The Ohio Annulment Law: A Beginning but Not an End

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NOTES

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The Ohio Annulment statute, passed during the 1963 session of the Ohio General Assembly, brings some badly needed reforms. However, it also provides the basis for much confusion and unnecessary litigation. This Note will point out and discuss both the strong and weak points of the statute; it is not intended, however, to be an exhaustive treatment of all the inconsistencies. Clarification of the statute is greatly needed, and it is hoped that the discussion herein will aid in apprising domestic relations attorneys of the applicable Ohio law in this area.

I. The Statute

The new Ohio annulment statute provides that each of the designated grounds for annulment must have existed at the time


2. In fairness to the sponsors of the statute, it should be noted that it represents the first piece of legislation enacted by the Ohio General Assembly in the last ten years in the field of family law. Judge Walter G. Whittlatch of the Cuyahoga County Juvenile Court and a member of the Family Law Committee of the Ohio State Bar Association pointed out several instances wherein the Committee was forced to extract certain desirable provisions from the bill for fear that the entire bill would fail to pass. In 1963, Judge Whittlatch commented on the enactment of this statute as follows:

Several significant substantive and procedural changes were effected in the field of family law by the 105th General Assembly. Most of these arose from the activities of the Family Law Committee, which enjoyed a highly successful legislative session. Much credit must go to the staff of the Bar Association and to the Family Law Committee . . . for the salutary and progressive provisions which were written into law relating to domestic relations.

Perhaps the most noteworthy Family Law legislative accomplishment was the enactment of an annulment statute, which became effective on September 24, 1963. 2 OHIO STATE BAR ASS’N SERVICE LETTER (Family Law ed. Nov., 1963).

Also helpful in interpreting the act are the comments of Mr. Judson Hoy, head of the House Judiciary Committee at the time of the passage of the act, communicated to the author by letter during the course of the preparation of this Note. However, Mr. Hoy cautions that the Committee comments are no longer in existence, and thus his statements expressed herein as to the intention of the Committee in enacting the sections of the statute are from memory.

3. OHIO REV. CODE §§ 3105.31-.34 (Supp. 1964). [hereinafter cited as CODE §]. CODE § 3105.31 provides:

A marriage may be annulled for any of the following causes existing at the time of the marriage:

(A) That the party in whose behalf it is sought to have the marriage annulled was under the age at which persons may be joined in marriage (as
of the marriage. For example, a marriage may be annulled by the parent or guardian on the grounds of non-age. Thus, where the male is under the age of eighteen or the female is under the age of sixteen, the marriage may be annulled by the parent or guardian of the non-age party. But this right ends as soon as the non-age party reaches the proper age. Also, within two years after attaining the proper age, the non-age party may annul the marriage, unless he or she has cohabited with the other party after reaching the age of consent.

The new statute also provides that where one of the parties to the marriage has a previously valid marriage, the present marriage may be annulled by either party to the marriage, or by the spouse

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4. **CODE** § 3105.31 (Supp. 1964).
5. **CODE** § 3105.31(A) (Supp. 1964).
7. **CODE** § 3105.31(A) (Supp. 1964).
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of the prior marriage. This action must be brought during the lifetime of both parties to the bigamous marriage.8 Where one of the parties has been adjudicated mentally incompetent, he or she may annul the marriage within two years after having been restored to competency.9 Where a party is not restored to competency, a relative or guardian of the incompetent spouse may annul the marriage at any time prior to the death of either party.10 Also, where the consent of one of the parties to the marriage was procured by fraud, sections 3105.31(D) and 3105.32 (D) provide that that party may annul the marriage within two years after discovery of the true facts.11 However, if the victim of the fraud freely cohabits with the spouse with full knowledge of the facts constituting the fraud, the action is barred.12 A party to a marriage whose consent was obtained by force may also annul within two years of the date of the marriage.13 But here also, voluntary cohabitation will preclude the action.

Where a marriage is otherwise valid, but has never been consummated, the marriage may be annulled by the “party aggrieved” within two years from the date of the marriage.14 But whether the marriage is characterized as void or voidable for other purposes, all children that are a result thereof are considered legitimate for all purposes.15

II. THE GROUNDS FOR ANNULMENT

Each of the areas covered by the statute will now receive separate attention. More specifically, these areas will be analyzed in terms of: (1) what the common law was prior to the enactment of the

8. Code §§ 3105.31 (B), .32 (B) (Supp. 1964).
11. Code §§ 3105.31 (D), .32 (D) (Supp. 1964).
15. Code § 3105.33 (Supp. 1964). However, this section merely restates the existing Ohio law on the subject. In addition, Code §§ 2101.03, 3105.03, .05-.11, .14-.15, and .21 were amended by adding the words “and annulment.” This integrated the annulment remedy into the procedural sections of the divorce chapter. In commenting on this aspect of the new law, Judge Whitlatch stated: “Heretofore, an action in annulment has been cognizable only in equity, with the procedure . . . being so ill-defined and confusing as to discourage its use in setting aside void or voidable marriages. The statutory enactment clearly defines the procedural . . . law relating to annulment. The statutory procedure for an annulment action is almost identical with that of a divorce action; this was accomplished by adding the words ‘annulment’ to the divorce procedural statutes.” 2 Ohio State Bar Ass’n Service Letter (Family Law ed. Nov., 1963).
section under discussion; (2) how, if at all, the section has changed the common law; and (3) whether these changes are progressive or regressive.

A. Non-age

Prior to the enactment of the new annulment statute, Ohio followed the majority common law view that the parents of a non-age party could not annul a marriage. The statute changes the law by giving the parents, guardian, or other person in charge, an express right to annul. There have been situations where a non-age spouse has refused to consent to an annulment, and under the majority common law view a parent was legally powerless to annul in such a situation. Within this frame of reference, the new provision is desirable, for if, for example, a non-age spouse has no parents and is under the control of a guardian or other person, the legal right to annul could well be the guardian's only means of protecting the interests of the non-age party. Thus, since this provision places the legal discretion of whether to annul in persons more mature and more experienced than the parties to the marriage, there is little doubt that this provision is a badly needed reform. But, as will be seen later, certain injustices may occur under the new provision in the form of too much power in the hands of a parent or guardian.

Only twelve states exclusive of Ohio have passed annulment statutes to date. Of these twelve, every one includes non-age as a ground for annulment, but only three allow an action on these grounds to be brought by a parent or guardian. Only the Cali-

18. CAL. CIV. CODE § 82 provides that "a marriage may be annulled for any of the following causes, existing at the time of the marriage: One. That the party in whose behalf it is sought to have the marriage annulled was without the capability of consenting thereto as provided in Section 56 of this code; unless, after attaining the age of consent, such party for any time freely cohabited with the other as husband or wife." CAL. CIV. CODE § 83 provides that "an action to obtain a decree of nullity of marriage, for causes mentioned in the preceding section, must be commenced within the periods and by the parties, as follows: . . . for causes mentioned in subdivision one: by the party to the marriage who was married under the age of legal consent, within four years after arriving at the age of consent; or by a parent, guardian, or other person having
fornia statute parallels Ohio's in that parents or guardians may apparently annul a non-age marriage even though they had previously consented to it.\textsuperscript{10} In all other states with annulment statutes, previous consent by the parents prevents them from later annulling the marriage. Thus, under the present Ohio provisions, the parents of a fourteen year old girl would probably consent to a marriage in order to give legitimacy to an expected child. Then, even if the parents would annul on the day after the marriage, the child would be legitimate since the issue of even a void marriage are held to be legitimate in Ohio.\textsuperscript{20} This is certainly a desirable result. However, where the non-age parties continue to cohabit as husband and wife and do not desire a termination of the marriage, this right of the parents to annul could result in great hardship under the new statute. The parent or guardian would have the option of annulling the marriage any time before the girl's sixteenth birthday or the boy's eighteenth birthday, even though they had previously consented to the marriage.\textsuperscript{21} Such a provision totally disregards the

\textsuperscript{19} Section 13 of the Model Annulment Act is also in accord: "A marriage is annulable if, at the time of the marriage, the male party is under the age of eighteen or the female party is under the age of sixteen, whether or not a parent, guardian or person in charge of such underage party consents to the marriage." Vernon, \textit{Annulment of Marriage: A Proposed Model Act}, 12 J. Pub. L. 143, 181 (1963).

\textsuperscript{20} Code § 3105.33 (Supp. 1964). Under Code § 3101.04, the Juvenile Court can give consent to a non-age marriage where illegitimate children would otherwise result. In this situation, the parents of the non-age spouse presumably would not have the right to annul.

\textsuperscript{21} The Model Annulment Act treats a non-age marriage as follows: "Where the marriage involves a boy under eighteen or a girl under sixteen, a different problem is presented. Here the state does not permit the parents to consent, and the [county prosecutor] ... should be given the power to proceed to have the marriage annulled in order to prevent a flouting of the state's policy." Vernon, \textit{supra} note 19, at 169. Section 13 of the Model Act allows an annulment action to be brought by a parent, guardian, or prosecuting attorney whether or not the parent or other person in charge of the under age party consented to the marriage. However, § 13(C) (3) of the Model Act limits such action to the first year of the marriage. To some extent, this provision mitigates the inequities which could arise under Ohio law. However, even one year is too long. If the parent wishes to annul, he should be required to act immediately. Therefore, action by a parent or guardian should be limited to sixty days from the time of the non-age marriage or from the time of its discovery, whichever is later. See Vernon, \textit{supra} note 19, at 181.
particular facts of each case. Certainly, there will be many situations in which it is wise to allow the marriage to continue. Therefore, it would seem that a more just result could be reached by providing that the parents will be bound by their initial consent, or at least be required to act within a very short time after the marriage or its discovery. It is undesirable for them to have a continuing power to annul.\textsuperscript{22}

Another injustice which could arise in this area involves the widow's share of her non-age spouse's life insurance policy. Suppose, for example, that a seventeen year old husband is killed leaving his wife but no children as dependents. His life insurance policy names his wife as the beneficiary. The husband's parents who previously consented to the marriage, could bring action to annul the marriage since such an action is not barred by the death of the non-age party.\textsuperscript{23} The parents could then claim that the annulment related back to the date of the marriage,\textsuperscript{24} that consequently

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\item The non-age parties themselves have always had this continuing power to annul. Holtz v. Dick, 42 Ohio St. 23 (1884) and \textit{In re Zemmick's Estate}, 76 N.E.2d 902 (Ohio Ct. App. 1946) indicate that the non-age party himself could ratify either by cohabitation or some other overt act. But the ratification was not effective until the underage party reached the age of consent. The non-age party could cohabit until reaching the age of consent without having ratified the marriage. So, presumably this party could annul upon reaching the age of consent. Thus, at common law, the non-age party could cohabit until the day before his eighteenth birthday and then annul. While the statute has not changed this situation, there appears to be no valid reason for extending this continuing power of annulment to the parents as well.

\item CODE § 3105.32(A) (Supp. 1964).

\item Traditionally, annulment of a void marriage relates back to the time of the marriage, whereas the decree becomes effective only when rendered in the case of a voidable marriage. \textit{Note}, 7 \textit{Stan. L. Rev.} 529, 530 (1955). However, it is not clear in Ohio whether a non-age marriage is void or voidable. Shafher v. State, 20 Ohio 1 (1851), held that such a marriage was void and therefore could be collaterally attacked and set aside without need of judicial decree. \textit{Accord}, Carlton v. Carlton, 76 Ohio App. 338, 64 N.E.2d 428 (1945); Gill v. Gill, 2 Ohio L. Abs. 14 (Ct. App. 1923); State v. Woodcox, 26 Ohio N.P. (n.s.) 343 (Juvenile Ct. 1926); Ott v. Ott, 3 Ohio Dec. 684 (C.P. 1895); Vernon v. Vernon, 9 Ohio Dec. Reprint 365 (C.P. 1884). \textit{Contra, In re Zemmick's Estate}, 76 N.E.2d 902 (Ohio Ct. App. 1946); Peefor v. State, 42 Ohio App. 276, 182 N.E. 117 (1931); Pearlman v. Pearlman, 27 Ohio N.P. (n.s.) 46 (C.P. 1928); Klinebell v. Hilton, 25 Ohio N.P. (n.s.) 167 (C.P. 1924); Allen v. Allen, 21 Ohio L. Rep. 313 (C.P. 1923). CODE § 3105.31(A) (Supp. 1964), causes a non-age marriage to be subject to collateral attack by the parents or guardian. This is at least one factor to be considered, and it supports the concept of a void rather than a voidable marriage. While the Ohio act does not deal directly with the void and voidable concept, Mr. Judson Hoy, head of the House Judiciary Committee at the time of the statute's passage, pointed out in a letter to the author that "these marriages are voidable only for the reason that section 3105.32 provides time limitations for bringing annulment actions and unless an action is brought within the time limitation the marriage is considered a valid one." Letter From Mr. Judson Hoy to the Author, Feb. 8, 1965. But since a non-age marriage may be collaterally attacked by the parent or guardian, it is still possible that a decree of nullity would relate back to the time of the marriage.

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there never was a wife and that the insurance proceeds should thus go to the parents of the deceased according to the laws of intestacy.\textsuperscript{25} Even if the court would not come to this result,\textsuperscript{26} the dependent widow is still forced to pay attorney's fees for litigation which could have been prevented by a provision forcing a parent or guardian to annul within sixty days after discovery of the marriage or be thereafter precluded from bringing the action.\textsuperscript{27}

annulment legislation. The preferable alternative would be to allow the courts to determine the nature of the defect on a case by case basis. Vernon, \textit{supra} note 19, at 150; see also Ross, \textit{The Ohio Law of Marriage}, 14 \textit{W. RES. L. REV.} 724, 737-39 (1963).

25. \textit{Code} § 2105.06(E) (Supp. 1964), provides that "if there is no spouse and no children or their lineal descendants, [the money or property goes] to the parents of such intestate equally, or to the surviving parent." Of course, if the marriage did produce children, the proceeds would go to them per stirpes. \textit{Code} § 2105.06(B) (Supp. 1964).

26. It is generally held that a party is not precluded by lack of clean hands, estoppel, or laches where the marriage is void. \textit{Note}, 7 \textit{STAN. L. REV.} 529 (1955). It is therefore highly possible that a court \textit{would}, under the present Ohio law, reach the inequitable result discussed.

27. One problem which the non-age section of the Ohio statute has entirely avoided is that of marriages between those under the age of twenty-one but above the non-age limit. Even though a person under twenty-one requires his parents' consent to enter into a marriage in Ohio, if he does so without their consent the parents are powerless to act and the marriage is valid. This renders the requirement of parental consent illusory.

Section 12 of the Model Annulment Act deals with this problem as follows:

\begin{itemize}
  \item[(A)] A marriage is annulable if, at the time of the marriage, the male party is eighteen, nineteen or twenty years old or the female party is sixteen or seventeen years old, unless consent to the marriage is given by a parent, guardian or person in charge of the underage party.
  \item[(B)] The consent contemplated by subsection A of this section shall be deemed given if the parent, guardian or other person in charge of the underage party
  \begin{itemize}
    \item[(1)] is present at the marriage and does not protest; or
    \item[(2)] signs a written consent to the marriage which is authenticated before a competent authority. Such written consent may be given either before or after the marriage.
  \end{itemize}
  \item[(C)] A marriage described as annulable in subsection A of this section may be annulled in an action brought by
  \begin{itemize}
    \item[(1)] the party who was underage at the time of the marriage; or
    \item[(2)] a parent, guardian or person in charge of such underage party.
  \end{itemize}
  \item[(D)] A marriage described as annulable in subsection A of this section shall not be annulled
  \begin{itemize}
    \item[(1)] if the parties live together as husband and wife after the underage party or parties reach the age of consent; or
    \item[(2)] if the action is brought more than one year after the underage party or parties reach the age of consent. Vernon, \textit{supra} note 19, at 180-81.
\end{itemize}

Some changes have recently been proposed, pointing up some of the problems encountered in this area:

A clampdown on juvenile marriages — with all applicants under 21 being questioned under oath about their background, social and financial responsibility, means of livelihood and other key factors — is being proposed as an Ohio law.

The move to cut down the rate of under-21 marriages is being urged by
B. Mental Incompetency

Under the present statutory provision, only a person who has been adjudicated mentally incompetent at the time of the marriage may have the marriage annulled. At the common law, any mentally incompetent person, whether or not under an actual adjudication, could annul a marriage. None of the other states which have annulment statutes require an actual adjudication. Even the California statute, upon which the Ohio statute is patterned, does not so provide. This is a highly unusual provision, and it could lead to anomalous results.

At common law, in order to enter into a valid marriage, each of the parties must have understood not only the nature and quality of the marriage contract, but also the duties and responsibilities of the status. The reason for allowing annulment in such a situation is obvious. For example, if the aggrieved party has given consent to enter into a contractual relationship, the nature of which neither he nor she understands, surely there can be no doubt that upon restoration to competency such party should have

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Common Pleas Judge Roy C. Scott and State Senator David T. Matia in a group of far-reaching reforms in Ohio's marriage and divorce laws. Three out of five juvenile marriages end in divorce court within three to four years, Scott and Matia pointed out. Scott is secretary of the family law committee of the Ohio State Bar Association.

To cut down the growing number of juvenile divorces, Scott and Matia also recommended the transfer to Juvenile Court jurisdiction of all divorce and support actions involving spouses under 21...

Their proposed law revisions also would:
Make it illegal for any male to take a girl under twenty-one outside Ohio for the purpose of marriage without the consent of her parents or guardians.
Raise the minimum age for girls from 16 to 18 with the consent of a parent...
The requirement of parents' consent under age 21 would remain unchanged.


28. CODE § 3105.31(C) is taken out of the order set forth in the statute so that bigamy, § 3105.31(B), fraud, § 3105.31(D), and impotency, § 3105.31(F), which are also grounds for divorce (CODE §§ 3105.01(A), (D), (F)), may be dealt with separately.

29. CODE § 3105.31(C) (Supp. 1964).

30. CAL. CIV. CODE § 82 provides that "a marriage may be annulled for any of the following causes existing at the time of the marriage: "Three. That either party was of unsound mind, unless such party, after coming to reason, freely cohabit with the other as husband or wife." CAL. CIV. CODE § 83 provides that "an action to obtain a decree of nullity of marriage . . . must be commenced within the periods and by the parties, as follows: . . . for causes mentioned in subdivision three: by the party injured, or relative or guardian of the party of unsound mind, at any time before the death of either party.

the option of invalidating the marriage. Yet, in Ohio, this would not be the result unless at the time of marriage such party were under an actual adjudication of mental incompetency. The Ohio law also fails to adequately meet the situation where a party to a marriage, although adjudicated mentally incompetent, is in fact competent at the time of the marriage, but not restored to legal competency by a court. In this situation, a person would be fully aware of the nature of the marriage and yet would be allowed to annul.

The law in Ohio prior to the enactment of the present annulment statute was that the burden of proof was upon the party attacking the marriage, and that such proof had to be demonstrated by clear and convincing evidence. Thus, there was a strong policy favoring the validity of a marriage which had complied with all the statutory formalities. But, an adjudication of mental incompetency was treated as prima facie evidence of that fact. It is clear that the legislature desired to strengthen this policy favoring the validity of formally correct marriages in the new legislation, but in so doing it appears to have been overextended. The present statutory language provides in effect for two conclusive presumptions. First, there is the presumption that a person who is not under an adjudication of mental incompetency understands the nature and quality of the nuptial contract and its resultant duties. Second, a presumption exists that a person who is under a judicial decree of mental incompetency does not so understand. To make these presumptions conclusive seems completely unrealistic and will cause harsh results in many cases where clear evidence is available to rebut the presumptions.

32. Section 14(A) of the Model Annulment Act provides; "A marriage is annulable if, at the time of the marriage, either of the parties was mentally incapable of understanding the nature of the marriage contract." Vernon, supra note 19, at 182.
34. Ibid.
35. Code § 3105.31(C) (Supp. 1964).
36. Mr. Judson Hoy informed the author that it was the Committee's "intention that a person who was in fact mentally incompetent but not so adjudicated at the time of his marriage not be allowed to annul. I believe that this is inconsistent with the purpose of the annulment statute, but the majority of the committee was concerned with problems of proof." Letter From Mr. Judson Hoy to the Author, Feb. 8, 1965. It is conceded that it would be extremely difficult for a person to successfully demonstrate that although he is presently competent, he was in fact incompetent sixteen months ago at the time of the marriage. However, where such are the facts, the judges should be allowed to make a proper determination and thus at least give the party the opportunity to bring in evidence to establish his prior mental incompetency.
In addition to barring a remedy to non-adjudicated mentally incompetents, the statute is highly unrealistic with respect to those people who are in fact under a court decree of mental incompetency. Such people are not ordinarily left to roam free in society; they are usually hospitalized and in nearly all cases would be in contact with professional people. Thus, there would be little opportunity for such a person to enter into a marriage without the knowledge or consent of a responsible party.37

37. There are two ways in which a person can be adjudicated mentally incompetent in Ohio. The first is pursuant to Code § 5122.36 (Supp. 1964), which provides that "indeterminate hospitalization pursuant to section 5122.15 . . . is an adjudication of legal incompetency. . . ." Chapter 5122 provides for an initial hearing in probate court with notice to all interested parties. At this point, the alleged incompetent is either released or temporarily hospitalized for ninety days. This temporary hospitalization does not operate as an adjudication of mental incompetency, and so if a person were able to marry at this point the marriage could not be annulled on the ground of mental incompetency. After the ninety day hospitalization, there is another hearing at which time the party is either released or ordered indeterminately hospitalized. It is this order of indeterminate hospitalization which operates as an adjudication of legal incompetency pursuant to § 5122.36. Second, Code § 5122.21 (Supp. 1964), provides that "after a finding pursuant to section 5122.15 . . . that an individual is a mentally-ill individual, subject to hospital by court order, no continuing jurisdiction remains in the probate court. Plenary power is granted to the officers of a public hospital to grant a discharge. Upon discharge the hospital must notify the court which caused the judicial hospitalization of the discharge from the hospital. If after such discharge is granted, a question again arises as to the necessity for involuntary hospitalization of such discharged person, he must again be examined in the probate court, under similar proceedings to those had when he was originally found mentally ill." Thus, a hospital discharge operates as a restoration to competency. And this is spelled out even more clearly in Code § 5122.36 wherein it is provided that "final discharge pursuant to section 5122.21 . . . operates as a restoration of legal competency. . . ." Thus, a person who has been discharged from the hospital is no longer under an adjudication of legal incompetency and is free to marry. Such a person would not come under the protective provisions of the annulment section even though he was not in fact restored to competency.

There are only two classes of people under an adjudication of mental incompetency pursuant to chapter 5122 who would be free to marry. First there are those who have escaped from a hospital. But since § 5122.26 provides procedures for the speedy recapture of such people, it is very unlikely that such an escapee would have either the time or the opportunity to marry prior to recapture. In addition, the percentage of escapees from such institutions is relatively small. The second class are those patients on trial visit status pursuant to Code § 5122.22. Section 5122.23 allows the head of the hospital to prescribe any conditions which he feels are necessary prior to releasing a person on trial visit status. While these conditions are not listed in the section, they are quite restrictive. "For the patient under hospital jurisdiction, the opportunity to marry without knowledge or consent of a responsible person is relatively small. . . . Patients on Trial Visit are formally signed out by a responsible person who generally agrees to keep the hospital informed about the patient. The formal signing out of a patient on Trial Visit is not specifically included in the code, but as far as I know, almost all state hospitals follow this procedure." Letter From Mr. David Seguichi to the Author, Jan. 29, 1965. However, the case of Seabold v. Seabold, 84 Ohio App. 83, 84 N.E.2d 521 (1948) demonstrates what can happen even under these or similar conditions. In this case, the person seeking to annul the marriage had been committed to a mental hospital under a court adjudication of mental incompetency. The marriage took
C. Consent by Force or Duress

A person whose consent was obtained by actual physical violence may annul within two years after the date of the marriage. But a question arises here as to the situation where the force is continuing and in fact continues beyond the two year period. In other words, would there be grounds for annulment even though the coerced party were falsely imprisoned? The fraud section of the new statute gives the defrauded party "two years after the discovery of the facts constituting fraud" to bring the annulment action. Surely a coerced party should have a similar length of time after the effect of the force is no longer present. The common law rule closely approaches this suggestion. Such a marriage may be ratified by consummation or other overt act. However, consummation under the continued effect of coercion is not sufficient to ratify a marriage. It is obvious that under this rule a falsely imprisoned spouse would be able to annul on the day of emancipation. Also, the common law ground of duress gives relief where only threat of force is used to gain another's consent to marry. A literal reading of the Ohio statute would not cover such a situation. The Michigan statute resembles the Ohio enactment in this respect in that it includes force as a ground for annulment, but does not

place outside of Ohio and, applying the normal conflict rule, the court held the marriage to be valid.

The second method by which a person may be declared mentally incompetent is under chapter 2111 of the Ohio Revised Code. Section 2111.01(D), the definition section of the guardian chapter, contains a very broad definition of "incompetent." Thus, it is possible for a person to be adjudicated legally incompetent in a guardianship proceeding without being hospitalized or placed under hospital jurisdiction pursuant to § 5122.15. As to the ability and probability of an incompetent under guardianship entering into a marriage, there are two factors to be taken into consideration. First, as Mr. Seguchi has stated: "I do believe that most people declared legally incompetent for a mental condition are either hospitalized or on official leave status, which means that they are still under the jurisdiction of the hospital." Letter From Mr. David Seguchi to the Author, Jan. 29, 1965. Second, non-hospitalized legal incompetents for whom guardians have been appointed are generally people who are incompetent due to infirmity of age. These people are not likely to marry. The mental incompetency section of the annulment act therefore protects so small a group of people as to render its effect nugatory.

38. CODE §§ 3105.31(E), .32(E) (Supp. 1964).
39. CODE §§ 3105.31(D), .32(D) (Supp. 1964).
40. For a statute providing the suggested treatment for fraud and force see MICH. COMP. LAWS § 552.2 (1948); see note 44 infra.
42. Fowler v. Fowler, 131 La. 1088, 60 So. 694 (1913).
provide for duress. But in Smith v. Smith, a Michigan court operating under an earlier version of substantially the same statute granted an annulment for duress. This decision is especially significant inasmuch as the Michigan statute is the type that purports to supersede the common law and provide an exclusive remedy.

Another statute that provides a remedy for force but not duress is section 82 of the California Civil Code. This section closely parallels section 3105.31 of the Ohio Revised Code. Like the Michigan statute, this section also purports to be exclusive and has been judicially so declared in Curtis v. Curtis. But there is one important difference between the Ohio provisions and section 82 of the California Civil Code. California has another section that is an open end provision giving the courts leeway when needed. It provides: "Either party to an incestuous or void marriage may proceed, by action in . . . court, to have the same so declared." Thus, the Curtis decision makes section 82 the exclusive remedy only as to those grounds covered by that section; it does not preclude remedies not covered in section 82. The Ohio statute incorporated section 82 but unfortunately neglected to include an open end provision such as the one contained in section 80 of the California

44. MICH. COMP. LAWS § 552.2 (1948), provides that "in case the consent of one of the parties was obtained by force or fraud, and there shall have been no subsequent voluntary cohabitation of the parties, the marriage shall be deemed void without any . . . legal process." (Emphasis added.) It is elementary that under this statute, such a marriage would not lose its void character no matter how long the force lasted — as long as the factor of force was in fact present.
45. 51 Mich. 607, 17 N.W. 76 (1883).
46. MICH. COMP. LAWS § 552.3 (1948), provides that "when a marriage is supposed to be void, or the validity thereof is doubted, for any of the causes mentioned in the two . . . preceding sections, either party . . . may file a petition . . . for annulling the same. . . ." (Emphasis added.) It is submitted that the italicized language of the statute grants the right to annul only for the specific causes listed in the previous two sections. Smith v. Smith, supra note 45, takes on added significance for purposes of determining how the Ohio courts will interpret a similar statutory provision.
47. CAL. CIV. CODE § 82 provides that "a marriage may be annulled for any of the following causes existing at the time of the marriage: . . . That the consent of either party was obtained by force unless such party afterwards freely cohabited with the other. . . ."
48. CAL. CIV. CODE § 83, provides that "an action to obtain a decree of nullity of marriage, for causes mentioned in the preceding section must be commenced within the periods and by the parties as follows. . . ." (Emphasis added.)
50. CAL. CIV. CODE § 80. (Emphasis added.)
Code. Thus, an Ohio resident whose consent to marry was obtained by threat of great bodily harm may well be without a remedy in the Ohio courts because the statute provides a remedy for force only, which does not include threat of force as does duress. In any event such a party could well be subjected to multiple appeals until the question is settled by the Ohio courts.\footnote{53}

**D. Non-consummation of a Marriage**

Section 3105.31 (F) states that for causes existing at the time of the marriage, either party to an otherwise valid marriage may annul within two years from the date thereof where the marriage has not yet been consummated. While this section does not mention fault, section 3105.32 (F) states that the action must be brought by the "party aggrieved."\footnote{54} Because of the wording of these two sections, a variety of interpretations are available. First, if the sections are interpreted to mean failure to consummate a marriage due to the fault of one of the parties to the marriage, they would be very similar to the common law ground of annulment for impotency and to the sixth section of the California statute.\footnote{55} The latter section, which serves as a pattern for the Ohio enactment speaks of incurable physical incapacity. But if fault was intended under the Ohio statute, why was such a term not included in the statutory language? Also, if fault were not intended to be a factor, it is difficult to understand why the action may be brought only by the "party aggrieved." Mere consensual nonconsummation would not create an aggrieved party. Moreover, if fault were not intended, it is difficult to understand how any cause could exist at the time of the marriage as it must in order to be a ground for annulment in Ohio.

\footnote{53} Mr. Judson Hoy indicated that he recalled that the Committee considered the terms "force" and "duress" as indistinguishable. But he went on to say that "this is questionable and I think the term duress should be included in the language." Letter From Mr. Judson Hoy to the Author, Feb. 8, 1965.

\footnote{54} CODE § 3105.32 (F) (Supp. 1964).

\footnote{55} CAL. CIV. CODE § 82, provides that "a marriage may be annulled for any of the following causes existing at the time of the marriage: ... That either party was, at the time of the marriage, physically incapable of entering into the marriage state, and such incapacity continues, and appears to be incurable." CAL. CIV. CODE § 83 provides that "an action to obtain a decree of nullity of marriage, for causes mentioned in the preceding section, must be commenced within the periods and by the parties, as follows ... For causes mentioned in section six: by the injured party, within four years after the marriage."
A concealed intent not to have marital intercourse has long been a basis for annulment in Ohio as part of the ground of fraud.\textsuperscript{56} This ground makes it even more difficult to construe the section in the Ohio statute relating to nonconsummation. An English statute provides that a marriage shall be voidable on the ground that the marriage has not been consummated owing to a \textit{wilful refusal} of one of the parties to consummate the marriage.\textsuperscript{57} This too is a possible interpretation of the Ohio statute. But whatever the legislature may have intended in section 3105.31(F), it is obvious that its intent was not well expressed. This section should be completely rewritten so as to remedy the inconsistencies set forth above.

No other state grants annulment for mere non-consummation, and it is quite doubtful that the Ohio legislature intended that such should be the case in this state. Non-consummation is, however, a big factor in determining whether or not to grant annulment for some other ground. Thus, at least one author has made this observation:

\begin{quote}
Although the rule is seldom stated, the cases clearly indicate that if the marriage has not been consummated, it may be annulled for such fraud as would render an ordinary contract voidable, at least in cases where the marriage is promptly disaffirmed before any change in status has occurred.\textsuperscript{58}
\end{quote}

It is quite possible that the legislature had in mind a codification of this idea. Where the parties are married but never live together as man and wife, public policy should favor an expedient termination of their marriage. If support of this policy was intended by the legislature, it is suggested that this idea be integrated into the other sections of the annulment code. Thus, if the ground for annulment is fraud, mistake, duress, jest or dare, or lack of mutual consent, the quantum of proof required should be far less where the marriage was never consummated. On the other hand, if in fact the legislature desired to grant annulment to parties who merely change their minds shortly after the marriage, the time in which to bring such an action should be severely limited — perhaps to six weeks from the time of the marriage.

\textsuperscript{56} Miller v. Miller, 1 Ohio Dec. 354 (C.P. 1894).
\textsuperscript{57} British Matrimonial Causes Act § 7(1) (a) (1937).
\textsuperscript{58} Ross, supra note 24, at 744, citing Akrep v. Akrep, 1 N.J. 268, 63 A.2d 253 (1949).
III. DIVORCE OR ANNULMENT

There are three grounds provided in the Ohio annulment law.\(^5^9\) which are also grounds for divorce,\(^6^0\) namely: fraud, bigamy, and impotency.\(^6^1\) Divorce is a statutory cause of action brought to terminate an otherwise valid marriage, and is based on the fault or misbehavior of one of the parties.\(^6^2\) Divorce grounds arise after the parties have entered into the marriage, whereas annulment is grounded on "causes existing at the time of the marriage."\(^6^3\) While it is true that statutes may provide anything within the normal limits of constitutionality, it is nevertheless strange that the legally diverse concepts of divorce and annulment appear to be optional remedies in Ohio.\(^6^4\) Indeed, the divorce section\(^6^5\) in no way defines these three grounds. As a result, the divorce courts must look to annulment cases for definitions of these terms.\(^6^6\)

A. Policy

Ohio divorce courts have authority to grant alimony because the statute gives them this power.\(^6^7\) But in annulment actions, the courts

\(^5^9\) The grounds of fraud and bigamy were not significantly changed by the enactment of the new statute. Therefore, these grounds will not receive separate consideration. For an excellent discussion of the Ohio law in these areas see Ross, supra note 24. The problem of like grounds for divorce and annulment was not created by the new statute. But, since it was an existing problem with which in the author's opinion the statute failed to deal adequately, it will receive careful analysis at this point.

\(^6^0\) CODE § 3105.01 provides that "the court of common pleas may grant divorces for the following causes: (A) Either party had a husband or wife living at the time of the marriage from which the divorce is sought... (D) Impotency... (F) Fraudulent Contract..." CODE §§ 3105.31(B), (D), (F), 3105.32(B), (D), (F) (Supp. 1964); see note 2 supra.

\(^6^1\) This is assuming that the non-consummation section, CODE § 3105.31(F) (Supp. 1964), is judicially construed to mean impotency. Compare CAL. CIV. CODE § 90 which lists seven grounds for divorce, none of which include bigamy, impotency, or fraud.

\(^6^2\) CODE § 3501.01 does not include mutual incompatibility as a ground for divorce.

\(^6^3\) CODE § 3105.31 (Supp. 1964). Vernon states that "the conceptual difference between annulment and divorce is clear and widely accepted, and the statutory mingling of the two seems unlikely to have arisen from any conceptual confusion. Divorce, traditionally, is granted for reasons arising after marriage and presupposes the existence of a valid marriage status. Annulment, on the other hand, is granted as a consequence of conditions existing at the time of the marriage..." Vernon, Annulment of Marriage: A Proposed Model Act, 12 J. PUB. L. 143, 146 (1963).

\(^6^4\) In situations where the cause arose only after the marriage was entered into, there would be no ground for annulment since the statute makes it clear that those causes must have existed at the time of the marriage. One would think, therefore, that where impotency, for example, arose before the marriage, the courts would grant only annulment. However, the Ohio divorce courts have not made that distinction. See McDowell v. Sapp, 39 Ohio St. 558 (1883) (dictum).

\(^6^5\) CODE § 3501.01; see note 60 supra.


\(^6^7\) CODE §§ 3105.14, .17, .18. For a further discussion of the Ohio divorce laws
do not have this power.\(^8\) Thus, in *VanValley v. VanValley*,\(^8\) a wife who was innocent of the bigamous character of her marriage was allowed both a divorce and alimony. Although alimony is generally compensatory and not exemplary, this choice of remedies is certainly justified if based upon the policy of compensating deserving innocent victims of bigamous or otherwise voidable marriages by granting alimony. However, the two Ohio statutes do not distinguish between the innocent victims of bigamy and the active parties.

B. Consequences of a Poorly Drafted Statute

(1) The Problem.—The decision in *Eggleston v. Eggleston*\(^7\) is a good example of the consequences of a poorly drafted statute.\(^7\) In this case, the second wife was totally unaware that her marriage was bigamous although her husband was aware of it. After a ten-year marriage which produced two children, she sued for divorce on the grounds of extreme cruelty and gross neglect of duty. The husband counterclaimed for annulment on the ground of bigamy which would have deprived the wife of alimony.\(^7\) The wife amended her petition to include bigamy as a ground for the divorce. The trial court granted an annulment, and denied the wife a divorce, alimony, or child support\(^7\) since these cannot be granted where a marriage is held void. The wife appealed to the Ohio Supreme Court which reversed, holding that divorce was the exclusive remedy since it was provided in the divorce chapter. The effect of this case illustrates how a spouse may be forced to go through costly, time

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\(^8\) Alimony is based on a spouse's duty to support which arose by virtue of a valid marriage. In annulment, the marriage is not considered to have ever been valid. For this reason, there is no conceptual basis for a decree of alimony pursuant to a decree of nullity of marriage. However, since the annulment court has equity jurisdiction, it could decree a property settlement. Conceptual distinction to the contrary, the entire problem could be solved by allowing the granting of alimony by annulment courts where the circumstances justify it. New York has such a provision. N.Y. CIV. PRAC ACT ANN. § 1140-a.

\(^7\) The strategy here was obvious: there can be no alimony award in an annulment decree.

\(^7\) Under CODE § 3105.33 (Supp. 1964), the court can now grant child support in such a situation. Formerly, a separate suit would have had to be maintained in the juvenile court.
consuming appeals to get what a well drafted divorce statute would have granted in the first instance.

Whether divorce was the exclusive remedy in Ohio for bigamy after *Eggleston*\(^74\) and before passage of the new annulment act is now academic. Clearly, it is not now the exclusive remedy after passage of the new annulment provisions. *If Eggleston*\(^75\) did anything to clarify the law in this area — which is questionable — the new statute not only reopened the problem, but failed to deal with it effectively.

(2) *Recommendations.*—It is submitted that the annulment and divorce sections of the Ohio Revised Code should be cross referenced and their application made dependent upon the circumstances of each case. Thus, where neither party knows of the defect at time of marriage, but it is discovered early in marriage, annulment should be the exclusive remedy. On the other hand, where the defect is discovered after children have been born, or after the parties have otherwise materially changed their position by virtue of a justifiable reliance upon the marriage status,\(^76\) a provision for alimony as well as child support\(^77\) should be included in the annulment decree. Thus under the latter approach, a party with a strong religious aversion to divorce would have both religious and financial needs satisfied in one decree.

Where one of the spouses is in bad faith, *i.e.*, had knowledge of the pending bigamous marriage, the innocent spouse should be given an option of remedies, except in cases of early discovery by the innocent spouse. In the latter situation, annulment should be the exclusive remedy, but continued cohabitation after discovery of the defect ought to be given the effect of discrediting the good faith of the innocent party.

C. *Fraud and Impotency*

An innocent misrepresentation by one of the parties is not fraud. Thus, where a party did not know that he was impotent prior to his marriage, it is impotency and not fraud which would be the proper ground for annulment. Where fraud is the ground, there

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\(^74\) *Eggleston v. Eggleston*, 156 Ohio St. 422, 103 N.E.2d 395 (1952).

\(^75\) Ibid.

\(^76\) Thus, if a woman forgoes a college education or other professional training in order to marry, she is not in the same position to earn money twenty years later as if she had completed such training. In this type of situation, there should be some provision for alimony even if the marriage produced no children.

\(^77\) *CODE* § 3105.33 provides for child support pursuant to an annulment decree.
must have been an active perpetration of fraud. The remedy, therefore, should always be at the option of the defrauded party, except of course in cases of early discovery prior to any change of position where it would be unfair to grant alimony. In such a case annulment should be the exclusive remedy.

Where the impotency was intentionally concealed, fraud is, as noted previously, the proper ground. But where it arose subsequent to the marriage, divorce would be the exclusive remedy — if indeed any remedy is available. If impotency existed prior to the marriage and such fact were unknown to the impotent party, annulment should be the exclusive remedy. This result is suggested since the party aggrieved will usually discover his or her mate’s impotency shortly after marriage. By way of illustration, suppose H and W marry. Shortly thereafter, both discover for the first time that H is impotent. W does not annul at this point as she has a right to, but instead accepts the fact of H’s impotency and remains married to him. H is an otherwise model husband. Ten years later, W decides to divorce H because she has tired of him. W sues for divorce on the ground of impotency; H’s defense is condonation. Surely under these circumstances W should not be entitled to a divorce with alimony. She should be required to bring an annulment action within a short time after the marriage, or be bound by her election to tolerate the defect.78

IV. CONSTRUCTION OF THE STATUTE

It should be noted that if the statute is held to provide the exclusive grounds for annulment,79 the grounds of non-adjudicated mental incompetency, marriage in jest,80 marriage under the condi-

78. Where the parties had a bona fide belief that H’s condition was curable, the time for bringing the annulment action would not start to run until such time as would be required to ascertain whether H’s condition was incurable. In other words, W makes no election until she knows that H’s condition is incurable.

79. On this question, Mr. Judson Hoy stated that "it was not intended that this statute provide exclusive remedies and I am going to suggest to the 106th General Assembly that the grounds such as incest, mistake and lack of mutual consent be added and that the courts be permitted to retain equitable jurisdiction as you point out that California does." Letter From Mr. Judson Hoy to the Author, Feb. 8, 1965. In this same connection, it is interesting to note that § 4 of the Model Annulment Act specifically states that the act is to provide the exclusive remedy. Vernon, supra note 63, at 179. Of the two approaches, California’s provides more leeway.

80. The majority of states hold that where a marriage is entered into as a joke, in jest, or otherwise without any real intent to marry, and this can be demonstrated by clear and convincing evidence, such marriage is voidable. Davis v. Davis, 119 Conn. 194, 175 Atl. 574 (1934); McClurg v. Terry, 21 N.J.Eq. 225 (1870); Meredity v.’ Shakespeare, 96 W. Va. 229. 122 S.E. 520 (1924). Accord, Conley v. Conley, 28 OHIO OP. 289 (C.P. 1943), aff’d without opinion by court of appeals. In this case,
tion of intoxication, narcotic addiction, duress, mistake, and lack of mutual consent would no longer be grounds for annulment in Ohio. Conceptually, lack of mutual consent, whether by mistake or design, should be grounds for annulment, for in order for there to be a valid marriage certainly both consent and scienter ought to be present. Thus, if a man can show that he was so intoxicated or so influenced by narcotics that he did not know what he was doing at the time of marriage, he should be able to annul the marriage. It seems doubtful that the Ohio legislature intended to disallow either lack of mutual consent or any of the other grounds discussed above.

A general rule of statutory construction is that statutes in derogation of the common law will be strictly construed, except that statutes remedial in nature will be construed liberally. Further, statutes which affirm a common law rule will be construed in accordance with the common law, unless the statute is intended to

a man married a pregnant girl in order to give the child legitimacy. The man was not the father of the child and the parties did not intend to live together as man and wife, nor did they ever cohabit. The court in granting the annulment lauded the man’s motives and saw no reason to punish him for such good intentions. In the same vein, § 8 of the Model Annulment Act provides:

A. A marriage is annulable in an action brought by either party if both parties enter the marriage as a jest or on a dare... and this fact was known, or should have been known, to the other party, provided the parties do not thereafter live together as husband and wife.

B. A marriage is annulable in an action brought by the party who entered the marriage with a serious contractual purpose if the other party entered the marriage as a jest or on a dare and this fact was not known, nor should it have been known, to the other party, provided the parties do not after the marriage live together as husband and wife.

C. An action to annul a marriage on the ground that it was entered into as a jest or on a dare must be brought within one year of the marriage. Vernon, supra note 63, at 179.

Presumably, such a marriage could be annulled in Ohio under the non-consummation section, as long as the parties were able to prove non-consummation. But anyone foolish enough to marry in jest or on a dare might well consummate the marriage on the same foolish impulse. If such were the case, the Ohio law would in effect punish the parties for having made such a mistake by withholding the right to annul. This obviously is a questionable policy.

81. Wells v. Houston, 23 Tex. Civ. App. 629, 57 S.W. 584 (1900). Section 9 of the Model Annulment Act provides that "a marriage is annulable... if one or both of the parties were so intoxicated, or so under the influence of drugs, as to be unaware of the identity of the other party or of the nature of the ceremony performed, provided the parties did not live together as husband and wife after the incapacity induced by intoxication or drugs has ceased." Vernon, supra note 63, at 179. In Ohio, the non-consummation section of the annulment law would again in this situation fail to provide adequate relief where the parties consummated the marriage while yet under the influence of a drug or alcoholic beverage.

82. See note 79 supra.
supersede the common law. The Ohio annulment statute here under
consideration does not fit neatly into any of the above rules. It
is at least partially declaratory of the common law (fraud and
bigamy) but in at least two instances it supersedes the common
law (non-consummation and parental rights to annul for non-age).
Also, the statute is primarily remedial in nature. Notwithstanding
these factors, it is quite probable that the statute would be construed
as being non-exclusive in light of the utter chaos which a contrary
interpretation would promote. This has generally been the interpre-
tation throughout the country among those states which have
enacted annulment statutes. Thus, in the previously mentioned case
of Smith v. Smith, annulment was granted on the ground of duress
where the statute only provided for annulment for consent by force.
An Indiana court operating under a statute which granted annul-
ment where a party was unable to understand the nature of the
conjugal relationship due to lack of age or ability held that such a
 provision related only to the inability which resulted from lack of
age. Although the statute did not provide insanity as a ground
for annulment, the court nevertheless held that it was remedial and
therefore non-exclusive. The court then proceeded to grant annul-
ment to an adult on the ground of insanity. A similar result was
reached by a Massachusetts court which granted an annulment for
fraud even though the Massachusetts statute did not include fraud as such a ground.

An interesting issue was presented in the recent Ohio appellate

83. See, e.g., Llewlyna, Remarks on the Theory of Appellate Decision and the Rules of
84. 51 Mich. 607, 17 N.W. 76 (1883).
85. Ind. Stat. Ann. § 44-106 (1952), provides that "when either of the parties to
a marriage shall be incapable, from want of age or understanding, of contracting such
marriage . . . the same may be declared void, on application of the incapable party in
the case of want of age or understanding. . . ." (Emphasis added.)
87. Ibid.
sexual intercourse).
ferent here, however, since the statute does not really purport to lay down grounds for
annulment. Section 14 provides that either party may file a "libel" for annulment
where he believes the marriage to be void. Sections 15 through 17 merely relate whether
children shall be legitimate or illegitimate under various given situations: § 15 pro-
vides that children resulting from incest shall be illegitimate; § 16 makes children the
product of a marriage involving insane or non-age parties legitimate; and § 17 provides
that children resulting from a bigamous marriage will be legitimate if the bigamous
marriage was contracted in good faith. Section 18 is merely procedural. Thus, it
would seem that the statute was not intended to be exclusive.
decision of *State ex rel. Spencer v. Montgomery Bd. of Elections.*

This case stands for the proposition that with respect to a "uniform" or "adopted" act, the legislature, by adopting such an act, adopts the judicial construction of that act in the adoptive state up to the time of enactment. Under this doctrine, it could be argued that the Ohio legislature adopted the California act despite the changes. If this argument were accepted, the Ohio courts, through the *Montgomery* case, would have to give due weight to *Curtis v. Curtis* which held that section 82 of the California Civil Code, which parallels section 3105.31 of the Ohio Revised Code, is the exclusive remedy. However, as already noted, section 80 of the California Civil Code provides an open end provision which distinguishes it from the Ohio statute. Thus, it is unlikely that the Ohio courts would hold the annulment law to be exclusive in the sense that it precludes common law grounds for annulment not covered in the statute.

V. CONCLUSION

There is no question but what the authors of the Ohio annulment law saw the problems discussed herein, but were hampered in any attempt to remedy them by fear of legislative inaction. However, the statute has brought some badly needed reforms by prescribing the limits within which actions must be brought; setting out a clearly defined procedure for bringing actions; providing for discretion in a parent or guardian with respect to marriages by non-age or mentally incompetent parties; providing for child support in annulment cases, and allowing the issue of custody of children to be

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90. 102 Ohio App. 51, 141 N.E.2d 195 (1956).
91. While the statutory words of the Ohio statute are not exactly the same, the two acts are so similar as to leave no doubt but that the Ohio act was patterned after the California statute. Mr. Judson Hoy was also of the opinion that "the original bill was taken from the California law with some changed language. . . ." Letter From Mr. Judson Hoy to the Author, Feb. 8, 1965.
94. See note 50 supra and accompanying text for a discussion of the effect of CAL. CIV. CODE § 80.
95. It should be noted, however, that the Ohio courts have a history of strictly construing statutes to reach seemingly unjust results. See *Cornell v. Bailey*, 163 Ohio St. 50, 125 N.E.2d 323 (1955); *Sears v. Weimer*, 143 Ohio St. 312, 55 N.E.2d 413 (1944); *Slingluff v. Weaver*, 66 Ohio St. 621, 64 N.E. 574 (1902).
96. Such a remedy was previously open to the wife, but in a separate action. Prior to the enactment of the annulment act, however, the wife had to bring two separate actions: one in common pleas for the annulment, and one in juvenile court for child support pursuant to CODE § 2105.18.
decided in the same forum instead of requiring that question to be settled in a juvenile court as was formerly the rule.

But the statute has failed to deal effectively with existing problems, and indeed it has created new ones. For example, in certain circumstances parental discretion could result in injury or injustice under a literal reading of the new law. Likewise, a non-adjudicated mental incompetent is without a remedy. The statute has also done little to solve the clash of the dual remedies of divorce and annulment — indeed it may have created new problems. It has not provided for alimony in certain annulment situations where public policy clearly demands it. It has created a whole host of new problems with respect to the meaning of "non-consummation." Finally, the statute is not clear as to whether it is intended to provide an exclusive remedy. This puts in jeopardy the continuing validity of the common law grounds of mistake, lack of mutual consent, impotency, duress, jest or dare, intoxication or narcotic addiction, and non-adjudicative mental incompetency.

A step in the right direction was taken by the passage of this statute; however, it is greatly in need of further refinement. The legislature must again act on this matter if the statute is to be given its proper effect.

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