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Contract--Replevin--Engagement Tokens (Wilson v. Riggs, 267 N.Y. 570 (1935))

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tract expressly required the purchaser's personal satisfaction as to the items to be included in the overhead. Further, there was no waiver or other equity in favor of the seller. The court explains that while overhead charges may not be dependent upon taste or fancy, still experts often disagree as to what items should be included in overhead, and since it is largely a matter of individual judgment, such a contract requiring personal satisfaction should be strictly construed.[15]

L. H. R.

CONTRACT—REPLEVIN—ENGAGEMENT TOKENS.—The plaintiff and the defendant were engaged to be married. As a pledge for, or token of, a mutual agreement to marry one another, plaintiff presented defendant with a diamond ring. Plaintiff alleges that he intended the gift as an engagement ring and that it was so accepted by the defendant. Thereafter, plaintiff and defendant by "mutual consent" cancelled and abandoned their contract to marry. In an action in replevin to recover possession of the ring, defendant moved for judgment on the pleadings. *Held,* motion denied; the complaint stated facts sufficient to constitute a cause of action. *Wilson* v. *Riggs,* 267 N. Y. 570, 196 N. E. 584 (1935).

It is well settled that when the donee breaks the engagement without legal cause, the ring or other consideration must be returned,[1]

Union Telegraph Co., 268 N. Y. 108, 113, 196 N. E. 760 (1935), Loughran, J., says: "When literal construction is rejected in cases like this, the reason is usually some consideration of hardship or unjust enrichment."

[15] In Dairymen's League Co-op. Ass'n, Inc. v. Holmes, 207 App. Div. 429, 438, 202 N. Y. Supp. 663, 672 (4th Dept. 1924), Sears, J., in remarking that "overhead" is a word of vague content, says: "It may be said to include broadly the continuous expenses of a business irrespective of the outlay on particular contracts." Lytle, Campbell & Co. v. Somers, Fitler & Todd Co., 276 Pa. 409, 415, 120 Atl. 409, 411 (1923): "* * * there are many uncertain items fluctuating between the administrative and operative ends, partaking somewhat of both." In the instant case, Wynkoop Hallenbeck Crawford Co. v. Western Union Telegraph Co., 268 N. Y. 108, 112, 196 N. E. 760 (1935), the court says that although strictly there is no element of taste or fancy involved, "the allocation of administrative and overhead charges, to one of many separate undertakings in a single business, is in large degree an affair of individual judgment,—an interpretation which is not a matter of general agreement in the business community." It is submitted that this explanation given by the court, may be the basis for a contention that the instant case merely adds "overhead" to that group of cases whose subject matter is considered as being dependent upon personal taste, fancy or judgment.

[1] Beck v. Cohen, 237 App. Div. 729, 262 N. Y. Supp. 716 (1st Dept. 1933); Beer v. Hart, 153 Misc. 277, 274 N. Y. Supp. 671 (1934); Humble v. Gay, 168 Cal. 516, 143 Pac. 778 (1914); Lumsden v. Arbaugh, 207 Mo. App. 561, 227 S. W. 868 (1921); *cf.* Rosenberg v. Lewis, 210 App. Div. 690, 206 N. Y. Supp. 353 (1st Dept. 1924), where it was held that where gifts are made

this condition being implied,[2] and infancy is no defense.[3] But the donee may keep the ring if the donor refuses to carry out the promise without legal justification or has by his fraud induced the donee's promise.[4] But when the parties mutually agree to break the engagement, a different problem arises. A contract to marry may, like other contracts, be abrogated by mutual consent,[5] in which case neither party is at fault. The Roman Law provided for the return of betrothal gifts when parties mutually dissolved the contract.[6] In the instant case the court found that since the engagement was cancelled by mutual consent, the principle applied that the ring was given and received upon the condition subsequent that it would be returned if the parties did not wed without fault of either. In following this rule the court is giving utterance to a public conscience, for essentially the problem is one of ethics.

H. S.

CONTRACTS—STATUTE OF FRAUDS—ORAL CONTRACT TO BE PERFORMED WITHIN A LIFETIME.—The plaintiff was the holder of a note executed by the defendant's brother, one Arnold. The note, when due, was not paid and plaintiff threatened suit, unless Arnold procured a loan on his insurance policy in which defendant was named as beneficiary. Defendant learning of the above facts, entered into an oral agreement with the plaintiff, that if he would forbear to sue Arnold on the note, and would renew the note for one year, the defendant would "in the event that Arnold die before the maturity of the renewal note, pay the amount of the note to plaintiff out of the proceeds of the aforementioned insurance policy." Arnold died before the note matured and plaintiff now seeks to recover on defendant's oral promise. The defendant interposes the Statute of Frauds. *Held,* the contract is unenforceable under the Statute of

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relying on the promise to marry, it cannot be said that they were given upon condition that they would be returned if defendant refused to keep her promise.

[2] Sloin v. Lavine, — N. J. —, 168 Atl. 849 (1933); Williamson v. Johnson, 62 Vt. 378, 28 Atl. 27 (1890); Jacobs v. Davis, 2 K. B. 532 (1917).

[3] Benedict v. Flannery, 115 Misc. 627, 189 N. Y. Supp. 104 (1st Dept. 1921), overruling Stromberg v. Rubenstein, 19 Misc. 647, 44 N. Y. Supp. 405 (1st Dept. 1891); Antaramain v. Ourakian, 118 Misc. 558, 194 N. Y. Supp. 100 (1st Dept. 1922); Casling v. Hughes, 119 Misc. 39, 195 N. Y. Supp. 200 (1922).

[4] Fross v. Hockstim, 72 Misc. 343, 130 N. Y. Supp. 315 (1st Dept. 1911); Cohen v. Sellar, 1 K. B. 536 (1926).

[5] Grant v. Willey, 101 Mass. 356 (1869).

[6] 2 SHERMAN, ROMAN LAW IN THE MODERN WORLD (1922) 45.