

1956

## Ruth Caffall v. Vern Caffall : Brief of Appellant

Utah Supreme Court

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Raymond R. Brady; Attorney for Appellant;

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### Recommended Citation

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In the  
**Supreme Court of the State of Utah**

FILED

MAY 2 - 1956

Clerk, Supreme Court, U. of U.

RUTH CAFFALL,  
*Plaintiff and Respondent,*

vs.

Case No.  
8447

VERN CAFFALL,  
*Defendant and Appellant.*

**BRIEF OF APPELLANT**

RAYMOND R. BRADY,  
*Attorney for Appellant.*

# TABLE OF CONTENTS

	Page
STATEMENT OF FACTS .....	1
A. PRELIMINARY STATEMENT .....	1
B. THE FACTS .....	1
APPELLANT'S STATEMENT OF POINTS .....	4
ARGUMENT .....	5
POINT I. THAT THE COURT COMMITTED ERROR IN DENYING THE DEFENDANT'S PETITION TO VACATE AND SET ASIDE THE DECREE OF DIVORCE .....	5
SUMMARY .....	15
CONCLUSIONS .....	16

## AUTHORITIES CITED

Anderson vs. Anderson, 44 N. E. 2nd 54, p. 57 .....	7
Baldwin vs. Anderson, 8 P. 2nd 461 .....	13
Behymer vs. Schrader, 19 Pac. 2nd 829 .....	9
Choi vs. Turk, 152 Pac. 1000 .....	9
Howard vs. Howard, 26 N. E. 2nd 421 .....	8
Huffman vs. Huffman, 86 P. 593 .....	15
Hutton vs. Dodge, 198 Pac. 162 .....	9, 13, 15
In re Christensen Estate, 53 P. 1003 .....	11
Lockwood vs. Lockwood, 168 P. 501 .....	11
Miller vs. Prout, 197 Pac. 1033 .....	9
Radle vs. Radle, 214 N. W. 603 .....	11
Rynearson vs. Union County, 102 P. 785 .....	15

## TABLE OF CONTENTS—Continued

	Page
Smith vs. Smith, 166 N. E. 2nd 421 .....	7
Thompson vs. Cook, 127 (2nd) 909 .....	14, 15
Towns vs. Towns, 176 N. W. 216 .....	7
White vs. Ladd, 680 P. 739 .....	15

### TEXTS CITED

27 C. J. S., Sec. 169 .....	6
27 C. J. S., p. 628 .....	7
C. J. S. 27, p. 812 .....	8
Nelson on Divorce and Annulment, Vol. 3, p. 175, Sec. 28.27 .....	8

### STATUTES QUOTED

U. C. A. 1953, 30-3-1 .....	6
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# In the Supreme Court of the State of Utah

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RUTH CAFFALL,

*Plaintiff and Respondent,*

vs.

VERN CAFFALL,

*Defendant and Appellant.*

Case No.  
8447

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## BRIEF OF APPELLANT

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### PRELIMINARY STATEMENT

The parties will be referred to as in the court below.  
All italics are ours.

### STATEMENT OF FACTS

In this case the plaintiff, Ruth Caffall, on the 6th day of September, 1945 filed a complaint in the Third Judicial Court praying for a decree of divorce from the defendant

Vern Caffall; and on the 22nd day of October, 1945 a decree of divorce was duly entered, and said decree provided that the care, custody and control of the two minor children of plaintiff and defendant be awarded to the plaintiff and that the defendant be ordered to pay the sum of \$25.00 per month alimony and the sum of \$25.00 each for the support of the two minor children of plaintiff and defendant.

That on the 22nd day of July, 1954 the defendant Vern Caffall filed in the Clerk's office of Salt Lake County a petition to set aside the decree of divorce theretofore entered and in said petition alleged: That on the 22nd day of July, 1936 the plaintiff Ruth Dolar Caffall entered into a purported marriage ceremony with the defendant Vern Caffall at Pocatello, Idaho. That at the time the said plaintiff Ruth Dolar Caffall entered into said marriage ceremony with the defendant she was legally married and had no legal capacity to marry, yet entered into the said marriage ceremony with the defendant Vern Caffall, and that said purported marriage ceremony was from its inception null and void and of no legal force and effect, and that the decree of divorce entered in said action by the court on the 22nd day of October, 1945 is therefore null and void and without legal force and effect, and has been null and void from its inception, and the petition of said defendant prays that the purported divorce secured in the above entitled court on the 22nd day of October, 1945 be set aside and declared null and void (R. 9).

That on the 27th day of January, 1955 the defendant Vern Caffall by his attorney Raymond R. Brady served

upon the plaintiff certain interrogatories as provided by rule 33 of the Utah Rules of Civil Procedure, to answer under oath the following questions (R. 14) :

“A. Did you marry C. B. Bradford at Evanston, Wyoming on the 8th day of October, 1935?

“B. Were you legally married to him on July 20, 1936?

“C. If you were not married to Mr. Bradford on July 20, 1936, when and where were you divorced from Mr. Bradford?

“D. If you were not a divorced woman on July 26, 1936, had you previously secured an annulment? If so, when and where?

“E. Was Mr. Bradford living on July 20, 1936? If not, when and where did he die?”

To the foregoing interrogatories, the plaintiff Ruth Caffall did on the 2nd day of February, 1955 file her answer under oath (R. 15) and in answer to interrogatory “A” Mrs. Caffall stated, “I married C. G. Bradford at Evanston, Wyoming on the 8th day of October, 1935,” and in answer to interrogatory “E” Mrs. Caffall answered that to her best knowledge Mr. Bradford was living on the 20th day of July, 1936 and died sometime in 1939.

That on the 8th day of February, 1955 at 10:00 o'clock A. M. before the Honorable Clarence E. Baker the defendant's petition to vacate and set aside the decree was duly heard, and testimony introduced. That the plaintiff testified (R. 5) as follows:

“Q. Let's take the next one, Interrogatory 'C': If you were not married to Mr. Bradford on July 20, 1936, when and where were you divorced from Mr. Bradford?

"A. I appeared in the District Court of Salt Lake County approximately the last week in October, 1935 with attorney Matthews for the purpose of securing an annulment, which annulment I thought had been obtained.

"A. Yes.

"Q. Did Mr. Matthews bring you down to court?

"A. Yes.

"Q. Did you testify?

"A. No, I didn't testify.

"Q. Did you file any legal proceedings?

"A. Well, it has been so long ago I rightl can't remember. You will have to ask Mr. Matthews.

Mr. Matthews was duly called as a witness and testified (R. 22) that he had never taken Mrs. Caffall to court and had never secured an annulment, and that he had checked the records and found that there had never been an annulment obtained. The court, at the conclusion of the hearing, took the matter under advisement, and on the 5th day of October, 1955 rendered his decision thereon, denying the defendant's petition to vacate and set aside the decree of divorce, from which judgment the defendant appeals.

## APPELLANT'S STATEMENT OF POINTS

### POINT I.

THAT THE COURT COMMITTED ERROR IN DENYING THE DEFENDANT'S PETITION TO VACATE AND SET ASIDE THE DECREE OF DIVORCE.



## ARGUMENT

## POINT I.

THAT THE COURT COMMITTED ERROR IN DENYING THE DEFENDANT'S PETITION TO VACATE AND SET ASIDE THE DECREE OF DIVORCE.

The preponderance of the evidence establishes that at the time of the marriage of the plaintiff Ruth Caffall to the defendant Vern Caffall she was in fact married to C. G. Bradford and had no legal capacity to marry the defendant Vern Caffall. The plaintiff, in her answer to defendant's Interrogatory "A", admitted (R. 15) that she married C. G. Bradford at Evanston, Wyoming on the 8th day of October, 1935. The plaintiff testified (R. 15) that she appeared in the District Court for Salt Lake County approximately the last week of October, 1935 with her attorney, O. H. Matthews, for the purpose of obtaining an annulment (R. 21). The testimony of her attorney, O. H. Matthews, (R. 22) denies that he ever appeared in court with Mrs. Caffall and that he ever filed an annulment for her, and that he had searched the records of the Clerk's office of Salt Lake County and found that an annulment had never been taken seems to clearly establish that Mrs. Caffall had never obtained a divorce or annulment prior to her marriage to the defendant Vern Caffall. The plaintiff's answer to the defendant's Interrogatory "E" (R. 15) admitted that Mr. Bradford was alive at the time of her marriage to the defendant Vern Caffall, and seems to remove all doubt that Mrs. Caffall was in fact married to Mr. C. G. Bradford

at the time she married Mr. Caffall, and had no legal capacity to marry him.

The law is well settled that if the court does not have jurisdiction of the subject matter, that any decree entered is a nullity and is void and should be vacated and set aside upon application. In 27 C. J. S., Sec. 169, P. 812, the law is set forth as follows:

“A divorce decree granted by a court without jurisdiction of the subject matter or of the person is void and should be set aside irrespective of fraud.”

The evidence in this case before the court clearly shows that the parties were not legally married at the time the divorce proceedings of Ruth Dolar Caffall vs. Vern Caffall, defendant in this action, were commenced. The Utah divorce statute (U. C. A. 193, 30-3-1) provides as follows:

“Proceedings in divorce should be commenced and conducted in the manner prescribed by law for proceedings in civil cases, except as hereinafter provided, and the court may decree a dissolution of the marriage contract between the plaintiff and defendant in a case where the plaintiff shall have been an actual and bona fide resident in this state and the county where the action is entered for three months next prior to the commencement of the action, for any of the following grounds; \* \* \*.”

It is obvious from a plain reading of the statute that the jurisdiction of the court in divorce matters is limited to the dissolution of marriages, and where the evidence shows that there is no valid marriage contract then existing, the court has no jurisdiction of the subject matter, and any decree by the court would be void ab i nitio.

Regardless of the extent of its equity powers in other matters, a court of equity cannot assume any powers in divorce actions or proceedings other than those which are expressly conferred by statute (*Towns vs. Towns*, 176 N. W. 216), and since the Utah divorce statute confers jurisdiction only to dissolve marriages and conveys no further jurisdiction, this court has no jurisdiction unless there is in fact a valid existing marriage at the time the action is commenced. In 27 C. J. S., P. 628 the rule is stated as follows:

“The general power to grant a divorce is statutory, and particular courts have such power and *only such power* in this regard as is conveyed by statutory or constitutional provisions. In view that a divorce proceeding, insofar as it affects the status of the parties, is an action in rem, it can be stated broadly that in order that any court may obtain jurisdiction of any action for divorce, such court must obtain jurisdiction of the res, that is, of the marriage status.”

In the case of *Anderson vs. Anderson*, 44 N. E. 2nd 54, P. 57, the court said:

“The jurisdiction of a court hearing divorce matters depends upon the grant of the statute and not upon its general equity powers.”

In *Smith vs. Smith*, 166 N. E. 85, the court said:

“Courts of equity have no inherent powers in cases of divorce. The jurisdiction of courts of equity to hear and determine divorce cases and all matters related thereto is conferred entirely by statute. While such courts may exercise their powers within the limits of the jurisdiction conferred by the statute, the jurisdiction depends upon the grant of the statute and not upon general equity powers.”

It seems to clearly follow that if there is in fact no marriage there would be no res or subject matter over which the court would have jurisdiction, and any action taken by the court would be without jurisdiction and void. In the case at bar the great preponderance of evidence shows that there was in fact no valid existing marriage between the parties at the time the action for divorce was commenced or at the time the divorce was entered, and for that reason, the court having no jurisdiction of the subject matter, the decree was void from the beginning. (C. J. S. 27, P. 812.)

“A divorce decree granted by a court without jurisdiction of the subject matter entered or of the person, is void and should be set aside irrespective of the question of fraud.”

The rule is well stated in Nelson on Divorce and Annulment, Vol. 3, P. 175, Sec. 28.27:

“If the court granting a purported divorce lacked jurisdiction to grant such relief, its decree is beyond the court and unquestionably open to attack by anyone at any time. But if it had jurisdiction of the subject matter the court’s decree is not open to attack for error in its findings as to residence requirement, and the party who sought the divorce or the opposing party if he is guilty of collusion or acquiescence in the proceedings is estopped to question such findings.”

In *Howard vs. Howard*, 26 N. E. (2nd), 421, the court says:

“A decree entered without jurisdiction is void and can be vacated at any time, and may be even attacked collaterally.”

*Miller vs. Prout*, 197 Pac. 1033, is a case of a void judgment, the invalidity of which does not appear on the face of the record, and was vacated upon motion and a showing by extrinsic evidence. The case of *Choi vs. Turk*, 152 Pac. 1000, an Oklahoma case holding that a void judgment would be set aside and vacated at any time on a motion in a direct proceeding. The case of *Behymer vs. Schrader*, 19 Pac. 2nd 829, is another case with the same holding, and in this case the court said:

“It is conceded that the attack made on the judgment quieting title is collateral and not direct. The chief distinction between a collateral and a direct attack upon such a judgment is that in a collateral attack the evidence shown may be raised to show excess of jurisdiction is restricted to the judgment role as defined by law at the time of the rendition of the judgment, but whereby a resort to such evidence the want of validity in the judgment is demonstrated, the duty to declare it void is imperative in collateral as well as direct attack.”

This case shows the distinction between a case in which a void judgment is attacked in a direct attack and not in a collateral attack. There are many cases holding that a judgment cannot be attacked collaterally, but there are few if any cases holding that a direct attack cannot be made by motion in the proceedings in a divorce action where the facts show that the decree is in fact void for lack of jurisdiction of the subject matter.

In the case of *Hutton vs. Dodge*, 198 Pac. 162, our Supreme Court quoted with approval the following language

from the opinion of Chief Justice Shaw, 2 Gray 61, Ma. Dec. 454:

“But we think the point here is settled by authority, not specifically in regard to divorce but generally as to the conclusive fact of a judgment in a case arising afterwards in the same matter between the same parties. We take the rule to be that a judgment of a court of competent jurisdiction having jurisdiction of the subject matter and of the parties, the legal processes duly served, where no appeal, writ of error, or review or other legal process is commenced by the party who would void the judgment in the mode or time prescribed by law is conclusive upon the same parties in any other proceeding in law or equity or before any other judicial tribunal.”

Our Supreme Court, after approving the foregoing language, expressly limited this rule to those cases wherein the court has jurisdiction of both the person and the subject matter, and used the following language:

“Thus we see the application of the doctrine contended for by the appellant is *conditional upon the fact that express jurisdiction has been obtained both of the subject matter and of the person.*

“It is unnecessary to review the cases in detail. They are clearly distinguishable from the case at bar. *They do not in any manner attempt to controvert the fundamental idea that where jurisdiction has not been obtained there is no basis for the plea res adjudicata.* As stated by Chief Justice Shaw in the excerpt hereinbefore quoted, a judgment becomes res adjudicata only when the court has acquired jurisdiction over the subject matter and of the parties.”



In the case of *Lockwood vs. Lockwood*, 168 P. 501, an Arizona case, the court held that where there is a failure to get jurisdiction of the defendant in a divorce action upon a proper showing the court should set aside the judgment at any time. And again, we say that the same rule would apply to those cases where the court had no jurisdiction of the subject matter.

In the case of *In re Christensen Estate*, 53 P. 1003, our Supreme Court said:

“A decree of divorce granted *without jurisdiction of the subject matter or of the person is absolutely void.*”

The same rule is expressed by the Supreme Court of Iowa in the case of *Radle vs. Radle*, 214 N. W. 603, where the court in a divorce action sustained a motion to set aside the decree on the grounds there had been no proper service of summons, and in setting aside the decree the court said:

“It is of course true that if the decree complained of is absolutely void for want of jurisdiction of the court, then it would be subject to either a direct or collateral attack and by procedure quite independent of the statute. If therefore we should look upon defendant’s motion either as a direct or collateral attack upon a void decree, he is under no less burden of proving facts which negative the jurisdiction of the court.”

In line with this case some jurisdictions have held that where a direct attack is made upon the validity of a void judgment the burden is upon the party raising the question to assume the burden of proof of showing that the judg-

ment or decree is in fact void for lack of jurisdiction. We believe that the defendant, Vern Caffall, has sustained that burden of proof in this case now before the court. This Iowa case is in harmony with the decision of our own court and follows the rule that the judgment rendered is absolutely void if the court did not in fact have jurisdiction of the person and the subject matter, but creates a presumption that the decree is valid and places the burden of proof upon the party asserting a lack of jurisdiction of proving lack of jurisdiction, but when the one raising the question of jurisdiction has assumed that burden of proof as Mr. Caffall has in this case, then the court should vacate and set aside the decree.

In the case at bar the defendant, Vern Caffall, filed a petition in the original divorce proceeding to vacate and set aside the decree on the ground that the court had no jurisdiction of the subject matter, and on the hearing the evidence clearly established that at the time of the marriage of the plaintiff to defendant, plaintiff was in fact married to another man, and was, of course, never legally married to defendant, and plaintiff and defendant not being legally married, this court has no jurisdiction over the subject matter, and the decree was absolutely void from the beginning and can be attacked in a direct attack at any time.

It may be conceded that some of the texts and cases seem to hold that if the decree is valid on its face it cannot be vacated. In other words, before the decree may be vacated the lack of jurisdiction must appear on the face of the judgment roll and cannot be shown by extrinsic evi-



dence. But an examination of these cases reveals that they are cases wherein the attack on the judgment is a collateral attack and not a direct attack as we have in the case at bar. But, a direct attack on the judgment by a petition in the original divorce proceedings to vacate and set aside the judgment is a direct attack and the courts have generally held as did our Supreme Court in the case of *Hutton vs. Dodge*, that such a proceeding is a direct attack and that on the hearing of the motion to vacate and set aside the judgment any fact going to show the lack of jurisdiction of the court to enter the judgment may be presented, and if the facts show that the court had no jurisdiction of either the person or the subject matter, the court should declare the judgment void.

The language of the court of Idaho in the case of *Baldwin vs. Anderson*, 8 P. (2nd), 461, expresses the more reasonable rule to be followed in cases involving this problem:

“The power within proper limits to vacate its judgments is inherent in all courts of record independent of statute (Freeman on Judgments, 5th Ed. Sec. 194, p. 375). While we have no statute expressly authorizing the vacation of a judgment on motion, the inherent power of courts of record to vacate their judgments void upon the face of the judgment roll upon the motion of a party or on its own motion at any time has been repeatedly recognized, by this court, and where the invalidity of a void judgment does not appear on the face of the judgment roll, it may be vacated upon motion made within a reasonable time. Such motion is a direct and not a collateral attack on the judgment, and any facts going to show the invalidity of the judgment

can be presented at the hearing of the motion. In addition to jurisdiction of the parties and the subject matter, it is necessary to the validity of the judgment that the court have jurisdiction of the question which its judgment assumes to decide and jurisdiction to render the judgment for the particular remedy or relief which the judgment undertakes to grant."

In the case at bar the court did not have jurisdiction of the subject matter.

Even though this court should follow those few cases in which the courts have held that before the court can vacate and set aside the judgment the lack of jurisdiction must appear on the face of the judgment roll, this court could not do so in the case at bar. In the case of *Thompson vs. Cook*, 127 P. (2nd) 909, the Supreme Court held that the trial court has no power to set aside on motion a judgment or order not void on its face unless the motion is made within a reasonable time from the date of the entry of the judgment except where the party in whose favor an order or judgment, valid on its face, runs, admits facts or fails to dispute evidence showing its invalidity, then the trial court must declare the judgment void. In the case at bar the court, having permitted the introduction of evidence as to the question of jurisdiction at the hearing upon defendant's petition to vacate the decree and the evidence now before the court not being successfully disputed that there was no valid existing marriage between the parties and the court had no jurisdiction of the subject matter of the action at the time the divorce was granted, this court must now vacate the decree as the California court did in the

case of *Thompson vs. Cook*. This rule is also well stated in the case of *Huffman vs. Huffman*, 86 P. 593, where the court said:

“Where a void judgment is called to the attention of the court, it is incumbent upon that tribunal to purge its own records of the nullity by cancelling the entry thereof.”

The case of *Rynearson vs. Union County*, 102 P. 785, holds that if upon application, a void judgment is not set aside, and the invalidity is attempted to be upheld, whereby the court in refusing to discharge the duty thus devolving upon it, exercises its judicial functions erroneously.

It seems to the writer that the clear duty of this court is to set aside the decree of divorce in this case because the evidence now before this court established the fact that the plaintiff and defendant were not in fact married at the time the divorce proceedings were had, and this court had no jurisdiction of the subject matter and the decree is void, and that this precise question was determined by our own Supreme Court in the case of *Hutton vs. Dodge*.

This court should set aside a void judgment at any time it is called to the attention of the court as was stated in the case of *White vs. Ladd*, 680 P., 739, wherein the court said:

“This power is inherent with the court and will be exercised even at its own suggestion for the preservation of its dignity and the protection of its officers and to arrest further actions which can serve no lawful purpose.”

## SUMMARY

At the time the plaintiff Ruth Caffall married the defendant Vern Caffall she was then married to C. G. Brad-

ford and had no legal capacity to marry the defendant Vern Caffall. That the Utah divorce statute confers jurisdiction only to dissolve marriages, and since there was no valid marriage existing between the parties at the time the divorce proceedings were had the court had no jurisdiction of the subject matter.

## CONCLUSIONS

That since there was no valid existing marriage between the parties at the time the plaintiff filed her action for divorce, the court had no jurisdiction of the subject matter and the decree is void ab i nitio; and the trial judge committed error when it denied the defendant's petition to vacate and set aside the divorce decree.

Respectfully submitted,

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