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Domestic Relations - Annulment of Marriage for Fraud

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Domestic Relations—Annulment of Marriage for Fraud.—Petition for the annulment of marriage on the ground of fraud. The defendant induced the plaintiff to marry him in a civil ceremony upon the promise that within a year thereafter he would marry her according to the rites of the Roman Catholic Church of which they were both members. The civil marriage ceremony was performed by a justice of the peace, at which time the defendant again promised to be married subsequently according to the rites of the Church. The parties did not publicly announce their marriage, nor did they make it known to their friends or acquaintances. The marriage was not consummated. The annulment was granted

The Court of Chancery stated that under its general power to annul fraudulent contracts it had jurisdiction to annul a contract of marriage for sufficient fraud, and where there had been no consummation of the marriage any fraud which would be sufficient to annul an ordinary contract should in reason be sufficient to annul a marriage contract. *Nocenti* v. *Ruberti* (N.J. 1939) 3 A. (2d) 128.

Marriage, so far as its validity in law is concerned, is a civil cotract to which the consent of the parties is essential. *Lyannes* v. *Laynnes,* 171 Wis. 381, 177 N.W. 683 (1920). Wisconsin Statute (1937) § 247.02(4) provides for the annulment of a marriage on the ground of fraud "at the suit of the innocent and injured party, unless the marriage has been confirmed by the acts of the injured party." The fraud must have been committed by a party to the marriage. Fraud of a third person will not be a ground for an annulment. *Keyes* v. *Keyes,* 22 N.H. 553 (1851).

In England a marriage will not be annuled for fraud which induces consent. The fraud must be such as to prevent consent, e.g. where a man goes through a marriage ceremony with a woman as to whose identity he has been deceived. Thus, if A goes through a ceremony with B whom he believes to be C, but who is in fact C's twin sister, there is fraud which procures the appearance of consent without its actuality. *Moss* v. *Moss* (1897) P. 263.

In Massachusetts fraud which induces rather than prevents consent will suffice to annul a marriage provided it "goes to the essence of the relationship." Mere errors or mistakes concerning the character or qualities of the spouse as to personal traits or attributes or concerning the position or circumstances in life of the other party are not sufficient for an annulment of the marriage. Such fraudulent representations are looked upon as mere accidental qualities which do not constitute the essential and material elements on which the marriage relation rests. Thus a representation of antenuptial chastity, when in fact at the time of making the statement, and entering into the marriage, the defendant was pregnant by another man constituted grounds for an annulment for fraud, as the representation directly affected her actual present condition and fitness to execute the contract. *Reynolds* v. *Reynolds,* 85 Mass. 605 (1862). Likewise the discovery of a venereal disease in the defendant if prior to consummation. *Smith* v. *Smith,* 171 Mass, 404, 50 N.E. 933 (1898). In Wisconsin even though there has been consummation, concealment of a venereal disease is fraud sufficient for an annulment if there was no ratification by marital relations after the discovery of the fraud, *C*——— v. *C*———, 158 Wis. 301, 148 N.W. 865 (1914).

However, in the case of *Di Lorenzo* v. *Di Lorenzo,* 174 N.Y. 467, 67 N.E. 63 (1903), the New York Court extended the doctrine to include every misrepresentation as to a material fact made with the intention of inducing another to enter the marriage and without which he or she would have refused to do so.

Following this theory of fraud the New York courts have granted annulments where both parties were of the Orthodox Jewish faith and a promise was made that after a civil ceremony a religious ceremony would be performed. In default of compliance with this promise, an annulment was granted. There was, however, no cohabitation. *Rubinson* v. *Rubinson,* 110 Miss. Rep. 114, 181 N.Y. Supp. 281 (1920); *Watkins* v. *Watkins,* 197 App. Div. 489, 189 N.Y. Supp. 860 (1921); *Rozsa* v. *Rozsa,* 117 Misc. Rep. 728, 191 N.Y. Supp. 868 (1922); *Rutstein* v. *Rutstein,* 221 App. Div. 79, 222 N.Y. Supp. 688 (1927).

In *Wells* v. *Talham,* 180 Wis. 654, 194 N.W. 36 (1923) the Wisconsin Supreme Court adopted the Massachusetts view, requiring fraud which goes to the essence of the marriage relationship rather than fraud sufficient to vitiate an ordinary civil contract. In that case an elderly Catholic man had entered into a marriage with a Protestant woman who falsely represented that she was a widow, when in fact she had a living husband from whom she had been divorced. Although the plaintiff could not continue cohabitation with the woman according to the tenets of his faith, and would never have married her had he known the facts, it was held that the facts were insufficient to allow an annulment for fraud.

Since the Di Lorenzo case *supra,* the courts of some states have relaxed the strict view which they formerly had, as to the degree or kind of fraud which will be sufficient to annul the marriage contract. The Minnesota Supreme Court in the case of *Robertson* v. *Ruth,* 163 Minn. 501, 204 N.W. 329 (1925), declared that in order to constitute fraud sufficient to grant an annulment of the marriage contract, "it must be something which destroys consent and blots out all semblance of the contract, or it must impose upon the one wronged, at the time of the marriage, burdens of such a character that tend to destroy the domestic happiness." There an annulment was granted upon the grounds of concealment of antenuptial insanity, and the spending of a period of time in an asylum for the insane. This trend was followed in *Wemple* v. *Wemple,* 170 Minn. 305, 212 N.W. 808 (1927), where the defendant falsely represented that she had obtained a divorce from the man with whom she had been living, when in fact she had been living in a state of adultery with him. Upon these facts an annulment was granted. Cf. *Reynolds* v. *Reynolds,* 171 Minn. 340, 214 N.W. 650 (1927), where the annulment was granted for fraudulent representation as to the time of obtaining a divorce from his former spouse. In *Christlieb* v. *Christlieb,* 71 Ind. App. 682, 125 N.E. 486 (1919), where the defendant had falsely represented that he had not previously been married, whereas he was divorced under a decree which required him to pay for the support of three children, the fraud was held sufficient for an annulment. There had been no consummation.

In *Gatto* v. *Gatto,* 79 N.H. 177, 106 Atl. 493 (1919) where the husband informed the wife before the marriage that he would not under any circumstance marry her if she was not a chaste woman, and the wife assured him that she was chaste and virtuous, although in fact she had for a number of years been guilty of incest with her father, the court granted an annulment to the husband because of the fraud. The same court, however, in a later case, *Heath* v. *Heath,* 85 N.H. 419, 159 Atl. 418 (1932) held that a false representation of good moral character and of never having been convicted of crime was not sufficient to obtain an annulment from a man who had been convicted of adultery.

It is interesting to note, however, that most courts will grant an annulment for the fraudulent concealment of a fact which vitally affects the health of

the other spouse, or offspring; tuberculosis, *Davis* v. *Davis,* 90 N.J.E. 158, 106 Atl. 644 (1919); *Sobol* v. *Sobol,* 80 Misc. 277, 150 N.Y. Supp. 248 (1914); epilepsy; *Richardson* v. *Richardson,* 246 Mass. 353, 140 N.E. 73 (1923), but see *Busch* v. *Gruber,* 98 N.J.E. 1, 131 Atl. 101 (1925); insanity, *McGill* v. *McGill,* 179 App. Div. 343, 166 N.Y. Supp. 397 (1917), apparently overruled by *Lapides* v. *Lapides,* 254 N.Y. 73, 171 N.E. 911 (1936).

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Municipal Corporations—Validity of Parking Meter Ordinances.—Complaint was made in the police court of Providence, R. I., against the defendants for parking an automobile in a parking meter zone without depositing a coin as required by traffic regulation 36 Sec. 3(e). An ordinance was passed under the authority of Public Laws, 1935, c. 2275, sec. 8, which provided that the Police Bureau "shall have authority to make all needful rules and regulations for control of traffic." Before trial in the lower court the defendants filed identical motions to quash the warrants and these motions raised the question of the constitutionality of the ordinance as a violation of the "due process" clause of the State Constitution, Art. I, sec. 10, and of the Federal Constitution, 14th Amendment, Sec. 1.

The constitutional question was certified to the appellate court, which refused to discuss or determine the constitutionality of such an ordinance until its constitutionality was first proved to be necessarily involved in the decision of the case. To determine that question the case was remanded. *State* v. *Goldberg* (R.I. 1938) 1 Atl. (2d) 101.

Attacks upon the legality of parking meters have been made on widely diversified grounds. In *State ex rel Harkow* v. *McCarthy,* 126 Fla. 433, 171 So. 314 (1936), the defendant had parked his car in a parking meter zone, and had refused to deposit the required coin. After his arrest he petitioned for a writ of habeas corpus on the ground that the ordinance was unconstitutional, because it was a means of raising revenue through the exercise of the police power. The appellate court held that the parking meters were acting as mechanical police, and therefore constituted a *bona fide* exercise of the police power. The court also stated that those who received the extra benefit of being able to park for thirty minutes instead of the ten minutes previously allowed, should pay the five cents to meet the cost of added convenience.

In *Harper* v. *City of Wichita Falls* (Tex. Civ. App. 1937) 105 S.W. (2d) 743, the petitioner sought an injunction against the use of parking meters on these grounds: 1) the placing of the parking meters at the curb exceeded the authority of the city to maintain the streets; 2) that it was an attempt to zone the particular section, and since there was no notice given, it was invalid; 3) that the meters caused a loss in business, which resulted in a depreciation of property value; 4) that the ordinance constituted a revenue raising scheme; 5) that such placing of meters was unreasonable and arbitrary, in that it unlawfully interfered with the rights of ingress and egress to and from private property, and therefore, violated the "due process" clauses of the state and federal constitutions.

The court denied the application for an injunction. In answer to the contentions of the petitioner the court stated that the fee charged was not a tax measure and therefore not forbidden by the city charter. The plaintiff had only one vested right in the use of the streets and this right was not violated. The public