly quoted in *Stull's Estate*:¹⁴

Now, believing as we do, that the statute in question . . . is expressive of a decided State policy not to permit the sensibilities of the innocent and injured husband and wife . . . to be wounded, nor the public decency to be affronted by being forced to witness the continued cohabitation of the adulterous pair, even under the guise of a subsequent marriage, performed in another State for the purpose of evading our statute, and believing that the moral sense of the community is shocked and outraged by such an exhibition, we will not allow such parties to shield themselves behind a general rule of the law of marriage, the wisdom and perpetuity of which depends as much upon the judicious exceptions thereto as upon the inherent right of the rule itself.

The rule referred to is, of course, the standard statement that it is the common law that a marriage which is valid under *lex loci celebrationis* is everywhere valid.

The Supreme Court of Pennsylvania, in *Stull*, added:

The foregoing reasoning is satisfactory to us. It invokes practically three distinct ideas, to wit: (1) that the foreign marriage is contrary to the positive statute of the domicil; (2) that it is contrary to the public policy of the government of the domicil, in that it offends against the prevailing sense of good morals among the people there dwelling; and (3) it was contracted for the express purpose of evading the positive law of the domicil. . . . The combination of these three objections seems to be most fatal to the validity of the marriage thus contracted. The writer is disposed to regard each one of them as fatal.¹⁵

public decency [is] affronted by being forced to witness the continued cohabitation of the adulterous pair, even under the guise of a subsequent marriage. . . ." *Pennegar v. State*, 87 Tenn. 244, 255, 10 S.W. 305, 308 (1889).

10. *Maurer v. Maurer*, 163 Pa. Super. 264, 60 A.2d 440 (1948); *Immendorf's Estate*, 21 Pa. County Ct. 268 (Orphans' Ct. 1898); *In re Stull's Estate*, *supra* note 9; *Pennegar v. State*, *supra* note 9; *Bennett v. Anderson*, 20 Tenn. App. 523, 101 S.W.2d 148 (1937).

11. *Succession of Gabisso*, 119 La. 704, 44 So. 438 (1907); *Succession of Hernandez*, 46 La. Ann. 962, 15 So. 461 (1894) (*semble*).

12. 119 La. 704, 713, 44 So. 438, 441 (1907).

13. 87 Tenn. 244, 255, 10 S.W. 305, 308 (1889).

14. 183 Pa. 625, 632, 39 Atl. 16, 18 (1898).

15. *Id.* at 632-33, 39 Atl. at 18.

It seems clear that this sort of language is intended to take this particular prohibition out of the almost uniform rule that prohibitions of the remarriage of the guilty party in a divorce suit are penalties and have no extraterritorial effect.¹⁶ It is necessary, therefore, to examine the reasons given by the courts in order to determine which, if any, justify the rule of invalidity.

It is simply not true, and it was not true at the times when the three leading cases were decided, that a marriage which is contrary to the positive statute of the domicile is void if the ceremony takes place in another state.¹⁷ Now, and at the time when these three cases were decided, intention to evade the law of the domicile does not make marriages void.¹⁸ This leaves only the reasons founded on public policy.¹⁹ One of them was said in *Stull and Pennegar* to be the protection of the innocent spouse from witnessing the continued cohabitation of the guilty pair. This does not seem to hold water. In all three States, the prohibition applies only to cases in which the divorce was for adultery with the second "spouse." Is the innocent spouse any less hurt by witnessing the cohabitation after divorce if he or she knew of the adultery, but could not prove it or preferred a less disgraceful cause for the divorce, *e.g.*, indignities to the person?

The second policy reason was said in these two cases to be the protection of the moral sense of the community from being shocked and outraged by such an exhibition—the continued cohabitation of the guilty pair. It may be that this held water at the dates of these cases and somewhat later. Those of us who remember our parents' attitude toward divorce, and particularly their opinion of a divorced woman, will remember that divorce, itself, was a disgrace and that the divorced woman was looked at askance, even if she was the innocent party. It may be that, then, divorce for adultery was more disgraceful than other divorces²⁰ and that these prohibitory statutes reflected a strong community sentiment.

16. See Taintor, *Marriage and Conflict of Laws*, 9 VAND. L. REV. 607, 625 (1956); Taintor, *Effect of Extra-State Marriage Ceremonies*, 10 MISS. L.J. 105, 111, (1938).

17. The earliest case found is *Medway v. Needham*, 16 Mass. 157 (1819), a case of miscegenation. See cases cited Taintor, *supra* note 16.

18. Intention to evade has been mentioned in a number of cases almost all of which fall into one of two categories: type of marriage not abhorrent to the people of the state—extrastate ceremonies effective; type of marriage abhorrent to those people—extrastate ceremonies ineffective and marriage void. Taintor, *supra* note 16, 10 MISS. L.J. at 128-31; 9 VAND. L. REV. at 629 and cases cited in both articles. The earliest case in which I found an express mention of intention to evade is *Putnum v. Putnam*, 25 Mass. (8 Pick.) 433 (1829), which dealt with a statutory prohibition of remarriage of the libellee for a period after divorce; the extrastate ceremony was effective.

19. See quotation accompanying text at note 14 *supra*.

20. This idea is reflected in *Williams v. Oates*, 27 N.C. (5 Ired.) 535 (1845),

If this was ever a good reason it is of doubtful validity today. In the first place, no like statute has been enacted in any other State and it is improbable that the people of these three have a more easily shocked moral sense than do those of the others. It is at least permissible to wonder whether the continued existence of these statutes does not reflect legislative inertia rather than a continued strong public sentiment.²¹ In the second place, those whose sentiments might be offended by such remarriages are not likely to know the grounds on which their neighbors were divorced, except perhaps in the smaller communities where people tend to know more about the affairs of their neighbors. Moreover, in these communities people are likely to know of the adultery and to be just as much offended by the cohabitation of the guilty pair, even though the divorce was granted on some other ground than adultery.

A reason which seems better was given in *Newman v. Kimbrough*,²² decided in Tennessee eleven years after *Pennegar*:

The policy of the law of this state is to maintain the marriage relation, and to remove all inducements of infidelity on the part of the husband or the wife possibly by shutting off all hope of marriage with a paramour during the life of the wife who has obtained the divorce.

Protection of existing marriages seems somehow more noble, even if that protection is given by a threat of the invalidity of a subsequent marriage, than does invalidating such a marriage by what seems to be a penalty imposed on the libellee. The notion back of the protection seems to be that the threat will tend to diminish the commission of adultery with a person whom the potential adulterer would want to marry. Here, again, our brethren in the field of sociology could help the bench, the bar, and the legislature, by discovering the answer to the following questions. In those states in which remarriage to the paramour is not forbidden, what proportion of libellees do marry the person for adultery with whom the divorce was decreed? In the three States where such remarriages are forbidden, is there a smaller proportion of divorces for adultery? In those states, what proportion of persons who could get a divorce for adultery actually choose a different ground? What

and *Marshall v. Marshall*, 2 Hun. 238 (N.Y. Sup. Ct. 1874), in both of which an extrastate ceremony was held ineffective where prohibition was of the remarriage of the libellee in a divorce for adultery. *Marshall* was overruled by *Van Voorhis v. Brintnall*, 86 N.Y. 18 (1881).

21. This is one of those situations in which our brethren, the sociologists, could help the legislatures, the courts, and the bars, by getting the answers to these questions. How strong is the popular feeling about divorce? About remarriage after divorce for adultery? About remarriage to a paramour after divorce for adultery with another? With him or her?

22. 59 S.W. 1061, 1064 (Tenn. Ch. App. 1900).

proportion of those who do choose a different ground hold the threat of divorce for adultery over the errant spouse for the purpose of getting a more advantageous separation agreement?

Discussion of the other situations in which these statutes might be applied requires memory of the techniques used by the courts when applying them to marriages of domiciliaries who leave the state for a marriage ceremony intending to make that state the family domicile. In all three States one of the techniques is application of the principle that persons cannot effectively marry in other states intending to return to their domicile, if the marriage is of a type which is there abhorred. In Pennsylvania the courts add: "A personal incapacity to marry is imposed."²³

It is clear that these statutes do not apply to marriages of a person and the paramour who change domicile to another state and marry in any state whose laws do not include such a statute, even though the divorce was decreed in one of the three States and even though they later return to the divorcing State.²⁴ The theory is that, when they married, they acquired rights under the laws of their new domicile and that those rights persist, *i.e.*, the marriage is wholly valid. This is the correct rule aside from any notion about the acquisition of rights. The question should be decided upon the facts at the time of the marriage. At that time neither the innocent spouse nor the people of the divorcing state were threatened with witnessing the cohabitation and the imposed personal incapacity would not survive a change of domicile.

It is not clear whether these statutes apply to marriages in the following circumstances: the divorce is decreed in one of the three States; the libellee and the paramour change domicile to another state; they marry there, intending to make their family domicile in the divorcing State.²⁵ The only case which I know to be directly in point was one in which the divorce was decreed in Tennessee, and the marriage was in Texas.²⁶ If there is any situation in which a

23. See *In re Stull's Estate*, 183 Pa. 625, 629, 39 Atl. 16, 18 (1898); *Kalmbacher v. Kalmbacher*, 63 Pa. D. & C. 204 (C.P. 1945).

24. "[We] do not mean to be understood as holding that, if the parties had continued to remain and live in Texas, the laws of this state could so far affect the relation of these parties as to declare the marriage there invalid. . . ." *Newman v. Kimbrough*, 59 S.W. 1061, 1064 (Tenn. Ch. App. 1900) (dictum).

"She never acquired any rights as an inhabitant of the state of Maryland. . . ." *In re Stull's Estate*, 183 P. 625, 629, 39 Atl. 16 (1898). Similar language was used in *Maurer v. Maurer*, 163 Pa. Super. 264, 267, 60 A.2d 440, 441 (1948).

25. To the effect that the law of marriage of the intended family domicile should be applied to determine the substantive validity of a marriage and that there has been judicial recognition of this principle, see Taintor, *What Law Governs the Ceremony, Incidents and Status of Marriage*, 19 B.U.L. REV. 353, 366-74 (1939); Taintor, *supra* note 16, 9 VAND. L. REV. at 610-14.

26. *Newman v. Kimbrough*, 59 S.W. 1061 (Tenn. Ch. App. 1900).

court of the intended family domicile would feel impelled to apply its own statute this is it. Here in fact were all of the evils against which the public policy reasons were intended to protect. Yet, it is not clear whether the marriage was held void or whether the court merely denied to the parties the benefit of a claim arising from the marriage, namely, that it freed the "wife" from guardianship of her property. If this is what the court intended, it is difficult to justify this sort of "indirect penology."²⁷ If such a marriage is held void in any of the three States, there seems to be no valid criticism of the result.

If, however, one of these States is not the former domicile in which the divorce was decreed but is only the intended family domicile, there is no valid basis for applying the statute. Obviously the state can impose no personal incapacity on nondomiciliaries who marry elsewhere; it will be only by chance that the innocent spouse will witness the cohabitation; and it is, to say the least, highly improbable that the people of the community, even if it is a small one, will know the ground of the foreign divorce.

It is not clear whether these statutes apply to marriages of persons who are divorced in a state which has no prohibition of remarriage, change domicile to one of the three States and marry there. These were the facts in *In re Mayall's Naturalization*,²⁸ but the court made nothing of it, holding the marriage void for the reasons stated below. It seems, however, that the reasons against application of the statute are the same as those given in the immediately preceding paragraph.

Are these statutes applicable to marriages of persons who are divorced in other states with no such prohibition and who marry in one of the three States, intending to make the family domicile in some state which has not enacted the prohibition? The beliefs of trial courts of New York and Pennsylvania have been opposite, the former believing the Pennsylvania statute to be inapplicable, the latter believing it applicable. The United States Court of Appeals for the Second Circuit, in a nondiversity case, believed that, if the question came before a court of statewide jurisdiction in Pennsylvania, the statute would not be applied.²⁹ Judge Ganey, in the United States District Court for the Eastern District of Pennsylvania, believed that it would be applied in those courts.³⁰

In the earlier Pennsylvania case, *Wagner v. Wagner*,³¹ the di-

27. See comments in Taintor, *What Law Governs the Ceremony, Incidents and Status of Marriage*, 19 B.U.L. REV. 353, 361-66 (1939).

28. 154 F. Supp. 556 (E.D. Pa. 1957).

29. See *Lembcke v. Lembcke*, 181 F.2d 703 (2d Cir. 1950).

30. See *In re Mayall's Naturalization*, 154 F. Supp. 556 (E.D. Pa. 1957).

31. 58 Mont. Co. L.R. 18 (C.P. 1941).

orce was decreed in New York, the parties "moved to Pennsylvania" and were married there. It cannot be said with certainty whether the court considered their possible domicile in Pennsylvania, but it is clear that the opinion made nothing of it: the talk was about exceptions to the common law rule that a marriage valid where celebrated is valid everywhere. The most significant language was:

Since the public policies of the states of New York and Pennsylvania are *identical*, full faith and credit should be given the positive statutes and prohibitory decrees of such states. To recognize such a prohibited marriage and give it legal effect would in a certain sense give countenance by one decree to a marriage entered into *in defiance* of a final decree of the State of New York.³²

The trouble with this is two-fold. The policies of the two States are not identical: New York forbids any remarriage of the libellee for a time after a divorce for adultery; Pennsylvania, only remarriage to the paramour. Moreover, even if these parties had left New York to marry intending to make that state the family domicile, their extrastate ceremony would have been wholly effective to create a marriage under the law of New York: New York sees no "defiance" of its decrees in such situations.

In the more recent Pennsylvania case, *Kalmbacher v. Kalmbacher*,³³ it is again not clear whether the parties, one of whom had been divorced in New York, had acquired a domicile in Pennsylvania, but probably not. There was no finding that they had, but there was a finding that they "resided" in New York at the time of the divorce and another that the libellant who sought an annulment was not domiciled in the county in which the suit was brought. The reasons are no more satisfactory than those in *Wagner*. The court quoted the language from *Stull* about wounding the sensibilities of the innocent spouse, affronting the public decency, and evasion of the law.³⁴ Obviously, there was no "evasion" of any law. The innocent spouse was a New Yorker, a person whose sensibilities that statute does not thus protect. If there was no change of domicile to Pennsylvania, no sense of public decency was thus protected by the state in which the parties would live. If there was such a change there would have been, as I said above, little probability that people in Pennsylvania would even know the case for the divorce.

In re Mayall's Naturalization,³⁵ disagreeing with the opinion in

32. *Id.* at 24. (Emphasis added.)

33. 63 Pa. D. & C. 195 (C.P. 1945).

34. See quotation accompanying text at note 14 *supra*.

35. 154 F. Supp. 556 (E.D. Pa. 1957).

Lembcke v. United States,³⁶ expressed "the firm conviction that . . . a Pennsylvania court of statewide jurisdiction . . . would also disagree with that case." The court relied on *Stull* and on *Schofield v. Schofield (No. 1)*.³⁷ The decision in *Stull* is not in point, nor is the reasoning, as I have shown. *Schofield* is a queer case for the court to rely on: it was there held that the extrastate marriage of first cousins who intended to return promptly to their former Pennsylvania domicile was entirely effective.

In an early New York case, *Stack v. Stack*,³⁸ it was held that the Pennsylvania statute was not applicable to domiciliaries of another state who married in Pennsylvania. The reason given was:

This provision forms a part of a statute which relates entirely to divorces decreed by the courts of Pennsylvania in accordance with the laws of that State. It affects only such persons as have been parties to divorce proceedings in the tribunals of that State. . . .³⁹

Much the same reason was given in the recent case of *Lembcke v. Lembcke*.⁴⁰ This court knew of the position taken in the Pennsylvania case of *Kalmbacher* and said that, if this were a diversity case, it would have to follow the New York rule of *Stack* and *In re Palmer's Estate*⁴¹ and hold the marriage valid. The court said, however: "For reasons already stated, we disagree with the construction which the *Kalmbacher* case puts upon the statute and believe that it would not be approved by the Supreme Court of Pennsylvania."⁴²

Another, and a very cogent, reason was given by the court in *In re Palmer's Estate*. It said:

Apparently no court in Pennsylvania has had occasion to pass upon this point. That is only natural since the parties to such a marriage are only in Pennsylvania long enough to be married, and leave immediately to return to their domicile where the legal problems arise. . . . This fact is significant not only as explaining the absence of decisions on the point in Pennsylvania, but also because it emphasizes that a question of conflict of laws is involved and that the domestic policy of the State of Pennsylvania is not an important factor. . . .

As to persons domiciled in another state in which the parties will live and which has no public policy against the marriage, Pennsylvania's ex-

36. 181 F.2d 703 (2d Cir. 1950). This opinion will be discussed *infra*.

37. 51 Pa. Super. 564 (1912).

38. 6 Dem. 280 (N.Y. Surr. Ct. 1887).

39. *Id.* at 284.

40. 181 F.2d 703 (2d Cir. 1950). Herein the Pennsylvania statute was spoken of as a section of a "complete code for Pennsylvania divorces," which was enacted as "An Act Concerning Divorces." *Id.* at 705.

41. 275 App. Div. 792, 80 N.Y.S.2d 179 (Sup. Ct. 1949), *affirming* 192 Misc. 385, 79 N.Y.S.2d 405 (Surr. Ct. 1948).

42. 181 F.2d at 707.

amination of the marriage in connection with the statute should not be in the light of its domestic policy.⁴³

It is probable that Louisiana will not apply her statute to marriages of persons there, if they are not domiciled there. It was said in *Succession of Hernandez* that "the place where marriage is contracted is not so much that where the ceremony is performed as that where the parties expect to live and settle. . . ." ⁴⁴

That these statutes, indeed all statutes prohibiting certain types of marriages, are not properly applicable if the only contact with the state is that the ceremony is there performed is made clear by understanding that "the laws concerning marriage are made up of two parts: the substantive part, that regulating the status; and the ceremonial part, that regulating the exchange of consents."⁴⁵

The only significant interest of the state where the ceremony takes place is in the use of the forms prescribed by its laws. This state is not touched by the existence of the status: the parties will not live there; nor will their children, in whom there is a vital interest as future citizens, be its citizens. "And while the law of the place where the ceremony is performed has an interest in the validity of the ceremony, it has none 'in the intrinsic validity of the status, unless the status is to be enjoyed there.'" ⁴⁶

CONCLUSION

These prohibitory statutes are properly applicable only where the divorce is decreed in one of the three States and the libellee and the paramour intend to make that State their family domicile, the state in which they intend to live as man and wife. Only that state has a significant interest in whether they are married or not.

43. 192 Misc. 385, 389-91, 79 N.Y.S.2d 404, 408-10 (Surr. Ct. 1948), *aff'd*, 275 App. Div. 792, 90 N.Y.S.2d 179 (Sup. Ct. 1949).

44. 46 La. Ann. 962, 990, 15 So. 461, 469 (1894).

45. Taintor, *supra* note 27, at 361.

46. *Sirois v. Sirois*, 94 N.H. 215, 216, 50 A.2d 88 (1946), quoting Taintor, *supra* note 27, at 368.