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Domestic Relations - Gifts in Contemplation of Marriage

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DOMESTIC RELATIONS—GIFTS IN CONTEMPLATION OF MARRIAGE—The Supreme Court of New York held that a donor could not recover an engagement ring upon donee's renouncing her intention to marry him, where the contract to marry was void since the donor was already married.

Lowe v. Quinn, 301 N.Y.S.2d 361 (1st Dep't 1969).

A jilted plaintiff brought an action of replevin to recover a sixty-thousand dollar engagement ring which plaintiff gave to defendant upon her promise to marry him. When plaintiff gave defendant the ring, he was married to another, separated, and contemplating divorce. His status was known to the defendant. Less than thirty days later, the defendant renounced her intention to marry the plaintiff and refused to return the ring. When plaintiff tried to recover the ring, the New York Supreme Court held that he was not entitled to recovery.

Throughout history, the donor's attempts to recover an engagement ring after his intended wife jilted him have proved successful. In England, the principle developed that the donor should recover if the donee breaks the engagement, and by implication, that the donor should not recover if the donor breaks the engagement.[1] This appears to be settled English law today.[2]

In the United States, the law has developed in a similar manner.[3] Louisiana is an exception since recovery is permitted regardless of who caused the breach.[4] Nevertheless, a crucial factor in determining whether the engagement ring would be, or would not be, recovered has always been whether it was the donor or the donee who broke the engagement.[5]

Prior to the statutory abolition of actions for breach of promise to marry, New York recognized that the engagement ring was distinct from other premarital gifts because of its symbolic nature and allowed

1. Young v. Burrell, 21 Eng. Rep. 29 (1576); held: Where plaintiff-donor, as a suitor in marriage, sued for tokens he delivered to the defendant-donee, the Court ordered "the tablet to be forthwith delivered by the defendant to the plaintiff." Oldenburgh's Case, 1 Freem. 213, 89 Eng. Rep. 151 (1676); held: where a man courted a lady and presented her with several jewels, and after, the match breaking off, he brought a detinue for the jewels, and she offered to wage her law, the Court held that she ought to return them because it was *causa matrimonii proelocuti.*
2. Jacobs v. Davis, 2 K.B. 532 (1917); Cohen v. Sellar, 1 K.B. 536, 15 B.R.C. 85 (1926).
3. *See,* 24 AM. JUR., *Gifts,* § 56-60.
4. Decuers v. Bourdet, 10 La. App. 361, 120 So. 880 (1929).
   Wardlaw v. Conrad, 18 La. App. 387, 137 So. 603 (1931).
5. 3 WYOMING L.J., 147, 149 (1949).

recovery if the donee terminated the engagement.[6] The New York statute abolishing an action for breach of promise to marry is popularly known as the Heart-Balm act. Following the passage of this act, New York refused to grant relief to the donor on the theory that the action for recovery was predicated upon a breach of promise to marry.[7] In spite of the holdings of the highest court, there were subsequent New York lower court decisions which allowed the donor to recover when the donee broke the engagement because "Common decency and fairness requires the defendant to return the ring or the value thereof."[8]

Three years after the court barred recovery of engagement rings and other personal property on the ground that recovery was predicated upon a breach of promise to marry, a most significant disapproval was voiced by the New York legislature. The legislature in 1947 passed a bill providing that courts should not be prevented, in a proper case, from granting restitution of money or property transferred in the contemplation of an agreement to marry, where such agreement is not performed.[9] The bill passed both chambers without debate but was vetoed by the Governor. The Governor's disapproval was not accompanied by a memorandum.[10] What justified the veto is not known, but it is reasonable to infer that the New York legislature never intended the Heart-Balm act to be construed so as to prevent actions for the recovery of engagement rings and other conditional gifts when the contemplated marriage did not take place. The objectives of the legislature were to eliminate the indefinite, distorted, and magnified actions for loss of time, humiliation, mortification, and "broken hearts". Nowhere in the language of the New York Heart-Balm act do there appear words which would seem to sustain the prevention of a right of action for the recovery of an engagement ring in the contemplation of an agreement to marry.

Finally in 1965 the New York legislature enacted section 80-b of the Civil Rights Law, which in pertinent part reads:

6. Beck v. Cohen, 237 App. Div. 729, 262 N.Y.S. 716 (1933).
7. Josephson v. Dry Dock Savings Institution, 292 N.Y. 668, 56 N.E.2d 96 (1944); Andie v. Kaplan, 32 N.Y.S.2d 429, 43 N.E.2d 82 (1942).
8. Reinhardt v. Schuster, 75 N.Y.S.2d 779 held: a man was entitled to return of engagement ring given to a woman who broke engagement by insisting that the man leave Texas where he was well-established to attempt to establish himself in New York so as to permit donee to be near her parents. Justice DiPirro, in delivering the majority opinion of the court, made no reference to *Josephson v. Dry Dock Savings Institution, supra,* note 7.
9. S. Int. No. 116, Senator Young; A. Int. No. 120, Assemblyman Wilson; 1947 Leg. Doc. No. 65 (j).
10. 13 BROOKLYN L. REV. 174 (1947).

> Nothing in this article contained shall be construed to bar a right for the recovery of a chattel . . . when the sole consideration for the transfer of the chattel . . . was a contemplated marriage which has not occurred. . . .[11]

This enactment is clearly contrary to the case law which the New York courts had developed since the passing of the New York Heart-Balm act.[12] Judge Asch, in delivering the majority opinion of *Goldstein* v. *Rosenthal,* concluded that section 80-b of the Civil Rights Law "presumably restores the common law rules which were in effect prior to the enactment of the anti-Heart-Balm statute."[13]

Notwithstanding this precedent, the Supreme Court of New York held in the instant case that a donor could not recover an engagement ring upon donee's renouncing her intention to marry him, where the contract to marry was void since the donor was already married. Justice Steuer in delivering the majority opinion of the court remarked: "It would logically follow that, there being no valid agreement which could be breached, the gift remains absolute."[14]

It is submitted that this does not logically follow. The Heart-Balm act is still in effect in New York, and thereby an agreement to marry in futuro is an invalid agreement. Nevertheless, section 80-b of the Civil Rights Law makes it unequivocally clear that the right for the recovery of a chattel does not depend on a valid agreement. This was the purpose of section 80-b.[15] Therefore, what would logically follow is that under the circumstances of this case the agreement to marry is an invalid agreement; even if the donor was not married at the time of the engagement, the agreement to marry in futuro would still be invalid because of the Heart-Balm act; hence, because the recovery of a chattel does not depend on a valid agreement, the donor should be entitled to recover the engagement ring.

"However," Justice Steuer in delivering the majority opinion in the instant case, stipulated in support of the court's holding, "in jurisdiction where the question has arisen, decision denying recovery has been placed on grounds of public policy and the equitable principle

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11. New York Civil Rights Law, Article 8, § 80-b (McKinney 1948).
12. New York Civil Practice Act, Article 2-A, §§ 61a-i (McKinney 1963).
13. Goldstein v. Rosenthal, 56 Misc. 2d 311, 314, 288 N.Y.S.2d 503, 507 (1968)
14. Lowe v. Quinn, 301 N.Y.S.2d 361, 363 (1969).
15. 56 Misc. 2d 311, 314, 288 N.Y.S.2d 503, 507 (1968).

of clean hands."[16] In support of this contention, he cited *Malasarte* v. *Keye*,[17] *Morgan* v. *Wright*,[18] and *Armitage* v. *Hogan*.[19]

In *Armitage* v. *Hogan* the donor could not recover because the ring was an incident of the contract, and "because such contracts are in violation of the marital duty and contrary to public policy."[20] *Malasarte* v. *Keye* furthered this principle because "all bargains which have for their object or tendency the divorce of married persons are opposed to public policy."[21]

Because of the circumstances in *Lowe* v. *Quinn*, the denial of the plaintiff's recovery on "the equitable principle of clean hands" triggered a vehement dissent. Justice Tilzer, dissenting in the instant case, stressed that if the plaintiff-donor is not guilty of inequitable conduct toward the defendant-donee in a particular transaction, the plaintiff-donor's hands are as clean as the court can require.[22] In the instant case, if the plaintiff-donor was guilty of inequitable conduct, it was towards his wife and not towards the defendant-donee. Justice Tilzer emphasized that the dirt upon plaintiff's hands must be his bad conduct in the transaction complained of.[23]

In *Lowe* v. *Quinn*, the donee was aware of the facts that the donor was married, separated from his wife for several years and awaiting an imminent divorce; nevertheless, she accepted the engagement ring and thirty days later she breached the engagement and refused to return the ring. Pennsylvania has never had a case directly on point, but the history of the engagement ring in Pennsylvania indicates that the plaintiff-donor under the same or similar circumstances of the instant case would recover the ring.

Prior to the Pennsylvania Heart-Balm act,[24] the Superior Court of Pennsylvania in *Ruehling* v. *Hornung* held:

16. 301 N.Y.S.2d 361, 363 (1969).
17. Malasarte v. Keye, 13 Alaska 407 (1951).
18. Morgan v. Wright, 219 Georgia 385, 133 S.E.2d 341 (1963). In *Malasarte v. Keye*, and in *Morgan v. Wright*, it was the defendant-donee who was married and not the plaintiff-donor.
19. Armitage v. Hogan, 25 Wash. 2d 672, 171 P.2d 830 (1946).
20. Id. at ——, 171 P.2d at 837.
21. 6 WILLISTON, CONTRACTS, 4933, § 1743 (2d ed. 1938).
22. 301 N.Y.S.2d 361, 364 (1969).
23. *Id.* There is a Pennsylvania holding in support of Justice Tilzer's contention that "the dirt upon his [plaintiff's] hands must be his bad conduct in the transaction complained of." The Pennsylvania Supreme Court in *Vercesi v. Petri*, 334 Pa. 385, 388, 5 A.2d 563, 565 (1939).
> One of the limitations of the doctrine that one coming into equity with unclean hands is that the wrongdoing of the plaintiff must have been in reference to the very matter in controversy, and not merely remotely or indirectly connected therewith.
24. PA. STAT. ANN. tit. 48 §§ 170-177 (1935).

> Such a ring is given as a pledge or symbol of the contract to marry. We think that it is always given subject to the implied condition that if the marriage does not take place either because of the death, or a disability recognized by the law on the part of, either party, or by breach of the contract by the donee, or its dissolution by mutual consent, the gift shall be returned.[25]

And in 1955 with the Pennsylvania Heart-Balm act in effect, the Pennsylvania Supreme Court in *Stangler* v. *Epler* held:

> A gift to a person to whom the donor is engaged to be married, made in contemplation of marriage, although absolute in form, is conditional; and upon breach of the marriage engagement by the donee the property may be returned to the donor.[26]

Pennsylvania has recognized that statutory abolition of actions for breach of promise to marry in no way alters or modifies plaintiff-donor's right to recover an engagement ring. "The title to the gifts . . . received, predicated on the assurance of marriage . . . never left . . . [the donor] until the marital knot was tied."[27]

If a case should arise in Pennsylvania in which the plaintiff-donor at the time of the engagement is married, it is submitted that Pennsylvania's courts would continue to comply with Pennsylvania's judicial history—recovery for the plaintiff-donor if the defendant-donee breaches the engagement. The marital status of the plaintiff-donor under the same or similar circumstances of *Lowe* v. *Quinn* should be construed as immaterial and irrelevant. It is immaterial because the plaintiff's marital status at the time of the engagement was merely technical since plaintiff was separated from his wife for several years and was awaiting an imminent divorce. Even if one concludes that plaintiff's marital status at the time of the engagement is material, it is still irrelevant because the plaintiff-donor was not guilty of inequitable conduct toward the defendant-donee in this particular transaction.

It is further submitted that to allow the donee to keep the ring after breaking the engagement under the circumstances of the instant case would be to allow a party to profit by his own wrong. In *Furman* v. *Krauss* it was said: "The doctrine of unclean hands should not be allowed to perpetrate an injustice or permit a party to profit by his

25. Ruehling v. Hornung, 98 Pa. Super. 535, 540 (1930).
26. Stanger v. Epler, 382 Pa. 411, 415, 115 A.2d 197, 199 (1955).
27. Paulicic v. Vostsberger, 390 Pa. 502, 507, 136 A.2d 127, 130 (1957).

own wrong."[28] In *Lowe* v. *Quinn,* the defendant-donee would make a profit. The ring was worth $60,000. In the instant case, Justice Tilzer, dissenting, made the interesting observation in regard to defendant's wrongful conduct that it was not the plaintiff-donor attempting to take another man's wife, but it was the defendant-donee seeking to take another woman's husband. "And while it may be that the plaintiff's hands are not too clean, the defendant's hands are covered with more than diamonds."[29]

Throughout history, the donor's attempts to recover an engagement ring after his intended wife jilted him have proved successful. In Pennsylvania, the trend of the law in allowing the donor to recover the engagement ring when the donee breaks the engagement is clear. In the instant case, the equities in favor of the plaintiff-donor are manifest. If a case such as *Lowe* v. *Quinn* should come before a court of Pennsylvania, it is submitted that the court would allow recovery for the plaintiff-donor.

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CONSTITUTIONAL LAW—QUALIFICATIONS OF CONGRESSMEN—The Supreme Court of the United States has held that Congress, in judging the qualifications of its members, is limited to the standing qualifications prescribed by the Constitution.

Powell v. *McCormack,* 89 S. Ct. 1944 (1969).

In November, 1966, petitioner Powell was elected from the 18th Congressional District of New York to serve in the House of Representatives for the 90th Congress. However, pursuant to a House Resolution, Powell was not permitted to take his seat.[1] He then filed suit in the

28. Furman v. Krauss, 175 Misc. 1018, 1021, 26 N.Y.S.2d 121, 124 (1941), *aff'd,* 262 App. Div. 1016, 30 N.Y.S.2d 848, (1941).
29. Lowe v. Quinn, 301 N.Y.S.2d 361, 364 (1969).

1. Powell was denied his seat in the following manner. During the 89th Congress, a special Subcommittee on Contracts of the Committee on House Administration conducted an investigation into the expenditures of the Committee on Education and Labor, of which Powell was the Chairman. The special Subcommittee issued a report concluding that Powell and certain staff employees had deceived the House authorities as to travel expenses and that there was strong evidence that certain illegal salary payments had been made to Powell's wife. (H.R. REP. No. 2349, 89th Cong., 2d Sess. 6-7 (1966).) No further action was taken until just prior to the organization of the 90th Congress, when the