The real defects in the system appear to lie more in the specifics than in the generalities. At least part of the language is vague and to some degree ambiguous. As proper cases arise, and real issues are brought before the courts, it may be anticipated that some of these early problems will be settled. It is expected that the legislature will continue to improve the law. In any event, in its basic outlines, the law has, to date, successfully withstood constitutional attack.

John L. Roche
James C. Rothwell

# EFFECT OF STATE MARITAL LAWS ON "WIDOW'S" BENEFITS UNDER THE SOCIAL SECURITY ACT

## I. INTROUCTION

This note concerns one part of the voluminous Social Security Act: Subchapter II—Federal Old-Age, Survivors and Disability Insurance Benefits.[1] Although the persons entitled to benefits under this Subchapter include those who meet the requirements of wife, child, widower, widow, or parent of the wage earner, this note is confined to the widow's Survivors benefits[2] and examines:

(1) The reference to state law to determine "widow's" status;
(2) The effect of this reference upon her right to benefits;
(3) The recent congressional amendments to the act which concern the problem;[3] and,
(4) The impact of state law upon the right to reinstatement of benefits after annulment of subsequent remarriage.[4]

### A. Nature of Benefits

The theory behind the widow's monthly benefits is the substitution of Social Security benefits for the economic loss resulting from the death of the wage earner, thus keeping the widow from becoming a public charge or undue burden upon her family.[5]

The right to benefits is in no way connected with need or wealth; a widow of a wealthy man as well as a widow of a poor man may

1 49 STAT. 622 (1935), as amended, 42 U.S.C. §§ 401-25 (1958).
2 42 U.S.C.A. § 402 (*e*) (Supp. 1962). The benefits are of two types: monthly pensions and lump-sum death payments. The lump-sum death payments are relatively unimportant; therefore, this note is primarily concerned with the monthly pension.
3 74 STAT. 924 (1960); 71 STAT. 519 (1957), amending 42 U.S.C. § 416 (*h*)(1).
4 By analogy the problems and rights of widows discussed in this note apply to widowers as well. See 42 U.S.C.A. § 402(f), 416(g) (Supp. 1962).
5 See Stuart v. Hobby, 128 F. Supp. 609 (S.D.N.Y. 1955); Newsom v. Social Security Board, 70 F. Supp. 962 (E.D. Mich. 1947).

receive benefits as long as the husband was covered by Social Security and the widow qualifies under the act.[6]

The benefits under the Social Security system are distributed pursuant to the power of Congress to tax and spend money in aid of the "general welfare."[7] In *Helvering v. Davis*[8] the United States Supreme Court upheld the constitutionality of the benefits on the basis that unemployment is a general national ill which Congress has power to check.[9]

The widow's monthly benefits under the system are in the nature of social insurance. In fact, the benefits under Subchapter II are titled Old-Age Insurance Benefits, but the insurance designation is misleading because the benefits are non-contractual in nature,[10] although the terms "insured," "insurance" and "beneficiary" are used throughout the act. Nor are the benefits vested property rights to which one may succeed.[11]

The funds necessary to provide these benefits are derived from mandatory deductions from the wages of each wage earner who is covered by the Social Security system. These deductions constitute an employment tax, a part of the Internal Revenue Code,[12] and have been declared constitutional in *Steward Machine Co. v. Davis.*[13]

The designation of the deductions as tax rather than as contributions to a pension fund or as an insurance contract eliminates any community property right a widow might otherwise claim.[14]

## II. DETERMINATION OF "WIDOW'S" STATUS

The Social Security tax is uniform throughout the United States, and it would seem, therefore, that the right to widow's benefits would also be uniform throughout the United States. This is not the case.

The lack of uniformity exists because the widow's benefits depend upon the marital status of the wage earner and the claimant; but

---

6 42 U.S.C.A. § 402(*e*)(1) (Supp. 1962).
7 Flemming v. Nestor, 363 U.S. 603 (1960).
8 301 U.S. 619 (1936).
9 UNITED STATES CONST. ART. I, § 8.
10 Bernstein v. Ribicoff, 192 F. Supp. 138 (E.D. Pa. 1961) *aff'd*, 299 F.2d 248 (3rd Cir. 1962), *cert. denied*, 369 U.S. 887 (1962); Price v. Flemming, 280 F. 2d 956 (2d Cir. 1960), *cert. denied*, 365 U.S. 817 (1961).
11 Kaplin v. Flemming, 190 F. Supp. 526 (E.D.N.Y. 1961); Roston v. Folsom, 158 F. Supp. 112 (E.D.N.Y. 1957).
12 INT. REV. CODE OF 1954, §§ 3101, 3111 as amended.
14 301 U.S. 548 (1936).
13 In California if insurance premium payments are made with community funds, the proceeds of the policy are community property to one-half of which the widow has a right. This right is superior to that of any designated beneficiary. Estate of Wedemeyer, 109 Cal. App. 2d 67, 240 P. 2d 8 (1952); *cf.* Allie Estate, 50 Cal. 2d 794, 329 P. 2d 903 (1958); Wissner v. Wissner, 338 U.S. 655, *reversing* 89 Cal. App. 2d 759, 201 P. 2d 837 (1949).

there is no federal domestic relations law, and the act as originally passed and as amended has failed to define such terms as "marriage" and "remarriage." Therefore, marital status is determined by reference to various state laws, and the right to widow's benefits is decided by the state laws governing such matters as intestate succession, annulment, divorce and marriage.

The fact that reference to state law may result in varying application of a federal statute was recognized in *Nott v. Folsom*[15] where the court held that reference must be made to state law to determine status, and that the correction of any inequities because of such application was a matter for congressional consideration, for the courts were not empowered to define the language of the act, legislating where Congress had failed to do so.

Once the decision is made that reference must be to state law for the purpose of determining marital status, the next question is: Which state law? The act itself provides the answer to this question by directing reference to the entire law of the state, including its conflict of laws rules. If the state court would find that: (1) claimant and deceased wage earner were validly married, or (2) if not validly married, then such claimant would nevertheless be deemed a widow for Social Security purposes if she would, under the laws applied by the state courts in determining the devolution of intestate personal property, have the same status with respect to taking of such property as a legal widow.[16]

Prior to 1957 status as a lawful widow would not alone entitle claimant to widow's benefits; she needed also to qualify under state law as the heir to the intestate personal property of the wage earner.[17]

This is illustrated in *Kandelin v. Social Security Board*[18] where the marital domicile was New York, and a New York statute provided that "no distributive share of the estate of a decedent shall be allowed under the provisions of this article . . . to a wife who has abandoned her husband." The court held that the widow, although validly married, was not entitled to recover death benefits under the act.

Under the present wording of 42 U.S.C. section 416(h)(1)(A) the *Kandelin* holding would not be controlling because the right to

---

15 Nott v. Folsom, 161 F. Supp. 905 (S.D.N.Y. 1958). It is of interest that in Pearsall v. Folsom, 138 F. Supp. 939 (N.D. Cal. 1956), *aff'd*, 245 F. 2d 562 (9th Cir., 1957) the Social Security Agency argued that interpretation should be without reference to state law, and in the Nott case it asserted the opposite position.

16 42 U.S.C.A. § 416(*h*)(1)(A) (Supp. 1962).

17 Kandelin v. Kandelin, 45 F. Supp. 341 (E.D.N.Y. 1942).

18 136 F. 2d 327 (2d Cir. 1943).

intestate personal property is not an essential requirement, but is an alternative means of qualifying in case no valid marriage is determined by the laws of the state of domicile. Thus, the two requirements, valid marriage and right to intestate succession, are now disjunctive and not conjunctive as they were prior to 1957.[19]

The question arises, whether the purpose behind the widow's benefits—to alleviate economic distress resulting from the wage earner's death—is vitiated by making these two requirements alternatives. Certainly under the present wording of the section the widow in the *Kandelin* case would be entitled to Social Security benefits even though she had abandoned her husband and was in no way dependent upon him. Is this not giving the lawful widow a vested right to benefits subject to divestment only by amendment or repeal of the act?

### A. California Law Re Putative Spouse

*"A putative marriage is one which has been contracted in good faith and in ignorance of some existing impediment on the part of at least one of the contracting parties. . . ."*[20]

At common law a putative spouse was given no rights in the marital property, but the rules of community property are different. Some community property states hold that a "community" can exist even though the marriage is void at law.[21] California, however, requires a valid marriage to create a true community, but accomplishes the same result by the equitable doctrine of quasi-community property.[22] Under California law, if a woman enters into a ceremonial marriage in good faith believing the marriage valid, then she is a putative spouse; and upon the death of her spouse, or prior dissolution of the marriage, she is entitled to the same share in the quasi-community property as a de jure wife would have had in true community property. If the spouse died intestate, the putative spouse is entitled to all of the property which would have been community property of a valid marriage.[23]

#### 1. *Where Estate Consists Only of Quasi-Community Property*

In *Speedling v. Hobby*[24] the applicant for Social Security benefits and the decedent, after obtaining interlocutory California divorce

---

19 Amended by 71 STAT. 519 (1957), 42 U.S.C. § 416(*h*)(1) (1958).

20 U.S. Fidelity & Guarantee Co. v. Henderson, 53 S.W. 2d 811, 816 (Tex. Civ. App., 1932).

21 Texas Co. v. Stewart, 101 So. 2d 222 (La., 1958); Funderburk v. Funderburk, 214 La. 717, 38 So. 2d 502 (1949); Smith v. Smith, 1 Tex. 621, 46 Am. Dec. 121 (1846); 1 DE FUNIAK, PRINCIPLES OF COMMUNITY PROPERTY § 56 (1943).

22 Schneider v. Schneider, 183 Cal. 335, 191 Pac. 533 (1920); Estate of Krone, 83 Cal. App. 2d 766, 189 P. 2d 741 (1948).

23 Estate of Krone, *supra* note 22.

24 132 F. Supp. 833 (N.D. Cal. 1955).

decrees from their respective spouses, married in Arizona prior to entry of final decrees. They subsequently treated the marriage as valid. All of the decedent husband's property was acquired during this marriage. The claimant, under California law, was entitled to take the same share of intestate personal and real property as a lawful widow, and thus was entitled to Social Security insurance benefits. It should be noted that the court did not hold that a putative wife is a lawful wife, but rather is a person viewed by state law to be equivalent for certain purposes; and for purposes of Social Security, claimant does not have to be the lawful widow of the decedent, but only must have the same status relative to taking intestate personal property as a lawful widow.

### 2. *Where Estate Consists of Quasi-Community Property and Separate Property*

In *Aubrey v. Folsom*[25] the court goes even further than in the *Speedling* case and holds that the putative widow need not have the same status as a lawful widow with respect to all classes of deceased wage earner's intestate personal property under applicable state law in order to qualify for benefits under the Social Security Act. Since California law gives the putative spouse a right of succession in all of the quasi-community property in the estate of the deceased wage earner, she was entitled to benefits under the act, even though the deceased wage earner left separate personal property in his estate and California law did not grant her succession rights in such property.

In the *Aubrey* case the Secretary[26] contended that the California courts recognize the putative spouse for equitable reasons only and grant her a share in the estate of the intestate putative spouse as a rule of equity and not as a rule of intestate succession. Under this theory the putative spouse would not have the status of widow within the meaning of 42 U.S.C.A. section 416 (h) (1). However, the court ruled against the Secretary and held that under California law the surviving spouse inherits all of the community property of an intestate spouse,[27] and that the California Probate law has been expressly held applicable to the surviving putative spouse,[28] thereby giving the putative spouse a right of inheritance in all quasi-community property.

In the *Speedling* case the court held that a putative widow satisfied the requirements of 42 U.S.C.A. section 416 (h) (1) where the

---

25 151 F. Supp. 836 (N.D. Cal. 1957).
26 Secretary of Health, Education and Welfare.
27 CAL. PROB. CODE § 201.
28 Estate of Krone, 83 Cal. App. 2d 766, 189 P. 2d 741 (1948).

deceased wage earner left only quasi-community property. The court expressly left open the question of whether the putative widow would qualify if the estate also included separate property. The *Aubrey* case settled this point by holding that under the regulations it is sufficient that the applicant be treated as a widow, although not technically endowed with that status, for the purpose of sharing in the estate, and that if the applicant is treated as standing in a widow's relationship for any purpose under the state law of intestate succession such applicant would qualify under 42 U.S.C.A. section 416 (h) (1).

### B. "Federal" Putative Spouse

Prior to the Social Security Amendments of 1960[29] in states which did not recognize the succession rights of a putative spouse, this could happen: A woman who had lived with the wage earner for many years, believing that her marriage was valid, might discover only after his death that the marriage was invalid. She would not be entitled to Social Security widow's benefits even though the wage earner had been taxed annually.

Recognizing the inequities resulting from these differences in state laws and endeavoring to make the right to benefits uniform and to more nearly accomplish the purpose of providing economic aid to surviving dependents of a deceased wage earner, Congress in 1960 amended 42 U.S.C.A. section 416(h) (1) so that the section became 42 U.S.C.A. section 416(h) (1) (A) and added a new section, 42 U.S.C.A. section 416(h) (1) (B).[30]

This amendment leaves the initial determination of status to state law, but if under both standards in subparagraph (A) the claimant

---

[29] 74 STAT. 924 (1960).

[30] Social Security Amendments of 1960, 74 STAT. 924, 951; 42 U.S.C.A. § 416(*h*)(1) (Supp. 1962) "(A) An applicant is the . . . widow . . . for purposes of this subchapter if the courts of the State in which such insured individual is domiciled . . . at the time of death . . . would find that such applicant and such insured individual were validly married at the time . . . he died. If such courts would not find that such applicant and such insured individual were validly married at such time, such applicant shall, nevertheless be deemed to be the . . . widow . . . of such insured individual if such applicant would, under the laws applied by such courts in determining the devolution of intestate personal property, have the same status with respect to the taking of such property as a . . . widow . . . of such insured individual.

"(B) In any case where under subparagraph (A) an applicant is not (and is not deemed to be) the . . . widow . . . of a fully or currently insured individual . . ., but it is established to the satisfaction of the Secretary that such applicant in good faith went through a marriage ceremony with such individual resulting in a purported marriage between them which, but for a legal impediment not known to the applicant at the time of such ceremony, would have been a valid marriage, and such applicant and the insured individual were living in the same household at the time of the death of such insured individual . . . then . . . such purported marriage shall be deemed to be a valid marriage. . . ."

would not be a widow or deemed a widow under applicable state law, then the Secretary is given the discretion to allow the claimant Social Security benefits if it is established to the Secretary's satisfaction[31] that:

(1) such claimant in good faith went through a marriage ceremony;

(2) but for a legal impediment,[32] not known to the claimant at the time of such ceremony, it would have been a valid marriage;

(3) such claimant and insured individual were living in the same household at the time of death of the insured individual; and

(4) no other person is or has been entitled to the benefits.

This 1960 amendment was a significant step in the direction of uniformity of benefits throughout the United States, for now, except in cases of marriages entered into with knowledge of invalidity, the ultimate decision as to benefits may be determined by one federal standard rather than by varying state laws regarding what is or is not a valid marriage or the state laws of intestate succession.

The wording of the amendment would indicate that any state decision as to what constitutes good faith or lack of it on the part of the claimant would not be binding upon the Secretary, for when interpreting federal legislation, neither the Secretary nor the federal courts would be bound by the *Erie R.R. v. Tompkins*[33] decision to follow state substantive law. Cases under the Social Security Act re-

---

31 1 P-H Soc. Sec. ¶ 31, 428A, Reg. 4, § 404.708a (*app'd.* 1-3-63; *filed* 1-8-63), lists the evidence required for a valid marriage under 42 U.S.C. § 416 (*h*)(1)(B): "An applicant whose status as a . . . widow . . . of the insured individual upon whose earnings the claim is based depends upon a purported marriage to such individual which is deemed to be a valid marriage . . . shall submit, in order to establish . . . her status as such, evidence consisting of the following:

(a) Evidence of a ceremonial marriage . . .; and

(b) Applicant's signed statement as to whether . . . she went through the marriage ceremony in good faith, believing that the marriage was valid at the time it was entered into, as to whether . . . she knew of the impediment to the marriage (e.g. an undissolved prior marriage) at such time and the reasons for . . . her belief that the marriage was valid; and

(c) **********

(d) Upon request, if the applicant's marriage to the insured individual is invalid because of a prior undissolved marriage, and the prior spouse is living and his (or her) whereabouts are known, a signed statement from such spouse showing whether applicant, at the time the marriage ceremony was entered into, knew of the prior marriage and knew that it had not been dissolved; and showing the basis for his (or her) awareness of the applicant's knowledge of these facts; and

(e) **********"

32 (1) Previous undissolved marriage, or (2) defect in procedure followed in connection with such purported marriage. 42 U.S.C.A. § 416 (*h*)(1)(B) (Supp. 1962).

33 304 U.S. 64 (1938).

garding survivor's benefits involve interpretation of a federal statute. In such interpretation the federal courts are not required by the *Erie* doctrine to follow the interpretation given to a state statute.[34] The federal courts interpret the Social Security Act liberally to accomplish the intent of Congress.[35]

### C. Summary

At the present time an applicant for widow's benefits may acquire widow's status for Social Security purposes if: (1) courts of the state of domicile of the wage earner at time of his death would find that he and applicant were validly married, or (2) if not validly married, the applicant would nevertheless be deemed a widow if the same state courts would give her the same status as a lawful widow in determining the devolution of intestate personal property, or (3) it is established to the satisfaction of the Secretary of Health, Education and Welfare that such applicant in good faith went through a marriage ceremony with the wage earner, which, but for a legal impediment, would have been a valid marriage, and such applicant and insured individual were living in the same household at the time of the death of the insured. The latter provision eliminates a disparity which existed until 1960 between persons claiming benefits as widows in states which did not recognize property rights in a putative spouse and inhabitants of states which did recognize those rights.

## III. REINSTATEMENT OF WIDOW'S BENEFITS AFTER ANNULMENT OF REMARRIAGE

Once it has been determined that the claimant meets the status of widow for Social Security purposes under 42 U.S.C.A. section 416(h)(1) and 42 U.S.C.A. section 416(c),[36] she must then satisfy

---

34 See United States v. Silk, 331 U.S. 704 (1947); Beaverdale Memorial Park v. United States, 47 F. Supp. 663 (D.C. Conn. 1942).

35 Sparks v. United States, 153 F. Supp. 909 (D.C.D. Vt. 1957); Schroeder v. Hobby, 222 F. 2d 713 (10th Cir. 1955); Ray v. Social Security Board, 73 F. Supp. 58 (S.D. Ala. 1947).

36 42 U.S.C.A. § 416 (*c*) (Supp. 1962): "The term 'widow' (except when used in section 402 (*i*) . . .) means a surviving wife of an individual, but only if (1) she is the mother of his son or daughter, (2) she legally adopted his son or daughter while she was married to him and while such son or daughter was under the age of eighteen, (3) he legally adopted her son or daughter while she was married to him and while such son or daughter was under the age of eighteen, (4) she was married to him at the time both of them legally adopted a child under the age of eighteen, (5) she was married to him for a period of not less than one year immediately prior to the day on which he died, or (6) in the month prior to the month of her marriage to him (A) she was entitled to, or on application therefor and attainment of age 62 in such prior month would have been entitled to, benefits under subsection (e) or (h) of section 402 of this title, or (B) she had attained age eighteen and was entitled to, or on application therefor would have been entitled to, benefits under subsection (d) of such section."

the requirements of 42 U.S.C.A. section 402(*e*)(1)[37] to receive the monthly benefits. Let us assume that the widow has satisfied all of these requirements, has been receiving the monthly benefits, remarries, benefits are stopped, and later the remarriage is annulled. She then applies for reinstatement of her former Social Security widow's benefits.[38] Will she be allowed such reinstatement? The answer to this question depends upon whether or not she has "remarried." Here again state law will affect the answer because the Social Security Act has failed to define "remarriage" for Social Security purposes.

In interpreting the requirement "has not remarried"[39] the word "remarried" has been held[40] to mean that a valid marriage contract has been entered into.

### A. Void and Voidable Marriages

If the state of domicile declares the remarriage to be void there is no problem as a void marriage is never a marriage; therefore, the Social Security benefits would be reinstated. In such a case the decree of annulment by the court is merely to record the fact.[41] But problems develop with marriages which are merely voidable. Voidable marriages remain valid until annulled by a court of competent jurisdiction because of a legal impediment which existed at the time the marriage was entered into.[42] Again, differences in the laws of the states lead to varying results in the reinstatement of widow's benefits.

An analogy exists between voidable marriages and voidable contracts. When rescinded, a contract becomes a nullity and the parties may be restored to the relative positions which they would have occupied had no contract been entered into.[43] As a general rule this is true also of a voidable marriage which has been annulled by the court for, unless otherwise provided by statute, a decree of nullity relates back so as to render the marital relation of the parties void from its inception.[44]

---

37 The only requirement pertinent to our discussion is the first one: A widow shall be entitled to receive widow's insurance benefits if she "has not remarried." 42 U.S.C.A. § 402(*e*)(1)(A) (1957).

38 *E.g.*, Santuelli v. Folsom, 165 F. Supp. 224 (N.D. Cal. 1958).

39 See *supra* note 37.

40 Sparks v. United States, 153 F. Supp. 909 (D.C.D. Vt. 1957).

41 See Yeager v. Flemming, 173 F. Supp. 316 (S.D. Fla. 1959).

42 CAL. CIV. CODE § 82 lists six grounds: Underage, previous husband living, unsound mind, fraud, force, and physical incapacity.

43 5 CORBIN, CONTRACTS § 1105 (1951 ed.).

44 55 C.J.S., *Marriage*, § 68. See also Pearsall v. Folsom, 138 F. Supp. 939 (N.D. Cal. 1956), *aff'd.* 245 F. 2d 562 (9th Cir. 1957); Santuelli v. Folsom, 165 F. Supp. 224 (N.D. Cal. 1958).

However, annulment proceedings should be classified as sui generis, for although a judgment of nullity is conclusive against the parties to the action and those claiming under them, it is not necessarily so against innocent third parties.[45] In the case of third parties, the status between marriage and annulment continues to be a factor, even after annulment, in determining the legal effect of all that occurred during that period.[46] The effect on such matters as legitimacy of children, obligations of a former husband to continue alimony payments, privileged communications, and reinstatement of Social Security benefits are but a few examples.

For the purpose of determining the effect as to third persons the courts apply a doctrine of "relation back," a legal fiction, limiting the application of the doctrine when policy and justice so require. The doctrine simply operates to make the annulment effective as of the date the marriage was celebrated; thus the marriage is held to be void ab initio.

The doctrine of "relation back" was enunciated by Mr. Justice Cardozo in *Sleicher v. Sleicher,*[47] a case involving the question of reinstatement of a first husband's alimony payments after annulment of his former wife's second marriage. In *Sleicher,* the court held that the annulment of the voidable marriage made the marriage void ab initio as between the parties, meaning that the wife in the annulled marriage had never remarried, and required the first husband to resume alimony payments as directed by the previous divorce decree. However, the court limited the application of the doctrine by holding that the nullity of the second marriage did not relate back to render the first husband in default for the alimony payments from the date of the remarriage to the date of the annulment. To do so would have the effect of laying "upon innocence the opprobrium of guilt."[48] The doctrine of "relation back" would defeat its purpose if used to change the quality of intervening acts of strangers.[49]

In arriving at its decision the court no doubt was influenced by the common law rule that a wife in an annulled marriage was not entitled to support from the husband in the annulled marriage, and also by the policy behind the requirement of alimony, to provide support of the divorced wife who would otherwise become a burden upon the state.[50]

The doctrine of "relation back" was employed in New York until 1940 when the state departed from the common law rule by the en-

45 CAL. CIV. CODE § 86.
46 Pearsall v. Folsom, *supra* note 44.
47 251 N.Y. 366, 167 N.E. 501 (1929).
48 *Id.* 167 N.E. at 502.
49 For a discussion of the "relation back" doctrine see 7 Stan. L. Rev. 529.
50 See Sparks v. United States, 153 F. Supp. 909 (D.C.D. Vt. 1957).

actment of a statute[51] which authorized courts to decree support of the wife by the husband in the annulled marriage, thereby removing the need for the application of the "relation back" doctrine as it affected alimony payments by the first husband.[52]

The effect of the New York statute was to give the wife in a voidable marriage rights similar to those conferred by divorce.

What effect does this statute and similar statutes in other states have upon reinstatement of the widow's Social Security benefits?

### 1. *Minority View*

In *Nott v. Folsom*[53] the marital domicile was New York. The federal court denied reinstatement of Social Security benefits after annulment, holding that under the New York statute a voidable marriage, annulled on the ground of fraud, is not void ab initio. The wife was entitled to support from the husband in the annulled marriage and it was immaterial that the wife in this case did not apply for support as she might have under New York Civil Practice Act section 1140-a.

In *Yeager v. Flemming*[54] the marital domicile was Connecticut. The court denied reinstatement of benefits, citing and following the *Nott* decision that for Social Security purposes the annulled marriage had been a remarriage. The Connecticut statute[55] allowed the court to decree support to the wife in an annulled marriage. The court felt that a voidable marriage, even though void ab initio as to the parties, continues to have sufficient validity on which to base a support decree, and therefore is a "remarriage" for Social Security purposes.

In both *Nott* and *Yeager* the *ratio decidendi* of the court in denying reinstatement of benefits was not that the wife received support,[56] but that there was in the state of domicile a statute giving the annulled voidable marriage some validity, which was enough to hold that for Social Security purposes the widow had remarried.

### 2. *Majority View*

California does not have a statute like those of New York and Connecticut, but follows the majority view which applies the "rela-

---

51 CPA § 1140-a (now CPLR, Domestic Relations Law art. 13, § 236).

52 Connecticut, New Hampshire, New Mexico, Washington and West Virginia have this type of statute. See Annot., 4 A.L.R. 926, 939 (1919); Annot., 54 A.L.R. 2d 1410 (1957).

53 161 F. Supp. 905 (S.D. N.Y. 1958).

54 173 F. Supp. 316 (S.D. Fla. 1959).

55 GEN. STAT. CONN. § 7341 (rev. 1949).

56 In the Nott case the wife of the annulled marriage had not applied for or received any support, and in the Yeager case the wife received a lump-sum payment of $3,000 which represented monies she expended for her own support during the annulled marriage.

tion back" doctrine. However, its application is not mandatory or conclusive as to any person except the parties to the marriage and those claiming under them, and it is employed at the discretion of the court when doing so conforms to sanctions of sound policy and justice.[57] In Social Security Act cases the courts apply the doctrine to further the intended purpose of the Act, *i.e.,* to provide economic relief to widows upon the death of the wage earner.

This majority view is based upon the common law rule that a wife who sued for annulment was not entitled to support from the husband in the annulled marriage; the theory being that the wife was denying the existence of the marriage which was the basis of her right to support.[58]

Thus, in the majority of states Social Security benefits will be reinstated after annulment of the subsequent marriage because the annulment relates back, making the remarriage void ab initio; this is true even though the state court ruled that the doctrine of "relation back" will not operate to revive the first husband's alimony obligation which was terminable upon the wife's remarriage.[59] This is so because as to strangers to the remarriage the "relation back" doctrine is discretionary and can operate for certain purposes and not for others.[60]

## IV. CONCLUSION

Whether or not a claimant for widow's benefits under the Social Security Act will receive those benefits is determined by reference to state law since the act itself does not define such terms as "marriage" and "remarriage." Because the marital laws of the states are not uniform the results under the Social Security Act are also not uniform.

The Social Security Amendment of 1960 which established a "federal putative marriage" standard removed inequities in results between states which did not recognize marital property rights of the putative spouse and those which did.

Inequities will occur, however, regarding reinstatement of benefits after annulment of a voidable remarriage. Congress should define in the Social Security Act what constitutes a "remarriage" for the purpose of reinstatement of widow's benefits. This is because state statutes, allowing state courts to decree support to the wife in an annulled marriage, have been the basis for denial of reinstatement

---

57 Sefton v. Sefton, 45 Cal. 2d 872, 291 P. 2d 439 (1955).
58 See Annot., 110 A.L.R. 1290 (1937).
59 See *supra,* note 57.
60 Santuelli v. Folsom, 165 F. Supp. 224 (N.D. Cal. 1958).

of widow's benefits. (The courts do not reason that it is the availability of support which is controlling, but speak in terms of such an annulled marriage having sufficient validity to preclude resumption of benefits.) In this area Congress should act to standardize rights to benefits throughout the United States.

Edna D. Barber

# FORMAL AND DOCTRINAL DIFFERENCES BETWEEN GOVERNMENT AND PRIVATE CONTRACTS

## I. INTRODUCTION

Justice Holmes admonishes us that "men must turn square corners when they deal with the Government."[1] This "Square Corner Doctrine" finds application in the extensive and expanding area of government contracting. This note surveys briefly some ways in which a contract between the United States Government and a private businessman or corporation may be at variance with a contract between private parties based upon common law principles.

## II. DISTINCTIONS BETWEEN GOVERNMENT AND PRIVATE CONTRACT TERMS

### A. Sovereign Immunity

Most areas of dissimilarity between government contracts and private commercial contracts involve mandatory clauses which are inserted into the government contract and which a contractor must accept if it chooses to do business with the government. However, one obvious dissimilarity derives from the nature of one of the contracting parties. This is the immunity of the sovereign to suit by the contractor. The doctrine of sovereign immunity has the effect of limiting the contractor's legal remedy for breach of contract by the government to such situations and to such forums as the government chooses.[2] The parties to a private contract need not contend with such a defense.

Prior to 1855 a government contractor's legal remedy for breach of contract by the government was limited to congressional action. The Act of 1855[3] constituted a definitive step in the limitation of the doctrine of sovereign immunity by establishing the Court of

1 Rock Island, A.L.R. Co. v. United States, 254 U.S. 141, 143 (1920).
2 See *e.g.*, Turner v. United States, 248 U.S. 354 (1918); Goodyear Tire and Rubber Co. v. United States, 276 U.S. 287 (1927).
3 10 STAT. 612.