Marriage -- Annulment -- Doctrine of Relation Back

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exactly as though they were being paid a weekly salary without regard to an hourly rate.

The courts have consistently rejected Belo wage plans where no hourly rate is specified or where the fixed wage is changed without a corresponding change in the hourly rate. Assume a plan that specified no hourly rate, but merely guaranteed a fixed wage for sixty hours work, and the employer testified at the trial of the case that neither he nor the employees felt it necessary to specify any hourly rate since none of the employees exceeded sixty hours of work per week. If a court should hold such a contract invalid and yet hold the contract in Hartford valid, it would in effect be saying that it was looking only to the technical form of the contract, and not to its substance, since in either situation the wages paid the employees would be the same. It is difficult to believe that Congress in enacting section 7(e) intended such a result.

Although the “substantial number of workweeks” test so persistently advocated by the Administrator has not survived judicial scrutiny, it is submitted that the overtime provisions of the FLSA are being circumvented by Belo-type contracts where the hours guaranteed are not exceeded. If the “regular rate” set in these contracts is truly bona fide, it is difficult to perceive how employers could afford to pay such high wages for hours not spent on the job. Perhaps this is another reason why the Administrator looks upon these contracts with a jaundiced eye.

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Marriage—Annulment—Doctrine of Relation Back

In October 1952 a widow was entitled to benefits under the Social Security Act as the unremarried widow of a deceased wage earner. These benefits were terminated because of her marriage in June 1954. In November she filed for annulment on the ground of fraud in that the husband never intended to consummate the marriage. The husband

87 See Sikes v. Williams Lumber Co., 123 F. Supp. 853 (E.D. La. 1954), where the district court rejected a purported Belo contract which provided $75.00 for fifty-three hours work, with no regular rate stated in the contract. The court said that since no hourly rate was specified in the agreement, the rate alleged by the defendant was fictitious.

88 Although there have been no revisions of the Administrator's Interpretative Bulletins published since the Hartford and Feinberg decisions, the public is currently being advised on request that the “substantial number of workweeks” test is no longer the sole criterion in adjudging the validity of a particular Belo-type contract, but may be given weight in determining the bona fide nature of the contract. Interview with Pauline W. Horton, North Carolina Federal Representative for the Wage and Hour and Public Contracts Division of the United States Department of Labor, February 13, 1958. This position has some support in the language of the court in the Adams case. See notes 23-26 supra.

defaulted and the court issued a decree of annulment in December 1954. After the decree of annulment the widow requested reinstatement of her benefits. Her application for reinstatement was denied by the Bureau of Old Age and Survivors Insurance, Social Security Administration. After exhausting her administrative remedies, she commenced this action for review of the administrative decision. The district court held that her benefits should be reinstated and the court of appeals affirmed. The appellate court's decision turned on the legal effect given to an annulment under California law and on the meaning of the word "remarriage." In California the legal effect of an annulment is that no valid marriage ever existed, even though the marriage is only voidable. The court looked to workmen's compensation cases and applied the meaning there given to the word remarriage, viz., a valid and subsisting marriage and not a void or voidable marriage.

From the standpoint of legal theory, it would appear that if a subsequent marriage is void the doctrine of relation back should always apply (in the absence of a statute); but, if the subsequent marriage is only voidable, the doctrine of relation back should not apply as such marriages are deemed valid until avoided. Nevertheless, there are cases within the same jurisdiction holding that the doctrine does apply and cases holding that it does not apply where the marriage is voidable. Some courts make it clear that whether or not they will apply the doctrine will depend upon whether it effects a result which conforms to the sanctions of sound policy and justice as between the parties, their property rights, and the rights of their offspring. Other courts seem to reach the same conclusion without expressly indicating that their decision is based upon the equities of the situation rather than upon strict legal theory.

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3. Folsom v. Pearsall, 245 F.2d 562 (9th Cir. 1957).
6. Madden, Persons and Domestic Relations 9 (1931).
The question of whether an annulment decree has the effect of rendering a voidable marriage void from the beginning often arises in those cases where a separation agreement or an alimony decree calls for payments to terminate upon remarriage. In these cases relation back has sometimes been applied, thereby reinstating alimony payments when the marriage was subsequently annulled.\(^1\) But in New York a statute\(^1\) gives the wife the right to receive support from the husband of the annulled marriage, thus removing the reason for reviving the obligation of the first husband; and California has refused to apply the theory of relation back to reinstate alimony payments on the ground that the divorced husband after her remarriage has the right to recommit his assets.\(^2\)

The question of relation back also arises in cases where the question is the validity of a second marriage entered into prior to the annulment of the first marriage. In the North Carolina case of Taylor v. White,\(^3\) where a first marriage was annulled on the ground of duress, the court allowed the decree to relate back and declared the marriage void \textit{ab initio}, thereby making a second marriage entered into prior to the annulment a valid marriage.\(^4\) The Taylor case illustrates the violence done to other legal principles when the doctrine of relation back is applied to a voidable marriage. One legal principle is that a voidable marriage is valid until avoided;\(^5\) another is that a second marriage entered into while a valid marriage exists is bigamous and absolutely void.\(^6\) Thus it would appear that the second marriage in Taylor was absolutely void. Yet, it is made valid by the application of the doctrine of relation back.

Although it may be desirable for the court to apply or refuse to apply the doctrine of relation back depending upon the equities of the case,

\(^1\) Sutton v. Leib, 199 F.2d 163 (7th Cir. 1952) (applying Illinois law); Brenholts v. Brenholts, 19 Ohio L. Abs. 309 (1935); Sleicher v. Sleicher, 251 N.Y. 366, 167 N.E. 501 (1929). \textit{But see} Linneman v. Linneman, 1 Ill. App. 2d 48, 116 N.E.2d 182 (1953) (alimony was not reinstated when wife got annulment in California on grounds of impotency, since in Illinois impotency is not a ground for annulment).


\(^4\) 160 N.C. 38, 75 S.E. 941 (1912).

\(^5\) Marriages entered into through duress are voidable in North Carolina. The only void marriages are interracial marriages and bigamous marriages. N.C. Gen. Stat. § 51-3 (Supp. 1957), State v. Parker, 106 N.C. 711, 11 S.E. 517 (1890).

\(^6\) Scarboro v. Scarboro, 233 N.C. 449, 64 S.E.2d 422 (1951). There is language in the Scarboro case which casts some doubt on whether or not Taylor v. White is still the law in North Carolina, but it does not overrule Taylor v. White.

\(^1\) N.C. Gen. Stat. § 14-183 (1953). This sets out the crime of bigamy and bigamous cohabitation. See also State v. Parker, 106 N.C. 711, 11 S.E. 517 (1890).
this creates uncertainties and sometimes does violence to sound legal theory. Some of the uncertainties might be avoided if the legislative bodies drafting statutes involving remarriage and if the judges drafting alimony decrees would spell out to a greater extent what is meant by remarriage.

Karl N. Hill, Jr.

Searches and Seizures—Description in Warrant—Limits of Curtilage

A recent North Carolina case has presented some unique problems in the admissibility of evidence found in the process of an unreasonable search and seizure.1 Within the same yard were two buildings, some thirty feet apart. The first building was a house, owned and occupied by a third party. The second building was a former filling station, rented from the third party and occupied by the defendant. A search warrant was obtained for the house against the third party and another for the filling station against the defendant. The affidavit described the defendant's "dwelling, garage, filling station, barn and outhouses and cars and premises . . . ."2 The officer searched the filling station. While searching the house of the third party the sheriff discovered, for the first time, that the defendant also rented a back porch room of the house. Despite the fact that neither the owner of the room nor the defendant gave his consent, the officer searched the room under the warrant for the house. The court excluded the evidence found in the room because it was seized in the course of an unreasonable search.

The court reached this decision upon the grounds: (1) that as between the third party and the defendant, the defendant had the right to invoke the constitutional protection against unreasonable search and seizure, (2) the warrant for the search of the house did not authorize a search of the back porch room. Thus the decision of the court did not turn upon the question of search within the curtilage. But the facts of the case necessarily suggest this problem. The room was close enough to be said to be in the defendant's curtilage, being within the same yard and within thirty feet of his dwelling. There was a path from the filling station to the room and it would appear that the room was used by the defendant in connection with the filling station as a habitation.3 That this problem presented itself to the minds of the

2 Ibid. at 240, 98 S.E.2d at 331.
3 Apparently the limits of the curtilage are set by two primary elements: the use of the lands and buildings in connection with the dwelling for ordinary habitation and the proximity to the dwelling. State v. Lee, 120 Ore. 643, 253 Pac. 533 (1927). There is no longer any requirement that this area be enclosed by a wall or fence, as was the case in England. Bare v. Commonwealth, 122 Va. 783, 94 S.E. 168 (1917).