

FAMILY LAW CASE NOTES



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CONTENTS

Hyde v Hyde and Woodmansee (1866) LR 1 P&D 130..... 3
Re Kevin: Validity of Marriage of Transsexual (2001) FamCA 1074 9
S v S (1980) 5 Fam LR 831 16

Sample

Hyde v Hyde and Woodmansee (1866) LR 1 P&D

130

- Court details

English Court of Probate and Divorce.¹

- Procedural history

This was an application for divorce to the English Court of Probate and Divorce.²

- Facts

This was a petition by a husband for a dissolution of marriage on the ground of adultery. There was no appearance by the respondent or the co-respondent.³

John Hyde, an English Mormon, who had been ordained to the priesthood of the Church of Jesus Christ of Latter-day Saints (LDS Church) brought an action of divorce against his wife, Lavinia, for adultery.⁴

John Hyde left the LDS Church and began to write and publish anti-Mormon material. As a result of this he was excommunicated from the LDS Church.⁵

Once he was excommunicated he returned to England but his wife remained in Utah in the United States.⁶

As a result of John Hyde's excommunication from the LDS Church, Lavinia Hyde left John Hyde and subsequently remarried in the Utah Territory in the United States. This

1 *Hyde v Hyde and Woodmansee* (1866) LR 1 P&D 130.

2 *Ibid.*

3 *Ibid.*

4 *Ibid.*

5 *Ibid.*

6 *Ibid.*

remarriage in the U.S was the basis for John Hyde's application for divorce in England. Lavinia Hyde was divorced from John Hyde, apparently in accordance with the law obtaining among the Mormons, and has since taken another husband. This is the adultery complained of.⁷

- Issues

It is necessary to define what is meant by "marriage."⁸

Whether a common law court can exercise jurisdiction over the union of man and woman as practised and adopted among the Mormons and whether this type of marriage was really a marriage in the sense as it was understood by the Matrimonial Court of England.⁹

Also whether people united in this Mormon way could be considered 'husband' and 'wife' in the sense these words must be interpreted in the Divorce Act.¹⁰

- Reasoning / Decision (commentary)

The meaning of marriage in Christendom (ie England) was:

"...the union of two people who promise to go through life alone with one another. It does not mean the same thing in Utah, as the man is at liberty to marry as many women as he pleases."¹¹

Citing *Warrender v. Warrender* Lord Penzance found that institutions in foreign countries (including marriage) cannot be considered as valid under English law, unless they resemble the equivalent English institution. With respect to marriage, English law could therefore not recognize either polygamy or concubinage as marriage. Similarly, he found

7 Ibid.

8 Ibid.

9 Ibid.

10 Ibid.

11 Ibid.

that cultural traditions of which the court had no knowledge could not form the basis for a court decision.¹²

Lord Penzance stated:

“It does not follow that because the consequences of a marriage in Utah and in England are different, the marriage in Utah is not to be recognised as valid in England. The validity of the marriage must be determined by the law of the place where it was contracted; the consequences of the marriage depend upon the law of the country where the parties reside, whether temporarily or permanently, after the marriage.

It would be extraordinary if a marriage in its essence polygamous should be treated as a good marriage in this country. Different incidents of minor importance attach to the contract of marriage in different countries in Christendom, but in all countries in Christendom the parties to that contract agree to cohabit with each other alone. It is inconsistent with marriage as understood in Christendom, that the husband should have more than one wife.”¹³

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12 Ibid.

13 Ibid.