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## Domestic Relations—Annulment for Refusal to Submit to Religious Ceremony

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### Annulment for Refusal to Submit to Religious Ceremony

Although a religious ceremony is not legally essential to the creation of a valid marriage,<sup>16</sup> it is of primary importance to persons of many faiths, and this fact is recognized and condoned by the law. It is a settled principle, that where one prospective spouse, in order to induce the other to enter a civil marriage, makes a promise of a subsequent religious ceremony without intending to keep it, an annulment will be granted where there has been no consummation by cohabitation.<sup>17</sup>

In *Brillis v. Brillis*,<sup>18</sup> the plaintiff and defendant were civilly married, with an understanding that they would not live together as man and wife until a later religious ceremony was performed. The defendant was an alien, required to leave the United States, who could facilitate his return to this country, as a non-quota immigrant, by such a marriage. The defendant, after his return, refused to undergo the religious ceremony and demanded a large dowry and great financial assistance. Therefore, there was no consummation of the marriage and the plaintiff brought this action seeking an annulment on the grounds of fraud.<sup>19</sup>

The Court of Appeals was unanimously of the opinion that this recorded evidence was sufficient to determine that the defendant never intended to undergo a religious ceremony and, therefore, affirmed the granting of the annulment by the lower courts.<sup>20</sup>

This decision is a recognition, without mentioning the rule, that although post-nuptial events are not grounds for annulment, they reflect the intent of the parties at the time the marriage was entered into.<sup>21</sup>

### Custody of Children

In *In Re Maxwell's Adoption*,<sup>22</sup> the natural mother's consent to a private adoption of her illegitimate child was legally insufficient. However, this consent is not deemed necessary under section 111 of the Domestic Relations Law if the parent has abandoned the child.<sup>23</sup> What action constitutes an "abandonment" is the first question presented the Court of Appeals by this case.

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16. N. Y. DOMESTIC RELATIONS LAW §11.

17. *Watkins v. Watkins*, 197 App. Div. 489, 189 N.Y.Supp. 860 (1st Dep't 1921); *Aufiero v. Aufiero*, 222 App. Div. 479, 226 N.Y. Supp. 611 (1st Dep't 1928); GROSSMAN, NEW YORK LAW OF DOMESTIC RELATIONS, §719 (1947).

18. 4 N.Y.2d 125, 173 N.Y.S.2d 3 (1958).

19. N. Y. CIV. PRAC. ACT §1139.

20. *Brillis v. Brillis*, 207 Misc. 104, 137 N.Y.S.2d 32 (Sup. Ct. 1954), *aff'd* 3 A.D.2d 662, 158 N.Y.S.2d 780 (2d Dep't 1957).

21. *Anonymous v. Anonymous*,—Misc.—, 49 N.Y.S.2d 314 (Sup. Ct. 1944).

22. 4 N.Y.2d 429, 176 N.Y.S.2d 428 (1958).

23. N. Y. DOM. REL. LAW §11.