The parole system was devised as a practical method of reinducting a convict into society under conditions which will protect the community.[10] To make this system effective, administrative machinery has been set up[11] with better facilities than most courts of general jurisdiction to determine whether a parolee's conduct is such as to warrant his reimprisonment. In both New York[12] and Pennsylvania[13] it is not necessary that the parolee have committed a crime before his case can be considered by the parole board, but only that he be accused of showing a tendency toward antisocial conduct. In the principal case had the relator not been permitted to leave Pennsylvania, he would have been subject to detention for hearings before the parole board whenever they were deemed necessary,[14] and no court could have interfered.[15] The relator obtained through the instant proceedings a court determination not only as to whether the Pennsylvania parole board should be permitted to consider his case, but also as to whether he had violated the terms of his parole. Yet in both Pennsylvania and New York no appeal can be taken from a finding of the parole board,[16] and thus in no case can a court consider the merits of an alleged parole violation. It is difficult to see how the relator acquired such rights merely by being permitted to leave the state.

Decisions like that in the principal case tend to impede efficient parole administration and thus to destroy the legislative safeguards set up to protect society from the release of unsupervised criminals.[17] To avoid this danger, conscientious parole boards may refuse to permit parolees to leave their state, if, in the discharge of their parole duties, opposition might be encountered from the courts of other states. Consequently this view may result in the denial of parole to many eligibles who are capable of finding employment only outside the state.

Divorce—Estoppel—Second Spouse Not Estopped from Pleading Invalidity of Wife's Former Divorce in Suit for Separate Maintenance—[New York].—In 1913 the plaintiff-wife secured a divorce in Pennsylvania, falsely alleging her domicil there. Her husband, a resident of New York, was not personally served with notice. In 1918, the plaintiff married the defendant, and since that time they have lived in New York. The plaintiff brought an action for separate maintenance,[1] and the defendant answered by alleging the invalidity of their marriage inasmuch as her prior divorce is

[10] La Roe, Parole with Honor 9, 10, and 16 (1939); Kolaski and Broecher, The Pennsylvania Parole System in Operation, 2 J. Crim. Law 427 (1932).

[11] 1 U.S. Dept. of Justice, Attorney General's Survey of Release Procedures 968, 970–72 (1939).

[12] New York, Annual Rep. Division of Parole of the Executive Dept. 17 (1938).

[13] 1 U.S. Dept. of Justice, op. cit. supra note 11, at 972.

[14] Pa. Stat. Ann. (Purdon, Supp. 1940) tit. 61, § 309.

[15] Commonwealth ex rel. Menke v. Reno, 46 Dauph. Co. Rep. [Pa.] 391 (1939).

[16] Pa. Stat. Ann. (Purdon, 1930) tit. 61, § 310, where the procedural set up for determining parole violations contains no provision for court appeal; People ex rel. Ross v. Lawes, 242 App. Div. 638, 272 N.Y. Supp. 169 (1934); Hogan v. Canavan, 246 App. Div. 734, 283 N.Y. Supp. 875 (1935); Ex parte Butler, 40 Okla. Crim. 434, 269 Pac. 786 (1928).

[17] Cockrell, Successful Justice 556 (1939)

[1] N.Y. Civ. Prac. Ann. (Gilbert-Bliss, 1926) § 1161.

not to be recognized in New York. *Held*, that it is necessary to prove a valid existing marriage before separate maintenance will be granted. As the Pennsylvania court did not have jurisdiction to grant the divorce decree the second marriage is void. The defendant is not estopped from asserting its invalidity. Complaint dismissed. *Maloney* v. *Maloney*.[2]

In an attempt to prevent circumvention of the state's strict divorce requirements, New York courts have traditionally restricted recognition of foreign divorces secured by its residents to the limited demands of the full faith and credit clause.[3] Nevertheless, the reaffirmance of this hostility to foreign divorces in the instant case, where the effect is to declare ineffective a de facto marriage that has existed for over twenty years, stands in marked contrast to a gradual mitigation of the New York policy which has developed in other instances.[4] Thus, while a large number of the frequent migratory divorces are probably invalid under New York law, prosecution of subsequent bigamous marriages is rare.[5] The rigor of having only one ground for divorce[6] has been alleviated by a liberalization of the strict rules on annulment of marriage,[7] and there is reason to believe that a large percentage of the divorces granted are collusive.[8] Moreover, the New York Court of Appeals has recently refused to enjoin the procurement of an out-of-state divorce even though the injunction would have prevented circumvention of the state's strict policy.[9]

A further instance of relaxation in the policy of non-recognition is to be found in those cases where the courts have held parties to the original divorce action to be estopped from denying its validity in subsequent proceedings.[10] Even though the court was without jurisdiction in granting the decree, its validity generally cannot be denied by the spouse who obtained the decree,[11] or by a spouse who takes advantage of the decree

[2] 22 N.Y.S. (2d) 334 (S. Ct. 1940).

[3] The divorce in the instant case was declared invalid on the basis of Haddock v. Haddock, 201 U.S. 562 (1906), which held that a divorce decree rendered at the domicil of one spouse need not be given full faith and credit where the other spouse was not a domiciliary of that state and was not personally served with notice of the proceedings.

[4] Kane, Recognition of Foreign Divorce Decrees in New York, 9 Fordham L. Rev. 242 (1940).

[5] Harper, The Myth of the Void Divorce, 2 Law & Contemp. Prob. 335, 339, 341 (1935). But cf. People v. Baker, 76 N.Y. 78 (1879).

[6] Adultery is the only ground for absolute divorce in New York. N.Y. Civ. Prac. Ann. (Gilbert-Bliss, 1926) § 1147.

[7] See. 1 Vernier, American Family Laws 242 (1931). Compare Schonfeld v. Schonfeld, 260 N.Y. 477, 184 N.E. 60 (1933), with Reynolds v. Reynolds, 85 Mass. 605 (1862). See also Krouch, Annulment of Marriage for Fraud in New York, 6 Corn. L. Q. 401 (1921).

[8] Collusive and Consensual Divorce and the New York Anomaly, 36 Col. L. Rev. 1121 (1936).

[9] Goldstein v. Goldstein, 283 N.Y. 146, 27 N.E. (2d) 969 (1940), noted in 8 Univ. Chi. L. Rev. 141 (1940).

[10] Rest., Conflict of Laws § 112 (1934).

[11] Krause v. Krause, 282 N.Y. 355, 26 N.E. (2d) 290 (1940); Stevely v. Stevely, 254 App. Div. 743, 4 N.Y.S. (2d) 69 (1938); McGraw v. McGraw, 48 R.I. 426, 138 Atl. 188 (1927); Guggenheim v. Guggenheim, 189 Ill. App. 146 (1914); Reeves v. Reeves, 24 S.D. 435, 123 N.W. 869 (1909); Ellis v. White, 61 Iowa 644, 17 N.W. 28 (1883).

by remarrying.[12] As the instant case indicates, even though neither of the parties to the original divorce suit would have been able to assert the invalidity of the decree, the second spouse of the person who secured the divorce will not be estopped from doing so. But it is doubtful whether such a result would be reached where the second spouse was active in securing the divorce which he later seeks to have declared invalid.[13]

The refusal to find an estoppel has the following undesirable results. As the first marriage is undissolved, four people[13a] have been living in an adulterous relation. Both the remarrying spouses of the former marriage may be subject to prosecution for bigamy.[14] The implications of this situation will have psychological and economic effects on the children of the subsequent marriages even though legitimation statutes have improved their legal status.[15] Furthermore, the plaintiff is not entitled to a statutory interest in the decedent estate of her second "husband";[16] at the same time, she will be estopped from making any claims against her first husband whom she has purported to divorce.[17] In view of this treatment it would seem that the plaintiff is, at best, a wife "at will" of the second "husband," who is under no duty to support her.

The court, in a dictum,[18] indicated that the defendant might be estopped from attempting to have the foreign divorce decree declared invalid had this been a case in which he was seeking affirmative relief rather than merely defending a suit. This estoppel would have been based on the fact that "the defendant has enjoyed the fruits of his marriage with the plaintiff for many years," and on the notion that the defendant, an attorney, knowing of the plaintiff's divorce, should have satisfied himself of the validity of his proposed marriage. Inasmuch as an estoppel of the husband in such a case would adjudicate the validity of the second marriage,[19] a later subsequent action

[12] Kelsey v. Kelsey, 237 N.Y. 520, 143 N.E. 726 (1923); Marvin v. Foster, 61 Minn. 154, 63 N.W. 484 (1895); Arthur v. Israel, 15 Colo. 147, 25 Pac. 8 (1894), aff'd 152 U.S. 355 (1894). But see 2 Schouler, Marriage, Divorce, Separation § 1162 (1921).

[13] Lefferts v. Lefferts, 263 N.Y. 131, 188 N.E. 279 (1933), Fischer v. Fischer, 254 N.Y. 463, 173 N.E. 680 (1930). Contra: Kaufman v. Kaufman, 177 App. Div. 162, 163 N.Y. Supp. 566 (1917). Derby, Obligation of Invalid Divorce on Person Who Induced It and Married Person Procuring It, 12 N.Y.U. L. Q. Rev. 31 (1934).

[13a] This is assuming that both spouses of the former marriage remarry.

[14] People v. Baker, 76 N.Y. 78 (1879); N.Y. Cons. Laws (McKinney, 1938) c. 40, § 340.

[15] In the absence of a legitimation statute the children of the subsequent marriages would be illegitimate. The existence in New York of such a statute evidences an attempt to alleviate one of the harsh aspects of the state's strict policy. N.Y. Civ. Prac. Ann. (Gilbert-Bliss, 1926) § 1135 (6).

[16] Bell v. Little, 204 App. Div. 235, 197 N.Y. Supp. 674 (1922), aff'd 237 N.Y. 519, 143 N.E. 726 (1923). Louisiana, adopting the Civil Code of France, recognizes the institution of putative marriage, i.e., a marriage which is objectively invalid, but which has been contracted in good faith by both parties or by one of them. The innocent spouse is entitled to the enjoyment of all the civil rights of a valid marriage. La. Civ. Code Ann. (Dart, 1932) art. 117.

[17] Ellis v. White, 61 Iowa 644, 17 N.W. 28 (1883) (dower); In re Ellis' Estate, 55 Minn. 401, 56 N.W. 1056 (1893) (appointment of administratrix); Marvin v. Foster, 61 Minn. 154, 63 N.W. 484 (1895) (inheritance of land); Laird v. State, 79 Tex. Crim. App. 129, 184 S.W. 810 (1916) (privileged communication).

[18] 22 N.Y.S. (2d) 334, 344 (S. Ct. 1940).

[19] Warshor v. Warshor, 130 Misc. 262, 223 N.Y.Supp. 705 (S. Ct. 1927).

by the wife for divorce or separate maintenance would then be permissible. In such a situation, the wife's prior divorce would, in effect, be recognized, in spite of the New York policy to the contrary. Such a ruling would seem to make the existence of the marriage depend upon which party was the first to institute proceedings in court, rather than on a consideration of the equities involved. A judgment of separation under these conditions, however, would not determine the relation between the plaintiff and her first husband, who are regarded, in New York, as still married.[20]

As long as New York persists in maintaining its strict policy, estoppel exists as a discretionary tool with which the court can prevent extreme hardship resulting from that policy. As estoppel is an equitable instrument, if it is to be used at all, its use should be determined by the presence or absence of equities in the particular case; its application should not be made to depend upon the accidental circumstance of one or the other party's having brought suit first.

Evidence—Federal Communications Act—Admissibility of Telephone Conversation Intercepted with Consent of One Party—[Federal].—An agent of the Federal Bureau of Investigation, by means of an extension, recorded telephone conversations between the defendants and the chief government witness, with the consent of the latter. In criminal proceedings for conspiracy to persuade the prosecuting attorney to recommend a light sentence for the chief government witness in a pending case, the recordings were introduced in evidence over objection of the defendants. On appeal from conviction, *held*, that the admission of the recordings was error because they were obtained by an interception of telephone conversations in violation of Section 605 of the Federal Communications Act. Judgment reversed and new trial ordered, one judge dissenting. *Polakoff v. United States*.[1]

The federal courts, until 1913, followed the common law rule that the admissibility of evidence was not affected by the illegality of the means by which it was obtained.[2] In *Weeks v. United States*[3] the first exception to the common law rule was made by the Supreme Court in holding inadmissible evidence obtained by government officers in violation of the Fourth Amendment.[4] Because of the decision in *Olmstead v. United*

[20] Krause v. Krause, 282 N.Y. 355, 360, 26 N.E. (2d) 290, 292 (1940).

[1] 112 F. (2d) 888 (C.C.A. 2d 1940), cert. den. 61 S. Ct. 41 (1940). In a companion case, United States v. Fallon, 112 F. (2d) 894 (C.C.A. 2d 1940), which was held to be controlled by the principal case, recordings of telephone conversations between the prosecution's chief witness and the accused were made by a federal agent with the cooperation of the witness in the latter's home and summer camp. In United States v. Yee Ping Jong, 26 F. Supp. 69 (Pa. 1939), with facts similar to those in the principal case, the court held there was not an interception since "intercept" means "to take or seize by the way, or before arrival at the destined place." The court in the principal case places emphasis on the consent of the communicants rather than on the location of the recording instrument.

[2] 1 Greenleaf, Evidence § 254(a) (14th ed. 1883). [3] 232 U.S. 383 (1913).

[4] The Fourth Amendment provides: "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated and no warrants shall issue, but upon probable cause, supported by oath or affirmation and particularly describing the place to be searched, and persons or things to be seized." As to admissibility in civil proceedings of evidence acquired by unreasonable search and seizure, see Rogers v. United States, 97 F. (2d) 691 (C.C.A. 1st 1938), noted in 6 Univ. Chi. L. Rev. 113 (1938).