

RECOGNITION OF POLYGAMOUS MARRIAGES UNDER THE ENGLISH LAW

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ABSTRACT: *This paper talks about the recognition of polygamous marriages under the English Law with special reference to England. It gives us an insight into the concept and nature of a monogamous marriage, it defines and distinguishes the polygamous type of marriage from monogamy, thereby making it clear to us that the concept of marriage is not uniform in all legal systems. It provides the solution to the three key questions that are usually raised by Lead Text Writers in this area of Private International Law which are: What law determines the nature of a marriage? Is the nature of a marriage to be determined in the light of the facts existing at its inception or at the time when its nature is questioned in legal proceedings? What recognition will be extended by an English Court to a marriage that is found to be actually or potentially polygamous? The position in England on the status of children of a polygamous marriage and Succession by widows of a potentially polygamous marriage to their deceased husbands' properties were also discussed in broad details. This paper agrees that the *lex loci celebrationis* should govern the status of a marriage, but suggests that the *lex domicili* and *lex loci celebrationis* of the parties to every marriage contract should be the same, and tells us why the idea is very workable.*

KEYWORDS: Marriage, Polygamous Marriages, Monogamous Marriage, Lex Loci Celebrationis, Lex Domicili, Parties, Spouses, Legitimacy Of Children, Succession, Widows, Legitimacy.

NATURE OF A MARRIAGE CONTRACT

A marriage contract differs fundamentally from a mercantile contract¹, since it creates a status that affects both the parties themselves and the society to which they belong. It is *sui generis*. It becomes *functus officio* upon the solemnization of the marriage ceremony and thereafter, there is a change in the Law that governs the relationship between the parties². The existence of marriage must be established as a preliminary to legal proceedings. The Matter may concern different parts of the law. The institution of a Matrimonial Cause, such as a petition for divorce or judicial separation implies that the parties are related to each other as husband and wife.

¹ Under the Law Reform (Miscellaneous Provisions) Act 1970, s. 1, an agreement to marry shall not have effect as a contract.

² *Cheshire & North's Private International Law (10th Edition, Butterworths)*, 1979 @ 295; *Cheshire, North & Fawcett Private International Law, 14th Edition (Oxford University Press) 2008 @ 876*

If a person claims an inheritance or insurance policy moneys as the widow or the widower of the deceased; if a beneficiary under a Will claims to be free from liability to capital transfer tax as being the surviving spouse of the testator; in each case, a preliminary to success is proof that a regularly constituted marriage exists³. The existence of the marriage tie is equally essential in several departments of criminal law, as for instance, where a person is prosecuted for bigamy. All these Matters and many others may raise a problem of Private International Law, since the parties in question may, for instance, have contracted a Union abroad which though valid, by the *lex loci celebrationis* or by the *lex domicili* does not create the status of marriage according to English Law.

The consensual union of man and woman which is the one common factor of every marriage⁴ possesses diverse features according to the law to which it is subject, and each legal system must determine what its attributes shall be in order to create a husband and wife relationship. The English view, common to most western countries is that it must be *monogamous*. Marriage can only be concluded (at least, as a general rule) by a formal, public act, and not for example, by an exchange of letters or over the telephone⁵. No action for damage will lie for the breach of fundamental obligation to love, honour and obey⁶. The contract cannot be rescinded by the mutual consent of the parties; it can only be dissolved (if at all) by a formal public act which is usually the decree of a Divorce Court. Marriage is far more than a contract because the status it creates is something of interest to the community as well as to the parties. Lord Westbury said in *Shaw v. Gould*⁷, that *marriage is the very foundation of civil society, and no part of the law and Institution of a country can be of more vital importance to its subjects than those which regulate the manner and conditions of forming, and if necessary, of dissolving the marriage contract*⁸.

The English Law requires the Union to be potentially indefinite in duration. The requirement of a lifelong Union does not mean that a marriage must be indissoluble, but in the eye of the *lex loci celebrationis* (Law of the place of celebration), it must be potentially indefinite in duration. The facility with which, according to that Law, it may be dissolved is irrelevant to its nature at the time of its creation. The one essential in this regard is that the parties have married in a form which envisages that, in the ordinary course of things, they will cohabit as man and wife for the rest of their lives. The most authoritative statement on the requirement of monogamy was given by *Lord Penzance* in *Hyde v. Hyde*⁹ where an English man who had embraced the Mormon faith married a Mormon lady in Utah according to the Mormon rites. After cohabiting with her for three years, and having children by her, he renounced his faith and soon after wards became the Minister of

³ *Cheshire & North's* supra @ 295

⁴ *Corbett v. Corbett* (otherwise Ashley) (1971) p.83; *Bellinger v. Bellinger* (2003) UKHL 21; *J v. C* (void marriage : Status of children) (2006) EWCA Civ 551; (2006) 2 FLR 1098; *Wilkinson v. Kitzinger & Ors* (2006) EWHC 2022 (Fam); Matrimonial Causes Act 1973, s. 11 (c); *Re North & Matheson* (1974) 52 DLR (3d) 280; *Cheshire, North & Fawcett Private International Law (14th Edition, Oxford University Press) 2008 @ 876*

⁵ *Morris on Conflict of Laws* by David McClean & Kisch Beevers (6th Edition), 2005 @ p. 143

⁶ *Morris* supra @ 143

⁷ (1868) L.R 3 HL 55

⁸ *Shaw v. Gould* (1868) LR 3 HL 55 @ 82

⁹ (1866) LR 1 P & D 130

dissenting Chapel at Derby in England. He petitioned for a decree of divorce after his wife had contracted another marriage in Utah according to the Mormon faith.

Lord Penzance assumed that a Mormon marriage was potentially polygamous. The learned Judge refused to dissolve the marriage and the authority of his decision was never doubted. He defines marriage as understood in christendom as ‘..... *the voluntary Union for life of one man and woman to the exclusion of all others*’¹⁰. The Matrimonial Laws of England are adapted to the Christian marriage, he thought, and are wholly inapplicable to polygamy. Parties to a polygamous marriage, therefore, are not entitled to the remedies, the adjudication or Relief of the Matrimonial Law of England¹¹.

See also *Nachimson v. Nachimson*¹². The remedy of divorce is an incident not of the marriage contract, but of the law of the country of domicile at the time of marriage. However, it is trite to state the fact that monogamy has never been the exclusive preserve of Christianity.

POLYGAMOUS MARRIAGES

A polygamous marriage is what we have in any case where a man marries more than one wife. Hence, it differs from a monogamous marriage due to its nature and some other factors which are going to be discussed in this paper.

The concept of marriage is not uniform in all legal systems.

PROBLEMS AS TO THE NATURE OF A MARRIAGE

This raises three questions:

1. What law determines the nature of marriage?
2. Is the nature of a marriage to be determined in the light of the facts existing at its inception or at the time when its nature is questioned in legal proceedings, i.e. can its nature change?
3. What recognition will be extended by an English Court to a marriage that is found to be actually or potentially polygamous?

Addressing those three questions, I would start with the first Issue-

What Law determines the Nature of a Marriage?

¹⁰ *Hyde v. Hyde* supra @ 133

¹¹ *Hyde v. Hyde* @ 138

¹² (1930) p. 217. In *Nachimson’s case*, a marriage had been solemnized in Moscow in 1924 between the parties domiciled in Russia. At that date, unilateral divorce was permissible by Russian Law. In a suit for judicial separation brought in England, it was argued that the marriage was *of such a flimsy nature* that it could not be regarded as a Union for life. This argument was dismissed by the Court of Appeal as untenable. It was demonstrated that the dissolubility of a marriage can have no effect upon its original character, for the valid creation of any contract, whether matrimonial, commercial or otherwise, stands apart from its conditions of avoidance (*Warrender v. Warrender*) (1835) 2 CL & Fin 488 @ 533

Here, the Union should be potentially for an indefinite period – we can see the case of *Nachimson v. Nachimson*¹³ where the relevant law was held to be the *lex loci celebrationis*, and no other. There is also much in favour of the view that the appropriate law to test the nature of marriage (whether it is monogamous or polygamous) is the law of the matrimonial domicile. In this case, this then means that to apply the *lex loci celebrationis* runs against the fundamental principle that Matters of status, especially the status of husband and wife are regulated solely by the law of the domicile.

In my view, the *lex loci celebrationis* should be the appropriate Law to govern the nature of a marriage. This is why parties intending to get married should calculate wisely why they should have to celebrate their marriage in a particular jurisdiction.

In Private International Law, the Law of any place a person subjects himself to should govern all aspects of the person's life. That is why the concept of dual nationality or dual domicile remains undesirable. If all parties to a marriage have a domicile or nationality per person, the parties should decide which one domicile should be adopted by both of them after marriage. The wife should not adopt a different domicile from that of the husband after marriage (unless it is really going to make her suffer some form of injustice). Otherwise, it is desirable for both parties to keep just a domicile after marriage.

Where both parties choose to adopt one and the same domicile, (which in this case is known as *the intended matrimonial domicile*), they should ensure they celebrate their marriage in that jurisdiction or territory of the intended matrimonial domicile. This will go to a large extent to help us resolve the problems associated with the law that determines the nature of the marriage. For example, if **A** & **B** (being citizens of Nigeria and Great Britain) decide to get married as husband and wife, they should be able to choose only Nigeria or Great Britain as their domicile after marriage. Whereby **A** (the intended Husband) has no plan to take on a second wife throughout his life time after marrying **B**, he should decide to make Great Britain their domicile and ensure that **B** accepts his suggestion, and if **B** knows that she would never want **A** to marry another wife during the subsistence of her marriage to **A**, she should never allow **A** to convince her to take Nigeria as their intended matrimonial domicile; for the Law of Nigeria on marriage recognizes the Customary and Islamic type of marriages in addition to the English marriage, and those marriages (apart from the English) are potentially polygamous in nature.

Hence, parties intending to get married must decide to discuss the type of marriage they intend to enter into which should enable them to choose favourably their intended matrimonial domicile, and which of course, should also be the place for the celebration of their marriage. Therefore, the *lex loci celebrationis* should be the same law as that of their matrimonial domicile which should govern a person's status, personal and property rights.

Concluding on this, one can safely say that if the parties celebrate their marriage in *Nigeria* (for example), the marriage is monogamous but *potentially polygamous*, and if it is celebrated in *Great*

¹³ (1930) p. 217

Britain, the marriage is actually *monogamous*. In the case of Nigeria eventually being the choice of the parties, it must strictly be celebrated according to English Law with every available evidence. Otherwise, the husband may at the inception of the marital contract decide to go polygamous, but such can not be the case where Great Britain becomes the choice of the parties.

Is the nature of the marriage to be determined in the lights of the facts existing at its inception or at the time when its nature is questioned in legal proceedings, i.e. can its nature change? - It is clear from more recent decisions that English Courts will recognize a change in the nature of a marriage after its inception¹⁴. See the case of *Cheni v. Cheni*¹⁵ where two Sephardi Jews, Uncle and niece domiciled in Egypt, were married in Cairo and a child was born to them two years later. By Jewish and Egyptian Law, the marriage was potentially polygamous in the sense that if no child was born within ten years, the husband might take another wife subject to the approval both of his first wife and of the Rabbinical Court. Five years after the parties had acquired an English domicile, the wife petitioned for a decree of nullity on the ground that she and her husband were within the prohibited degrees of consanguinity. The court had no jurisdiction to entertain this Suit since the marriage was potentially polygamous for the fact that an additional wife can possibly be taken judging by the facts of the case¹⁶.

Sir Jocelyn Simon P. held that the decisive date for considering its polygamous potential was the inception of the instant proceedings. I humbly disagree with the judgment by saying that the best time to consider the nature of the marriage was at its inception. We should be concerned about the facts existing at the inception of the marriage. Going by the facts of this case, we know that a marriage celebrated in the territory of Egypt and where both parties are domiciled is potentially polygamous; and any incidence of polygamy can certainly arise at the time. There was no point for the English Court to entertain the Matter because the foundation of the marriage has rendered it impossible for any Matrimonial Proceedings to be brought before it. Therefore, any intending wife to a marriage must carefully think of the consequences of celebrating her marriage in any jurisdiction before she goes ahead. Or else, she should opt out of the pre-marriage contract before all formalities associated with the marriage are met. If **B** (an intending wife) does not want her husband to marry another wife immediately or in the future while she is still alive, and the marriage is subsisting, she should make all efforts to ensure that she does not get married to her husband in a potentially polygamous jurisdiction or country. For trying to change the nature of the marriage after it has already been celebrated amounts to wasting the time of the Courts. From the beginning, the legal status of a marriage must be determined and known, not later. We cannot count on subsequent developments before we know what Law is applicable to a matrimonial Cause. In this case, we should do away with the idea of changing the nature of marriages from monogamous to potentially polygamous or from polygamous to Monogamous forms. This will reduce the conflicts of Private International Laws across all country Borders. The concept of dual nationality should be done away with because it is also a contributory factor to the problem associated with this question (ii) which has just been addressed. If dual nationality is expunged, the applicable Law will remain the *lex loci celebrationis*, which will also be the same Law as the *lex domicilii*, and the

¹⁴ *Cheshire, North & Fawcett* (14th Edition) 2008 @ p. 924

¹⁵ (1965) p.85

¹⁶ Per *Sir Jocelyn Simon P.*

parties in *Cheni v. Cheni* will have no business acquiring an English domicile in addition to that of Egypt; and would certainly have no business bringing any Matrimonial Cause before the English Court.

What recognition will be extended by an English Court to a marriage that is found to be actually or potentially polygamous? - According to *Cheshire, North & Fawcett*,¹⁷ although it is not possible to enter into a valid polygamous marriage in England, such a marriage abroad can be recognized as valid provided it has been validly created in the Eyes of the English Private International Law¹⁸. That is to say, that it must have been contracted between parties of full age and capacity, and in accordance with the formal requirements of the *lex loci celebrationis*. In my reasoning, the English Court should not recognize a polygamous marriage which is largely an African concept. An English marriage has always been known to be the union of one man and woman to the exclusion of all others¹⁹. That definition should be allowed to stand permanently. It has been tried and tested over the centuries, and it no doubt has more advantages than disadvantages, for the disadvantages of polygamous marriage are numerous. Not only is a monogamous marriage more civil in nature, it has even been proved to be a more stabilizing factor in every society than polygamy where disputes can arise too often between wives of the same man, between a wife and children of co-wives and even between children of the same father, but different mothers.

It is my humble view that the English legal system should not recognize potentially polygamous or real polygamous marriages or give any acceptable legal meaning or effects to such. Those in polygamous marriages should bring forward their matrimonial disputes to the Law courts in their domicile which should desirably be the same as the place of celebration of marriage. What prompted parties to a potential polygamous marriage to enter into such contract in the first place? Marriage is a contract entered into at full age and capacity; the parties to it cannot later decide that it was entered into by mistake or under duress, and should seek to dissolve it in the jurisdiction where they formalized it. The issue is this - why would parties to a marriage come to dissolve it in a territory that did not conduct its celebration, and was not notified when the marriage was about to take place or even immediately after it had taken place, but suddenly decided to dissolve it in that territory only after it had broken down irretrievably? Such is not desirable. Material evidence required on the dissolution of the marriage will also be easily gathered and established if a marriage is dissolved in its *lex loci celebrationis* than in any other jurisdiction. At times, either party to a Divorce Proceedings may hide material facts warranting the dissolution of the marriage from the Court presiding over the matrimonial proceedings (especially where that court is far from or entirely different from the *lex loci celebrationis*).

¹⁷ *Private International Law* (14th Edition), Oxford University Press @ p. 932

¹⁸ See the Private International Law (Miscellaneous Provisions) Act 1995, s. 5 (2)

¹⁹ As defined in *Hyde v. Hyde* supra

In *Harvey v. Farnie*,²⁰ it can be seen that there was a tendency for the courts to disregard such marriages for all purposes on the inadmissible ground that *it is a union falsely called marriage*²¹ and one that merits no recognition in a Christian country. I would rather say that it merits no recognition in *any civilized* country.

In *Baindail v. Baindail*,²² Greene M.R stressed that *since the status of a person depends on his personal Law, the status of husband and wife conferred on the parties to a polygamous marriage by the Law of their domicile must be accepted and acted on in other countries. Although, he was careful to add that it must be accepted for certain purposes only, and not for all, the present state of the law is that a polygamous marriage is recognized for most purposes*²³. I would like to ask – why is polygamous marriage in his view **not recognized for all purposes**? It is because it is simply out of place to recognize it in a purely English jurisdiction that is largely known to celebrate only monogamous form of marriage.

Why is it not practicable to celebrate a polygamous marriage in England, for example? It is because it is foreign to their own concept of marriage and general way of life. The English Courts cannot afford to accept what is not practicable in their territories. It is not workable in any way to recognize and accept polygamous marriage as having effect in English and other highly civilized jurisdictions. Are the English people now beginning to welcome intruders into the marital concept of a man and his wife? It is not my view that parties to a potentially or purely polygamous marriage cannot come to live in England or in the Western world where monogamy is the norm, but the issue is that they should not make such places their domicile of choice in such a way that they will bring matrimonial proceedings before Courts within the those territories.

They can reside in those foreign lands for many years without having to make such places their domicile of choice. Hence, I am, and have always been against the proposition of dual nationality or dual domicile because most problems of Private International Law (as mentioned earlier) originate from dual nationality/domicile as a matter of fact. The *lex loci celebrationis* should continue to be the decisive factor for Matrimonial Proceedings. I repeat - when parties to a potentially polygamous marriage know that their marriage cannot be celebrated in England, and as such cannot be recognized as valid from its inception, why do they think the English Courts should be in position to dissolve what by its Law, it does not regard as a valid marriage? Why can't the parties go and dissolve it in their *lexi loci celebrationis*? The English Courts are not in position to recognize a non-existent marriage, neither are they in position to change the nature of any marriage from polygamous to monogamous, when in fact, the marriage was not in the first instance celebrated in their territory. Despite all efforts being made by the English courts, especially in England to recognize polygamy, the truth is that is not workable. We cannot import any foreign, unknown, impracticable, uncivilized concept into the English Law concept of marriage. Let those parties to potential and real polygamous marriages retain their *Lex loci celebrationis* as their *lex*

²⁰ (1880) 6 PD 35

²¹ *Harvey v. Farnie* supra @ 53

²² (1946) p. 122

²³ *Baindail v. Baindail* @ 127 – 128; *Cheshire, North & Fawcett Private International Law* @ 132

domicili, or go to other territories that recognize their type of marriage and dissolve them or change their nature, if they think that taking such steps will be a way forward for their lives and future.

However, *Baindail v. Baindail* which was the first case to clearly show that a polygamous husband is married man in the eye of English Law, and therefore precluded from contracting a monogamous marriage in England has its facts as follows - a man domiciled in India married an Indian woman in India according to the Hindu rites. During the subsistence of this marriage, which at that time was polygamous in nature, he later went through an English marriage ceremony at the Holborn Register Office with the petitioner, an English woman. The court annulled the English marriage as bigamous, and to that extent, recognized the Indian status of the respondent as a man already legally married. Now, the English marriage ceremony should never have been allowed to take place; and it is an interesting development that the court nullified it. The law in England should be reformed to sanction anybody in a potentially or real polygamous marriage who comes to change the nature of his or her marriage in England or dissolve it there, when England was not the place where the marriage was celebrated in first instance.

In my view, while the court was right to nullify the English marriage in this case, it did not have to recognize the man's polygamous status either because such marriages are not known to be valid in England. The court should in addition have ruled that the man should either go to the *lex loci celebrationis* of his polygamous marriage to dissolve it before coming to England to marry another person under the English law. A potentially polygamous marriage remains valid only within its jurisdiction or other jurisdictions where it is acceptable and practised as a system of marriage. Proceedings to dissolve such marriages should have no business whatsoever in purely English jurisdictions where such marriages are not acceptable as a way of life of the people.

Recognition of a marital status conferred by a *valid* polygamous marriage is also seen in *Mohammed v. Knott*²⁴ where a Nigerian domiciled in Nigeria had in Nigeria married a thirteen year old girl, according to Moslem Law. This marriage was potentially polygamous and was valid under Nigerian law. Three months later, they both came to England, and a complaint was made against the husband that the girl was in need of care and protection within the meaning of the Children and Young Persons Act s. 2 of 1963. The Justices had refused to recognize the marriage and concluded that a thirteen year old girl living with a man twice her age was in need of care and protection.

Interestingly, the Justices rightly refused to recognize this marriage, but the Divisional Court differed and decided that this was a valid, though potentially polygamous marriage, which could be recognized as conferring the status of a wife on the girl²⁵. I disagree with this decision of the Divisional Court because a potentially polygamous marriage is not the type usually celebrated in

²⁴ (1969) 1 QB 1; (1968) 2 ALL ER 563

²⁵ While the Court considered an Order under the 1963 Act could be made in respect of a married woman, it declined to make one in this case. I will add that in England, a girl of 13 years is not yet of full age and capacity to marry. Therefore, it was right of the court to decline to make an order in respect of a married woman for the so-called *wife* in this case. This type of child marriage has no recognition in England.

England or known to English Law. Secondly, the wife in this case is not of full age and capacity (being 13 years old only) to contract a valid marriage under the English Law, even though she did not come to celebrate any marriage in England. However, she had issues with her marriage and needed the aid of the court to enforce certain rights). There is no reason for the Divisional Court to recognize her status as a *wife*. It is contrary to natural justice, equity and good conscience. Anything contrary to English Law in England should not be recognized or legalized just because the *lex loci celebrationis* of the parties recognize that law or public act. There should be a tangible reason put forward before the English Courts before any Matter can be legalized. If country A legalizes the act of *false pretences*, does that mean that the English Courts should legalize the same act when citizens of country A come before the English courts to seek to enforce its legality? That should not be possible.

LEGITIMACY OF CHILDREN OF A POLYGAMOUS MARRIAGE – THE POSITION IN ENGLAND

The question of the legitimacy of the children of an actually polygamous marriage was considered in *Hashmi v. Hashmi*²⁶ where the husband was domiciled in Pakistan at all material times. He married W1 in Pakistan in 1948 under Moslem rites, i.e. a potentially polygamous marriage, and there were three children of this marriage. He then married W2, a domiciled English woman in an English Registry Office in 1957 W2 bore him three children. In 1968, W2 petitioned for divorce, and the parties agreed that if on the trial of a preliminary issue, it was decided that the children would be regarded as legitimate even if the marriage was void by English Law, W2 would not oppose a decree of nullity sought by the husband.

The Court held that the first marriage was a valid polygamous marriage, and therefore, the latter English marriage to W2 was void. Furthermore, the children of the marriage were regarded as legitimate. In my view, the children of the first marriage remain legitimate with respect to the law of the place where the marriage was celebrated; and should not be recognized as legitimate in England, since polygamous marriages are foreign to English law for the fact that they can not be officially celebrated in England.

On the status of the children of the second marriage, it was held by the Court that the marriage, though void under English Law would be recognized under the Law of Pakistan, the domicile of the husband. And so, the court decided that for the purposes of legitimacy, based on the law of the husband's domicile which recognizes a valid polygamous marriage, the children thereof were legitimate²⁷. The second marriage was declared null and void, but the children thereof were declared legitimate. In my candid opinion, since the second marriage is a nullity in England, the children are illegitimate. The court had no business in ruling that the children were legitimate when

²⁶ (1972) Fam 36

²⁷ (1972) Fam 36. Going by this judgment in *Hashmi v. Hashmi*, it is clear that children of both a potentially and an actually polygamous marriage can succeed to property in England. Children of any marriage that is not recognized in England in my view, should not be entitled to succeed to any property in England. For if a woman is not recognized as a *wife* in England, why should her children be recognized in England?

their mother's marriage is nullity. The products of the union remain a nullity under the English Law. The status of the children should be taken to Pakistan for determination and ruling on their legitimacy status. That status of legitimacy should not be accorded to them in England, but in Pakistan.

SUCCESSION BY WIDOWS IN ENGLAND

The position is that the widow of a potentially polygamous marriage ought to be able to succeed to her deceased husband's property under the rules of intestate succession²⁸. In the case of an actually polygamous marriage, the widow's share could be properly divided equally between the surviving wives²⁹. This position is really a strange thing to happen in England. It is more of an African thing or a preserve of jurisdictions that celebrate polygamous marriages like Nigeria³⁰. Statutory recognition of polygamy is provided by Social Security Legislation. Regulations made under or preserved by the Social Security Contributions and Benefits Act 1992³¹ now govern the present position in relation to benefits falling within these Acts, e.g. widow's benefit, maternity benefit and child benefit. They allow a valid polygamous marriage to be treated as a monogamous marriage if it has either always been actually monogamous or for any day throughout which it was in fact monogamous³². I may ask - why would a valid polygamous marriage be allowed to be treated as monogamous? If it has always been actually monogamous or was in fact monogamous, then it remains *monogamous*. As long as the *lex loci celebrationis* of the marriage was not in England, the English courts in England should have no right to change the nature of the marriage or allow it to take the nature of what it is in fact not.

CONCLUSION

In conclusion, there is no reason why polygamous marriages should be recognized in England. All efforts should be made to ensure that the *lex domicili* of the parties to a marriage is the same as the *lex loci celebrationis* which should govern the nature of marriage, its status and all aspects of the lives of the spouses. Once there is a uniform law governing the domicile and the place of marriage of parties, we will not be having too many Issues to resolve in Private International Law on this

²⁸ *The Six Widows Case* (1908) 12 Straits Settlement LR 120; though it must be admitted that there might be difficulty with distribution of the personal chattels; *Cheang Thye Phin v. Tan Ah Loy* (1920) AC 369; *Cheshire, North & Fawcett (14th Edition)* @ 934

²⁹ *Re Sehota* (1978) 1 WLR 1506; (1978) 3 ALL ER 385

³⁰ In Nigeria, where polygamy is a very popular type of marriage, we have the case of *Danmole v. Dawodu* (1958) 3 FSC 46; (1962) 1 WLR 1053

³¹ S. 121 (1) (b), 147 (5) as amended by the Private International Law (Miscellaneous Provisions) Act 1995, s. 8(2), Sch para 4 and the Civil Partnership Act 2004, Sch 24 (3) para 40. The 1992 Act is a consolidation Statute, and Regulations made under its forerunners, the Social Security Act 1975 and the Child Benefit Act 1976 continue in effect. See also State Pension Credit Act 2002, s. 12; Tax Credits Act 2002, s. 43; Age-Related Payments Act 2004, s. 8(2); Welfare Reform Act 2007, Sch 1 para 6(7); SI 2006/213, reg 74 (3); SI 2007/688, Sch 2 para 1 and SI 2007/719, reg 2 (7).

³² SI 1975/561, regs 1 (2), 2 (2); and SI 2006/223, reg 35; *R v. Department of Health, ex P Misra* (1996) 1 FLR 129

subject. People will not be entering into a marriage contract with the intention of dissolving it at the slightest provocation or opportunity.

The British Government is known to celebrate only one system of marriage - *the monogamous* one. That is the only type of marriage that should be recognized. Statutory Regulations made under the Social Security Contributions and Benefits Act 1992 in England for widows of potentially polygamous marriages should be done away with. Such should be made for only widows of monogamous marriages, because anything apart from this amounts to promoting polygamy in England. Recognition of polygamous marriages in England would amount to changing the culture of the English people and possibly turning England into what it is not. And who knows? It is just possible that with time, England may end up turning into a potentially or actually polygamous country when most of its residents and nationals begin to recognize the polygamous marriage system and eventually begin to practise it. Then, if this gradually starts becoming the norm in England, are wives of actually monogamous marriages really protected and safe anymore in their marriages? Other purely English jurisdictions who were once Colonies of Great Britain may soon begin to imitate, adopt and practise the polygamous marriage system based on what they see happening in England, and before we know it, there may be a serious Revolution. The World will gradually turn polygamous, and the monogamous marriage begins to phase off gradually, till it is done away with completely!

We must not give room for polygamy to displace monogamy which is the most civilized and peaceful form of marriage in the World. Hence, it is most desirable that the *lex domicili* and *lex loci celebrationis* should be the same not just for all marriage intents and purposes, but for all other purposes. Now than ever, is the most appropriate time in England (including other purely English jurisdictions), to kick against polygamy and all incidents emanating from it.

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