St. John's Law Review

Volume 11, April 1937, Number 2 — Article 9

Constitutional Law--Validity of Statute Abolishing Causes of Action for Breach of Promise to Marry and Seduction (Fearon v. Treanor, 272 N.Y. 268 (1936))

St. John's Law Review

Follow this and additional works at: https://scholarship.law.stjohns.edu/lawreview

Recommended Citation

St. John's Law Review (1937) "Constitutional Law--Validity of Statute Abolishing Causes of Action for Breach of Promise to Marry and Seduction (Fearon v. Treanor, 272 N.Y. 268 (1936))," *St. John's Law Review*: Vol. 11 : No. 2 , Article 9.
Available at: https://scholarship.law.stjohns.edu/lawreview/vol11/iss2/9

This Recent Development in New York Law is brought to you for free and open access by the Journals at St. John's Law Scholarship Repository. It has been accepted for inclusion in St. John's Law Review by an authorized editor of St. John's Law Scholarship Repository. For more information, please contact lasalar@stjohns.edu.

ating the car has his consent, and whether used in his business or not, thus creating a liability where none existed before the enactment.[7] However, the statute has no extra-territorial effect.[8] It does not come into operation until an accident happens on a public highway in *this* state.[9] Where the accident occurs in another state, the law of that state applies in an action for the recovery of damages for negligence.[10] In the absence of any evidence as to the law of the foreign state, it will be presumed to be the same as the common law of the state where the action is brought.[11] Thus, in the instant case, Section 59 of the Vehicle and Traffic Law, not being a restatement of the common law, does not apply, and the owner is not responsible for the tort of the driver.

Although there was a bailment between father and son, it was a gratuitous one, and no such contract resulted [12] as would allow plaintiffs to sue as third-party beneficiaries.[13]

J. K.

CONSTITUTIONAL LAW—VALIDITY OF STATUTE ABOLISHING CAUSES OF ACTION FOR BREACH OF PROMISE TO MARRY AND SEDUCTION.—Plaintiff seeks to recover damages for a breach of promise to marry, and seduction, the acts alleged in the complaint occurring subsequent to the enactment of Article 2-A of the New York Civil Practice Act.[1] At Trial Term, a verdict was directed for the defendant on the grounds that the cause of action had been abolished by statute. The judgment has been affirmed by the Appellate Division, which held that the statute, in so far as it applies to this case, is constitutional. On appeal, *held,* affirmed. The legislature has plenary power in dealing with the subject of marriage, and may, in its discretion, abolish or alter causes of action in relation thereto, when a condition is deemed to exist that is detrimental to the best interests

[7] Gochee v. Wagner, 257 N. Y. 344, 347, 178 N. E. 553, 554 (1931).

[8] Kernan v. Webb, 50 R. I. 394, 399, 148 Atl. 186, 188 (1929).

[9] *Ibid.*

[10] Metcalf v. Reynolds, 267 N. Y. 52, 195 N. E. 681 (1935).

[11] Matter of Marchant v. Mead-Morrison Mfg. Co., 252 N. Y. 284, 303, 169 N. E. 386, 392 (1929); Weissman v. Banque De Bruxelles, 254 N. Y. 488, 495, 173 N. E. 835, 837 (1930).

[12] 2 WILLISTON, CONTRACTS (1924) § 1039. Professor Williston, in discussing loans for bailee's use without hire, says, "Here as in that case there is likely to be no true contract * * *. There is * * * the possibility of a contract as the parties bargained for an exchange, but generally this will not occur."

[13] 1 WILLISTON, CONTRACTS 394 (1924). "The foundation of any right the third person may have whether he is a sole beneficiary or a creditor of the promisee, is the promisor's contract. Unless there is a valid contract, no rights can arise in favor of anyone."

[1] N. Y. Laws 1935, c. 263.

of the institution of marriage. *Fearon v. Treanor,* 272 N. Y. 268, 5 N. E. (2d) 815 (1936).

The general principle in New York and other jurisdictions is that the contract of marriage is a civil contract.[2] But because of the nature of its subject-matter such a contract is cloaked with a public interest, and the legislature has power to subject the parties to certain conditions precedent to the valid execution of the marriage contract.[3] It is well settled that the state has the right to require persons to procure a license,[4] and to fulfill certain conditions as to age,[5] and consanguinity.[6] In a contract of marriage, as in any contract bearing on a social relation, the personal rights of the parties are subordinate to the general welfare,[7] and the legislature may protect the institution of marriage from the immoral consequences of "legal blackmail".

The provision of the Federal Constitution safeguarding the obligations of contracts [8] does not extend to contracts made with respect to the institution of marriage.[9] In the name of good order and public morals, the legislature is hampered neither by due process nor the aforementioned provisions in enacting such legislation as it deems necessary or expedient.[10] The state exercises plenary powers in dealing with the subject of marriage.[11] Unless such powers are unreason-

---

[2] N. Y. DOM. REL. LAW (Cons. L. c. 14) art. 3, § 10; 2 SCHOULER, MARRIAGE, DIVORCE, SEPARATION AND DOMESTIC RELATIONS (6th ed. 1921) § 1073; DiLorenzo v. DiLorenzo, 174 N. Y. 467, 67 N. E. 63 (1903); Zeigler v. Cassidy, 220 N. Y. 98, 115 N. E. 471 (1917); Coe v. Hill, 201 Mass. 15, 96 N. E. 949 (1909); Heymann v. Heymann, 218 Ill. 636, 75 N. E. 1079 (1905); Van Dommelen v. Van Dommelen, 218 Mich. 149, 187 N. W. 324 (1922).

[3] 2 SCHOULER, MARRIAGE, DIVORCE, SEPARATION AND DOMESTIC RELATIONS (6th ed. 1921) § 1074; Wade v. Kalbfleisch, 58 N. Y. 282 (1874); Cunningham v. Cunningham, 206 N. Y. 341, 99 N. E. 845 (1921); Tyler v. Tyler, 170 Mass. 150, 48 N. E. 1075 (1898).

[4] N. Y. DOM. REL. LAW (Cons. L. c. 14) art. 3, § 13; Blackburn v. Crawfords, 3 Wall. 175 (U. S. 1865); Davidson v. Ream, 178 App. Div. 362, 164 N. Y. Supp. 1037 (3d Dept. 1917); Taub v. Taub, 87 N. J. Eq. 624, 101 Atl. 246 (1917).

[5] N. Y. DOM. REL. LAW (Cons. L. c. 14) art. 2, § 7 (1); Kellogg v. Kellogg, 122 Misc. 734, 203 N. Y. Supp. 757 (1924); Peo. v. Souleotes, 26 Cal. A. 309, 146 Pac. 903 (1921).

[6] N. Y. DOM. REL. LAW (Cons. L. c. 14) art. 2, § 5; Arado v. Arado, 281 Ill. 123, 117 N. E. 816 (1917); Audley v. Audley, 196 App. Div. 103, 187 N. Y. Supp. 652 (1st Dept. 1921).

[7] Home Bldg. & Loan Ass'n v. Blaisdell, 290 U. S. 398, 54 Sup. Ct. 231 (1932); Block v. Hirsch, 256 U. S. 135, 41 Sup. Ct. 458 (1921); Peo. v. Griswold, 213 N. Y. 92, 106 N. E. 929 (1914); Matter of Peo. (Tit. Guar. & Mtge. Co.), 264 N. Y. 69, 190 N. E. 153 (1934).

[8] U. S. CONST. Art. I, § 10.

[9] Maynard v. Hill, 125 U. S. 190, 8 Sup. Ct. 723 (1888); Rast v. Van Deman, 240 U. S. 342, 36 Sup. Ct. 370 (1916).

[10] U. S. CONST. Amdt. XIV, § 1; Truax v. Corrigan, 257 U. S. 312, 42 Sup. Ct. 124 (1921); Union Dry Goods v. Giorgia, 248 U. S. 372, 39 Sup. Ct. 117 (1919).

[11] Maynard v. Hill, 125 U. S. 190, 8 Sup. Ct. 723 (1888); Baker's exec. v. Kilgore, 145 U. S. 487, 12 Sup. Ct. 943 (1892); State v. Tutty, 41 Fed. 753 (S. D. Ga. 1890); Duval v. Wellman, 124 N. Y. 156, 26 N. E. 343 (1891).

ably used, the legislation so enacted must stand.[12] It is not within the power of the judiciary to question the wisdom or necessity of the statute.[13]

In the instant case, the court limited its discussion to those sections of the statute which were involved.[14] The question of seduction, brought into the case by plaintiff's allegation, was summarily dealt with by the court. At common law there was no cause of action for seduction brought by the woman against her seducer.[15] Hence there is no doubt of the legislative power to abolish that cause of action. The court completely ignored the great wealth of legal and editorial opinions that have been offered since the enactment of the statute.[16] It paid no heed to the popular juridical philosophy that the legislature cannot validly abrogate a cause of action without replacing it with an adequate substitute.[17] Nor did it dwell upon other equally effective and less radical means of attaining the same result.[18] After satisfying itself that the police power of the state was reasonably exercised, the court placed its stamp of validity on this much discussed statute.

In the recent case of *Hanfgarn v. Mark*,[19] the Appellate Division, Second Department, ruled that the legislature went beyond its powers in abrogating the causes of action for alienation of affections and criminal conversation, without substituting therefor an adequate remedy.[20] The Court of Appeals dismissed the defendant's appeal on a technicality of procedure,[21] but the result of the reargument before

---

[12] Nebbia v. New York, 291 U. S. 502, 54 Sup. Ct. 505 (1934); Matter of Stubbe v. Adamson, 220 N. Y. 459, 116 N. E. 372 (1917); Home Bldg. & Loan Ass'n v. Blaisdell, 290 U. S. 398, 54 Sup. Ct. 231 (1932).

[13] Williams v. Mayor, 289 U. S. 398, 53 Sup. Ct. 431 (1932).

[14] Section 61-h of the present article provides that it shall be liberally construed, and if any clause, sentence, paragraph or part thereof shall be found invalid under any condition or circumstance, such judgment shall not affect the remainder of the article, nor the application of that part found invalid to other conditions or circumstances.

[15] Hamilton v. Lomax, 6 Abb. Pr. 142, 25 Barb. 615 (N. Y. 1858); Pickle v. Page, 252 N. Y. 474, 169 N. E. 650 (1930); Graham v. Wallace, 50 App. Div. 101, 63 N. Y. Supp. 372 (4th Dept. 1900); Welsind v. Scheuller, 98 Minn. 475, 108 N. W. 483 (1906).

[16] N. Y. L. J., Apr. 9, 1936, p. 1792, col. 3; *id.*, Aug. 19, 1936, p. 456, col. 1. See also Note (1935) 10 Wis. L. Rev. 417; Note (1936) 5 Fordham L. Rev. 63; Dixon, *Penal Provisions of the New "Heart Balm" Legislation* (1936) 10 St. John's L. Rev. 236.

[17] Hanfgarn v. Mark, 248 App. Div. 325, 289 N. Y. Supp. 143 (2d Dept. 1936). See New York Cen. R. R. Co. v. White, 243 U. S. 188, 37 Sup. Ct. 247 (1916); Gibbs v. Zimmerman, 290 U. S. 326, 54 Sup. Ct. 140 (1932); Crane v. Hahlo, 258 U. S. 142, 42 Sup. Ct. 214 (1922).

[18] It has been suggested that the extension of the Statute of Frauds (N. Y. Pers. Prop. Law § 31) so as to include mutual promises to marry, would substantially decrease the number of fraudulent actions.

[19] 248 App. Div. 325, 289 N. Y. Supp. 143 (2d Dept. 1936).

[20] New York Cen. R. R. Co. v. White, 243 U. S. 188, 37 Sup. Ct. 247 (1916); Poindexter v. Greenhow, 114 U. S. 270, 5 Sup. Ct. 903 (1885). But see dissenting opinions per Davis and Adel, JJ., in Hanfgarn v. Mark, 248 App. Div. 325, 330 *et seq.*, 289 N. Y. Supp. 143, 149 *et seq.* (2d Dept. 1936).

[21] 272 N. Y. 265, 5 N. E. (2d) 386 (1936).

that tribunal promises to be of great interest in view of the conflicting opinions on the subject in the lower courts.

E. F. A.

CONSTITUTIONAL LAW—SEPARATION OF POWERS—DELEGATION TO PRESIDENT OF POWER TO DECLARE EMBARGO.—Pursuant to the authority vested in him on May 28, 1934, by a Joint Resolution of Congress,[1] the President issued a proclamation [2] prohibiting the sale of munitions in the United States or its territories, to any of the countries engaged in armed conflict in the Chaco. To an indictment charging defendants with conspiracy to sell machine guns to one of the belligerents, defendants demurred on the ground that the Joint Resolution is unconstitutional, inasmuch as it effects an invalid delegation of legislative power to the executive. On appeal from a judgment sustaining the demurrer,[3] *held,* judgment reversed. The legislation was aimed at regulating foreign relations and not domestic affairs, and as such it is not repugnant to the Federal Constitution.[4] *The United States of America* v. *Curtiss-Wright Export Corp., et al.,* — U. S. —, 57 Sup. Ct. 216 (1936).

Perhaps no other phase of Constitutional Law has aroused greater national controversy during the present administration than the question of the delegation of legislative power to the Executive. On two momentous occasions [5] the Supreme Court struck a lethal blow at the very vitals of the President's "New Deal Program". It reiterated in no uncertain terms the principle enunciated in the maxim *"Delegata potestas non potest delegari"*—delegated powers may not be delegated. The instant case, however, differs from its antecedents in that it

[1] "Resolved * * * that if the President finds that the prohibition of sale of arms and munitions of war in the United States to those countries now engaged in armed conflict in the Chaco may contribute to the reestablishment of peace between those countries, and * * * if he makes proclamation to that effect, it shall be unlawful to sell * * * any arms or munitions of war * * * until otherwise ordered by the President or Congress." 48 STAT. 811 (1934).

[2] 48 STAT. 1744 (1934).

[3] United States v. Curtiss-Wright Export., 14 F. Supp. 230 (S. D. N. Y. 1936).

[4] Art. I, § 1: "All legislative powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives." Article I, § 8, par. 18 provides that Congress shall have the power "To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by the Constitution in the government of the United States, or in any department or office thereof."

[5] Panama Refining Co. v. Ryan, 293 U. S. 388, 55 Sup. Ct. 241 (1935) A. L. A. Schechter Poultry Corp. v. United States, 295 U. S. 495, 55 Sup. Ct. 837 (1935). Of course in these decisions another vital issue played a great part—the question whether the codes themselves would be constitutional, had they been formulated by Congress itself, leaving the President to fill in the details.