7-1-1975

Bad Laws Make Hard Cases: State ex rel. Angvall v. District Court and the Law of Annulment in Montana

Don Molloy

Follow this and additional works at: https://scholarship.law.umt.edu/mlr

Part of the Law Commons

Recommended Citation
Don Molloy, Bad Laws Make Hard Cases: State ex rel. Angvall v. District Court and the Law of Annulment in Montana, 36 Mont. L. Rev. (1975), Available at: https://scholarship.law.umt.edu/mlr/vol36/iss2/6

This Comment is brought to you for free and open access by The Scholarly Forum @ Montana Law. It has been accepted for inclusion in Montana Law Review by an authorized editor of The Scholarly Forum @ Montana Law.
BAD LAWS MAKE HARD CASES*
STATE EX REL ANGVALL V. DISTRICT COURT AND
THE LAW OF ANNULMENT IN MONTANA

Don Molloy

I. INTRODUCTION

In August of 1968 the Montana supreme court considered a fundamental conceptual notion of the law of annulment when it heard the case of *State ex rel Angvall v. District Court of the Thirteenth Judicial District.*

In June of 1966 Jon and Patricia Angvall were married in Sheridan, Wyoming. What transpired between the Angvalls for the next three months is known only to them. But, in September, they were involved in an altercation in which Patricia was struck and injured by an automobile driven by Jon. Their relationship deteriorated and Patricia filed an action for damages for the injuries she had sustained.

The normal recourse of litigation was not available to Patricia as a party plaintiff because she was attempting to sue her own husband. The prevailing law in Montana has always been that "a wife may not maintain an action against her husband for personal injuries upon her by her husband while they were married." Thus, the only way Patricia could bring the action was to show that she and Jon were not legally married. In order to do this she sought an annulment on the ground that her marriage to Jon was void from the beginning; it violated a Montana statute.

The statute in question prohibited the remarriage of either party within six months of a judgment of divorce. Jon had been divorced less than the requisite six months when he and Patricia participated in the marriage ceremony in Wyoming. Relying on the statutory declaration that such marriages are void, having no effect whatsoever, Patricia brought the damage action against Jon. Her theory was that if the annulment were granted it would have the effect of

*It is the opinion of the author that the legal adage "Hard cases make bad law" can be turned about to state an equally applicable adage, that "Bad laws make hard cases".


2. *Id.*

3. *Id.*

4. Revised Codes of Montana, § 48-151 (1947) [hereinafter cited as R.C.M. 1947]. "[I]t is unlawful for any person who is a party to an action for divorce in any court in this state, or for any Montana resident who is a party to an action for divorce elsewhere, to marry again until six months after judgment of divorce is granted, and the marriage of any such person solemnized before the expiration of six months from the date of the granting of judgment of divorce shall be void." Repealed Sec. 1, Ch. 63, L 1967.
a judicial decree stating that no marriage had ever existed between her and Jon. If no marriage ever existed, she would not be barred from bringing suit against Jon as she would not fall within the strictures of the interspousal tort immunity doctrine.

The Montana supreme court, speaking through the Chief Justice, found no merit in Patricia Angvall's argument. The court pre-faced a superficial analysis of the problem with this sweeping assumption:

This court sees no reason to distinguish between annulments and divorces as far as allowing actions subsequent to the termination of the marriage.\(^5\)

The court went on to find that "void", as used in the statute prohibiting marriages\(^6\) such as the one between Jon and Patricia Angvall, interpreted in light of other sections of Montana law,\(^7\) meant "void from the time its nullity shall be declared by a court of competent jurisdiction."\(^8\) Thus, by the court's interpretation, the plaintiff could not bring her action. The general rule that a wife could not sue her husband in tort would be extended to include persons whose purported marriages were subsequently declared void.

Even a cursory analysis of the \textit{Angvall} case leads to the conclusion that the court erred in its interpretation of the statute in question. At least two factors contributed to the faulty reasoning and conclusion in this case.

First, the statute is not carefully drafted. The language used when the chapter was amended in 1963\(^9\) was inconsistent with the language used throughout the rest of the title. The statute declaring such marriages void was an anomoly in an anachronistic statutory scheme, something which the legislature apparently realized when it repealed the statute four years after it was adopted.\(^10\)

Secondly, the judiciary has a duty to provide reasoned articulation in the decisions they reach. Assertions should be supported by authority, authority which should be documented, not merely inferred from the court's inherent powers. In this case the court failed to probe deeply into the relevant law, and reached a conclusion not supportable by that law.

---

5. State ex rel Angvall v. District Court, \textit{supra} note 1 at 371.
8. State ex rel Angvall v. District Court, \textit{supra} note 1 at 371.
10. \textit{Id.}
This note will discuss that relevant law, examining the origins and development of the law of annulment in Montana.11

II. HISTORICAL DEVELOPMENT

In its early history Montana, like many western territories and states, looked to California’s statutes for guidance on an initial statutory scheme. Montana’s Code Title on Marriage and Annulment had such roots. The present Marriage and Annulment statutes, and their predecessors,12 are verbatim enactments of the California Civil Code13 provisions on the same subject. Thus, in order to fully understand the present Montana statutory scheme one must first look briefly to the Field Code, which is the basic source of the California statutory scheme,14 and the common law, which the Field Code attempted to codify.

A. Common Law

From the Twelfth Century to the middle of the Nineteenth Century the ecclesiastical courts of England had exclusive jurisdiction in suits to annul.15 The action to annul was not known as annulment but was called divorce a vinculo matrimonii,16 and was given for reasons which today are recognized as grounds for a voidable marriage: for conditions at the time of the marriage which made the marriage invalid.17

The holiness of the matrimonial state is left entirely to the ecclesiastical law, the temporal courts not having jurisdiction to consider unlawful marriage as a sin, but merely as a civil inconvenience. The punishment therefore, or annulling, of incestuous or other unscriptural marriages, is the province of the scriptural courts; which act pro salute animae.18

However, during this historical period the civil courts were not without power to act in the area of domestic relations. Certain civil disabilities acted to make the marriage contract19

---

12. Id. at 21. See also Appendix.
14. WEST’S ANNOTATED CALIFORNIA CIVIL CODE § 55 et seq. (West, 1954). See also supra note 11 at 21.
16. Id.
17. The grounds for ecclesiastical annulment are generally considered to be consanguinity, affinity, impotence, and pre-contract. Vol. I, COOLEY, COOLEY’S BLACKSTONE, 434 (3d ed. 1884).
18. Id. at 433. Pro Salute Animae means “for the good of the soul.”
void ab initio, and not merely voidable; not that they dissolve a contract already formed, but they render the parties incapable of forming any contract at all; they do not put asunder those who are joined together, but they previously hinder the junction. And, if any persons under these legal incapacities come together, it is meretricious, and not matrimonial union. 29

As a result of the historically different jurisdictional sources of the decree, relationships which could be annulled were classed as being either voidable or void marriages. 21 The voidable marriage, which derived from ecclesiastical impediments, was defined as follows:

A marriage is voidable when in its constitution there is an imperfection which can be inquired into only, during the lives of both the parties, in a proceeding to obtain a sentence declaring it null. Until set aside, it is practically valid; when set aside, it is rendered void from the beginning. 22

The void marriage was one which was based upon a disability to contract, a civil impediment.

A marriage is termed void when it is good for no legal purpose, and its invalidity may be maintained in any proceeding, in any court, between any parties, whether in their lifetime or after the death of the supposed husband and wife, and whether the questions arise directly or collaterally. 23

The consequences of a decree in either case were the same. A declaration that a marriage was "void" 24 meant that there was no relationship at all, it was "void from the beginning," 25 while a declaration that it was "voidable" 26 meant that once the decree was entered it "related back" and established that the marriage never existed.

20. COOLEY, supra note 17 at 435. Bigamy and want of reason are considered the usual grounds for a void marriage.

21. H. CLARK, supra note 15 § 3.1 at 120. The void, voidable distinction has also been stated in terms of declaratory annulment and constitutive annulment. "Theoretically declaratory annulment declares that no marriage ever existed for any purpose. It established in an official manner what the situation has been all along, i.e. that there never was any relationship. Constitutive annulment changes the parties' relationship, however. It declares that because of an impediment or incapacity antedating the purported marriage, that marriage is invalid."

22. BISHOP, BISHOP ON MARRIAGE, DIVORCE AND SEPARATION, 107 § 259 (1891).

23. Id. at 107 § 258.


25. "Void from the beginning" is the language used in R.C.M. 1947, §§ 48-105 and 48-111.

26. "Voidable" is the language used in R.C.M. 1947, § 48-104.
Although the ecclesiastical courts were never a part of the American judicial system, the peculiar meaning given the word voidable carried over as a part of the American common law. The jurisdictional conflict between the temporal courts and the ecclesiastical courts was non-existent, so it seems the temporal courts in this country might well have never recognized the "voidable" marriage at all. Such was not the case, however, and as the common law found its roots in the states, the distinction between "void" and "voidable" became firmly established in the courts and early statutory enactments.

B. Field Code

1. Introduction

It was during the Nineteenth Century that the action for annulment, probably because of the spread of statutes governing annulment, came to be distinguishable from divorce. The distinction turned on the nature of the two decrees. A divorce decree terminated for the future a valid, existing marriage. An annulment, whether granted because a "marriage" was void or because it was voidable, was a declaration that no marriage cognizable in law ever existed because of some impediment existing at the time of the marriage ceremony. Of necessity, the two types of decree, divorce and annulment, were mutually exclusive.

In pursuance of a state constitutional mandate, the New York legislature set up commissions to codify the laws of New York. One of the commissions ultimately headed by David Dudley Field, drafted the Civil Code, subsequently called the Field Code. There is no doubt that when the state of New York commissioned the Field Code, one of the goals of the Code Commissioners was to eliminate all the anomalous and anachronistic holdovers found in the common law. The commission found one of the holdovers of the common law to be the concept of a voidable marriage.

2. Change in Language

It appears that in order to eliminate the legal fiction of "relation back" in voidable marriages the commission intentionally

27. Briggs, supra note 11 at 17.
28. Clarke, supra note 15 at 120 § 3.1.
29. See Wheaton v. Wheaton, 63 Cal. Rptr. 291, 67 Cal.2d 656, 432 P.2d 979, 982 (1967) where the court noted: "An annulment differs conceptually from a divorce in that a divorce terminates a legal status, whereas an annulment establishes that a marital status never existed." Accord, State ex rel Wooten v. District Court, 57 Mont. 517, 189 P. 233 (1920).
31. Id. referring to FIELD CODE (Albany 1865) Introduction XVI.
changed the terminology it used when drafting the annulment provisions of the code. Professor Edwin Briggs, in an article about annulment in Montana, made the following observation about the framers of the Field Code.

Had they wanted to declare that an annulled marriage was void \textit{ab initio}, they almost certainly would have said that it was "voidable," because the latter's meaning in domestic relations was well established at the drafting of the code. "Void \textit{ab initio}" was just what they did not want to say, because they wished to eliminate the retroactive character of an annulment. "\textit{Ab initio}" was the culprit; so they substituted for it a phrase which appeared to mean the very negation of relation back. They retained the word "void" because they were in the annulment field, which always talked in terms of "being void" rather than of a "dissolution". Its retention recognized the distinguishing character between "annulment" and "divorce", in that the former was granted for a cause existing at the time of the marriage; the latter for a cause arising thereafter.\textsuperscript{32}

The Field Code rejected the notion that the consequences of a voidable marriage and a void marriage were the same, in other words, a declaration that no marriage ever existed. This position is manifested by the substitution of the phrase "void from the beginning" for "void", a classification which retained the effect of the common law annulment decree. More important, however, was the change evident in the substitution of the phase "void from the time its nullity is adjudged" for the word "voidable."\textsuperscript{33} The consequence of this semantic change was that decrees which formerly "related back" would henceforth take only prospective effect. The only difference between such a decree of annulment and a divorce decree was the ground upon which each was based.

3. \textit{Change in Classification}

Aside from semantical changes, the drafters of the Field Code attempted a major conceptual change in the doctrine of annulment. This change reflected the fact that there were no ecclesiastical courts in New York (or anywhere in the United States). This modification is evident in the determination of which marriages were classified as "void from the beginning" and which were considered to be within the ambit of the new language, "void from the time its nullity is adjudged by a court of competent jurisdiction." The importance of this change lies in the fact that some marriages which were formerly "voidable" were classified as "void from the begin-

\textsuperscript{32} Id. at 40.
\textsuperscript{33} Id. at 22.
ning” while others, previously annulable on the basis of being “void”, were categorized as being “void from the time its nullity is adjudged”. In other words, incestuous relationships were considered voidable at common law because of their ecclesiastical origins. Under the Field Code in effect they became void. In contrast, however, civil disabilities which were grounds for a court to declare certain common law “marriages” void were rendered prospectively void by the Field Code. An example is marriages void due to want of understanding or marriages void because of lack of consent. Although either ground would have been sufficient to have a marriage declared void at common law, under the Field Code they were only void from the time their nullity was declared by a court.

To comprehend the conceptual basis of the Montana annulment statutes, the Field Code modifications and refinements must be understood. Distinctions based upon the archaic jurisdictional conflict between the temporal and ecclesiastical courts are superficial, and are simply inadequate in finding solutions to contemporary annulment problems.

Thus, the Field Code made two basic changes: (1) The common law language void was replaced by void from the beginning; and the term voidable was eliminated and the phrase void from the time its nullity is adjudged was added.

(2) The common law classification of grounds for annulment was changed. A ground which would render a “marriage” void at common law would not necessarily render the same kind of marriage void from the beginning under the Field Code.

C. Montana Code

Montana’s earliest legislation concerning annulment and divorce was a strange amalgam apparently drafted with the intent of eliminating any distinction between the two.34 “Whether from design, or ignorance”35 the early legislation had a definite effect on Montana’s law of annulment in that it placed the burden on one insisting on the common law attributes of annulment to prove them. These first statutes, the TERRITORIAL LAWS OF MONTANA (the Bannack Code), were replaced by the CIVIL CODE OF 1895, which was essentially the Field Code as enacted in the California Civil Code.36 The CIVIL CODE OF 1895, though recodified,37 is basically the present statutory law in Montana on marriage and annulment.

34. Id. at 20. See f.n. 20 citing the Bannack Code (ACTS, RESOLUTIONS AND MEMORIALS, TY. OF MONT. 1ST LEGIS. ASSEMB. 1864).
35. Briggs, supra note 11 at 20.
36. Id. at 21 n. 22.
37. See R.C.M. 1907, 1921, 1935 and 1947; Marriage and Annulment.
Because of the heredity of Montana's statutes, the common law distinctions between void and voidable marriages have little significance, if any, in the present law of marriage and annulment. This becomes apparent upon close examination of the statutory provision setting forth the grounds for annulment. Rather than the common law jurisdictional classification, one now finds a generic classicication. There are presently three kinds of annulments granted: (1) those granted for non-age; (2) annulments which are based on marriages deemed void from the beginning; and (3) those marriages classified as voidable. In addition the statute concerning bigamous marriages has elements which can be categorized within both of the latter two categories.

38. R.C.M. 1947, § 48-202 (5729). "A marriage may be annulled for any of the following causes, existing at the time of the marriage:

(1) That the party in whose behalf it is sought to have the marriage annulled was under the age of majority, and such marriage was contracted without the consent of his or her parents or guardian, or person having charge of him or her; unless, after attaining the age of majority, such party for anytime freely cohabited with the other as husband or wife.

(2) That the former husband or wife of either party was living, and the marriage with such former husband or wife was then in force.

(3) That either party was of unsound mind, unless such party, after coming to reason, freely cohabited with the other as husband or wife.

(4) That the consent of either party was obtained by fraud, unless such party afterward, with full knowledge of the facts constituting the fraud, freely cohabited with the other as husband or wife.

(5) That the consent of either party was obtained by force, unless such party afterwards freely cohabited with the other as husband or wife.

(6) That either party was, at the time of marriage, physically incapable of entering into the married state, and such incapacity continues and appears to be incurable."

39. This note will not discuss relationships annulled because of non-age. For a thorough discussion of the effect of annulment based on non-age, see Briggs, supra note 11 at 38.

40. R.C.M. 1947, § 48-105. "Marriages between parents and children, ancestors and descendants of every degree, and between brothers and sisters of the half as well as the whole blood, and between nieces and uncles, and between aunts and nephews, and between first cousins, and between persons, either of whom is feeble-minded, are incestuous and void from the beginning, whether the relationship is legitimate or illegitimate. (Italicized portion added by Amend. sec. 1, ch. 6, L. 1919).

41. R.C.M. 1947, § 48-104. "If either party to a marriage be incapable from physical causes of entering into the marriage state, or if the consent of either be obtained by fraud or force, the marriage is voidable."

42. R.C.M. 1947, § 48-111. "A subsequent marriage contracted by any person during the life of a former husband or wife of such person, with any person other than such former husband or wife, is illegal and void from the beginning, unless:

(1) The former marriage has been annulled or dissolved.

(2) Unless such former husband or wife was absent, and not known to such person to be living for the space of five successive years immediately preceding such subsequent marriage, or was generally reputed and was believed by such person to be dead at the time such subsequent marriage was contracted; in either of which cases the subsequent marriage is valid until its nullity is adjudged by a competent tribunal."
1. Void From the Beginning

Perhaps the most perplexing of the Montana statutes are those dealing with "marriages" declared void from the beginning. As noted earlier, incestuous marriages were considered voidable at common law because the decree of annulment came from the ecclesiastical courts. However, section 48-105 makes such marriages void from the beginning. This reclassification coincides with the objectives of the Field Code draftsmen who were seeking to rid the law of the anomalies of the common law.

The difficulty with section 48-105 lies in the amendment made in 1919. At that time the following italicized provision was added to the statute.

Marriages between parents and children, ancestors and descendants of every degree . . . and between persons, either of whom is feeble-minded, are incestuous and void from the beginning. (Emphasis added)

Clearly an impaired mental condition or "feeble-mindedness" alone cannot be the basis for the declaration that a relationship is incestuous. Undoubtedly this amendment was an attempt by the legislature to make mental incapacity a ground for annulling marriages.

The notion of mental defect as a ground for annulment was recognized in common law. However, it was not included as a statutory impediment in the code scheme. At common law "idiocy" was deemed a civil impairment because any person suffering such an impediment did not have the capacity to contract. Because marriage was considered a civil contract any relationship between a person of unsound mind and another was void. This accounts for its location in section 48-105 where a relationship is pronounced void from the beginning. It most certainly does not account for making such a relationship incestuous.

One other section of the Marriage Title, section 48-111, concerns marriages considered void from the beginning. In this section, bigamous marriages are declared void from the beginning except in two cases. First, a previously married person can remarry if the former relationship has been ended by divorce or annulent. Secondly, marriage is possible where the former spouse is absent and not known to be living by the surviving spouse for at least five years.

---

43. R.C.M. 1947, § 48-105, supra note 40.
44. R.C.M. 1947, § 48-105, supra note 40.
45. Not only is the concept of mental incapacity oddly placed in §48-105, but a further complication exists in the inconsistency throughout the Title in the language used to refer to the concept. See R.C.M. 1947, §§ 48-105; 48-202(3); 48-204.
46. R.C.M. 1947, § 48-111, supra note 42.
preceding the subsequent marriage, or where such former spouse is believed to be dead. In either case, the subsequent marriage is valid until its nullity is adjudged by a competent tribunal. This is the only statute in the Montana code which preserves the prospective nature of the annulment decree, and then only in certain instances.

2. Voidable

The remaining kind of annulable marriages under the Field Code scheme are those considered prospectively void. In Montana these are marriages annulable on grounds of physical incapacity, force or fraud. In this case though, Montana's legislature apparently substituted the common law language of voidable for the Field Code terminology of "void from the time its nullity is adjudged by a competent tribunal." As a result of this verbal substitution, the statute is subject to at least two interpretations. It can be read to hold that such marriages were "void from the beginning," as the entry of an annulment decree in a voidable marriage has the effect of relating back and declaring the marriage was nonexistent for any purpose. Alternatively, the word voidable in this statute can be interpreted in light of what was intended by the draftsmen of the Field Code. This would give due consideration to the semantic and conceptual changes they made, that is, that the annulment decree in such cases is prospective. The annulment is effective from the time it is declared by a court of competent jurisdiction. Given the history and source of the Montana statutes, the latter seems to be the more accurate and desirable interpretation. This presents an obvious dilemma for the court.

3. Procedure

Finally, consideration must be given to the two principal statutes involved in the Angvall case. The first of these is section 48-201, allowing a judicial declaration of void marriages. It provides that "Either party to an incestuous or void marriage may proceed by an action in the district court to have the same so declared." This statute provides a procedural device whereby parties to relationships deemed void under any circumstances can obtain such declaration by a court.

The problem with section 48-201 is its imprecise use of the words of art contained in it. The statute provides that either party to an incestuous or void marriage can seek an annulment decree.

47. Id.
However, as noted above, Montana has no void marriages per se; only marriages which are void from the beginning. The two classifications differ semantically, not conceptually. In this state marriages annulled as incestuous or bigamous are void from the beginning, or in the language of the common law, void. It is likely that in this instance “incestuous” referred to one kind of marriage void from the beginning while void was a reference to bigamous marriages.

At common law either party, pro se, could terminate a relationship when a pre-existing condition rendered it void. Because it was understood there was no marriage for any purpose, there was no need of a judicial declaration of voidness. Even though this was the case at common law, there is much authority for the proposition that although a marriage is absolutely void, and so no judicial decree is necessary, yet

[A]s well as for the good order of society as for the peace of mind of all persons concerned, it is expedient that the nullity of the marriage should be ascertained and declared by decree of a court of competent jurisdiction.

Thus, where controversy is likely to occur it is reasonable to require a formal annulment proceeding as the exclusive method for establishing the voidness of a relationship. A judicial proceeding provides a format for the extensive and formal kind of factual investigation necessary to insure the interests asserted by the parties, as well as those of any third party, are protected. It is therefore very likely that this statute was intended to provide a means of litigating the questions of incest, unsoundness of mind, and bigamy, all of which, if found to exist, are grounds for a declaration that the relationship is void from the beginning.

The Montana supreme court had occasion to consider the significance of this statute when it considered State v. Crosby. The case involved a prosecution under the former criminal bigamy statute. The defendant had married while a former spouse was still living, and this had the effect of rendering the subsequent marriage

50. Briggs, supra note 11 at 53.
51. Id. citing Hahn v. Hahn, 104 Wash. 227, 176 P.3 (1918).
52. At one time a serious consideration in all annulment proceedings was the interest of third parties, especially the children of annulable marriages. The problem which had to be resolved was the effect a declaration of annulment had on the legitimacy of such children. Theoretically, if the decree related back the children were “bastardized”. In fact, this is what happened in many cases. Montana has vitiated the necessity of considering this aspect of annulment by a statutory declaration that children of relationships subsequently annulled are legitimate. See R.C.M. 1947, § 48-207. See also, Briggs, supra note 11 for a lengthy discussion of this problem.
void from the beginning. Based on this fact the defense asserted that there were no grounds for the bigamy charge as the marriage in question was void from the beginning. The court disagreed and found

... such voidness must have been declared by a court of competent jurisdiction; such a determination of voidness cannot be made by the person involved to avoid being charged with a criminal act.

Although the matter involved in *Crosby* concerned criminal conduct, the reasoning is applicable in any instance involving marriages which are void from the beginning. Self-determination of voidness is untenable where the interests of another or a third party are concerned.

4. Amendment

As the historical development of the Montana Marriage and Annulment Title is traced, it is apparent that a common thread runs throughout. The consistency lies in the conceptual notions first set forth in the Field Code's treatment of the common law. It provides the backbone of the statutory scheme. There have been few amendments to this basic format, the most notable being the 1919 amendment (making marriages between feeble minded persons incestuous) and the miscegenation statutes (later deleted from the Code).

However, in 1963 the Montana legislature again amended the code, this time injecting the language which perplexed the *Angvall* court. The Title was amended to add the following provision:

It is unlawful for any person, who is a party to an action for divorce in any court of this state, or for any Montana resident who is a party to an action for divorce elsewhere, to marry again until six months after judgment of divorce is granted, and the marriage of any such person solemnized before the expiration of six months from the date of granting of judgment of divorce shall be void.

It appears that the legislature created a new ground for annulment having no basis in the common law or in the Field Code.

It is necessary to read this statute in the context of the statement of legislative purpose enacted as part of the same chapter:

It is the intent of this act to promote the stability and best interest of marriage and the family. Marriage is the institution that is the
foundation of the family and of society and the state. The conse-
quences of the marriage contract are more significant to society
than those of other contracts and must be taken into account al-
ways . . . . The impairment or dissolution of the marriage relation
generally results in injury to the public wholly apart from the effect
upon the parties immediately concerned.59

Quite obviously the statute is a moral statement, enacted with little
or no consideration of its suitability as a part of the annulment title.

This was the state of Montana’s substantive law of annulment
when the court heard the Angvall case. The common law distinc-
tions of void and voidable served only as a backdrop for understand-
ning the Field Code. A semantical and conceptual change was mani-
fested both in the statutory language involved and in the classifica-
tions of the kinds of annulment. The legislature had created a new
ground for annulment by requiring a statutory period for divorce
decrees to exist before either party to a dissolved marriage could
remarry. Circumscribing the substantive law is the policy declara-
tion of the state’s moral interest in the marital relationship.

III. THE CASE

The case was an original proceeding in which the relator, Jon
Angvall, sought a writ of supervisory control. The trial court had
denied his motion for summary judgment in the action commenced
by his wife in which she sought to establish his liability to her for
damages he allegedly caused. The writ of supervisory control was
issued by the court with an order vacating the trial court’s denial
of the motion for summary judgment and entering a new order
granting summary judgment to the relator.60

Any law student is early exposed to legal hyperbole where plati-
tudes such as “hard cases make bad law” are embedded in the mind
for perpetuity. Sometimes, however, an appellate court opinion
lends credence to such cliches. The treatment of the issues in
Angvall seems to be one such instance in Montana.

The primary issue in the case concerned the effect to be given
an annulment decree when the relationship being annulled was sta-
tutorily declared void. Given the normal meaning of the word void
in domestic relations it appears there should have been no question
of the effect on the relationship in question. But, given the facts of
the case and the implications a decision in favor of the purported
wife would have had on the doctrine of interspousal immunity, the
court in effect relegated the fundamental issue of the case to
dictum.

60. State ex rel Angvall v. District Court, supra note 1 at 371.
The court first reached a conclusion which is apparently based on a legal syllogism. The major premise of the syllogism is a statement that Montana has never allowed a wife to sue her husband. The minor premise follows in the statement that a former wife cannot sue her husband for injuries inflicted during coverture. This, the court finds, leads to the conclusion that there is no reason to distinguish between annulments and divorce when the question involves a suit by one former spouse against the other. The conclusion seems to ignore the entire history of common law as well as a century of statutory enactment.

In considering whether the doctrine of interspousal tort immunity should be applied equally in cases of annulment and divorce, it is first necessary to assess the policy considerations which are the basis of that doctrine. The arguments in support of interspousal immunity are basically four: (1) that actions between spouses for personal torts would disrupt the harmony of the marriage and therefore be contrary to public policy; (2) permitting such actions would create a high risk of collusion and fraud at the expense of the husband's (or wife's) liability insurer; (3) adequate remedies are available in criminal and divorce courts to settle disputes between spouses; and, (4) such actions would burden the courts with trivial suits. Underlying the doctrine is the common law fiction that the personalities of the parties merge in marriage, and it is impossible for a party to sue himself.

Considering these factors it is obvious that interspousal immunity has no place when considering its effect on an annulled relationship, since annulment is a declaration that the parties never were spouses. An early Montana case articulates the precise reason the notion of interspousal immunity is not applicable to annulment:

Although it appears that up to 1895 the successive legislative assemblies of this state did not recognize the fact, there is a clear distinction between actions for annulment of a marriage on pre-existing grounds and those for dissolution of such a contract for acts committed after its solemnization. The first . . . repudiates the idea that there ever was in fact a marriage . . . and the decree of the court . . . declares the marriage null and void ab initio, while the latter recognizes the validity of the marriage and seeks a decree dissolving the bonds because of the wrongful act of one of the parties during the existence of the marriage relation.

61. Id. at 370.
62. Id. at 371.
63. Id.
65. State ex rel Wooten v. District Court, 57 Mont. 517, 522, 189 P. 233 (1920).
Perhaps the court’s resolution of the immunity question can be understood as an unwillingness by the court to allow persons who have been involved in a personal relationship of trust and confidence to recant when the partnership sours. This conclusion would have been tenable if the matter had involved a relationship deemed voidable and the court had interpreted that word in light of its code origins as a substitute for the language “void from the time its nullity is declared by a court of competent jurisdiction.” That was not the case. The statute in question in Angvall, section 48-151, was a declaration that certain marriages were void. The decision seems to be based on what the court thought was “right”, rather than a reasoned consideration of the law of annulment.

Having slammed the proverbial court house door in the purported former wife’s face, the court went on to consider whether or not she was entitled to an annulment. The statute in question made marriages within six months of a divorce void. The facts clearly indicated that Patricia Angvall was entitled to an annulment. The court’s problem was reconciling the statutory declaration that marriages such as hers were void, with the doctrine of interspousal immunity.

The court found that former section 48-151 had to be read in the context of other sections within the same title. It looked to the sections of the title which declared certain marriages “void from the beginning”. The language used in these particular sections was a semantical change implemented when the Field Code was drafted. Conceptually, a declaration that a marriage was void from the beginning was identical in effect to a common law declaration that it was void. The court failed to make this distinction, observing:

On the other hand, former section 48-151 did not say that marriages within six months of a divorce are void from the beginning, only that they are void.

Turning its attention to the chapter on annulment, the court further confused the issue by its reading of section 48-201. It should be remembered that this statute was enacted to provide a procedural device by which a party to a marriage “void from the beginning” could secure such a declaration by a court. On the basis of these two statutes, the court reached its conclusion:

67. State ex rel Angvall v. District Court, supra note 1 at 371.
68. R.C.M. 1947, § 48-201. "Either party to an incestuous or void marriage may proceed by an action in the district court, to have the same so declared." Though this statute is treated as a part of the annulment chapter, its textual location is purely coincidental. When the code was adopted in 1895 § 48-201 was not a part of the annulment chapter but was a separate article setting forth a judicial procedure to determine void marriages. Vol 2. Civ. Code (1895), tit. I, ch. I, art. III, § 100.
In view of section 48-201, we hold that the word *void* in former section 48-151 means that the marriage should be void from the time its nullity shall be declared by a court of competent jurisdiction.\(^6\)

This conclusion is tantamount to a judicial declaration that *void* as used in domestic relations, carries the same meaning that *voidable* has in other areas of the law. As the dissenting opinion notes:

The Majority has, in effect, construed the statutory declaration that such marriage is "void" to mean that it is "voidable". In so doing, public policy prohibiting this marriage has been rendered meaningless and illusory by making its vitality dependent upon the will of the parties.\(^7\)

This result is diametrically opposed to a conclusion previously reached by the Montana court in dealing with a legislative declaration that certain marriages are void. Deciding *In Re Takahasi's Estate,*\(^8\) the court had to consider the effect of a statute which declared that marriages between caucasians and persons of Japanese ancestry were void. There the court held

Neither time nor circumstance could remove the legal objection and obstacle thereto; nor could the marriage status afterward result from such cohabitation as followed. *The marriage was void and ineffectual for any lawful purpose in this state.* It is open to collateral attack in any proceeding wherein the question of its validity is raised, whether before or after the death of either or both of the parties. *The marriage was wholly non-existent, and there was no occasion ever for any proceeding to have it annulled.*\(^9\) (Emphasis added)

The statute interpreted by the court in *Angvall* involved essentially the same principle as that in *Takahasi's Estate:* The statute in both cases was a legislative declaration that a relationship is void, based upon principles having no foundation in common law. These "marriages are declared void because they violate a declared policy of the state."\(^{10}\) As the court had stated in an earlier divorce decision:

The legislature has imposed methods recognized under which the bonds of matrimony are consumated and at the same time it has imposed the methods under which those bonds may be terminated. For us to read into the statute something that is not there would

\(^{69}\) State ex rel Angvall v. District Court, *supra* note 1 at 371.

\(^{70}\) *Id.* at 372.

\(^{71}\) *In Re Takahasi's Estate,* 113 Mont. 490, 129 P.2d 217 (1942).

\(^{72}\) *Id.* at 500.

\(^{73}\) R.C.M. 1947, § 48-142.
be in effect a judicial amendment thereto. Such authority has not been committed to us. It is arguable that the Angvall court read something into former sections 48-151 and 48-201 which wasn’t there.

IV. CONCLUSION

When old rules are discarded it is inevitable that a new generation of principles will evolve. A court is burdened with the duty to provide a reasoned analytical approach in developing these new principles. On occasion, though, it appears that the duty is shrugged and that reason and principle give way to what appears to be reaction. The conclusions on such occasions, if not inimical to the integrity of the system, at least deprive it of its predictable character.

The statute interpreted in Angvall has since been repealed, so it is unlikely the particular question involved will again come before the court. The court’s interpretation of “void” however, will linger on and undoubtedly will be used as authority in subsequent annulment cases. Its effect will probably be most acutely felt in litigation concerning the incidents of marriage such as alimony and statutory compensation benefits. Progressive writers in the domestic relations field have urged that the distinctions between divorce and annulment be abolished. The effect of Angvall may well be that some of these distinctions have been abolished in Montana. Therefore, it is time for the legislature to take a careful look at Montana’s Marriage and Annulment title and rid it of the confusing language which runs throughout.

76. Clarke, supra note 15 at 143 § 3.6.
77. When a divorce decree is granted there is a declaration that the relationship has ended and the status of the parties is changed. Angvall can be read to have the same effect when an annulment decree is granted.
APPENDIX A

CONCEPTUAL DEVELOPMENT OF ANNULMENT IN MONTANA

**TEMPORAL COURTS**

1. Civil Disabilities
   a. prior marriage
   b. idiocy
   c. non-age

**ECCLESIASTICAL COURTS**

Divorce a vinculo matrimonii

1. Canonical Impediments
   a. consanguinity
   b. affinity
   c. impotence (physical incapacity)
   d. pre-contract

**ENGLISH COMMON LAW COURTS**

1. VOID
2. VOIDABLE

**AMERICAN COMMON LAW**

1. No Ecclesiastical courts
2. Void/voidable distinction

**FIELD CODE (N.Y., 1847)**

1. Eliminate common law anomalies:
   a. "void from the beginning" substituted for "void"
   b. "void from the time its nullity is declared as such by a court of competent jurisdiction" substituted for "voidable". DOES AWAY WITH CONCEPT OF RELATION BACK

**THE BANNACK STATUTES**

Divorce and Annulment treated the same.

**REVISED CODES OF MONTANA**

A. VOID FROM THE BEGINNING
1. Prior marriage ($48-111)
2. Consanguinity & Affinity ($48-105) VOIDABLE at common law.
1919 Amendment---Feble-Mindedness
3. 1963 Amendment---marriage within six months of divorce is void ($48-151) NO COMMON LAW BASIS. Repealed 1967.

B. VOIDABLE ($48-104)
1. Physical incapacity
2. Force or Fraud. VOID AT COMMON LAW.

§48-301 Proceeding to declare a relationship void. NOT REQUIRED AT COMMON LAW.

**STATE ex rel AIGNALL v. DISTRICT COURT**

"Void" in §48-151 in view of §48-201 means void from the time its nullity shall be declared by a court of competent jurisdiction.