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## Marriage--Annulment for Want of Understanding--Does It Include Lunacy as Well as Idiocy? (De Nardo v. De Nardo, 293 N.Y. 550 (1944))

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infant were not excluded, but were included, in the coverage clause and his acts were the proximate cause of the loss.

I. K.

**MARRIAGE—ANNULMENT FOR WANT OF UNDERSTANDING—DOES IT INCLUDE LUNACY AS WELL AS IDIOCY?**—An action was brought under Section 7 of the Domestic Relations Law<sup>1</sup> and Section 1137 of the Civil Practice Act<sup>2</sup> to annul a marriage on the ground of the plaintiff's lunacy. The jury was asked to determine whether the plaintiff was a lunatic at the time of his marriage. The defendant's counsel wished the court to charge that if the jury found that the plaintiff had a lucid interval on the day of the marriage, the answer to the question must be "No". The court refused the request. The trial court charged the jury that, "A lunatic is a person of unsound mind who is mentally deranged but might have intermittent lucid intervals." After the jury had retired, it returned with a request for further instructions. The court once again refused the counsel's request that it charge the jury, "A lunatic meant that plaintiff on the day of the marriage was incapable of consenting thereto for want of understanding."<sup>3</sup> *Held*, refusal to charge as requested was prejudicial error. *De Nardo v. De Nardo*, 293 N. Y. 550 (1944).

In New York, a marriage may be annulled where one of the parties, due to his mental derangement at the time of marriage, was incapable of comprehending the nature and import of the act.<sup>4</sup> Although this rule would seem, on the face of it, to offer no decisional

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<sup>1</sup> DOM. REL. LAW §7: A marriage is void from the time its nullity is declared by a court of competent jurisdiction if either party thereto:

Subd. 2: Was incapable of consenting to the marriage for want of understanding.

<sup>2</sup> CIV. PRAC. ACT §1137: Action to annul marriage where party was a lunatic. An action to annul a marriage on the ground that one of the parties thereto was a lunatic may be maintained at any time during the continuance of the lunacy or, after the death of the lunatic in that condition and during the life of the other party to the marriage, by any relative of the lunatic who has an interest to avoid the marriage. Such an action may also be maintained by the lunatic at any time after restoration to sound mind; but in that case the marriage should not be annulled if it appears that the parties freely cohabited as husband and wife after the lunatic was restored to a sound mind. Where one of the parties to a marriage was a lunatic at the time of the marriage an action may also be maintained by the other party at any time during the continuance of the lunacy, provided the plaintiff did not know of the lunacy at the time of the marriage. An action to annul a marriage upon the ground specified by subdivision 5 of section 7 of the Domestic Relations Law may be maintained pursuant to and in accordance with the provisions of such subdivision by or on behalf of either of the parties to such marriage.

<sup>3</sup> DOM. REL. LAW §7, cited *supra* note 1.

<sup>4</sup> *Weinberg v. Weinberg*, 255 App. Div. 366 (4th Dep't 1938).

problems, yet one problem always<sup>5</sup> arises when such action is brought. By definition, a lunatic is one who having been of sound mind has lost his reason but still enjoys intermittent lucid periods, whereas an idiot is one who is without understanding from birth.<sup>6</sup> Therefore, if a person who is a lunatic is married during one of his lucid periods, can such a marriage be annulled under Section 7 of the Domestic Relations Law and Section 1137 of the Civil Practice Act? It has invariably been held in this State<sup>7</sup> that if such a lunatic contracted a marriage during a lucid period, it is valid.

The *Weinberg* case<sup>8</sup> amply demonstrates just this point. On August 31, 1920, Albert I. Weinberg was adjudged insane and was committed to the Rochester State Hospital; on June 4, 1924 he was released on parole. Thereafter, he was periodically confined to various mental institutions due to his dementia praecox condition. In August of 1926 he met the defendant and shortly thereafter they were married. During their entire courtship the plaintiff was entirely rational, conducting himself as would any other normal person in a similar situation. In this action to annul the marriage, brought by the mother of the plaintiff, the court held as follows: "The marriage of a lunatic is voidable not void. Before a marriage can be annulled on the ground of lunacy or for want of understanding on the part of one of the parties it must be shown satisfactorily that such party was mentally incapable of understanding the nature and effect of said event."

Therefore it can readily be seen that in the *De Nardo* case the trial judge erred, because as he framed the question for the jury, all the jury decided was that the plaintiff was a lunatic. When actually, what should have been determined was not whether Mario De Nardo was a lunatic, but rather, did he have a lucid period at the time of marriage, and did he understand the nature of his act. Thus, Justice Thacher in writing the Court of Appeals decision said, "The trial judge departed from the statutory definition of lunatic and failed to instruct the jury that if the plaintiff's intestate<sup>9</sup> was of sound mind at the time of his marriage, he could not be regarded as a lunatic for the purpose of answering the framed question." The opinion then went on to say, "Presumably the doubt in the minds of the jury was whether they could find the husband to have been a lunatic although

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<sup>5</sup> *Wightman v. Wightman*, 4 Johns. Ch. 343, 344 (N. Y. 1820); *Forman v. Forman*, 24 N. Y. Supp. 917 (1893).

<sup>6</sup> 1 BL. COMM. 302-304.

<sup>7</sup> *Meekins v. Kinsella*, 152 App. Div. 32 (1st Dep't 1912); *Wightman v. Wightman*, 4 Johns. Ch. 343, 344 (N. Y. 1820), cited *supra* note 5.

<sup>8</sup> *Weinberg v. Weinberg*, 255 App. Div. 366 (4th Dep't 1938), cited *supra* note 4.

<sup>9</sup> See section 1137, CIVIL PRACTICE ACT, *supra*, for persons allowed to bring this action.

he had no want of understanding at the time of his marriage.”

Most authorities<sup>10</sup> agree that an idiot is incapable of any understanding from the time of birth. Thus it would necessarily follow that an annulment could be had under Section 7 of the Domestic Relations Law, where one of the parties to the marriage is an idiot. In the *De Nardo* case, Justice Thacher in his opinion, made the following statement, “Under this section<sup>11</sup> a marriage may be annulled because either party is incapable of consenting to a marriage for want of understanding, and such unsoundness of mind includes both lunacy and idiocy.” Therefore all that is necessary in an action commenced under Section 7 of the Domestic Relations Law and Section 1136 of the Civil Practice Act<sup>12</sup> to annul a marriage because of the idiocy of one of the parties would be to establish said idiocy by testimony.

L. L.

MASTER AND SERVANT—FEDERAL EMPLOYERS’ LIABILITY ACT—DUTY OF EMPLOYER TO PROVIDE MEDICAL SERVICE TO INJURED EMPLOYEE.—Plaintiff-appellant invoked the Federal Employers’ Liability Act,<sup>1</sup> seeking to recover damages for the negligent death of her husband. The deceased was a laborer employed by the defendant. In the course of his work he was rendered helpless from heat prostration. While in such condition he was not afforded any medical attention by his employer, but the foreman of his crew directed two of his men to convey him to his home where he was left unaided and unattended. Death ensued, which, it was claimed, resulted from

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<sup>10</sup> *Bicknell v. Spear*, 38 Misc. 389, 391 (1902); 1 BL. COMM. 302-304, cited *supra* note 6.

<sup>11</sup> DOM. REL. LAW § 7, cited *supra* note 1.

<sup>12</sup> CIV. PRAC. ACT § 1136: Action to annul marriage where party was an idiot. An action to annul a marriage on the ground that one of the parties thereto was an idiot may be maintained at any time during the life time of either party by any relative of idiot who has an interest to avoid the marriage.

<sup>1</sup> 45 U. S. C. A. § 51 (1940) provides that “Every common carrier by railroad while engaging in commerce between any of the several States or Territories, or between any of the States and Territories, or between the District of Columbia and any of the States or Territories, or between the District of Columbia or any of the States or Territories and any foreign nation or nations, shall be liable in damages to any person suffering injury while he is employed by such carrier in such commerce, or, in case of death of such employee, to his or her personal representative, for the benefit of the surviving widow or husband and children of such employee; . . . for such injury or death resulting in whole or in part from the negligence of any of the officers, agents, or employees of such carrier, or by reason of any defect or insufficiency, due to its negligence, in its cars, engines, appliances, machines, tracks, roadbed, works, boats, wharves, or other equipment.”