Volume 66
Issue 3 *Dickinson Law Review - Volume 66, 1961-1962*

3-1-1962

Pennsylvania Domestic Relations Cases of 1961

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JUDICIAL HIGHLIGHTS

PENNSYLVANIA DOMESTIC RELATIONS CASES OF 1961

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COMMON LAW MARRIAGE

Sinclair v. Sinclair.[1] In a divorce from bed and board action on the ground of indignities, the alleged wife relied upon a common law marriage which the defendant denied. The relationship of the parties, innocent in its inception, ripened into a meretricious one in 1957 as a result of which she became pregnant. An abortion caused her to become hospitalized. She claimed that the parties exchanged "marriage vows" during one of defendant's visits to the hospital. After her discharge, the parties did not live together. Later in 1957, when she again became pregnant, defendant set her up in an apartment and "visited her periodically, mostly on week ends." It appeared that they were known as husband and wife "to a limited circle of acquaintances." When she was released from the hospital, defendant "used ten days of his vacation time to stay with the plaintiff and their child, and assist her in and about the apartment."[2] Plaintiff continually urged the defendant to enter into a "civil marriage ceremony." This he refused to do. Finally, "defendant broke off relations with plaintiff and left her to shift for herself." Finding that a common law marriage had not been made out, the appellate court (on the opinion of the court below, per Van der Voort, J.) sustained the dismissal of the complaint. In support of such a finding, the court emphasized that even if it could be said that "words of marriage" were exchanged, the parties "did not regard them as creating a contract of marriage," as evidenced by the subsequent conduct of the parties, such as living separately, making no announcement of their marriage, and the plaintiff's insistence that they should enter into a civil marriage ceremony. While, the court noted, defendant's conduct was "contemptible," baseness "cannot be substituted for proof."

CUSTODY

In re Irizarry.[3] This proceeding involved the custody of two male children, aged nine and ten years, whose parents, lifelong residents of Puerto

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1. 197 Pa. Super. 59, 176 A.2d 123 (1961).
2. *Id.* at —, 176 A.2d at 124.
3. 195 Pa. Super. 104, 169 A.2d 307 (1961).

Rico, were divorced in 1957. In the divorce action, the Superior Court of Puerto Rico awarded custody of the children to the father. Each of the parties remarried. The mother established residence in Delaware County, Pennsylvania, and the father continued to live in Puerto Rico with his children. The father allowed the children to visit with their mother at her home in Pennsylvania "for a period to begin July 13, 1960, and end August 3, 1960." On July 26, 1960, the mother filed a petition for the children's custody in the Delaware County Court of Common Pleas. Over the father's objection, the court ruled that it had the requisite jurisdiction to determine custody. On appeal, the father urged that the lower court did "not have jurisdiction of this custody matter because it is bound to give full faith and credit to the custody decree of Puerto Rico,"[4] and it did "not have jurisdiction of the children because they are not residents of Pennsylvania but are here only for a temporary visit."[5] In affirming and remanding for a full hearing on the merits, the appellate court held that jurisdiction follows the residence of the children. Defining residence as "a tarrying place for some specific purpose of business or pleasure," it declared that "the mere presence of the children within the jurisdiction of the court, even for the thirteen day visit with their mother,"[6] was sufficient. That being so, and "because of the interest of the Commonwealth in the child, and because decrees of custody are temporary in nature,"[7] the full faith and credit clause does not preclude the Pennsylvania court from modifying the custody decree for changed conditions.

Commonwealth ex rel. O'Hey v. McCurdy.[8] The parties, married in 1948, were divorced in 1960. They had five children, ranging from eleven to one and one-half years of age. Custody of the youngest child was in the mother, and this proceeding related only to the custody of the four other children. The mother had since remarried and the father, with whom the four children had been living, was "away at work every weekday" and left the children in the care of his maid. In attempting to show the mother's unfitness, the father claimed that "the mother had a drinking problem, was basically immature," and spent too much time in athletic activities such as "golfing, swimming, bowling, etc." The appellate court apparently accepted the findings of the lower court that the mother had no "drinking problem"; that neither parent was unfit; and that the interests of the children would better be served by their mother's "daily guidance than the ministration of a maid." Accordingly, finding that the children were of a "tender age," and that the needs of such children "are ordinarily best served" by their mother, the

4. *Id.* at 106, 169 A.2d at 308.
5. *Ibid.*
6. *Supra* note 3, at 109, 169 A.2d at 309.
7. *Id.* at 108, 169 A.2d at 309.
8. 196 Pa. Super 79, 173 A.2d 672 (1961).

court awarded custody to her. It was added: "It is desirable that all of the brothers and sisters be kept together."[9]

SUPPORT

Commonwealth ex rel. Atlee v. Atlee.[10] At the close of the hearing in a nonsupport proceeding, the judge announced orally that the husband pay the wife twenty-five dollars per week. "Later the same day the court, from chambers, directed that the order be only fifteen dollars per week for the wife."[11] On appeal, the wife argued "that the court could not, as a matter of law, change the order previously announced the same day without the parties and their counsel being present, and without showing on the record a change of circumstances of the parties."[12] In rejecting this argument, the court declared that the reduction in amount could not be regarded as a "change," but only as a "correction of an oral order inadvertently made." Hence, "there was no deprivation of constitutional rights nor of the right of appeal." A trial court, it was also observed, has "complete control" of orders "during the term in which they were entered," and "within such time can correct its order to conform to the intention of the court."[13]

Commonwealth ex rel. Hollinger v. Shaeffer.[14] In a child-support proceeding, which resulted in an order of ten dollars per week, the defendant had requested that the court of quarter sessions employ the official court stenographer to report the proceedings. The court "refused the request, stating that the facts were not in dispute."[15] On appeal, the court was informed by defendant's counsel "that he intended to endeavor to prove that he was not the father"[16] of the child. The lower court's action, it was said, thus prevented him from "presenting a defense." Noting that this was a case of first impression, the appellate court held that the pertinent statute, making it mandatory upon the court to employ an official stenographer when requested, was broad enough to be applicable to a support proceeding. Accordingly, it reversed and remanded for a hearing de novo with a direction that "the proceedings shall be reported and the testimony shall be transcribed in full."[17]

Commonwealth v. Martin.[18] In this support proceeding, although the

9. *Id.* at 84, 173 A.2d at 674.
10. 196 Pa. Super. 2, 173 A.2d 684 (1961).
11. *Id.* at 3, 173 A.2d at 685.
12. *Ibid.*
13. *Supra* note 10, at 4, 173 A.2d at 685.
14. 196 Pa. Super. 301, 175 A.2d 114 (1961).
15. *Id.* at 302, 175 A.2d at 115.
16. *Ibid.*
17. *Supra* note 14, at 304, 175 A.2d at 116.
18. 196 Pa. Super. 355, 175 A.2d 138 (1961).

court said that "a parent is not liable for the support of a child attending college,"[19] the father was directed to continue to do so because at the time of his divorce he had "voluntarily agreed" to provide her "with an education beyond high school." Judge Woodside, concurring, would have gone so far as to hold that such an order of support should be approved, if there is no undue hardship to the father, even "in the absence of an expressed contract."[20] As he saw it, the rule that "a parent is not liable for the support of a child attending college" was "formulated years ago when attendance at college was viewed as a luxury." The rule should be reviewed "in the light of the large number of parents who now send their children to college."

Commonwealth ex rel. Gerstemeier v. Gerstemeier.[21] After the parties were divorced in January of 1958, custody of three of their children was placed in the mother, and the father was ordered to pay forty dollars per week for their support. In February 1958, the father remarried and two children were born of this second marriage. In May 1961, the application having been made, the support order was reduced to thirty-five dollars per week. The appellate court found that "the two additional dependents of the father" constituted the requisite "change in conditions" to warrant the reduction.

Adoption

In re Adoption of Snyder.[22] The subject of this adoption proceeding was Dale, a nine-year-old boy whose mother had died at his birth. His father subsequently remarried, and he and his second wife raised the child until the father's death in 1960, at which time his widow petitioned for the adoption of the child. Dale's half-sister and her husband (the Beaches) challenged the petitioner's fitness and alleged "their willingness to adopt the boy." The lower court awarded the boy to the Beaches. The supreme court, noting that both sides were "respectable people" and seemed "reasonably fit," felt that the child's welfare would be promoted if he were not taken from his stepmother. The following support was offered: Dale himself indicated that he "wanted to remain with his step-mother"; he never knew his own mother and the petitioner represented "the idea of mother to him"; through the years he had rarely seen the Beaches; the change would have required his moving to Ohio where the Beaches lived; and the change in the boy's life would have been so radical that "a complete readjustment" would have been necessary.

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19. *Id.* at 358, 175 A.2d at 139.
20. *Id.* at 360, 175 A.2d at 140.
21. 196 Pa. Super. 308, 175 A.2d 105 (1961).
22. 403 Pa. 343, 169 A.2d 544 (1961).

ALIMONY PENDENTE LITE

Belsky v. Belsky.[23] In November 1959, the wife filed a complaint against her husband for a divorce *a mensa et thoro* and, in May 1961, an order was made for alimony pendente lite in the amount of one hundred dollars per week. It appeared that the parties, who married in 1958, had entered into an ante-nuptial agreement which in pertinent part provided that the wife, in consideration of being permitted to "retain as her own property all of the income that she may receive from her property,"[24] relinquished all claims for "maintenance and support" that she might have against her husband in the event they "shall cease to live together" as "husband and wife." On appeal, the husband argued that the waiver of maintenance and support operated as a bar to an award of alimony pendente lite. In rejecting the husband's argument, the court observed that the wife "is entitled to have the validity of the instant agreement judicially determined."[25] This she could not do if she were "deprived of her day in court," and an important purpose of an award of alimony pendente lite "is to prevent such a denial of justice." After concluding that "the term 'maintenance and support' does not have the same connotation as the term 'alimony pendente lite,' "[26] the appellate court (adopting language of the lower court) observed that if the parties, by their agreement, "had intended that no award of alimony pendente lite be available to the wife," they "should have said just that."

ANNULMENT

Jewett v. Jewett.[27] The parties, having entered into a marriage in Maryland in 1952, subsequently cohabited together in Pennsylvania for about nine years, after which time the husband left the marital abode and this action followed. In his two-count complaint, the husband sought a divorce and annulment. The wife's demurrer resulted in a dismissal of the annulment count. The husband had claimed that at the time of the Maryland marriage he was a minor and that the wife had misrepresented his age to the license clerk; that he was induced into the marriage by the wife's fraudulent representation that he was the father of a child born to her out of wedlock and that the child was ill when in fact no child had been born; and that he was driven into the marriage because of the wife's threats to prosecute for fornication and bastardy. The appellate court observed that the law of Maryland—the state where the marriage was celebrated—governed the validity of the marriage. It appeared that, in Maryland, annulment "is

23. 196 Pa. Super. 374, 175 A.2d 348 (1961).
24. *Id.* at 376, 175 A.2d at 349.
25. *Id.* at 377, 175 A.2d at 349.
26. *Id.* at 379, 175 A.2d at 350.
27. 196 Pa. Super. 305, 175 A.2d 141 (1961).

limited to cases of marriage within the prohibited degrees of consanguinity and affinity and to bigamous marriages."[28] While marriages in Maryland contracted under fraud and duress are cognizable in its courts of chancery, such marriages are only "voidable." Annulment in Pennsylvania is available only for marriages which are "absolutely void," and the cases have limited it to the following grounds: "bigamy; insanity; minority under seven years; subsequent marriage to a paramour after divorce on the ground of adultery; and marriage entered into in jest or play."[29] Further, the court said, "a marriage contract by a minor above seven years is voidable, not void, both in Maryland and Pennsylvania."[30] Concluding that the husband's allegations did not constitute ground for annulment in Maryland or Pennsylvania, the court ruled that the annulment count of his complaint did not set forth a cause of action. It added that the proper remedy in Maryland would be a complaint in Equity to set aside the marriage—but that the marriage would not be void.

Masters

Shuman v. Shuman.[31] The husband in a divorce action based on indignities was ordered to pay a Master's fee of 10,000 dollars. Twenty-one hearings had been held before the Master; the testimony covered 2,011 pages; the Master spent 405 hours on the case; and the master's report, recommending a divorce, covered 198 pages. The appellate court observed that while the power to fix a Master's fee resides in the court of common pleas and is largely within its discretion, "the court's action is subject to review on appeal." Finding that the court below gave "little if any consideration" to the issue of the husband's "ability to pay," and after examining his financial condition, the appellate court found that the fee was "excessive," directing that the total fee be reduced to 3,000 dollars. One judge concurred, and one dissented.

Divorce

Adultery-Recrimination-Condonation

Boyd v. Boyd.[32] In a husband's divorce action on the grounds of indignities and adultery, the lower court found that the wife was guilty of adultery but denied the divorce on the ground that the defense of recrimination had been established. It appeared that the parties were married in 1945 and cohabited as husband and wife until April 1957. The appellate court agreed that the record supported a finding of adultery by the wife in May

28. *Id.* at 307, 175 A.2d at 142.
29. *Ibid.*
30. *Supra* note 27, at 308, 175 A.2d at 142.
31. 195 Pa. Super. 145, 170 A.2d 597 (1961).
32. 195 Pa. Super. 371, 171 A.2d 555 (1961).

and December of 1957. However, it felt that the defense of recrimination had not been established. While it was true that the husband lived with another woman (his first wife) during 1947 and 1948—and his adultery might have been inferable—the present wife, "after this alleged occurrence and after she had full knowledge of it, went back to live with her husband and continued to cohabit with him."[33] According to the court, "this condoned the plaintiff's adultery, if any." It applied the settled principle that "a wife may condone the adultery of her husband so as to allow him to be divorced from her for the same offense committed by her subsequently to her condonation."[34] Other proof offered by the wife, showing his association with women after April 1957, was unavailing in that the circumstances did not permit the inference of adultery to be drawn. Accordingly, the lower court was directed to grant a divorce to the husband.

Desertion

Popovic v. Popovic.[35] The husband, a career enlisted serviceman in the Navy who was assigned to a ship which spent approximately six months of each year at sea, obtained a divorce from his wife on the ground of desertion. In 1956, while the parties were living in Boston, the wife "developed a severe nervous and emotional condition" after which the husband brought her to the home of her parents in Pittsburgh. She was hospitalized and, after discharge, was required to undergo regular psychotherapy treatments by a local neuropsychiatrist. She suffered from "residuals of schizophrenic reaction with periods of depression" and from "hydrops of the labyrinth and cochlea" which resulted in "considerable impairment of hearing." The husband, in 1957 and again early in 1958, requested his wife to make a home with him in Newport, Rhode Island, where he was then stationed. She refused on both occasions. On appeal, the wife sought to justify her refusal on the basis of her illness and on the advice of her neuropsychiatrist that she reside in Pittsburgh near her family. Finding that her condition had "greatly improved"; that "another doctor" could continue her treatment; that "she was capable of getting along without assistance most of the time"; and that if any help were needed, it "would be as convenient at a naval installation as it would be in Pittsburgh"; the appellate court concluded that justification for the wife's refusal to join her husband had not been demonstrated.

Yohn v. Yohn.[36] In a divorce action by the husband on the ground of desertion, the wife sought to show that the separation was consensual by

33. *Id.* at 374, 171 A.2d at 557.
34. *Id.* at 375, 171 A.2d at 557.
35. 195 Pa. Super. 291, 171 A.2d 608 (1961).
36. 196 Pa. Super. 506, 175 A.2d 117 (1961).

pointing to a "property settlement agreement entered into weeks before the separation." The agreement, providing "for the division of certain household items and for the payment of $86.67 per month for her support," contained the following clause: "That nothing in this agreement shall be construed as a waiver of any rights either party may have to institute and proceed with divorce proceedings . . . ." Noting that "a property settlement agreement is not conclusive evidence that the separation was consensual," the court found that the above clause negated "an inference that it was a separation agreement."[37] Accordingly, it was felt, the agreement did not establish that the separation was consensual.

Jeanette v. Jeanette.[38] In a divorce action by the husband, who claimed that his wife was a "constructive" deserter, it appeared that the stories of the parties were "diametrically opposed." The appellate court declared that a constructive desertion may take place where one is "put out by force or justifiable fear of immediate bodily harm," or is "locked out" against his will or without his consent.[39] Resolving the question of credibility in favor of the husband, the appellate court found it clear that even if the husband's fear of receiving bodily harm at the time he was "put out" was not justifiable, he had been "locked out" of his home and his attempts toward reconciliation had been refused. This, it was held, having continued for a two-year period, constituted a constructive desertion. It mattered not, the court added, that the wife "still remained in the common habitation," for desertion "does not require absence from the common habitation," but only "absence from the habitation of the injured and innocent spouse."[40]

Indignities

Gillen v. Gillen.[41] In a divorce action by the husband on the ground of indignities, it appeared that the wife accused him "of having affairs with other women, including his sister-in-law, dating women with whom he was employed, consorting with prostitutes, and sexual perversions."[42] She attacked him "on numerous occasions about the face, inflicting scratches and lacerations, cut him with a knife, hit him with a hacksaw causing unconsciousness, and threatened him with emasculation."[43] When he bought a new home, she "constantly abused him for doing so and attempted to destroy any improvements which he made to the property."[44] The appellate

37. *Id.* at 510, 175 A.2d at 118.
38. 196 Pa. Super. 295, 175 A.2d 145 (1961).
39. *Id.* at 300, 175 A.2d at 148.
40. *Id.* at 301, 175 A.2d at 148.
41. 195 Pa. Super. 60, 169 A.2d 340 (1961).
42. *Id.* at 61, 169 A.2d at 341.
43. *Ibid.*
44. *Supra* note 41, at 62, 169 A.2d at 341.

court sustained the lower court's finding that the wife's conduct amounted to indignities. To the wife's claim that her conduct was "provoked" by the husband's "failure to return home at the appointed hour" and that she did not like the home which he purchased, the court retorted that these were "rather trivial reasons" for her accusations and physical attacks. According to the court, there was "no provocation apparent which would justify any indignities." Even if his conduct could have been regarded as provocative, it was felt that the retaliation was "so overly excessive as to negate any defense or justification" of her conduct. Further, the court held, the existence of a meretricious relationship between the husband and a female acquaintance did not operate as a bar to the husband since his misconduct occurred long after he and his wife had separated and after the indignity grounds for divorce had accrued.

Heyme v. Heyme.[45] In a divorce action, the husband made out a case of indignities by showing the wife's "refusal over two years" to talk with him "except perhaps on rare occasions, her failure to visit him in his room when he was ill and calling him very foul names."[46] Even though the husband "called no witnesses to corroborate his charges," it was held that the failure of the wife to deny the complaints justified the decree.

Baio v. Baio.[47] The husband in a divorce action grounded on indignities demonstrated, among other things, that his wife "continuously accused him of infidelity; that she accused him of having intercourse with her sister; that the accusations of infidelity were made in the presence of others, including members of the family, friends and strangers";[48] and "that she called him a whoremaster, a cheat, a louse and applied other vulgar and profane epithets to him."[49] As a result of this continuous abuse, "the husband's patience gave out, his health began to fail and his life became so miserable and unbearable that he finally left her and brought this action."[50] This, it was held, amounted to indignities.

Henszey v. Henszey.[51] After a marriage of some fifty-two years, during which time seven children were born, the husband obtained a divorce from his wife on the ground of indignities. It appeared that the wife, *inter alia,* "continually neglected her household duties, maintained the home in a filthy condition, . . . slept late every day, . . . used uncommonly dirty and filthy language, . . . continuously and falsely accused the plaintiff of adultery,

45. 195 Pa. Super. 314, 171 A.2d 827 (1961).
46. *Id.* at 317, 171 A.2d at 828.
47. 196 Pa. Super. 202, 173 A.2d 800 (1961).
48. *Id.* at 204, 173 A.2d at 801.
49. *Id.* at 205, 173 A.2d at 801.
50. *Ibid.*
51. 195 Pa. Super. 377, 171 A.2d 837 (1961).

incest and other humiliating charges, . . . threw objects at him, and at one time threw a knife at him, which cut the lobe of his ear."[52] To the wife's plaint that the husband at times used "vile and abusive language," the appellate court declared that "in view of her conduct and treatment of him," such lapses of "gentlemanly conduct must be expected." While, the court added, the plaintiff in a divorce action must be an "injured and innocent spouse," he need not be "completely blameless." That the plaintiff husband died after appellate argument did not operate to "abate the appeal." For, as the court noted, quoting from its decision in *Matuszek v. Matuszek*,[53] "the state is still interested in determining whether the divorce proceeding was properly decided."[54]

Herger v. Herger.[55] In this divorce action the husband claimed "indignities beginning with the year 1933 and continuing for 24 years." Among other things, he accused his wife of "name-calling, periods of silence, failure to prepare his meals, insults, and slurs." In affirming the dismissal of his complaint, the appellate court observed that the cited instances "are isolated and sporadic and span practically the entire period of the marriage." For example, it was noted that in 1933 the wife "threw something" at him but that "it had been ten years" since she last "threw anything at him." Accordingly the court concluded that indignities, which involves a "course of conduct" rendering conditions intolerable and life burdensome, had not been demonstrated.

Cruel and Barbarous Treatment and Indignities

Simons v. Simons.[56] The husband sought a divorce on the ground of cruel and barbarous treatment and indignities. The parties, married in 1950, lived apart intermittently during the succeeding ten years, part of which was due to the wife's confinement in a mental institution. The husband claimed that his wife "made unprovoked attacks on him with a knife on at least two occasions"; that she "attempted to suffocate" him; and that she refused "to have sexual relations." Cruel and barbarous treatment, the appellate court observed, "implies a merciless and savage disposition leading to conduct amounting to actual personal violence, or creating a reasonable apprehension thereof, so as to render further cohabitation dangerous to physical safety."[57] Further, it was observed, "refusal to have sexual relations does not constitute cruel and barbarous treatment,"[58] nor does it constitute "indignities."

52. *Id.* at 380, 171 A.2d at 839.
53. 160 Pa. Super. 526, 52 A.2d 381 (1947).
54. *Id.* at 530, 52 A.2d at 382.
55. 195 Pa. Super. 40, 169 A.2d 329 (1961).
56. 196 Pa. Super. 650, 176 A.2d 105 (1961).
57. *Id.* at 653, 176 A.2d at 107.
58. *Id.* at 655, 176 A.2d at 108.

With regard to the claim of indignities, the court declared that a person, because of mental illness, "may be irritable and may spontaneously say and do mean and contemptible things," but they are excusable "on the theory that such conduct lacks the spirit of hate, estrangement, and malevolence which is the heart"[59] of a charge of indignities. A further ground assigned by the court for the denial of a divorce was that the husband was not an "innocent and injured spouse." Among other things, he had beaten her, made insulting remarks, and used abusive language.

Foreign Decree

Commonwealth ex rel. Messing v. Messing.[60] The alleged wife's support action was dismissed on the ground that the defendant had obtained a divorce from her in Nevada in 1952. On appeal, the plaintiff claimed that at the time of the Nevada decree "(1) her husband was not a bona fide resident of Nevada and (2) there was outstanding a preliminary injunction which had been issued against him"[61] by a Pennsylvania court of common pleas "enjoining him from prosecuting an action of divorce against the plaintiff in Nevada or in any other jurisdiction outside of Pennsylvania."[62] The appellate court, finding that the defendant "went into business in Nevada at or about the time of arrival there in 1951" and had "remained there since," felt that the Nevada decree must be recognized as valid. The violation of the injunction—which was assumed, but not decided, to be valid—had no effect upon the jurisdiction of the Nevada court. The appellate court observed, "equity acts in personam and the Philadelphia court could punish the defendant for disregarding its decree when it obtained power over him upon his return to this jurisdiction, but it could not affect the validity of the Nevada decree."[63] Accordingly, finding that the Nevada divorce decree was entitled to full faith and credit, the lower court's dismissal of the support action was affirmed.

Commonwealth ex rel. Wenz v. Wenz.[64] The defendant and Florentia were married in 1921. In January 1942, he obtained a divorce from her in Ohio, and ten months later married Juanita in Maryland. In August 1958, Florentia obtained a divorce from defendant in Pennsylvania. Defendant and Juanita had been living together since 1938 and cohabited at various addresses in Pennsylvania until March of 1959, when the defendant ejected her from the common domicile. Juanita, in this support proceeding, obtained an order

59. *Ibid.*
60. 195 Pa. Super. 334, 171 A.2d 893 (1961).
61. *Id.* at 335, 171 A.2d at 893.
62. *Id.* at 335, 171 A.2d at 894.
63. *Id.* at 336, 171 A.2d at 894.
64. 195 Pa. Super. 593, 171 A.2d 529 (1961).

directing defendant to pay her twenty-five dollars per week. On appeal, defendant denied that Juanita was his lawful wife. He argued that the Ohio divorce was invalid "in that he was never a resident of the state," and hence was not legally competent to marry Juanita in Maryland. In affirming, the appellate court declared that the full faith and credit clause required Pennsylvania to assume that the defendant at the time of his divorce had a bona fide domicile in Ohio, and that an attacker of the Ohio decree had the burden of showing by a preponderance of the evidence that jurisdiction was in fact lacking. However, since defendant had procured the divorce, he was estopped from collaterally attacking its validity. Even if estoppel were not an obstacle, because Juanita had participated in the procurement of the divorce, the court found that since the defendant was regarded as an incredible witness he had not sustained the burden of proving that he had not been a domiciliary of Ohio. Further, even if defendant had sustained the requisite burden and the Ohio divorce was invalid, defendant and Juanita were deemed married under the operation of a 1953 Pennsylvania statute[65] which provided:

> If a person, during the lifetime of a . . . wife with whom a marriage is in force, enters into subsequent marriage . . . and the parties thereto live together thereafter as husband and wife, and such subsequent marriage was entered into by one or both of the parties in good faith in the full belief that the former . . . marriage has been . . . terminated by a divorce . . . they shall after the impediment to their marriage has been removed by . . . divorce, if they continue to live together as husband and wife in good faith . . . be held to have been legally married from and immediately after the removal of such impediment.[66]

According to the court, Juanita "at the time of the Maryland marriage, assumed the legality of the Ohio decree and exercised good faith in her desire for matrimony."[67] Hence, the statutory requirements had been satisfied, "including their living together, in good faith, as man and wife after the decree of divorce obtained by the defendant's first wife on August 12, 1958, had removed the impediment to their marriage."[68] As of the time of the removal of the impediment, Juanita and defendant became lawfully married.

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65. PA. STAT. ANN. tit. 48, §§ 1-17 (Supp. 1961).
66. *Supra* note 64, at 599, 171 A.2d at 532.
67. *Id.* at 600, 171 A.2d at 533.
68. *Ibid.*