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Annulments for Lack of Love and Affection

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NEW YORK LONG HAS ENJOYED the dubious distinction of being the most flexible jurisdiction for the granting of annulments of marriages. As a student of the subject relates, "For those unable or unwilling to travel and assume residence outside the state, New York offers an unusually expansive concept of annulment to mitigate the severity of the divorce law." [1] There is some anticipation that the recently revised divorce statute will tend to make annulments less appealing and attractive to those who are incapable of resorting to foreign forums for the severance of the marital tie.[2] Annulments for fraud are allowed to be instituted by sections 7 and 140(e) of the New York Domestic Relations Law.[3] Do the subjective elements of love and affection play any meaningful role in ascertaining the grounds for fraudulent conduct in the arena of annulments?

Over five decades of litigation in New York and elsewhere indicate that dishonest professions of love and affection *per se* prior to marriage are not considered vital in annulling the bonds of matrimony. The cases fully reveal that disingenuous expressions of romantic warmth and devotion are usually linked with ulterior motives to gain specific objectives otherwise impossible of attainment. Professor Milton Gershenson of the Brooklyn Law School rightfully maintains that "when standing alone, such misrepresentation does not warrant an annulment. Where coupled with other facts, such as a scheme to evade the immigration laws, or a scheme to mulct the spouse, or a scheme to get a free medical education, it becomes fraud justifying annulment." [4]

Only two reported cases in New York and Missouri have seemingly rejected the principle that love and affection may not be interposed by themselves as the legal foundation for the

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1 Franck, The Annulment of Marriage in New York, 1 U. Brit. Col. L. Rev. 471, 472 (1961).

2 N. Y. Dom. Rel. Law § 254 (rev. 1966). For an authoritative analysis of the new law, see Foster and Freed, The Divorce Reform Law, 5-37 (1966).

3 N. Y. Dom. Rel. Law § 140(e) reads in part as follows: "An action to annul a marriage on the ground that the consent of one of the parties thereto was obtained by fraud may be maintained by the party whose consent was so obtained within the limitations of time for enforcing a civil remedy of the civil practice law and rules. . . . But a marriage shall not be annulled . . . on the ground of fraud, if it appears that, at any time before the commencement thereof, the parties voluntarily cohabited as husband and wife, with a full knowledge of the facts constituting the fraud."

4 Gershenson, Fraud in the New York Law of Annulment, 9 Brooklyn L. Rev. 51, 66 (1939).

dissolution of a conjugal relationship.[5] The Appellate Division of the Fourth Department awarded a decree of annulment in the *Schinker* case to a spouse whose husband had maintained a powerful erotic connection with a young lady in California (site of his military post) while espousing the noble thoughts of undying fealty and irrevocable passion during the courtship. While the plaintiff had knowledge of the out-of-state romance during the engagement period, the opinion holds she was induced to enter into the marriage by the supposedly deceptive tactics of the defendant who forswore any further involvement with his paramour. The court reasoned that she would not have consented to the marriage proposal if her mental faculties had not been diminished by his ostensibly truthful intentions toward her. This decision is evidently an indirect circumvention of the inveterate legal doctrine that false pleas of love and affection cannot serve as a basis for annulling an otherwise legally constituted marriage.

As early as 1913, the Appellate Division of the Second Department in *Schaeffer v. Schaeffer*[6] formulated the rule that hardship, injustice and unfortunate consequences cannot impel a court to annul a marriage because an aggrieved party had been victimized by the sham and deceitful outpourings of a specious suitor. The opinion held that, while a serious miscarriage of justice had been perpetrated on an innocent girl by a scheming scoundrel, no conventional legal principle could be employed by the court to destroy this misalliance by an annulment. As Justice Carr appropriately suggested,

> . . . we have not yet arrived at a legal stage which requires an annulment of a marriage because one party or both parties were untruthful to each other in their mutual protestations of all-consuming and undying love.[7]

The identical position has been adopted by courts outside of New York as shown by the following statement of a New Jersey court in the well-known case of *Salzberg v. Salzberg*, "A marriage cannot be annulled for the reason only that no love existed between the parties to the marriage at the time thereof."[8] In *Feig v. Feig*,[9] the Appellate Division of the First De-

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[5] Schinker v. Schinker, 271 App. Div. 688, 68 N. Y. S. 2d 470 (1947); Rankin v. Rankin, 17 S. W. 2d 381 (Mo. 1929).

[6] 160 App. Div. 48, 144 N. Y. S. 774 (1913); see also Longtin v. Longtin, 22 N. Y. S. 2d 827 (1940); Jennings v. Jennings, 186 Misc. 1021, 63 N. Y. S. 2d 294 (1946); and Bloom v. Bloom, 76 N. Y. S. 2d 890 (1947). This opinion is favorably quoted in the Montana case of Baird v. Baird, 232 P. 2d 348 (Mont. 1951).

[7] Schaeffer v. Schaeffer, 160 App. Div. 48, 49; 144 N. Y. S. 774 (1913).

[8] 107 N. J. Eq. 13, 153 A. 605 (1931).

[9] 232 App. Div. 172 (1931); see also Nickols v. Nickols, 138 N. Y. S. 2d 651 (1955).

partment declined to annul a marriage because of the supposedly spurious demonstrations of passion and love of a young bride who had recently arrived in the United States after marrying the plaintiff in her native habitat of Rumania. Justice Merrell could not find any warrant for annulling a legitimate marriage due to the post-nuptial change of heart and altered mental state of the defendant; it seemed obvious that the hapless wife did not harbor any antecedent misgivings about the plaintiff. She had become unusually distraught in a novel environment far removed from the pace and quality of her placid nativity. The court also relied on former section 1143 of the CPA (now section 144 of the Domestic Relations Law) which disallows the testimony of interested parties in this kind of an annulment case without other satisfactory evidence.

The very learned and intellectually oriented treatise of Justice Hammer in the New York County Supreme Court case of *Rubman v. Rubman*[10] in 1931 annulled a marriage where the defendant had obtained the plaintiff's consent to marriage by his ardent professions of love for her while concealing his fundamental motivation which was to evade the quota provisions of the immigration laws by marriage to the plaintiff. The jurist decreed that the committed fraud rendered nugatory the fact of consent which is indispensable for the validity of a contract, matrimonial or otherwise. The court in the *Rubman* dispute chose to pierce the veil of disingenuousness and misrepresentation about love and affection and founded its decision upon the basic concealed intent. At the same time, the cases clearly underscore the admonition that an injured party is not permitted to cohabit with the dissimulator after discovering the fraudulent maneuvering to obtain entry into the United States.[11]

But a sincere and non-exclusive desire to seek American citizenship in the context of the marital vow will not condemn a marriage and sanction the rendering of a decree of annulment, according to decisions of the New York County Supreme Court and the Superior Court (Appellate Division) of New Jersey.[12] Justice Geller in New York maintained that the defendant-spouse possessed the physical capacity to enter into the marriage and had subsequently fulfilled all the expected nuptial obligations of a true and devoted wife. The opinion asserted that it is taken for granted in these times of continuing world crises

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[10] 251 N. Y. S. 474 (1931); see also Miodownik v. Miodownik, 259 App. Div. 851 (1940); Pastore v. Pastore, 199 Misc. 435, 100 N. Y. S. 2d 552 (1950); and Lederkramer v. Lederkramer, 173 Misc. 587, 18 N. Y. S. 2d 725 (1940), for the most brazen instance of deception.

[11] See Bracksmayer v. Bracksmayer, 22 N. Y. S. 2d 110 (1940); see also Cantor v. Cantor, 234 N. Y. S. 2d 600 (1962).

[12] Novick v. Novick, 17 Misc. 2d 350, 185 N. Y. S. 2d 388 (1959); and Cirulli v. Licata, 10 N. J. Super. 449, 77 A. 2d 288 (1950). A somewhat related issue is to be found in Kurys v. Kurys, 25 Conn. Supp. 495, 209 A. 2d 526 (1965).

that the desirability of American citizenship by an alien may be one of the inducing factors leading to the marriage altar. As the jurist opined,

> The proof adduced shows no more than defendant's natural desire to attain American citizenship and falls far short of establishing that she married plaintiff solely for that purpose and with no intention of consummating the marriage.[13]

The facts evidenced a good faith marriage on the part of the defendant who had been a British subject in Canada with the knowledge of the plaintiff prior to the marital ceremony. United States Supreme Court Justice William J. Brennan, sitting in the Superior Court (Appellate Division) of New Jersey in 1950, wrote along parallel lines that

> The act of an alien in entering into a bona fide marriage with the express purpose "to avoid deportation" is not illegal. . . . The law distinguishes between such a marriage and a marriage entered into not in good faith but as a mere sham, or pretense, formed for the purpose of "evading" a judgment of deportation.[14]

Courts of sister states have uniformly subscribed to the legal postulate that a marriage entered into with the intent of evading the immigration laws is voidable at the option of the deceived party since this type of behavior flouts the basic character of lawful contractual dealings.[15]

The perennial problem of male malefactors seeking false marriages for economic advancement and support has plagued our courts for over three decades. Courts have generally ruled that reprehensible, outrageous and vicious conspiracies to utilize the facade of love and affection for pecuniary enrichment warrants the decreeing of annulments. But each controversy must be assessed on its intrinsic facts and patterns of concealment and prevarication. The Oneida County Supreme Court in *Berardino v. Berardino*[16] dismissed a request for an annulment due to the husband's mendacities and falsehoods about his monetary status before the marriage. The opinion did not question the depth of his love for his spouse and felt he had been truthful in his declarations in the romantic sphere. To bolster its argument, the court quoted from the ancient New York case of *Keyes v. Keyes*[17] to the effect that

> Fabrications and exaggerations of this kind, while not com-

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[13] Novick v. Novick, 185 N. Y. S. 2d 388, 389 (1959).

[14] Cirulli v. Licata, 77 A. 2d 288, 290 (N. J. Super. 1950).

[15] Babis v. Babis, 45 Del. 496, 75 A. 2d 580 (1950).

[16] 280 N. Y. S. 13 (1935).

[17] 6 Misc. 355, 26 N. Y. S. 910 (1893).

> mendable, are so common as to be tolerated by the law on grounds of public policy.[18]

But an Albany County Supreme Court case[19] would appear to contradict the rationale and foundation of the *Berardino* formula. The opinion termed the mendacious warranties of a good home and furnishings gross fraud in inducing marriage. The defendant had also included representations of love in his promises prior to the execution of the marital rites. As Justice Taylor stated,

> Fraud in inducing one to marry in reliance upon an express promise to furnish and establish a home and to provide support which a defendant had no intention of keeping gives rise to a cause of action for annulment.[20]

The most famous *cause celebre* in this field is the case of *Woronzoff-Daschkoff v. Woronzoff-Daschkoff*[21] decided by the Court of Appeals in 1952. The decision tends to adopt the basic reasoning of the Albany County Supreme Court in denying an annulment for premarital untruths and distortions about love and money. While the court repudiated the discredited idea that fraud must have a direct impact on the essence of the marriage such as consortium and cohabitation before a decree of annulment may be granted, it asserted that marriage for the sole purpose of extorting resources from a wealthy female did not fall within the category of matter vital to the marriage. As Justice Desmond said,

> Premarital falsehoods as to love and affection are not enough, nor disclosure that one partner "married for money." [22]

It is not easy to accept the logic of the Court of Appeals in the *Woronzoff-Daschkoff* case, but the obvious economic station of the victim probably dissuaded the jurists from invoking the long-established rule that a husband is fully liable for the support of his spouse. She surely did not rely on his professed desire to find employment after the marriage. But his conniving to mulct her certainly partakes of the basic ingredients of fraud.

In a recent case,[23] Justice Widlitz in the Nassau County Supreme Court followed the dictates of the Court of Appeals in the *Woronzoff-Daschkoff* battle by rejecting a plea for an annul-

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[18] Berardino v. Berardino, 280 N. Y. S. 13, 15 (1935).

[19] Siek v. Siek, 196 Misc. 165, 93 N. Y. S. 2d 470 (1949); aff'd, 276 App. Div. 1035, 95 N. Y. S. 2d 234 (1950).

[20] 93 N. Y. S. 2d 470, 473 (1949).

[21] 303 N. Y. 506, 104 N. E. 2d 877 (1952); favorably referred to in Patey v. Peaslee, 111 A. 2d 194 (N. H. 1955).

[22] 303 N. Y. 506, 512; 104 N. E. 2d 877, 880 (1952).

[23] Avery v. Avery, 18 App. Div. 705, 236 N. Y. S. 2d 379 (1962).

ment predicated on false economic promises of postnuptial support and provisions for a private residence. The decision also operated on the presupposition that an ordinarily prudent person could not be deceived by such representations; the fraudulent statement, according to the opinion, must be so powerfully overriding as to tame the reasoning capabilities of a person of average intelligence and comprehension.

The matter of *Ryan v. Ryan*[24] in the New York County Supreme Court stands for the theory that malingering members of the titled nobility class in Europe may not contract to marry American citizens for the primary aim of securing an economic return sufficient to enable them to live in leisurely idleness. The court described this type of fraud as essentially a mockery of the sacred institution of marriage and the family. According to the decision, marriage may not be equated with purchase and sale of bargains.

Medical students may not seek the benefit of a marital arrangement without some reciprocity in the nature of husbandly dedication and affection, according to the leading case of *Feynman v. Feynman*.[25] While granting the annulment for fraud to the naive and trapped wife, Justice Wenzel elaborated on the point that the absence of love and respect did not figure in his legal reasoning. He detected the brazen elements of fraud in the circumstance of the defendant's lack of prenuptial intent to cohabit with his spouse after reaching his goal of medical education through her largesse.

The courts have pretty well delineated the boundaries of fraud in the area of love and affection. The fundamental premise of the judicial approach is best epitomized in Justice Coyne's opinion in a Westchester County Supreme Court case:

> Promises of undying love and affection, of dutiful and faithful connubial demeanor, and of comfortable and happy home surroundings are insufficient, notwithstanding plaintiff's claim that he relied upon such promises and would not have entered into the marriage had the same not been made. The law assumes that those entering upon the marriage contract will accord each to the other all of the rights and privileges incident upon the relationship.[26]

Lawyers in New York and several other jurisdictions should be alerted to the fact that, in this and other sectors of the annulment-for-fraud picture, it is not necessary to plead the three-year Statute of Limitations, according to very recent decisions in the Albany County Supreme Court and the Appellate Division

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[24] 281 N. Y. S. 709 (1935).

[25] 4 N. Y. S. 2d 787 (1938).

[26] Washburn v. Washburn, 62 N. Y. S. 2d 569, 570 (1936).

of the Fourth Department.[27] In all other civil litigation, the Statute of Limitations is deemed waived if it is not specifically raised as an affirmative defense in the pleadings.

The American viewpoint on such personal and subjective matters as love and affection finds backing in the writing of David H. Vernon who is the author of an outstanding model code for annulments. In his words, "Marriage is too serious a business to permit annulment on the basis of testimony concerning a party's subjective feelings." [28]

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[27] See Shoddy v. Shoddy, 269 N. Y. S. 2d 584 (1966); and Romano v. Romano, 156 N. Y. L. J. 39 (1966). For origin of the three year statute of limitation, see Von Lingenthal, A Medieval Procedural Form for Marriage Annulment Cases, 10 Am. J. Legal Hist. 76, 81 (Jan. 1966).

[28] Annulment of Marriage: A Proposed Model Act, 12 J. Pub. L. 163 (1963).