Volume 55 | Issue 2 Article 11

June 1953

Pleading--Equity--Insufficiency of Bill a Jurisdictional Defect

W. O. S.
West Virginia University College of Law

PLEADING—EQUITY—INSUFFICIENCY OF BILL A JURISDICTIONAL DEFECT.—Suit to set aside as void, for lack of jurisdiction over the parties, a divorce decree granted *D,* the husband, in the same court two years before. On demurrer, the court restricted hearing to the question of whether the wife had made or authorized a general appearance. After such hearing the court decided that she had authorized a general appearance by counsel; whereupon her bill was dismissed. *P* appealed. *Held,* after agreeing with the lower court that the wife had made a general appearance, that nonetheless, since the bill for divorce did not contain a sufficient statement of grounds for divorce, the court was without jurisdiction of the subject matter and therefore the divorce decree was void. The earlier decree was adjudged void so far as it granted a divorce; decree dismissing instant proceeding reversed; cause remanded. *Bennett v. Bennett,* 70 S.E.2d 894 (W. Va. 1952), *rehearing denied,* September 23, 1952.

The proposition which our court seems to have propounded is essentially this: mere insufficiency in a bill of complaint, that is, an insufficient statement of the grounds for divorce, is a jurisdictional defect giving the court the right to examine the matter on its own motion in a collateral proceeding; which in turn, of course, gives it the right to declare a decree based on such a bill void. To quote the actual holding of the court: ". . . the facts alleged as constituting cruel and inhuman treatment are insufficient to constitute any charge entitling the husband to a divorce, and . . . the court was, therefore, without jurisdiction to enter a divorce decree."

What power does the court have to enter a decree in a certain cause? First, the court must have jurisdiction over the parties, to be gained by proper notice or consent; second, and most important for the purpose of this comment, the court must have jurisdiction over the subject matter. Inquiry should be made into what our court has meant when it has spoken heretofore concerning jurisdiction over the subject matter. In *Anderson v. Anderson,* 121 W. Va. 103, 1 S.E.2d 884 (1939), the court states that "there can be no question of the . . . circuit court's jurisdiction of the subject matter, because, in this state, a circuit court's jurisdiction of divorce suits is conferred by statute." See W. VA. CODE c. 48, art. 2, § 6 (Michie, 1949). Speaking generally on the question, our court in *Haymond v. Camden,* 22 W. Va. 180 (1883), said that jurisdiction over subject matter is "conferred by the Constitution and laws of the State or

country in which the courts are situate, and consists of the power to hear *a particular class of cases, or to determine controversies of a specified character.*" (Italics supplied). Amplifying on the matter further, a court in another state said that jurisdiction over subject matter "does not mean jurisdiction of the particular case, which must be acquired by some method of bringing the case before the court for adjudication." *Roy v. Upton,* 234 Ill. App. 53 (1924).

There are various methods of bringing a particular suit before any certain court. The question of jurisdiction is sometimes governed by the place where the act complained of occurred, *Becket v. Becket,* 56 Ky. (17 B. Mon.) 370 (1856); *Williams v. Williams,* 3 R.I. 185 (1855); sometimes by the matrimonial domicil, and sometimes by the domicil of the parties, or both of them. *Hood v. State,* 56 Ind. 263 (1877); *Goodwin v. Goodwin,* 45 Me. 377 (1858); *Watkins v. Watkins,* 135 Mass. 83 (1883). But whatever the method, it is obvious that such jurisdictional facts must be recited in the bill. HOGG, EQUITY PLEADING § 575 (Miller's ed. 1943). That some courts have held this requirement to be part of the true concept of jurisdiction over subject matter is readily seen from this excerpt: "[T]he existence of one of the facts mentioned in the statute [requiring either an allegation of residence within the state for one year prior to petition or that acts complained of were committed within the state] is an indispensable element constitutive of the right to maintain an action for divorce and . . . without it the whole proceeding is *coram non judice* for lack of jurisdiction over the subject matter." *Stansbury v. Stansbury,* 118 Mo. App. 427, 94 S.W. 566 (1906).

In keeping with the idea that jurisdictional facts must be recited, our legislature has provided: (1) the venue statute which geographically limits the general jurisdiction of circuit courts to grant divorces, W. VA. CODE c. 48, art. 2, § 9 (Michie, 1949); (2) the statute requiring that the divorce bill show that the plaintiff had been an actual bona fide resident of the state for at least one year prior to the bringing of the suit, W. VA. CODE c. 48, art. 2, § 8 (Michie, 1949); and (3) the statute specifying certain exclusive grounds for which a divorce will be granted, W. VA. CODE c. 48, art. 2, § 4 (Michie, 1949). The court nowhere in its opinion doubts that the requirements of the first and second statutes have been

met, and therefore it must be determined whether the bill complied with the third statute.

Admitted that a decree should be read in the light of the pleadings, and, so far as it purports to grant relief without foundation therefor in the pleadings, it is void, *Cato v. Silling,* 73 S.E.2d 731 (W. Va. 1952); HOGG, EQUITY PLEADING § 576 (Miller's ed. 1943), it is difficult to see how the court determined that this bill was completely devoid of "any charge entitling the husband to a divorce." As stated by the court, the bill alleged that the wife admitted not only only kissing a certain man but that she may have had "improper" relations with that man; further, that she constantly nagged him, that she had no love for him, and did not desire to live with him any longer. In concluding, the bill alleged that the wife had been extremely cruel and had caused the plaintiff to suffer much strain and worry causing his health and peace of mind to be seriously affected.

Was the husband grounding his prayer for divorce on desertion? Or that the wife was an habitual drunkard or addicted to morphine? Or that she was a convicted felon? The questions are rhetorical.

The proper test seems to be whether it can be determined from the pleadings, either directly or indirectly, on what ground the party is seeking relief. Even immaterial and wholly insufficient allegations may be enough to set the judicial mind in motion. "Judgments and decrees are not collaterally assailable as void for want of jurisdiction in the court to enter them, merely because the pleadings on which they rest lack material averments." *Jarrell v. Laurel Coal Co.,* 75 W. Va. 752, 84 S.E. 933 (1915); *Noder v. Alexander,* 114 W. Va. 563, 172 S.E. 613 (1934); 1 BLACK, JUDGMENTS § 269 (2d ed. 1902). If, in a case in which it is questionable whether a court has jurisdiction, it erroneously decides that it does, its decree is only voidable and not open to collateral attack. *St. Lawrence Co. v. Holt & Mathews,* 51 W. Va. 352, 41 S.E. 351 (1902).

In the many cases cited and discussed by the court, only its quotation from 27 C.J.S., Divorce § 108 (1941) would seem to support its position. But, C.J.S. cites only *Jones v. Jones,* 8 W. W. Harr. 162, 189 Atl. 588 (1937) which was a controversy on direct appeal to an intermediate court in Delaware. There the court held that because the ground for divorce stated was not recognized by the

Delaware statutes, no cause of action was alleged. (The bill alleged desertion, whereas the statutory ground was "wilful" desertion.)

The only apparent justification for the court's holding is that henceforth it shall require a greater degree of particularity—a closer adherence to the rules of pleading—in bills of complaint for divorce. So restricted, the court's pronouncement would not appear so startling. Indeed, the opinion states that due to the interest of the state in the protection and preservation of the marriage relationship, accurate pleading should be demanded before the marriage is dissolved. Undoubtedly, it is a wise policy which enjoins the courts with the duty of watching over divorce proceedings with the closest surveillance. A policy which interposes to prevent abuses of the delicate and reasonable power confided in the courts to dissolve the marriage contract is certainly desirable. But, aside from the statutory protection of the state's interest under W. VA. CODE c. 48, art. 2, § 24 (Michie, 1949) which provides for appointment of a commissioner to investigate and "defend the interests of the State," other interests are here involved. Holding, as the court does, that divorce decrees which do not have a sufficient averment of grounds to support them are forever open to attack, what of the security of land titles passed pursuant to divorce decrees? Or the poor abstractor struggling with the record of a divorce granted, to be certain (or never be certain?) that the title he certifies is secure? Or think for a minute of the fate of Mr. Williams and his second wife, *Williams v. North Carolina,* 317 U.S. 287 (1942), 325 U.S. 226 (1945), and of such a possibility under this decision.

W. O. S.

TAXATION—APPLICATION FOR REFUND.—Petition for writ of mandamus requiring *D* to issue a warrant on the State Treasurer to refund a tax payment as recommended by the Court of Claims and approved by the legislature which requested that the amount in controversy be paid as a moral obligation against the State under W. VA. CODE c. 11, art. 13, § 3 (Michie, 1949). *Held,* that inasmuch as the remedy under W. VA. CODE c. 11, art. 1, § 2a was not complete, writ awarded. *Raleigh County Bank v. Sims,* 73 S.E.2d 526 (W. Va. 1952).

The pertinent part of W. VA. CODE c. 11, art. 1, § 2a (Michie