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Domestic Relations—Support: Parent-Child

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The court during its last term formulated a new test in denying an annulment on grounds of fraud in *Woronzoff-Daschkoff v. Woronzoff-Daschkoff*.[29] The defendant represented that he always earned his own living, had never taken money from any women, that his purpose in marrying was to contribute to the plaintiff's (wife) happiness and faithfully perform his husbandly duties, that his social position was high in Europe and New York. All these representations were false when made and the plaintiff relied on them in giving her consent to the marriage.

Desmond, J. for the court said that the defendant performed the *fundamental* duties of the marriage relationship and reformulated the test so that the fraud must go to the matters *vital* to the marriage relationship *only*, citing *Lapides v. Lapides*.[30] The court further stated that fraudulent practice in respect to character, fortune, health or the like does not render a marriage void. This is of course dictum as the misrepresentations of the defendant were not material under previous standards. Nevertheless the dictum if followed in succeeding cases will be a return to a great extent to the *essentialia* doctrine. To what degree this return is intended is evidenced by a speech delivered by Judge Desmond where he recommended that annulment actions be limited to certain types of fraudulent misrepresentations—such as those "going to the essence of the marriage."[31]

Support: Parent-Child

In practically all American jurisdictions, a father has a legal as well as a moral duty to support his minor children.[32] The legal problems arising in this connection relate primarily to the methods of enforcing the performance of this duty.[33] This was the question before the Court in *Langerman v. Langerman*.[34] The infant plaintiffs brought an action in Supreme Court seeking support from their father, over and above the provisions made for them in a Nevada divorce decree. The complaint was dismissed upon the ground that the court did not have jurisdiction to order the support of children in an action brought for that sole purpose.

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29. 303 N. Y. 506, 104 N. E. 2d 877 (1952), *rev'g* 278 App. Div. 924, 105 N. Y. S. 2d 910 (1st Dep't 1951).

30. 254 N. Y. 73, 171 N. E. 911 (1930). *But see, Schonfeld v. Schonfeld, supra* n. 10.

31. N. Y. TIMES, Apr. 10, 1948, p. 16, col. 1.

32. 4 VERNIER, AMERICAN FAMILY LAWS 56 (1935).

33. MADDEN, PERSONS AND DOMESTIC RELATIONS 392 (1931).

34. 303 N. Y. 465, 104 N. E. 2d 857 (1952).

In New York a father is chargeable with the support of his infant children by the criminal law and the civil law.[35] However, plenary relief for the breach of his duty is unavailable in the absence of statute.[36] The courts will go no further than to allow the one who furnishes necessaries to minors an action.[37] Quasi-criminal proceedings by a public officer provide subsistence relief.[38]

In a matrimonial proceeding, the court can also order the education and maintenance of any children to the marriage.[39] This relief is only granted incidental to the marital action; the CIVIL PRACTICE ACT sections do not provide for a separate action for support as was sought in the instant case.[40] Prior to the enactment of CIVIL PRACTICE ACT §1170-a the Supreme Court would not retain jurisdiction to deal with matters of support of children where the court had refused to grant the relief sought in the matrimonial action.[41] (This was contrary to the rule in other states.)[42]

New York provides but one special tribunal [43] wherein a child can sue for prospective support, subsequent to a divorce of the parents by a foreign decree.[44]. The extent of the relief given is analogous to that available in a matrimonial action, as the court has power to order support, "as justice requires having due regard to the circumstances of the respective parties."[45]

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35. PENAL LAW § 480; CODE CR. PROC. § 914; SOCIAL WELFARE LAW § 101; CRIM. CODE (Children's Court Act § 31); CRIM. CODE (Domestic Relations Court Act §101). *DeBrauwere v. DeBrauwere*, 203 N. Y. 460, 96 N. E. 722 (1911).

36. *Matter of Stern*, 285 N. Y. 239, 33 N. E. 2d 689 (1941); *Ramsden v. Ramsden*, 91 N. Y. 281 (1883); *Matter of Ryder*, 11 Paige 185 (N. Y. 1844); *Bedrick v. Bedrick*, 151 Misc. 4, 270 N. Y. Supp. 566 (Sup. Ct. 1933), *aff'd*, 21 App. Div. 807, 271 N. Y. Supp. 949 (1st Dep't 1934).

37. *De Brauwere v. De Brauwere*, 203 N. Y. 460, 96 N. E. 722 (1911).

38. *Sec. e.g.*, N. Y. CODE CR. PROC. § 915.

39. C. P. A. §§ 1164, 1170.

40. *Johnson v. Johnson*, 206 N. Y. 561, 100 N. E. 408 (1912).

41. *Davis v. Davis*, 75 N. Y. 221 (1878). The present C. P. A. § 1170-a provides that where the court . . . "refuses to grant judgment of divorce . . . the court may, nevertheless, render judgment in the same action . . . for the maintenance of any child . . ."

42. *E.g., Urbach v. Urbach*, 52 Wyo. 207, 73 P. 2d 953 (1937); *Horton v. Horton*, 75 Ark. 22, 86 S. W. 824 (1905); and cases listed under 113 A. L. R. 902.

43. Domestic Relations Court of the City of New York; Children's Court (for residents outside of New York City).

44. *Helman v. Helman*, 190 Misc. 991, 74 N. Y. S. 2d 310 (Dom. Rel. Ct. 1947).

45. CRIM. CODE (Domestic Relations Court Act, § 92 (1)); CRIM. CODE (Children's Court Act, §30a (1)).

However, the Court of Appeals, in the instant case, did not say that the Supreme Court is without jurisdiction because the Family Courts have exclusive jurisdiction; the Court based its decision on the fact that the Supreme Court's jurisdiction in equity was limited to that possessed by the English courts in 1776.[46] It would seem that it is not inconsistent with the traditions of equity to suggest that where infants are concerned the Supreme Court has inherent power to give those who have a right, a corresponding remedy.[47]

VII. Municipal Corporations

The Local Unit

Our modern local governmental institutions are the result of a complex and haphazard process of evolution rooted in Anglo-Saxon England. The first municipal charter was granted by Henry VI in 1439; but long before that time, and indeed before the corporate concept emerged, some local units had acquired a measure of autonomy. English local government was far from democratic; being founded upon a class society, it was dominated by the landed gentry and was plagued by devices which assured continuity of office. Its basic ideas, however, were brought to the new world by the colonists, who then adapted them to the character of the settlements here. Our present day local units are the result.[1]

Rooted as they are in history, our modern municipalities are the creatures of statute. They have certain of the attributes of sovereignty; but their powers are neither inherent nor capable of enlargement by the act of the municipality.[2] This basic premise was reaffirmed by the New York Court of Appeals in the 1951-

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46. See C. P. A. §64.

47. The courts of equity have a special interest in the protection of infants. 4 Pomeroy, Equity Jurisprudence, §§1303-1305 (5th ed. 1941). In New York equity has jurisdiction to provide for *custody* of a child in the absence of a marital action. Cadozo, J., in *Finlay v. Finlay*, 240 N. Y. 429, 432, 148 N. E. 624, 626 (1925). Many American jurisdictions allow a child to sue his parents although the suit is not incidental to a matrimonial action, because there is no adequate relief under other statutes. *Parker v. Parker*, 335 Ill. App. 293, 81 N. E. 2d 745 (1948); 17 U. Chic. L. Rev. 200 (1949); *Campbell v. Campbell*, 200 S. C. 67, 20 S. E. 2d 237 (1942); *McClaugherty v. McClaugherty*, 180 Va. 51, 21 S. E. 2d 761 (1942). See cases under 13 A. L. R. 2d 1142.

1. Fordham, Local Government Law (1st ed. 1949), pp. 1-15; McQuillin, Municipal Corporations (3rd ed. 1949), §1.55 *et seq.*

2. New York Constitution, Art. IX, §9; *LaGuardia v. Smith*, 288 N. Y. 1, 41 N. E. 2d 153 (1942).