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Husband and Wife--Liability of Wife for Support of Husband on Public Relief--Sections 125 and 128 of Public Welfare Law (Hodson v. Stapleton, 248 App. Div. 524 (1st Dept. 1936))

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Unfortunately, a legislative enactment would be of little assistance in distinguishing the types of negligence for each case must be decided on its own particular facts.[11]

It has been suggested that in view of the statute making the driver of a motor vehicle who leaves the scene of an accident guilty of a misdemeanor,[12] that a similar "measure should be enacted imposing upon a person who negligently starts a fire a duty to take all reasonable means, short of risking serious injury, to give warning to those whose lives he has placed in jeopardy".[13]

S. S. N.

HUSBAND AND WIFE—LIABILITY OF WIFE FOR SUPPORT OF HUSBAND ON PUBLIC RELIEF—SECTIONS 125 AND 128 OF PUBLIC WELFARE LAW.—The defendant and her husband were married October 8, 1901. Her husband received, from the Department of Public Welfare of the City of New York, monthly payments as old age security relief aggregating $2,025, between September 1, 1931 and July 1, 1935. During most of this time, she was of meagre means, possessing neither real nor personal property, until the death of her uncle. By his will, she received on May 1, 1935, $1,000. She has since received several thousand dollars on account of her distributive share which will total $29,000. The plaintiff, Commissioner of Public Welfare of the City of New York, seeks to recover from the defendant, under Section 128 of the Public Welfare Law,[1] the entire sum paid

requiring as a substitute for criminal intent, *intent implied in fact?*" (Italics ours.)

[11] (1937) 6 FORD. L. REV. 309, n. 3.

[12] N. Y. VEHICLE AND TRAFFIC LAW § 70, subd. 5-a.

[13] See note 11, *supra*.

[1] N. Y. PUBLIC WELFARE LAW § 125 (L. 1929 c. 565 effective Jan. 1, 1930) creates the liability, and relatives may be compelled to support under N. Y. PUBLIC WELFARE LAW § 126 or N. Y. CODE OF CRIM. PRO. § 915. See Hodson v. Grumlich, 156 Misc. 199, 280 N. Y. Supp. 193 (1935).

N. Y. PUBLIC WELFARE LAW § 126: *"Liability of relatives to support.* The husband, wife, father, mother, grandparent, child or grandchild of a recipient of public relief, or of a person liable to become in need of public relief, shall, if of sufficient ability be responsible for the support of such person."

Note: N. Y. CODE OF CRIM. PRO. § 914, amended by L. 1933, c. 589, is now similar to this portion of N. Y. PUBLIC WELFARE LAW.

N. Y. PUBLIC WELFARE LAW § 128: *"Recovery from a person discovered to have property.* A public welfare official may bring an action against a person discovered to have real or personal property * * * if such person, or anyone for whose support he is or was liable received relief or care during the preceding ten years, and shall be entitled to recover up to the value of such property the cost of relief. Any public relief received by such person shall constitute an implied contract."

to her husband. The defendant contends that the obligation created by this section is unreasonable, arbitrary, and unconstitutional insofar as it applies to marriages contracted before the enactment of the law. *Held,* the statute adds a new incident to marriages contracted before and after its enactment, but in no event can liability arise for relief payments made prior to the enactment. And too, this liability is not absolute, arising only if and when the wife is capable of bearing the burden, as in the case at bar from May 1, 1935. *Hodson* v. *Stapleton,* 248 App. Div. 524, 290 N. Y. Supp. 570 (1st Dept. 1936).

The moral obligation of support and maintenance commensurate with his means, which a husband owed to his wife and family, was early recognized as a legal duty at common law,[2] and later expressly provided for by statute.[3] The converse of that proposition, namely that the wife owes duty of support to her husband, was never recognized as true at common law.[4] The moral obligation to support and aid when in need was always present, however, and it was gradually strengthened by the various enabling acts and the general modern desire for equality of the sexes. It was not, however, until the passage of the Public Welfare Law [5] that this moral obligation, which had gradually grown stronger, became established as a legal reality, attaching to every marriage in existence.

To establish this liability, there must be a concurrence of indigence of the husband or a relative [6] plus the ability of the wife to support the needy one. This new liability of the wife is not, as in the husband's common law duty to support, imposed regardless of her circumstances. The wife, in the words of the statute,[7] "if of sufficient ability", becomes liable. This duty, therefore, differs from that of the husband, in that it is not absolute.

The statute is not retroactive. True, to every existing marriage it adds this new obligation. Liability, however, does not arise for relief given prior to the passage of this Act and attaches from the date

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It should be noted that under this section, the City may recover from one liable to support under § 125 when support has already been given, provided the person liable has real or personal property. The remedy afforded by this section differs from § 125; see Hodson v. Grumlich, 156 Misc. 199, 280 N. Y. Supp. 193 (1035).

In Goodale v. Lawrence, 88 N. Y. 513 (1882) the Poor Authorities recovered from husband, in absence of this statute.

[2] Finkelstein v. Finkelstein, 174 App. Div. 416, 161 N. Y. Supp. 166 (1st Dept. 1916); Stevens v. Hush, 107 Misc. 353, 176 N. Y. Supp. 602 (1919).

[3] N. Y. PUBLIC WELFARE LAW § 125; DOM. REL. COURT ACT § 101, subd. 1 (effective Oct. 1, 1933). These statutes merely restate the common law duty and provide a means of enforcing the liability. They add nothing to the husband's former duty of support as known to the common law.

[4] Young v. Valentine, 177 N. Y. 347, 69 N. E. 643 (1904).

[5] N. Y. PUBLIC WELFARE LAW effective Jan. 1, 1930.

[6] N. Y. PUBLIC WELFARE LAW § 125 makes a wife liable for the support, not only of her husband but also her children, grandchildren and parents, and grandparents.

[7] N. Y. PUBLIC WELFARE LAW § 125.

when the person liable was "of sufficient ability". Since the statute produces a radical change in the common law doctrine of support, it must be strictly construed.[8]

The defendant's contention that the Act[9] is unconstitutional was lightly dismissed by the court on the ground that the general question has been too well settled in this jurisdiction to be argued at this late date. It has been repeatedly held that although marriage is called a civil contract[10] and though it possesses many contractual characteristics, it is not a contract within the meaning of that clause of the Federal Constitution which prohibits a state from passing laws impairing the obligations of contracts.[11] Instead it has been viewed[12] as a social institution avidly protected and regulated by the state.

M. M. B.

MOTOR VEHICLES—NEGLIGENCE—PROXIMATE CAUSE—GUEST RULE.—This is an action to recover for personal injuries alleged to have been sustained by the plaintiffs, husband and wife, who were passengers in an automobile operated by their son, which, while turning to the left into a side street, was struck by the car of the defendant, approaching from the opposite direction. The trial judge, in accordance with the request of plaintiffs' counsel, charged the jury, that even though the negligence of the driver of the automobile in which the plaintiffs were riding contributed to the injury, the plaintiffs may still recover if the jury finds the negligence of the defendant was the direct and proximate cause of the injuries sustained by plaintiffs. Trial term held for defendant, Appellate Division affirmed. On appeal, *held,* judgment for defendant affirmed. *Anderson* v. *Burkardt,* 275 N. Y. 281, 9 N. E. (2d) 929 (1937).

The charge as to contributory negligence taken as a whole in connection with the evidence to which it was to apply was sufficient.[1] It is a question of fact and not of law as to whether the defendant's negligence was the proximate cause of the injury to the plaintiff.[2] Proximate cause is any cause which in natural and continuous sequence, unbroken by any efficient intervening cause, produces the

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[8] OP. ATT'Y GEN. (1934) 51 St. Dept. 258.

[9] N. Y. PUBLIC WELFARE LAW §§ 125, 128.

[10] N. Y. DOMESTIC RELATION LAW § 10; O'Gara v. Eisenlohr, 38 N. Y. 296 (1868) ("Thereby distinguishing it from a religious sacrament"); Wade v. Kalbfleisch, 58 N. Y. 282 (1874).

[11] Maynard v. Hill, 125 U. S. 190, 8 Sup. Ct. 723 (1888); White v. White, 5 Barb. 476 (1848).

[12] Wade v. Kalbfleisch, 58 N. Y. 282 (1874).

[1] Palsgraf v. Long Island R. R., 248 N. Y. 339, 162 N. E. 99 (1928).

[2] Hutchins v. Emery, 134 Me. 205, 183 Atl. 754 (1936).