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Article 11

Annulment--Requirement of "Other Satisfactory Evidence" Besides Confession of Either Party (De Baillet-Latour v. De Baillet-Latour, 301 N.Y. 428 (1950))

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RECENT DECISIONS

ANNULMENT—REQUIREMENT OF "OTHER SATISFACTORY EVIDENCE" BESIDES CONFESSION OF EITHER PARTY.—The plaintiff brought an action to annul her seven-month-old marriage to the defendant on the ground that he had fraudulently induced her to marry him. The defendant allegedly represented to the plaintiff that he would have marital relations when, in fact, he never intended and never did fulfill his promise. The defendant, who insisted that the marriage had been consummated, was asked whether the plaintiff had any conspicuous scars on her person. He testified that she did not. The existence of such scars was then demonstrated by a physician. The question was whether this constituted ". . . other satisfactory evidence of the facts . . ." within the meaning of Section 1143 of the New York Civil Practice Act.[1] The Appellate Division affirmed the annulment granted by the trial court. *Held,* judgment affirmed. In an annulment action the declaration or confession of either party to the marriage is not alone sufficient as proof. There must be other satisfactory evidence of the facts. But the language of the statute only requires that there be, in addition, to the declarations or confessions of either party, other material from other sources, substantial and reliable enough to satisfy the conscience of the trier of the facts. *De Baillet-Latour v. De Baillet-Latour,* 301 N. Y. 428, 94 N. E. 2d 715 (1950).

The statute is but a reiteration of a rule which emanates from the ecclesiastical courts of England.[2] It is still the law today.[3] The express purpose of the canon was to preclude annulments based on collusive evidence. For this reason, the ecclesiastical courts refused to grant annulments in suits based on impotency unless the alleged incapacity was established by a medical examination ordered by the

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[1] N. Y. CIV. PRAC. ACT § 1143. ". . . a final judgment annulling the marriage shall not be rendered . . . without proof of the facts upon which the allegation of nullity is founded. The declaration or confession of either party to the marriage is not alone sufficient as proof, but other satisfactory evidence of the facts must be produced."

[2] Canon 105, ratified at the Convocation of Canterbury (1603), provides: "Forasmuch as matrimonial causes have been always reckoned among the weightiest . . . we do straitly charge that in all proceedings to divorce and nullities of matrimony, good circumspection be used . . . and that credit be not given to the sole confessions of the parties themselves . . . ."

[3] Canon 105 was incorporated in the N. Y. Rev. Stat., part II, c. VIII, tit. I, § 36 (1829). It was subsequently enacted into the Code of Civil Procedure by the N. Y. Laws 1880, c. 178. From here it was transferred into the Civil Practice Act.

court.[4] When the state legislatures conferred jurisdiction in matrimonial matters upon their respective tribunals it was not their intent to create a different principle.[5] Consequently, the uniform practice of the ecclesiastical courts was adopted here.[6]

The courts have concluded that the statute prohibits a judgment of annulment rendered solely on the testimony of either party to the marriage.[7] They have differed, however, as to what constitutes the degree of corroboration necessary to meet the statutory requirement of ". . . other satisfactory evidence . . . ." The realization that annulments were being sought where absolute divorces could not be obtained on statutory grounds [8] prompted many courts to refuse relief where the other evidence was not such as to constitute proof of a *clear and convincing character* in respect to all essential elements.[9] Obviously, however, not all annulment actions will admit to ready proof. A plaintiff's difficulty is one of proof because his evidence depends largely on the statements of the parties themselves as verified by their witnesses. Notwithstanding, the witnesses' testimony simply proves that the defendant made a declaration or confession to which the plaintiff testified and nothing more. Such evidence, however, is insufficient.[10]

Although the statute limits the right to relief, it does, nonetheless, sanction it when other satisfactory evidence exists. It could not be that the ingredients of corroboration were meant to be so circumscribed as to be unattainable.[11] The advocates of this second viewpoint, in contrast to the view that the evidence must be *clear*

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[4] Briggs v. Morgan, 3 Phil. 325, 161 Eng. Rep. 1339 (Ecc. 1820); Norton v. Seton, 3 Phil. 147, 161 Eng. Rep. 1283 (Ecc. 1819); Welde v. Welde, 2 Lee 579, 161 Eng. Rep. 446 (Ecc. 1730).

[5] Devanbagh v. Devanbagh, 5 Paige 554 (N. Y. 1836); Perry v. Perry, 2 Paige 501 (N. Y. 1831). *Cf.* Griffin v. Griffin, 47 N. Y. 134, 137 (1872).

[6] Devanbagh v. Devanbagh, 5 Paige 554 (N. Y. 1836); Le Barron v. Le Barron, 35 Vt. 364 (1862); Gore v. Gore, 103 App. Div. 168, 93 N. Y. Supp. 396 (3d Dep't 1905). *Accord,* Anonymous v. Anonymous, 69 Misc. 489, 126 N. Y. Supp. 149 (Sup. Ct. 1910).

[7] Weiman v. Weiman, 295 N. Y. 150, 65 N. E. 2d 754 (1946); Feig v. Feig, 232 App. Div. 172, 249 N. Y. Supp. 695 (1st Dep't 1931); Hall v. Hall, 139 App. Div. 120, 123 N. Y. Supp. 1056 (1st Dep't 1910); Zoske v. Zoske, 64 N. Y. S. 2d 819 (Sup. Ct. 1946); Steimer v Steimer, 37 Misc. 26, 74 N. Y. Supp 714 (Sup. Ct. 1902).

[8] *Cf.* Mirizio v. Mirizio, 242 N. Y. 74, 87, 150 N. E. 605, 610 (1926) (dissenting opinion).

[9] *See, e.g.,* Gabriel v. Gabriel, 274 App. Div. 141, 143, 79 N. Y. S. 2d 823, 825 (1st Dep't 1948); Jones v. Jones, 189 Misc. 145, 147, 69 N. Y. S. 2d 223, 225 (Sup. Ct. 1947); Gerwitz v. Gerwitz, 66 N. Y. S. 2d 327, 330 (Sup. Ct. 1945).

[10] *Accord,* Caleca v. Caleca, 125 N. Y. L. J. 62, col. 1 (Sup. Ct. Jan. 5, 1951). See note 7 *supra.*

[11] *Cf.* Sigel v. Sigel, 20 N. Y. Supp. 377, 378 (Super. Ct. 1892); Richardson v. Richardson, 125 N. Y. L. J. 813, col. 4 (Sup. Ct. Mar. 7, 1951) (if so narrow a construction were placed on Section 1143 as to demand direct corroboration it would be tantamount to saying the legislature offered but a hollow shell without substance).

and convincing, considered that the other satisfactory evidence necessary may be *direct* or *inferential,* according to the circumstances of the case.[12] Apparently leaning more to this approach, the Court of Appeals may have taken cognizance of the practical aspects of the problem. The secrets of the bedchamber, unsusceptible as they are to clear-cut verification, appear to furnish a natural foundation for the exercise of judicial discretion.[13] In light of this, the failure of the statute to define *satisfactory evidence* is not without significance.[14] But this should not mean that the court will abandon the *clear and convincing* proof requirement in all suits for annulment.[15] The statute was enacted to prevent fraud and collusion, and to this end it should be given effect.[16]

While there are circumstances in the present case which might give rise to doubts as to the genuineness of the alleged fraud, it must be remembered that the Court of Appeals was without any power to review the weight of the evidence.[17] Moreover, the issue before the Court of Appeals was not proof of either the defendant's fraudulent intent or of the fraud.[18] The statute, however, does not require that there be other satisfactory evidence to establish the fraud, but only that such evidence exist to corroborate it. An opportune illustration of this distinction is afforded by two decisions which were handed down subsequent to the case at bar. In *Caleca v. Caleca,*[19] the court believed the plaintiff's testimony and yet refused to grant an annulment because of the lack of corroborative evidence. In *Richardson v. Richardson,*[20] however, the court de-

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[12] *See, e.g.,* Rubman v. Rubman, 140 Misc. 658, 674, 251 N. Y. Supp. 474, 491 (Sup. Ct. 1931); Bentz v. Bentz, 188 Misc. 86, 88, 67 N. Y. S. 2d 345, 348 (Sup. Ct. 1947) (what constitutes other satisfactory evidence rests in discretion of court); Zoske v. Zoske, 64 N. Y. S. 2d 819, 834 (Sup. Ct. 1946) (the character of evidence required is the inverse ratio to probability of plaintiff's cause); *accord,* Richardson v. Richardson, 125 N. Y. L. J. 813, col. 5 (Sup. Ct. Mar. 7, 1951).

[13] Vanneman, *Annulment of Marriage for Fraud,* 9 MINN. L. REV. 497, 512 (1925).

[14] *Cf.* Richardson v. Richardson, 125 N. Y. L. J. 813, 814, col. 1 (Sup. Ct. Mar. 7, 1951)

[15] Chambers v. Chambers, 32 N. Y. Supp. 875 (1895) (church register insufficient proof of bigamous marriage); see note 6 *supra.*

[16] *Cf.* Bentz v. Bentz, 188 Misc. 86, 88, 67 N. Y. S. 2d 345, 348 (Sup. Ct. 1947) (the court may not in its discretion dispense entirely with this statutory rule).

[17] Boyd v. Boyd, 252 N. Y. 422, 169 N. E. 632 (1930); Ferguson v. Ferguson, 271 App. Div. 976 (2d Dep't 1947).

[18] *See* De Baillet-Latour v. De Baillet-Latour, 301 N. Y. 428, 435, 94 N. E. 2d 715, 722 (1950) (dissenting opinion).

[19] 125 N. Y. L. J. 62, col. 1 (Sup. Ct. Jan. 5, 1951). ". . . we have *only* the defendant's . . . confession. . . . The testimony of plaintiff's two witnesses is no corroboration of the fraud. . . . Their testimony simply proves that defendant made the . . . confession . . . and nothing more." *Rev'd,* 125 N. Y. L. J. 1296, col. 5 (App. Div., 2d Dep't, April 10, 1951).

[20] 125 N. Y. L. J. 813, col. 5 (Sup. Ct. Mar. 7, 1951). ". . . the fact that . . . he [defendant] tore from her finger the rings which had sealed their

creed an annulment when it was satisfied that other evidence existed.

The present case is not without precedent. It bears a striking similarity to the decisions in actions for divorce which appear to support the conclusion reached here. At an early date, the 105th canon was applied to such actions.[21] These decisions uniformly recognize that the confessions of the parties are insufficient proof.[22] They differ, however, in respect that they held the testimony of the parties to the marriage to be admissible; corroboration thereof merely being required to avoid collusion.[23] It logically followed, therefore, that a confession of adultery, when free from all taint of collusion, justified a decree of divorce.[24] The theory was that when the reason for the rule fails, the rule itself ceases.[25] Still another interesting comparison is presented by the cases requiring corroboration of the testimony of private detectives and prostitutes.[26] But again the court refused to be bound by a rigid rule of evidence, and accordingly determined the rule to be one for the guidance of the judicial conscience.[27]

The resemblance between annulment and divorce cases can be discerned more vividly, however, in the rationale of the decisions which appear to leave to the court an area in which to exercise its discretion; at once, flexible enough to provide bona fide petitioners with the redress permitted by law, and yet, at the same time, sturdy enough to protect the purpose for the requirement of corroboration. The wisdom of a decision which leaves to the judiciary the function of safeguarding public policy cannot be questioned.

ARBITRATION—COMPETENCY OF ARBITRATORS.—During recent years arbitration has been resorted to more and more for the settlement of business controversies. With this increase there has been

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betrothal . . . is eloquent corroborative evidence that . . . he had no intention to live with her . . . in accordance with his promise. . . ."

[21] *See* Betts v. Betts, 1 Johns. Ch. 197 (N. Y. 1814). When the canon was embodied in statutory form no mention was made of its applicability to divorce actions. N. Y. REV. STAT., part II, c. VIII, tit. I, § 36. "No sentence of nullity . . . shall be pronounced . . . ."

[22] Fowler v. Fowler, 29 Misc. 670, 61 N. Y. Supp. 109 (1899); Montgomery v. Montgomery, 3 Barb. Ch. 132 (N. Y. 1848); Betts v. Betts, 1 Johns. Ch. 197 (N. Y. 1814).

[23] Madge v. Madge, 42 Hun 524 (N. Y. 1886); Lyon v. Lyon, 62 Barb. 138 (N. Y. 1861); Doe v. Roe, 1 Johns. 25 (N. Y. 1799).

[24] See note 23 *supra*.

[25] *Cf.* Lyon v. Lyon, 62 Barb. 138, 142 (N. Y. 1861).

[26] McCarthy v. McCarthy, 143 N. Y. 235, 38 N. E. 288 (1894); Moller v. Moller, 115 N. Y. 466, 22 N. E. 169 (1889); Platt v. Platt, 5 Daly 295 (N. Y. 1874).

[27] Yates v. Yates, 211 N. Y. 163, 105 N. E. 195 (1914); Winston v. Winston, 165 N. Y. 553, 59 N. E. 273, *aff'd*, 189 U. S. 506 (1901). *Cf.* McKeon v. Van Slyck, 223 N. Y. 392, 398, 119 N. E. 851, 852 (1918).