Buffalo Law Review

Volume 7 | Number 2 Article 13

1-1-1958

Heart-Balm Statute No Bar to Restitution of Property

William Sugnet

Follow this and additional works at: https://digitalcommons.law.buffalo.edu/buffalolawreview

 Part of the Civil Procedure Commons

Recommended Citation

William Sugnet, *Heart-Balm Statute No Bar to Restitution of Property*, 7 Buff. L. Rev. 316 (1958).
Available at: https://digitalcommons.law.buffalo.edu/buffalolawreview/vol7/iss2/13

This Recent Decision is brought to you for free and open access by the Law Journals at Digital Commons @ University at Buffalo School of Law. It has been accepted for inclusion in Buffalo Law Review by an authorized editor of Digital Commons @ University at Buffalo School of Law. For more information, please contact lawscholar@buffalo.edu.

confrontation, against the interest of national security, represented by the denial of confrontation. Admittedly, no *one* balance can be struck to insure justice in *all* future cases, but certain guiding principles can, and should, be laid down. For instance, where the information supplied to the Defense Department is not sworn to by the informant under oath, the suspected employee should be accorded the right to question the F.B.I. agent, or any other investigator who elicited the information. Similarly, where the informant is *not* an undercover agent, he should be brought before the employee at the hearing and cross-examined. This will, of course, necessitate a change in existing regulations to empower the Hearing Board to subpoena witnesses. No such power now exists. Department of Defense Directive, *supra*, §67.4-4(*c*): In a sentence, the choice between the interests of security and liberty should be pre-disposed in favor of the citizens' liberty.

Ray Ellis Green

Heart-Balm Statute No Bar to Restitution of Property

An eighty-year old plaintiff sought the return of substantial cash gifts that he bestowed upon a thirty-year old woman on the condition that she marry him, which condition was broken. Her defense was based upon the Pennsylvania Heart-Balm Statute, PA. STAT. ANN. tit. 48 §171 (1935), which abolished actions based upon breach of contract to marry. *Held:* the act did not affect contracts subsidiary to the actual marriage compact and in no way discharged obligations based upon a fulfillment of the marital contract. The plaintiff received restitution of his property. *Pavlicic v. Vogtsberger,* 136 A.2d 127 (Pa. 1957).

Heart-Balm statutes have been a main line legislative attack at abuses of the law of contracts as applied to contracts of engagement to marry and the breach thereof. In many jurisdictions today, in New York as well as Pennsylvania, prior to 1935, the case books are full of decisions such as *O'Brien v. Manning,* 101 Misc. 123, 166 N.Y. Supp. 760 (Sup. Ct. 1917), that had awarded exorbitant amounts to sorrowful young ladies who had claimed damages of the heart and marriage market, caused usually by wealthy men who unwisely associated with them and then paid-off to avoid the notoriety of such a law suit. The difficulty of proof as to whether or not the contract was agreed upon at all, or who broke it, if it was agreed upon, gave the courts much concern. Since there were seldom any witnesses or written evidence of the agreement, the proof depended entirely upon who gave the most convincing story. The juries in turn were never seriously in doubt as to the path of justice when confronted with a weeping female complainant.

The states that have adopted a heart-balm statute remedy for such hapless males are quite generally worded as are New York's and Pennsylvania's, "All causes

of action for breach of contract to marry are hereby abolished." PA. STAT. ANN., *supra.* New York varies in the wording of its statute slightly by adding that all actions for damages for breach of contract to marry are abolished. N.Y. CIV. PRAC. ACT §61-b. It it suggested that policy reasons behind heart-balm statutes are obvious. The difficulty of proof, above mentioned, can lead to fraud upon the court. Fraudulent complaints that essentially stem from the same atmosphere as "Boudoir Promises," when the plaintiff seeks either to gain her benefits through a forced marriage and its consequent status obligations, or a handy settlement in or out of court. In preventing the advent of such fraud and duress upon prospective defendants, the legislators directly encouraged more freedom of marriage. When a bar has been put up against money-saving marriages, the courts save many possible divorce litigations and family unhappiness in general.

As close as the New York and Pennsylvania statutes read, the case at hand points up a wide divergence of judicial interpretation in the two states. This is true especially as to actions for property settlement based on breach of such contracts. The leading New York case is *Andie v. Kaplan,* 263 App. Div. 884, 32 N.Y.S.2d 429 (2d Dep't 1942), *aff'd without opinion,* 288 N.Y. 685, 43 N.E.2d 82 (1942). This case involved a suit by plaintiff to recover two pieces of jewelry worth $435 and $600 that were given by him to the defendant on a mutual promise of marriage between the parties. The court refused to allow the action, stating that it was barred by N.Y. CIV. PRAC. ACT §61-b. The only writing that is recorded for this leading case is a memorandum dissent by Justices Lazansky and Taylor in which they said that the action should not be barred by the statute because: "The purpose of the new legislation was to prevent a recovery for alleged pecuniary loss, blighted affections, wounded pride, humiliation, and the like, against the one who violated the promise, but not to enable the latter to receive benefits out of his wilfull act." This dissenting view evidently carried some weight with the legislative authorities. In 1947, the New York Law Revision Commission suggested an amendment to the Civil Practice Act by proposing §61-j which read:

> This article shall not be deemed to prevent a court in a proper case from granting restitution of property or money transferred in contemplation of the performance of an agreement to marry which is not performed. ANNUAL REPORT OF THE N. Y. LAW REVISION COMMISSION, 1947, p. 227.

The amendment quite clearly refers to the common law rule allowing recovery of property in suits for breach of contract to marry. An interesting question is, what property was allowed to be recovered and by whom? A relatively recent English decision would not allow the man to recover the engagement ring if it were he who broke the engagement. But the court said, "If a woman who has received a ring refuses to fulfill the conditions of the gift, she must return it."

Cohen v. Sellar, [1926] 1 K.B. 536. In the *Pavlicic* case, *supra,* the plaintiff was allowed to recover over $10,000 worth of cash and property, but the question arises as to small amounts that may be in the nature of gifts. In a recent New Hampshire case the court allowed recovery of an engagement ring but refused to allow recovery of clothing, toiletries and, ". . . personal gratuities upon which the law imposes no condition of return, and are more nearly akin to a Christmas present." *Gikas v. Nicholas,* 96 N.H. 177, 71 A.2d 785 (1950).

If the New York Heart-Balm statute was to be revised to allow recovery of property in certain cases, the above difficulties would have to be ironed out, but it certainly seems obvious that in cases involving engagement rings, the innocent donor should be allowed recovery. Again in the *Pavlicic* case, *supra,* where there is a proven fraudulent intent on the part of the defendant and a great discrepancy in age that belies undue influence, there is proof enough to find proper grounds for restitution. But despite the above circumstances that can and do pervade engagement relationships, the proposed amendment, even though passed by the New York Legislature, met its lasting doom on a sweep of the governor's veto pen in that same year of 1947. The governor's disapproval was unfortunately not accompanied by a memorandum.

Thus at the present time, New York has the dubious distinction of depriving injured parties of a remedy for the enforcement of property rights growing out of contracts of marriage engagement. Under the view that has prevailed since the *Andie v. Kaplan* decision, *supra,* the Heart-Balm statute not only bars action for damages for breach of contract to marry, but any other action which requires proof of the promise to marry. Gifts in contemplation of marriage may not be recovered even though enrichment may result to the donee.

The singular inroad that has been made by a few New York lower court jurisdictions, to the *Andie v. Kaplan* doctrine, has been to allow restitution upon proof of a mutual recission of the marriage contract and a new contract to return the property given. *Morris v. Baird,* 269 App. Div. 948, 57 N.Y.S.2d 890 (2d Dep't 1945); *Unger v. Hirsch,* 180 Misc. 381, 39 N.Y.S.2d 965 (N.Y. Munic. Ct. 1943). This is New York's only concession to its strict heart-balm attitude.

It seems, in the light of this recent Pennsylvania case, *supra,* that New York State would benefit by a re-evaluation of their heart-balm policy, at least benefit to the extent of realizing the inequities such a broad interpretation necessarily fosters in an attempt to squelch very similar inequities. This result could not have Been intended by the legislature in enacting the Heart-Balm Statute and it will not properly serve the interests of the people of this state as presently interpreted. The New York Law Revision Commission's suggested amendment to the Heart-Balm Statute should be reintroduced. This amendment, if adopted,

would return our courts to the common law interpretation of restitution of property rights for an innocent donor. However, even if the donor who was not innocent was allowed to recover, would not one of the basic policies of the heart-balm legislation still be served, that of reducing the economic duress that can influence unwilling marriages? It seems that in the area of restitution of property rights that legislation might even forge on beyond the common law recovery notions, without any detriment to heart-balm policies, and even with a chance at greater promotion of those same policies.

William Sugnet

Use of Declaratory Judgment to Determine the Validity of a Foreign ex parte Divorce

Plaintiff-wife, a New York resident, was legally separated from the defendant-husband who was an alleged resident of New York State at all times. The defendant obtained a Mexican divorce without the appearance of the plaintiff. Subsequently, the plaintiff sought a declaratory judgment, pronouncing the Mexican divorce decree invalid for lack of jurisdiction and declaring that she was still the defendant's lawful wife. Upon hearing of a motion to dismiss the complaint for failure to state a cause of action, *held:* a doubtful Mexican divorce decree is grounds for a declaratory judgment to determine marital status, and remarriage of one of the parties is not a prerequisite for such a declaratory judgment. *Grutman v. Grutman,* 7 Misc.2d 236, 166 N.Y.S.2d 315 (Sup. Ct. 1957.)

In New York State, the marital status of the parties is a proper *subject matter* for a declaratory judgment. *Lowe v. Lowe,* 265 N.Y. 197, 192 N.E. 291 (1934). The grant of a declaratory judgment lies in judicial discretion, but is not to be granted without substantial grounds. *Engel v. Engel,* 275 App. Div. 14, 87 N.Y.S.2d 1 (1st Dep't 1949). The problem in this area of law is the determination of what circumstances produce substantial grounds for a declaratory judgment.

A separation decree adjudicates an existing marital status only at the time of the decree. *Statter v. Statter,* 2 N.Y.2d 668, 672, 163 N.Y.S.2d 13, 16 (1957). If the divorce decree was prior to the separation decree, its invalidity would have been adjudicated by necessity and an action for a declaratory judgment would be rejected as superfluous. *Garvin v. Garvin,* 306 N.Y. 118, 116 N.E.2d 73 (1951).

However, a separation decree cannot decide what has not yet come into existence. A separation decree does not foreclose the possibility of a later divorce and would not affect the possibility of a declaratory judgment action attacking the later divorce.