

December 1962

## Domestic Relations--The Effect of a Bigamous Marriage in a Workmen's Compensation Proceeding

Thomas Franklin McCoy  
*West Virginia University College of Law*

Follow this and additional works at: <https://researchrepository.wvu.edu/wvlr>



Part of the [Family Law Commons](#), and the [Workers' Compensation Law Commons](#)

---

### Recommended Citation

Thomas F. McCoy, *Domestic Relations--The Effect of a Bigamous Marriage in a Workmen's Compensation Proceeding*, 65 W. Va. L. Rev. (1962).

Available at: <https://researchrepository.wvu.edu/wvlr/vol65/iss1/9>

This Case Comment is brought to you for free and open access by the WVU College of Law at The Research Repository @ WVU. It has been accepted for inclusion in West Virginia Law Review by an authorized editor of The Research Repository @ WVU. For more information, please contact [ian.harmon@mail.wvu.edu](mailto:ian.harmon@mail.wvu.edu).

language of the statute and fully and completely informs the defendant of the character and causes of the particular offense charged. The provision of our constitution which forbids that any person shall be twice put in jeopardy, applies only to the same offense. It has no application to another or different offense. *State v. Taylor*, 130 W. Va. 74, 42 S.E.2d 549 (1947). Thus the question presents itself as to whether the statutory offense of negligent homicide is the same offense as common law manslaughter. The court followed *State v. Taylor supra*, in saying that the State Constitutional provision denying the State the right to twice place in jeopardy a defendant has no application where the offense for which a defendant is being tried is a different offense than the one involved in a former prosecution. *State v. Pietranton*, 140 W. Va. 444, 84 S.E.2d 774 (1954).

For the doctrine of double jeopardy to operate properly, there must be a balance drawn between the rights of an individual, in the number of times he may be brought to trial for one act, and the authority of the State to prosecute separate criminal offenses that are committed in one act. It would seem that there is little the courts can do to avoid these overlaps in the law. If they are to be corrected it is up to the legislature to do it.

*Earl Moss Curry, Jr.*

---

#### Domestic Relations—The Effect of a Bigamous Marriage in a Workmen's Compensation Proceeding

*P* married *M*, who at the time of their wedding was already legally married. Under Kentucky laws this ceremony, between *P* and *M*, was void. *P* was awarded benefits as a dependent widow in a workmen's compensation proceeding. *Held*, a marriage contracted in Kentucky, which is made void by the laws of that state, cannot form the basis of a claim for compensation by one claiming to be the widow of the deceased workman by reason of such marriage. *Meade v. State Compensation Comm'r*, 125 S.E.2d 771 (W. Va. 1962).

The instant case itself poses no particular difficulty, for it is well established that a marriage which is void under the laws of the state in which it is contracted or celebrated is considered void everywhere. *Spradlin v. State Compensation Comm'r*, 145 W. Va.

202, 113 S.E.2d 832 (1960). The problems arise when one attempts to determine the result should the bigamous marriage have been contracted in West Virginia, where such marriages are merely voidable.

In *Shamblin v. State Compensation Comm'r*, 122 W. Va. 652, 12 S.E.2d 877 (1940), the court, in commenting on the difference between void and voidable marriages, stated that a void marriage confers no legal rights and when it has been determined that the marriage was void, the effect is the same as if no marriage had ever been performed. A voidable marriage differs from a void marriage in that it may be afterwards ratified by the parties and become valid and is usually treated as a valid marriage until decreed void.

At common law a bigamous marriage is absolutely void and void ab initio without any decree of the court. This is true even though contracted in good faith on a reasonable belief that the former marriage had been dissolved by death or divorce. MADDEN, PERSONS AND DOMESTIC RELATIONS § 18 (1931). This was, at one time, the rule in West Virginia. *Stewart v. Vandervort*, 34 W. Va. 524, 12 S.E. 736, 12 L.R.A. 50 (1890). The present statute, W. VA. CODE ch 48, art. 2, § 1 (Michie 1961), however, states, in part, that bigamous marriages “. . . shall be void from the time they are so declared by a decree of nullity.”

The fact that the present statute radically changes the common law and makes a bigamous marriage merely voidable and not void raises some interesting problems. For example: will a ruling by the state compensation commissioner be sufficient to nullify such a marriage or must the decree come from a judicial tribunal such as the circuit court? May an action for annulment be brought after the death of one of the parties or must it be brought during the lifetime of both? May both wives be permitted to share in the estate of the deceased workman?

As to whether a decree by the state compensation commissioner is sufficient to nullify a bigamous marriage, it has been stated that the circuit court, on the chancery side, is to have jurisdiction over suits for annulling marriages or divorces. W. VA. CODE ch. 48, art. 2, § 6 (Michie 1961). In *Spradlin v. State Compensation Comm'r*, 145 W. Va. 202, 207, 113 S.E.2d 832, 835 (1960), the court stated that the determination of the validity or invalidity of a

marriage is a judicial function and an administrative officer, such as the compensation commissioner, is without authority to investigate and determine the validity of such a marriage. In several other cases it has been held that an attack on a bigamous marriage must be made in a court of competent jurisdiction and not before an administrative officer of the state government. This authority belongs solely to the courts. *Meade v. State Compensation Comm'r*, 125 S.E.2d 771 (W. Va. 1962); *Sledd v. State Compensation Comm'r*, 111 W. Va. 509, 163 S.E. 12 (1932). It is obvious, from these cases, that a decree of nullity entered by the compensation commissioner is ineffective to annul a bigamous marriage. Consequently, unless the bigamous marriage is annulled by a competent judicial tribunal, the second wife may qualify as the deceased workman's widow and be entitled to death benefits. However, if the actual legal spouse of the deceased, the first wife, can meet the prescribed requirements of the workmen's compensation law then she too should be entitled to the death benefits. This raises the problem as to which of the two wives should receive the compensation. On what basis can a division of the benefits be made, for, because of the wording of W. VA. CODE ch. 48, art. 2, § 1 (Michie 1961), both women can claim to be the decedent's widow. If it is decided that the two wives are to share in the benefits, will one get a larger proportion than the other?

In *Hastings v. Douglass*, 249 Fed. 378 (N.D. W. Va. 1918) the court stated that for some time the rule in West Virginia has been that a voidable marriage may be questioned only in a direct proceeding for annulment, brought by one of the parties during the lifetime of the other. It has also been stated that the right to assail the marriage contract is made, by West Virginia laws, purely personal to the contracting parties and survives no one after the death of either. *Hastings v. Douglass, supra; Shamblin v. State Compensation Comm'r, supra*. From these cases it is obvious that unless the decree for nullity reaches its conclusion during the life of both parties, the marriage must be considered as having been lawful from its inception. But then, this has the effect of giving the deceased party two legal spouses. This is obviously a ridiculous situation, but because of the wording of the statute what other situation is possible.

If, because of the wording of our statute, both women are wives of the same man, this will have the effect of allowing both

to share in the estate of the deceased! If both wives are to share in the deceased's estate, the court is faced with the problem of determining how the women are to participate. Will they share equally or will one get a larger proportion than the other?

A statement by Clyde L. Colson, Dean of the West Virginia College of Law, summarizes exactly the state of West Virginia Law today because of the wording of this statute. Dean Colson stated that as the matter now stands it is impossible to deal with the situation logically and no relief can be had until the legislature sees fit to go back to the common law rule that bigamous marriages are void ab initio. He also stated that such a change would clear up the illogical muddle that the courts are now in. Colson, *West Virginia Marriage Law*, 43 W. VA. L.Q. 33, 51 (1936).

*Thomas Franklin McCoy*

---

#### **Due Process—Requirement That a Prisoner Be “Duly Cautioned”**

*D* was convicted of breaking and entering. After conviction and before sentencing, information setting forth two previous convictions was properly presented to the court. Pursuant to the provisions of the Habitual Criminal Act of West Virginia, W. VA. CODE ch. 61, art. 11, §§ 18, 19 (Michie 1961), the court sentenced *D* to confinement in the penitentiary for the remainder of his natural life. *D* filed a petition in the United States District Court for Northern West Virginia praying for a writ of habeas corpus. An order was entered by that court quashing the writ and dismissing the petition. *Held*, reversed. Where the prisoner was not duly cautioned prior to the admission of his identity and prior to the imposition of the life sentence, “due process of law” was denied and the sentence imposed under the statute is void. *Spry v. Boles*, 299 F.2d 332 (4th Cir. 1962).

The Congress of the United States has given to the federal courts the power to grant a writ of habeas corpus. Judiciary and Judicial Procedure Act, 28 U.S.C. § 2241 (1959). However, this power will only inure to the benefit of a prisoner under certain circumstances. The Judiciary and Judicial Procedure Act, 28 U.S.C. § 2241(c) (3) (1959) provides that the prisoner shall not have the benefit of the writ unless he is in custody in violation of the Constitution or laws or treaties of the United States. When a federal court declares that an act is done without due process of law, its