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Marriage and Divorce -- Annulment -- Marriage in Jest

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awarded.[9] The facts of this case tend to show that some agent of the defendant acted with a fraudulent motive or else with such gross negligence as to display a reckless disregard for the plaintiff's rights. In view of the aggravated nature of the offense of altering the check and the fact that the altered instrument operated to charge plaintiff with the crime of issuing a check without funds, it is submitted that the jury verdict may be upheld, although the actual loss to the plaintiff through loss of credit and damage to business reputation probably was slight under the circumstances.[10]

TRAVIS BROWN.

Marriage and Divorce—Annulment—Marriage in Jest

Infant plaintiff brought an equitable petition by her next friend for the purpose of annuling her marriage to the defendant. She alleged that she was fifteen years old and that the defendant was nineteen, and that both resided with and were dependent upon their respective parents. While attending a dinner dance, in a spirit of fun, braggadocio, and levity, the parties began to dare each other to get married. They drove across the state line into Alabama, procured a license from a probate judge by means of falsifications by the defendant as to their ages, and were married. Plaintiff alleged that she returned home and had never lived with the defendant. Defendant entered a general demurrer for want of equity and on the ground that the court of equity "was without jurisdiction or power to annul a marriage under any circumstances." *Held,* demurrer sustained.[1]

Two questions are presented in the case. The first, whether or not a court of equity has jurisdiction to annul a marriage, had never been adjudicated in Georgia and was left open by the court. There are many cases which have decided that equity has such jurisdiction.

[9] 2 MORSE, BANKS AND BANKING (5th ed., 1917) §458. See Winkler v. Citizens' State Bank, 89 Kan. 279, 131 Pac. 597, 598 (1913); American Nat. Bank v. Morey, 113 Ky. 857, 24 Ky. Law Rep. 658, 69 S. W. 759, 760, 101 AM. ST. REP. 379, 58 L. R. A. 956 (1902); McCormick, *Some Phases of the Doctrine of Exemplary Damages* (1930) 8 N. C. L. REV. 129.

[10] The plaintiff was insolvent at the time of the alleged occurrences leading to the suit. It was not proved that the defendant's action contributed any substantial part to the plaintiff's going into bankruptcy thereafter.

[1] Hand v. Berry, 154 S. E. 239 (Ga. 1930).

Some of them hold that the power is inherent,[2] others that it is conferred upon the courts by statute,[3] and still others that it is a part of the general power of a court of equity over contracts.[4]

The second question presented is whether or not on the facts the marriage could be set aside if jurisdiction existed. The law of the place of contracting governs with regard to matrimonial capacity of parties as well as with respect to the manner or form of solemnization or annulment.[5] It appears that the parties were capable of contracting a valid marriage in Alabama.[6] The fraud of defendant in falsifying their ages in order to secure a license without the written consent of their parents did not render the marriage voidable on that ground.[7] But, granting the capacity of the parties and assuming that the court had jurisdiction, it held that the facts did not constitute grounds for annulment. The basis for the decision is that the state has decreed that when capable parties consent to the pronouncement of a certain ceremony by the proper official that they are united as man and wife. A very strong majority opposes this view on the ground that it is real consent to assume the obligations and rights of that status which validates the contract.[8] The words are the external manifestation of intention, but mere words without any intention corresponding to them cannot make a marriage or any other civil contract, unless they are justifiably and reasonably taken at their face value.[9] The legal forms are not a substitute for legal consent, they are but modes of declaring and substantiating it.[10] Actual mutual consent and a bona fide agreement are fundamental and essential

[2] Meredith v. Shakespeare, 96 W. Va. 229, 122 S. E. 520 (1924); Dorgelah v. Murtha, 92 Misc. Rep. 279, 156 N. Y. Supp. 181 (1915).

[3] Johnson v. Kincade, 37 N. C. 470 (1843).

[4] Corder v. Corder, 141 Md. 114, 117 Atl. 119 (1922); Clark v. Field, 13 Vt. 460 (1841).

[5] Powell v. Powell, 282 Ill. 357, 118 N. W. 786 (1918); Great Northern v. Johnson, 254 Fed. 683 (C. C. A. 8th, 1918).

[6] Ala. Code (1923) §8999. But see: Quigg v. Quigg, 42 Misc. Rep. 48, 85 N. Y. Supp. 550 (1903); Kellog v. Kellog, 122 Misc. Rep. 734, 203 N. Y. Supp. 757 (1924); Swenson v. Swenson, 179 Wis. 536, 192 N. W. 70 (1923).

[7] Smith v. Smith, 205 Ala. 503, 88 So. 577 (1921); Bays v. Bays, 105 Misc. Rep. 492, 174 N. Y. Supp. 212 (1918); Fodor v. Kunie, 92 N. J. Eq. 301, 112 Atl. 598 (1920).

[8] Crouch v. Wartenberg, 86 W. Va. 664, 104 S. E. 117 (1920); Note (1921) 11 A. L. R. 215.

[9] McClurg v. Terry, 21 N. J. Eq. 225 (1870); Regina v. Millis, 10 Clark & F. 534 (1844).

[10] 1 BISHOP, MARRIAGE, DIVORCE, AND SEPARATION (1921) §§296 and 337; SPENCER, DOMESTIC RELATIONS (1923) §§37 and 82.

elements,[11] without them the marriage is voidable,[12] unless it is ratified by consummation.[13]

The cases preponderate in favor of annulment of marriages contracted in jest.[14] Social policy dictates that a contract of such importance to the race shall not be unintentionally assumed. Where it appears that the parties never had the intention of fulfilling the obligations of the contract, it would seem to be more just to both the state and to the parties to restore them to *statu quo*.

C. E. REITZEL.

Negligence—Automobiles—Duty of Guest

Two actions (consolidated by consent) were brought against the owner of an automobile and his wife, who was driving, to recover damages for personal injuries sustained by a guest, and caused by the alleged negligence of the driver while operating the car. Judgment against the wife was sustained, the court holding that the owner was relieved of any liability by the finding of the jury that his wife was not operating the car as his agent. Testimony of caution by the guest to the driver was held competent on the question of the driver's negligence.[1]

The above statement of the owner's liability raises serious doubt in view of the court's previous adoption of the "family purpose" doctrine.[2] There is no indication that the court is overruling the previous holding of modifying the doctrine, although the language would seem to restore the owner's liability to an agency basis.[3]

The testimony as to the warning is admissible either to show a compliance with the guest's duty to warn, if any,[4] or as evidence tending to show negligence on the part of the driver.[5] Such a state-

[11] Crouch v. Wartenberg, *supra* note 9.
[12] McClurg v. Terry, *supra* note 10; Hall v. Hall, 24 Times L. R. 756 (1908).
[13] Brooke v. Brooke, 60 Md. 524 (1883); Macri v. Macri, 164 N. Y. Supp. 112, 177 App. Div. 292 (1917); Arado v. Arado, 281 Ill. 123, 117 N. E. 816, 4 A. L. R. 28 (1917); Martin v. Otis, 233 Mass. 491, 124 N. E. 294 (1919); Americus Co. v. Coleman, 16 Ga. App. 17, 84 S. E. 493 (1915).
[14] Note (1921) 11 A. L. R. 215.
[1] Teasley *et al.* v. Burwell *et al.*, 199 N. C. 18, 153 S. E. 607 (1930).
[2] Goss v. Williams, 196 N. C. 213, 145 S. E. 119 (1928); (1927) 5 N. C. L. REV. 252; (1928) 6 N. C. L. REV. 78; McCall, *The Family Automobile* (1930) 8 N. C. L. REV. 256.
[3] Linville v. Nissen, 162 N. C. 96, 77 S. E. 1096 (1913); Tyree v Tudor, 183 N. C. 340, 111 S. E. 714 (1922); Watts v. Lefler, 190 N. C. 722, 130 S. E. 630 (1925).
[4] McAdd v. Shea, 10 La. App. 733, 122 So. 879 (1929).
[5] Hiller v. De Sautels, 169 N. E. 494 (Mass. 1929).