



1943

Criminal Seduction in Kentucky, Kentucky Statutes Sec. 1214

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Recommended Citation

Knuckles, Grant (1943) "Criminal Seduction in Kentucky, Kentucky Statutes Sec. 1214," *Kentucky Law Journal*: Vol. 31 : Iss. 2 , Article 8.
Available at: <https://uknowledge.uky.edu/klj/vol31/iss2/8>

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to recognize as valid a mortgage given before the crop was planted. The court indicated that if the crop were sown the mortgagee would acquire a lien thereon superior to after acquiring purchasers taking with actual notice¹⁷ It would seem that the court meant that a mortgage on future crops was void but that mortgages on planted crops were to be treated as giving the mortgagee an equitable lien.

From the dictum in the Kentucky case of *Cheatham v. Tennell's Assignee*¹⁸ it seems that a mortgage might be given upon the increase of female animals even before the animals are bred.

Kentucky now has a statutory provision governing mortgages of crops and livestock. Carroll's Kentucky Statutes, 1936 Edition, Sec. 523b-1 enumerates the types of property which may be mortgaged and provides that a mortgage may be given upon:

"a. Any and/or all livestock of every kind and character whatsoever, including the increase, issue, progeny and/or produce thereof, whether such increase, issue, progeny and/or produce is in being or may come into being during the existence of the mortgage or any renewal thereof."

and in regard to crops:

"e. Any and/or all emblements and any and/or all crops (either annual or perennial) whether industrial, agricultural, field, hothouse, greenhouse and/or garden crops, either or whether grown or growing under glass in hothouse, greenhouse or in field or garden or to be planted within one year from the date of such mortgage."

To summarize, it would appear, that in Kentucky there is still an opportunity for the courts to follow the common law rule which has not been expressly abrogated by statute and to hold that the young of animals which have a potential existence may be the subject of a sale. The situation as to mortgages is not affected by the Sales Act but is governed by Section 523b-1 which now allows a mortgage of an unplanted crop which was not allowed before. Section 523b-1 does not change the older Kentucky rule as to the mortgage of the young of animals for under this section the young of animals which come into existence during the mortgage or during renewals of the mortgage may be valid subjects of the mortgage.

MARY BARTON

CRIMINAL SEDUCTION IN KENTUCKY, KENTUCKY STATUTES SEC. 1214.

Although at common law seduction was not an indictable of-

¹⁷ Dictum in cases cited *supra* note 16.

¹⁸ *Cheatham v. Tennell's Assignee*, 170 Ky. 429, 186 S. W 128 (1916).

fense,¹ Kentucky, as well as many other states, has made seduction a statutory felony.² The Kentucky Statute provides:

"Whoever shall, under promise of marriage, seduce and have carnal knowledge of any female under twenty-one years of age, shall be guilty of a felony and, upon conviction thereof, shall be confined in the penitentiary not less than one year or more than five years. No prosecution shall be instituted where the person charged shall have married the girl seduced, or offer and be willing to marry her, unless he shall wilfully and without such cause as constitutes a statutory ground of divorce to the husband, abandon or desert her within three years after the date of the marriage, and any prosecution instituted shall, upon the request of the defendant, be suspended if the party accused marry the girl seduced before final judgment; but the prosecution shall be renewed and proceed as though no marriage had taken place if the accused shall wilfully and without such cause as constitutes a statutory ground of divorce to the husband abandon or desert his wife within three years after the marriage. All prosecutions under this section shall be instituted within four years after the commission of the offense."

The above cited statute is not primarily intended to be a criminal statute.³ In *Commonwealth v. Wright*⁴ the court stated the purpose of the statute by saying: "the marriage of the parties is the purpose, intent and spirit of the statute. Within its keeping the past misery and shame may be forgotten, the future happiness of both secured; so that, the statute being so construed, although the seducer be forced almost to the very doors of the penitentiary before offering to fulfill his promise of marriage, yet, having done so, on good faith, and his offer having been declined, he can do no more, the woman, and not the man, defeats the object and purpose of the statute." Thus, it would seem that the statute is a roundabout method of specifically enforcing a contract to marry. If it is true that the primary purpose of the statute is to enforce marriage contracts its expediency is doubtful. Assuming that love and happiness, as stated in *Commonwealth v. Wright*, were sure to follow all such coerced marriages, the statute would be highly humanitarian. However, in reality antagonisms and divorces are the more probable consequences of such marriages.

In order to obtain a conviction under this section it is necessary that the girl be seduced under promise of marriage.⁵ Whether or not the acts or words used are sufficient to constitute a promise of marriage, it seems, is to be determined by general contract law. However, it is held if the promise is conditioned on pregnancy there

¹ *Martin v. State*, 19 Ala. App. 251, 96 So. 734 (1923), *People v. Nelson*, 153 N. Y. 90, 93, 46 N. E. 1040 (1897).

² See 57 C. J. Sec. 150.

³ *Commonwealth v. Ingram*, 114 Ky. 726, 71 S. W. 908 (1903)

⁴ *Commonwealth v. Wright*, 16 Ky. L. Rep. 251, 27 S. W. 815 (1894).

⁵ *Morehead v Commonwealth*, 194 Ky. 592, 240 S. W. 93 (1922).

can be no conviction.⁶ Also, the girl must yield because of the promise of marriage and not as the result of lust on her part.⁷ The entire question of consent due to promise of marriage was well stated in *Morehead v. Commonwealth*⁸ as follows:

"Any act, deception, or artifice used in accomplishing the seduction is competent as tending to prove the offense, but the statute requires that it be committed under promise of marriage. Whether that promise must be made in so many words, or whether words or suggestions intended to convey a promise and accepted as such are sufficient need not be decided. Any advancement that leads a woman to believe that the man is going to marry her is sufficient. The prosecutrix might have accepted an advancement as meaning a promise, when it was never so intended and was not reasonably susceptible of that construction. Certainly, if the statute does not require an express promise, it requires such action and words as clearly imply a promise."

Kentucky further imposes the requirement that the girl seduced must be chaste.⁹ This does not necessarily mean virginity but that the girl must not have had illicit relations within a reasonable time prior to the present act.¹⁰ Some states take a different position by making virginity an essential factor of the offense.¹¹ It is necessary that the woman be unmarried in order to be seduced.¹² However, the accused need not be single to commit the offense.¹³ An interesting circumstance presents itself relative to the requirement that the woman be unmarried in order to be seduced: Suppose the woman is divorced and the accused, through promise of marriage, has intercourse with her. Is such a woman an unmarried woman within the meaning of the statute? It seems that this question has never been decided in Kentucky. However, in those jurisdictions where it has been decided there is a split of authority. Those cases saying a divorcee can be seduced base their holding on the fact that an unmarried woman means a single woman at the time of act.¹⁴ The cases taking the position that a divorcee is not an unmarried woman within the meaning of the statute base their holding on a strict interpretation of the statute.¹⁵

Under the statute the woman must be under twenty-one years in order to have a conviction. If the woman is slightly older than twenty-one it would seem there could be no conviction. It seems that those statutes which have no express provision as to the

⁶ *Hoskins v. Commonwealth*, 188 Ky. 80, 221 S. W. 230 (1920).

⁷ *Ibid.*

⁸ *Supra*, note 9, page 597.

⁹ *Morehead v. Commonwealth*, 194 Ky. 592, 240 S. W. 93 (1922).

¹⁰ *Gaddis v. Commonwealth*, 175 Ky. 183, 193 S. W. 1052 (1917).

¹¹ *State v. Johnson*, 182 N. C. 883, 109 S. E. 786 (1921).

¹² *Norton v. State*, 72 Miss. 126, 16 So. 264 (1894).

¹³ *Commonwealth v. Tobin*, 140 Ky. 261 (1910).

¹⁴ *People v. Weinstock*, 140 N. Y. Supp. 453, L. R. A. 1916D 457 (1912).

¹⁵ *Jennings v. Commonwealth*, 109 Va. 821, 63 S. E. 1080 (1919).

age of the woman are more logical. Some jurisdictions have taken the position that the age limit is immaterial, provided the woman has reached the age of puberty¹⁶

The most peculiar element of the statute is the defense given to the accused. It is provided that he has a valid defense if he marries, or offers to marry, the prosecutrix any time prior to final judgment.¹⁷ At first impression this statute would not have a striking effect. However, slight consideration reveals undesirable consequences. In the first instance the accused would gladly take a wife in preference to a jail sentence. Equally as true, the prosecutrix would take a husband in preference to bad repute. It is obvious that such marriages would be as insecure as totalitarian promises. Sooner or later, the great majority would end at the feet of the chancellor.

Another problem arising under the statute should be mentioned: What procedure is to be employed by the state relative to the indictment when the accused marries the woman? In answering this question the court in *Barkley v. Commonwealth*¹⁸ said:

"Under the statute two courses are open to the commonwealth in a prosecution for seduction when the accused marries the girl seduced; one being to continue the indictment on the docket for three years, or file it away with leave to redocket on notice; the other being to dismiss it, and, if, within three years the accused should abandon his wife without cause, reindict him."

In conclusion, it would be well to note another question that might arise under the statute; namely, the availability of the plea of former jeopardy to one who marries the prosecutrix during a prosecution for seduction, but later deserts her without cause, and is again prosecuted for the same offense. In *Commonwealth v. Tobin*¹⁹ the court said:

"That there was a former indictment which was dismissed without the defendant's being tried on it, or his having been placed in jeopardy under it, is not a bar to subsequent prosecution for the same offense. Even though he was placed in jeopardy by the trial's having been begun, if he then marries the girl and moved a discontinuance of the trial, he would not subsequently be allowed to take advantage of his own act-so far as to defeat the renewed prosecution."

GRANT KNUCKLES

¹⁶ *Whately v. State*, 144 Ala. 68, 39 So. 1014 (1906).

¹⁷ *Polk v. State*, 40 Ark. 482, 48 Am. Rep. 17 (1883).

¹⁸ *Barkley v. Commonwealth*, 154 Ky. 201, 157 S. W. 373 (1913).

¹⁹ 140 Ky. 261, 130 S. W. 1116 (1910).