

types of *inter vivos* trusts, may have been persuasive; see Cavers, *Trusts Inter Vivos* and the Conflict of Laws, 44 *Harv. L. Rev.* 161, 183-86 (1930).

The case is interesting as illustrating the judicial technique of handling such problems; all factors present are weighed, and no single element is permitted to control the decision as to what law will be applied. See 33 *Col. L. Rev.* 1251, 1252 (1933). Apparently situs is at present the most persuasive single element, administration and intent are increasing in importance, and domicile and place of execution are declining in value. It is as yet impossible to assure prospective settlers that any given trust will definitely be held valid, and this result may be deplored; see 47 *Harv. L. Rev.* 350 (1933); however, if a substantial number of the factors enumerated point to the law of a particular jurisdiction as controlling, it seems reasonably certain that that law will be applied.

GERALDINE W. LUTES

Conflict of Laws—Validity of Marriage Contracted in Violation of *Lex Fori*—[Federal].—Plaintiff, divorced in the District of Columbia on grounds of adultery, was prohibited by statute (D.C. Code 1929, title 14, c. 3, § 63) from remarrying, but married again in Florida. Her second husband later returned to the District of Columbia, and there died. Plaintiff sued in the District of Columbia to enforce her dower interest in his estate and recovered. *Held*, the decision of the District Supreme Court be reversed. Plaintiff, having contracted this second marriage in violation of the statute, could not use the courts of the District to gain for herself any of the incidents of the second marriage. *Loughran v. Loughran*, 66 F. (2d) 567 (D.C. 1933).

The court relies completely on *Olverson v. Olverson*, 54 App. D.C. 48, 293 Fed. 1015 (1923), where a divorced adulteress who had remarried was denied a divorce *a mensa et thoro* from her second husband. There the court held that though the marriage would be treated as valid to protect the interests of children or third persons, they would not consider it as establishing any marital obligations between the parties. But the parties in that case went outside the state for the wedding solely to evade the statute and returned immediately thereafter. In the present case, although it is not entirely clear from the report, it appears that the parties had removed their domicile from the District of Columbia prior to their wedding. Thus the court on the facts goes beyond *Olverson v. Olverson*, 54 App. D.C. 48, 293 Fed. 1015 (1923), for the element of intentional evasion of the law of the domicile is here missing. "The fact of such an intended evasion has been repeatedly recognized as the basis of invalidity when otherwise validity would have been declared." *In re Stull's Estate*, 183 Pa. 625, 630, 39 Atl. 16, 17, 39 L.R.A. 539, 542, 63 Am. St. Rep. 776, 778 (1898). *Nelson v. Nelson*, 200 Ill. App. 584 (1916); *Lincoln v. Riley*, 217 Ill. App. 571 (1920); *People v. Steere*, 184 Mich. 556, 151 N.W. 617 (1915); *State v. Fenn*, 47 Wash. 561, 92 Pac. 417 (1907); *Pierce v. Pierce*, 58 Wash. 622, 109 Pac. 45 (1910); Uniform Marriage Evasion Act, 9 U.L.A. 225.

The statute of the District of Columbia here involved only prohibits the marriage of the guilty party to the divorce and is penal in nature. It follows that it is not entitled to extraterritorial effect and was no impediment to the validity of the second marriage when celebrated. *Ponsford v. Johnson*, 2 Blatchf. 51, Fed. Cas. No. 11,266 (1847); *Inhabitants of Phillips v. Inhabitants of Madrid*, 83 Me. 205, 22 Atl. 114, 12 L.R.A. 862, 23 Am. St. Rep. 770 (1891); *Commonwealth v. Lane*, 113 Mass. 458, 18 Am. Rep. 509 (1873); *In re Crane*, 170 Mich. 651, 136 N.W. 587, 40 L.R.A. (N.S.) 765,

Ann. Cas. 14A 1173 (1912); *Van Voorhis v. Brintnall*, 86 N.Y. 18 (1881); *People v. Chase*, 28 Hun. 310 (N.Y. 1882); see *Warter v. Warter*, L.R. 15 Prob. Div. 152 (1890), distinguishing *Scott v. Att'y. General*, L.R. 11 Prob. Div. 128 (1886).

It is clear, then, that the case is treated as an exception to the general rule that a marriage valid where celebrated is valid everywhere. One exception to this rule is recognized in cases of polygamy. *Hyde v. Hyde*, L.R. 1 Prob. and Div. 130 (1866); Beale, Laughlin, Guthrie and Sandomire, *Marriage and the Domicil*, 44 Harv. L. Rev. 501, 508 (1931); Conflict of Laws Restatement (Proposed Final Draft 1930), § 140. Another class of exceptions includes incest, *United States v. Rodgers*, 109 Fed. 886 (1901); see *Sturgis v. Sturgis*, 51 Ore. 10, 93 Pac. 606, 15 L.R.A. (N.S.) 1034, 131 Am. St. Rep. 724 (1908); *State v. Fenn*, 47 Wash. 561, 92 Pac. 417 (1907); Conflict of Laws Restatement (Proposed Final Draft 1930), § 140, and miscegenation, *State v. Tully*, 41 Fed. 753 (C.C.S.D.Ga. 1890); *Dupre v. Boulard*, 10 La. Ann. 411 (1855); *State v. Kennedy*, 76 N.C. 251, 22 Am.St.Rep. 683 (1876); *Kinney v. Commonwealth*, 30 Grat. (Va.) 858, 32 Am. St. Rep. 690 (1878); Conflict of Laws Restatement (Proposed Final Draft, 1930), § 140; but see *Medway v. Needham*, 16 Mass. 157, 8 Am. Dec. 131 (1819). Usually included among the exceptions to the general rule are those cases involving interlocutory decrees. In these the foreign marriage never had any validity since one of the parties, being married, lacked the capacity to contract a valid marriage. *McLennan v. McLennan*, 31 Ore. 480, 50 Pac. 802, 38 L.R.A. 863, 65 Am. St. Rep. 835 (1897); *Sanders v. Industrial Commission*, 64 Utah 372, 230 Pac. 1026 (1924); *Heflinger v. Heflinger*, 136 Va. 289, 118 S.E. 316, 32 A.L.R. 1088 (1923); *White v. White*, 167 Wis. 615, 168 N.W. 704 (1918). The foreign marriage is also generally regarded as void where there is an express statutory prohibition against marrying in another state in evasion of the laws of the domicil. *Wright v. Wright*, 264 Mass. 453, 162 N.E. 894 (1928); *Wheelock v. Wheelock*, 103 Vt. 417, 154 Atl. 665 (1931); *Peerless Pacific Co. v. Burckhard*, 90 Wash. 221, 155 Pac. 1037, L.R.A. 1917C 353, Ann. Cas. 18B 247 (1916); *Knoll v. Knoll*, 104 Wash. 110, 176 Pac. 22, 11 A.L.R. 1391 (1918); but see *Horton v. Horton*, 22 Ariz. 490, 198 Pac. 1105 (1921).

The weight of authority, however, is in favor of applying the general rule in cases of a violation of some statutory prohibition by remarriage in another state when there is no statute which expressly prohibits such evasion. *Ponsford v. Johnson*, 2 Blatchf. 51, Fed. Cas. No. 11,266 (1847); *Wilson v. Holt*, 83 Ala. 528, 3 So. 522, 3 Am. St. Rep. 768 (1887); *Smith v. Goldsmith*, 223 Ala. 155, 134 So. 651 (1931); *Putnam v. Putnam*, 8 Pick. 433 (Mass. 1829); *Commonwealth v. Lane*, 113 Mass. 458, 18 Am. Rep. 509 (1873); *Van Voorhis v. Brintnall*, 86 N.Y. 18 (1881); *Moore v. Hegeman*, 92 N.Y. 521, 44 Am. Rep. 408 (1883); *Fisher v. Fisher*, 250 N.Y. 313, 165 N.E. 460, 61 A.L.R. 1523 (1929); *State v. Shattuck*, 69 Vt. 403, 38 Atl. 81, 40 L.R.A. 428, 60 Am. St. Rep. 936 (1897); *Scott v. Att'y. General*, L.R. 11 Prob. Div. 128 (1886); *contra*, *Wilson v. Cook*, 256 Ill. 460, 100 N.E. 222, 43 L.R.A. (N.S.) 365 (1912); *In re Stull's Estate*, 183 Pa. 625, 39 Atl. 16, 39 L.R.A. 539, 63 Am. St. Rep. 776 (1898); *Pennegar and Haney v. State*, 87 Tenn. 244, 10 S.W. 305, 2 L.R.A. 703, 10 Am. St. Rep. 648 (1889); *Newman v. Kimbrough*, 59 S.W. 1061 (Tenn. 1900); *McManus v. State Compensation Commissioner*, 169 S.E. 172 (W.Va. 1933). Yet, although there was no express statute prohibiting such evasion here, the court in relying on *Olverson v. Olverson*, 54 App. D.C. 48, 293 Fed. 1015 (1933), speaks of it as "sustained by the great weight of authority."