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## Civil Practice—Evidence-Estoppel

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## THE COURT OF APPEALS, 1953 TERM

### Declaratory Judgments

“The general purpose of a declaratory judgment is to determine or stabilize an uncertain or disputed jural relation. . . .”<sup>41</sup> The declaratory judgment is a category of relief which is in the realm of judicial discretion.<sup>42</sup> The determination of the matrimonial status of parties is an approved ground for declaratory relief.<sup>43</sup> Where such relief is unnecessary, however, it will not be granted.<sup>44</sup>

In *Garvin v. Garvin*,<sup>45</sup> which was decided by the Court of Appeals in the past term, the plaintiff wife, having previously obtained a decree of separation which necessarily entailed a finding of an existing marriage between the parties, was denied a judgment which would once again declare the existence of that marriage. Before final judgment in the separation proceeding the defendant, in defiance of an injunction which forbade the prosecution of divorce proceedings by him in any other jurisdiction,<sup>46</sup> had obtained a divorce in the Virgin Islands. Subsequently he went through a marriage ceremony with another woman and returned to live with her in New York. The court sustained the defendant's challenge to the complaint on the ground that the action was unnecessary in view of the previous declaration of the marital status, although the defendant was now acting utterly in disregard of that declaration.

### Evidence-Estoppel

The Vehicle and Traffic Law provides that an automobile dealer may allow the use of his dealer license plates by the vendee of a vehicle for five days after the sale provided the vendee makes a proper application for registration of the vehicle within twenty-four hours after he purchases.<sup>47</sup> If the vendee fails to make proper and timely application the dealer may be held liable for damage caused by the vehicle while being operated with his plates.<sup>48</sup> This liability is based on the theory that the presence of license plates on a vehicle is *prima facie* evidence of ownership by the registrant of those plates,<sup>49</sup> and that the registrant

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41. 7 CARMODY-WAIT, NEW YORK PRACTICE 206 (1952).

42. C. P. A. § 473; *James v. Alderton Dock Yards*, 256 N. Y. 298, 176 N. E. 401 (1931).

43. *Bauman v. Bauman*, 250 N. Y. 382, 165 N. E. 819 (1929).

44. *Somberg v. Somberg*, 263 N. Y. 1, 188 N. E. 137 (1933).

45. 306 N. Y. 118, 116 N. E. 2d 73 (1953).

46. *Garvin v. Garvin*, 302 N. Y. 96, 96 N. E. 2d 721 (1951).

47. VEHICLE AND TRAFFIC LAW § 63.

48. *Reese v. Reamore*, 292 N. Y. 292, 55 N. E. 2d 35 (1944).

49. *Ferris v. Sterling*, 214 N. Y. 249, 108 N. E. 406 (1915).

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cannot rebut this presumption by a showing of his violation of the registration statute.<sup>50</sup>

In *Switzer v. Aldrich*,<sup>51</sup> the Court of Appeals was once again confronted with a situation of this type. In a suit by the widow of a person killed by the negligent operation of a truck, the dealer who had sold the truck was made a defendant on the ground of his ownership of the vehicle. The trial court admitted evidence showing that the dealer was not the owner, but had sold the truck to the person who was driving it at the time of the accident. The Appellate Division unanimously affirmed the action of the trial judge, distinguishing *Reese v. Reamore*,<sup>52</sup> on the ground that in that case the dealer had allowed the use of his license plates over an extended period of time with the knowledge that the operator had no intention of applying promptly for a license. In the instant case there was an interval of only four days between the sale and the accident. The Court of Appeals unanimously reversed the Appellate Division and applied the doctrine of the *Reese* case strictly, holding that any deliberate violation of the statutory requirements is sufficient ground for an estoppel.

### IV. CONTRACTS

#### *Parol Evidence Rule*

In *Perlman v. Israel & Sons Co.*,<sup>1</sup> it appeared that an oral contract of the sale was made and confirmatory letters were exchanged which evidenced the contract. When the buyers sued for breach of contract, defendants alleged a valid tender. The Trial Judge excluded testimony of the defendant which offered to show the conversation at the time the agreement was consummated, and charged the jury that plaintiffs were not bound to accept goods allegedly tendered, so long as they were willing to take and pay for them before the contract term expired. The Court of Appeals, reversing a judgment for plaintiff held, that the exclusion of evidence was erroneous and a tender, if made and refused, resulted in a breach of contract excusing defendant from further performance.

The parol evidence rule applies only where the parties to an agreement reduce it to writing and intend that that writing shall

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50. *Shuba v. Greendonner*, 271 N. Y. 189, 2 N. E. 2d 536 (1936).

51. *Switzer v. Aldrich*, 307 N. Y. 56, 120 N. E. 2d 159 (1954).

52. *Supra* note 48.

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1. 306 N. Y. 254, 117 N. E. 2d 352 (1954).