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Contracts--Statute of Frauds--Oral Contract To Be Performed Within a Lifetime (Terminello v. Bleeker, 155 Misc. 702 (City Ct. 1935))

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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

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.

Frauds, as amended by the Legislature of 1933,¹ since it is not in writing and since, by its terms, it is not to be performed within one year from the making thereof, nor is its performance to be completed before the end of a lifetime. *Terminello v. Bleeker*, 155 Misc. 702, 280 N. Y. Supp. 326 (City Ct. 1935).

The instant case is the first reported decision construing the statute as amended and is directly within its provisions, as the defendant's promise did not become enforceable until the death of defendant's brother; therefore, performance could not be completed during his lifetime, but only after his death. In the words of the statute, performance of the contract by the defendant was not to be completed before the end of a lifetime. The language of the amendment refers to an oral contract, the performance of which is not to be completed before the end of a lifetime, not the end of a *particular* lifetime but of *any* lifetime.²

Plaintiff contends that the statute is limited to that class of contracts that are based on a promise to support during the lifetime of a person. The statute is clear and unambiguous and there is no such limitation or reference placed thereon by the Legislature, nor can one be read into the statute by implication. An agreement for a person's support during life is not within the old New York statute, since the life may not extend beyond a year.³ So too, a contract of employment for the life of either employer,⁴ or employee,⁵ is not within that statute. Similarly, the old Statute of Frauds has been held inapplicable to a contract of insurance since the contract may be completely performed within a year upon the happening of the stipulated contingency.⁶

The test of whether a contract was within the Statute of Frauds was whether at the time such agreement was made it could have been

¹N. Y. PERS. PROP. LAW § 31: "Agreements required to be in writing. Every agreement, promise or undertaking is void, unless it or some note or memorandum thereof be in writing and subscribed by the party to be charged, therewith, or by his lawful agent, if such agreement, promise or undertaking:

1—By its terms is not to be performed within one year from the making thereof or *the performance of which is not to be completed before the end of a lifetime.*" (Italics indicate amendment of 1933.)

²CAL. CIVIL CODE § 1624, subd. 6; CODE CIVIL PRAC. § 1973, subd. 6 (1931) —"An agreement which by its terms *is not to be performed during the lifetime of the promisor*, or an agreement to devise or bequeath any property, or to make any provision for any person by will." (Italics the writer's.) *Hagan v. McNary*, 170 Cal. 141, 148 Pac. 937 (1915), L. R. A. 1915 E, 562. This statute refers only to promises made by the promisor, whereas the New York statute does not contain any such limitation.

³*Dresser v. Dresser*, 35 Barb. 573 (N. Y. 1862); *McCable v. Green*, 18 App. Div. 625, 45 N. Y. Supp. 723 (2d Dept. 1897).

⁴*Kent v. Kent*, 62 N. Y. 560 (1875).

⁵*Cox v. Baltimore & Ohio S. W. Ry.*, 180 Ind. 495, 103 N. E. 337 (1913).

⁶*Hicks v. British-American Assur. Co.*, 162 N. Y. 284, 56 N. E. 743 (1900); *International Ferry Co. v. American Fidelity Co.*, 207 N. Y. 350, 101 N. E. 160 (1913).

performed within a year, and not whether in fact such contract had been so performed, hence, if performance within one year was possible, the contract was not repugnant to the statute.⁷ Under the amendment, an oral agreement is unenforceable if by its terms, the performance is not to be completed before the end of a lifetime, although that contingency may occur within one year from the time the contract is made.⁸ Oral agreements for a person's support during life are within the statute, although the life may not extend beyond a year.⁹ So too, oral contracts to render services for life,¹⁰ must be in writing to be enforceable today.

M. B. G.

CORPORATIONS — PLEDGEE'S RIGHT TO STOCK DIVIDENDS.— Plaintiff is the pledgee of certain shares of capital stock of the defendant, deposited with the plaintiff as collateral for a note executed by one Skolkin to the plaintiff. The certificate of stock provided that it was transferable only upon the books of the defendant corporation. Plaintiff never presented the stock to the defendants for transfer. Skolkin, the pledgor, was also indebted to the corporation. Subsequently, plaintiff transmitted to the defendant an order of Skolkin directing that all dividends on the stock be sent to the plaintiff. Dividends were thereafter declared and plaintiff now claims these dividends by virtue of its pledge, while defendant asserts the right to offset the dividends against Skolkin's indebtedness. *Held*, failure of pledgee of corporate stock to present the stock for transfer on the books of the corporation did not affect its right to the dividends declared thereon, where the corporation had knowledge of the pledge prior to the payment of dividends, and where a copy of Section 66 of the Stock Corporation Law¹ was not printed on the stock certificate. *Manufacturers Trust Co. v. Bank of Yorktown*, 156 Misc. 793, 282 N. Y. Supp. 507 (Mun. Ct. 1935).

It is a basic and well settled principle, that in the absence of a contrary provision in the pledge agreement, it is the right of a pledgee of stock to collect the dividends declared thereon,² and that

⁷ *Mutual Life Ins. Co. v. Ritsher*, 196 Ill. App. 27 (1915).

⁸ WHITNEY, *CONTRACTS* (2d ed. 1934) 165.

⁹ *McCabe v. Green*, 18 App. Div. 625, 45 N. Y. Supp. 723 (2d Dept. 1897).

¹⁰ *Cox v. Baltimore & Ohio S. W. Ry.*, 180 Ind. 495, 103 N. E. 337 (1913).

¹ STOCK CORPORATION LAW § 66. "Transfer of Stock by Stockholder indebted to corporation.—If a stockholder shall be indebted to the corporation, the directors may refuse to consent to a transfer of his stock until such indebtedness is paid, provided a copy of this section or the substance thereof is written or printed upon the certificate of stock."

² *Guaranty Co. v. East Rome Town Co.*, 96 Ga. 511, 23 S. E. 503 (1895); *Reid v. Caldwell*, 120 Ga. 718, 48 S. E. 191 (1904); *Hunt v. Rosenbaum Grain*