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## Annulments--Residents Requirements--Applicability of Divorce Statures

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4. If they are tried by a special court, will this court have one location or will it sit in various parts of the state?

5. If they are tried by courts of general jurisdiction, who will defend the state?

6. Regardless of which system is used, how can the court and the state guard against fraudulent claims?

Space limitations prevent inquiry into possible solutions for these and other problems which would arise should the state submit to the role of defendant in a court of law or equity; however solutions would have to be found in order to properly implement the proposed amendment, *provided*, of course, it is adopted.

T. E. P.

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### CASE COMMENTS

ANNULMENT—RESIDENCE REQUIREMENTS—APPLICABILITY OF DIVORCE STATUTES.—*P*, a resident of Canada, filed a bill of complaint for annulment in the circuit court of Wayne County, Michigan. The bill alleged that *D* is a resident of Wayne County. The Michigan statute dealing with annulment requires only that one party to the suit be a resident of the county where the bill is filed. The divorce statute, however, may be invoked only upon fulfilling certain additional residence requirements. *Held*, that statutory residence requirements regulating divorce suits are inapplicable to suits for annulment. *Hill v. Hill*, 93 N.W.2d 157 (Mich. 1958).

Provisions similar to those of the Michigan statute are likewise found in the statutes of the majority of jurisdictions. That is, there are specific statutes dealing with the venue requirements for petitions for annulment while another statute provides the residence requirements for divorce suits.

The only important divergence from this scheme is that in many states the venue statute applicable to annulments likewise applies to suits for divorce, so that both jurisdictional and venue requirements must be met in an action for divorce. West Virginia follows this view. *Morgan v. Vest*, 125 W. Va. 367, 24 S.E.2d 329 (1943). However, the question in the principal case is the reverse of the preceding situation, that is, whether or not the sections of the divorce statute relating to jurisdiction apply to petitions for annulment.

One view of the matter is shown by the opinion in *Wilson v. Wilson*, 95 Minn. 464, 104 N.W. 300 (1905), where a unanimous court held that "our view is that the term 'divorce' in section 4792, was used advisedly, having reference to the entire subject of procedure . . . to secure annulment of the marriage." The statute referred to in this decision provides that no *divorce* shall be granted unless the complainant has completed the residential requirement of Minnesota. *Eliot v. Eliot*, 77 Wis. 634, 46 N.W. 806 (1890).

An illustration of the court's exercising its judicial prerogative to change its mind is *Gordon v. Gordon*, 35 Ariz. 101, 274 Pac. 772 (1929), where it was held that in view of the provisions and the juxtaposition of the sections of the Arizona Code entitled "absolute divorce", the term "divorce" as used in these sections applies to all actions to dissolve the marital status, whether for annulment or divorce. On rehearing, 35 Ariz. 357, 278 Pac. 375 (1929), the court reversed itself, and held that the mere fact that the statute giving the court jurisdiction to annul marriages was found in the chapter entitled "absolute divorce" did not make a suit for annulment subject to the jurisdictional requirements for divorce.

It is submitted that the ultimate holding of the Arizona court is in line with a logical approach to the problem and certainly is in accord with the majority view. *Mazzli v. Cantales*, 142 Conn. 173, 112 A.2d 205 (1955); *Estes v. Estes*, 199 Tenn. 96, 250 S.W.2d 32 (1952); *Garcia v. Garcia*, 232 S.W.2d 782 (Tex. Civ. App. 1950).

These cases adhere to the theory that the added residence requirements for jurisdiction in divorce suits are in line with public policy which is concerned with the maintenance of marriage. Therefore such statutes and the public policy from which they arise are not concerned with the determination that a valid marriage never existed.

The statutes covering this subject in West Virginia are W. VA. CODE ch. 48, art. 2, § 8 (Michie 1955), which begins with the words "no suit for divorce shall be maintainable", and goes on in detail to set forth the necessary jurisdictional requirements for a suit for divorce, and W. VA. CODE ch. 48, art. 2, § 9 (Michie 1955), which gives the venue requirements for both annulment and divorce. This latter statute applies to annulment alone in the last sentence, which reads "in the case of a suit to annul a marriage performed in this

state, where neither party is a resident of the state, the suit shall be brought in the city where the marriage was performed.”

In the absence of West Virginia cases in point, there are several indications as to how our court would hold on a fact situation similar to that in the principal case.

Looking first at the minority view:

1. The venue statute applicable to both divorce and annulment suits is found in article 2 of the *West Virginia Code*. Article 2 is entitled “divorce”; this could be interpreted to mean that the legislature intended the term “divorce” to also include annulment.

2. The argument given by the majority of the courts, that public policy aimed at preserving marriages has no place in annulment actions, has no application in West Virginia. In this state, the marriage (with four exceptions) is merely voidable, and thus valid until annulled. *Martin v. Martin*, 54 W. Va. 301, 46 S.E. 120 (1903). Therefore, it would seem that the public policy of preserving marriage is equally applicable to suits for annulment in West Virginia.

Indications favoring the majority view would include:

1. A divorce is granted for happenings subsequent to the date of the marriage, and terminates the marriage, while an annulment is granted for conditions that existed at the time of the ceremony, and the result is a judicial determination that there never was a valid marriage. In light of these facts, it hardly seems reasonable that the word divorce could include suits for annulment.

2. In West Virginia, the same venue statute applies to both divorce and annulment, with the exception of the last sentence of the statute. This sentence could not apply to divorces or it would be in direct conflict with the jurisdictional requirements contained in the divorce statute. This indicates that the legislature intended an entirely different set of requirements for divorce and annulment suits in West Virginia.

It would seem that the second argument under the majority view would outweigh all other considerations, and cause West Virginia to follow the holding of the Michigan court in the principal case.

T. J. W.