

## Marriage--Fraudulent Representations--Recovery of Damages (Leventhal v. Liberman, et al., 262 N.Y. 209 (1933))

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meaning.<sup>7</sup> Where, in an action for imputation of unchastity or immorality, or where the alleged libelous words are susceptible of various meanings, one being lack of chastity, the words charged are actionable only by reason of extraneous facts, these facts must be averred so as to show that an actionable charge has been imputed.<sup>8</sup> This is accomplished by properly alleging those extrinsic facts and circumstances in the past and present relations of the parties, or the facts surrounding the publication, by which the jury shall be justified in giving to words, not ordinarily actionable, a libelous signification.<sup>9</sup> However, the meaning of the words cannot be extended by innuendo beyond their natural import, aided by reference to the extrinsic facts with which they may be connected.<sup>10</sup> The words must be construed in the sense which hearers of common and reasonable understanding would ascribe to them, even though particular individuals, better informed on the matter alluded to, might form a different judgment on the subject.<sup>11</sup>

In general, the right to an action for libel, where special damages are not sought, depends upon a publication of matter affecting the reputation of the plaintiff, of that character which is defined by law as necessarily causing actionable damage, made or authorized by defendant in violation of a legal duty.

C. M. DE P.

MARRIAGE—FRAUDULENT REPRESENTATIONS—RECOVERY OF DAMAGES.—After having avoided her marriage on the ground of fraud, the plaintiff brought this action against the father and sister of her former husband for false representations. The fraud alleged in this case concerned the state of health and the moral habits of her then prospective husband. A suspicion arose in the minds of the plaintiff and her family that the groom had been suffering with some

<sup>7</sup> *Hemmens v. Nelson*, 138 N. Y. 517, 34 N. E. 342 (1893); *Crashley v. Press Pub. Co.*, 179 N. Y. 27, 71 N. E. 258 (1904); *Quinn v. Prudential Ins. Co.*, 116 Ia. 552, 90 N. W. 349 (1902); *Belknap v. Ball*, 83 Mich. 583, 47 N. W. 674 (1890).

<sup>8</sup> *Grant v. New York Herald Co.*, 138 App. Div. 727, 123 N. Y. Supp. 449 (1st Dept. 1910); *Moore v. Levy*, 191 N. Y. Supp. 165 (1921); *Hemmens v. Nelson*, *supra* note 7.

<sup>9</sup> *Hanchett v. Chiarovich*, 101 Fed. 742 (C. C. A. 9th, 1900); *Perry v. Dozier*, 161 Ala. 292, 49 So. 909 (1909), noting the meaning of inducement, colloquium and innuendo in common law pleading; *Quinn v. Prudential Ins. Co.*, *supra* note 7.

<sup>10</sup> *Woodruff v. Bradstreet Co.*, 116 N. Y. 217, 23 N. E. 354 (1889); *Simons v. Burnham*, 102 Mich. 189, 60 N. W. 476 (1894); *Blake v. Smith*, 19 R. I. 476, 34 Atl. 995 (1896).

<sup>11</sup> *MOAKS UNDERHILL, TORTS*, 122; *Phillips v. Barber*, 7 Wend. 439 (N. Y. 1831); *Jarnigan v. Fleming*, 43 Miss. 710 (1871); *Hankinson v. Bilby*, 16 M. & W. 442, 2 C. & K. 440 (1847).

ailment. Upon asking the defendants in this action regarding the health and habits of the young man they were assured that he had never been ill, was a well lad, and that he had no bad habits known to them; whereas, in fact, they both knew he had tuberculosis and was a drug addict. *Held*, plaintiff may recover exemplary as well as compensatory damages and she is not limited to her pecuniary loss. *Leventhal v. Liberman, et al.*, 262 N. Y. 209, 186 N. E. 675 (1933).

The annulment of a marriage may be justified upon proof showing that spouses did not voluntarily cohabit with full knowledge of facts and circumstances.<sup>1</sup>

It is a general rule that a wife may not maintain an action against a husband, nor a husband against a wife for personal injuries, whether negligent or willful.<sup>2</sup> The decree of annulment destroyed the marriage from the beginning,<sup>3</sup> as a source of rights and duties, but whether this would take the case out of the above rule is not under consideration. The question is whether the action may be maintained against the father and sister for false representations. The rule has been well settled that an action of this nature for fraud in inducing one to marry another, may be maintained.<sup>4</sup> The misrepresentation of a material fact was made with the intention of inducing the plaintiff to enter into a marriage which she might never have consented to, had she known all the facts.<sup>5</sup>

The annulment decree, while relieving the plaintiff for the future, did not and could not make up for past suffering and affliction.<sup>6</sup> The pecuniary loss is by no means the limit of damage in such a case as this.<sup>7</sup> The plaintiff, beside any direct pecuniary loss,<sup>8</sup> may have the jury consider as bearing upon the question of damage the fact that she has changed her status as a single woman, has suffered humiliation, disgrace, and mental anguish and that she has also been deprived of the society, comfort, and attention of a well man. These must all be considered in arriving at the amount of damages.<sup>9</sup>

M. E. W.

<sup>1</sup> N. Y. CIVIL PRACTICE ACT (1920) §1139.

<sup>2</sup> *Schubert v. August Schubert Wagon Co.*, 249 N. Y. 253, 164 N. E. 42 (1928).

<sup>3</sup> *Butler v. Butler*, 236 N. Y. 642, 142 N. E. 317 (1923).

<sup>4</sup> *Piper v. Hoard*, 107 N. Y. 73, 13 N. E. 626 (1887); *Kujek v. Goldman*, 150 N. Y. 176, 44 N. E. 773 (1896); *Abrahams v. Abrahams*, 246 N. Y. 611, 159 N. E. 672 (1927).

<sup>5</sup> *Kujek v. Goldman*, *supra* note 4.

<sup>6</sup> *Powers v. Benedict*, 88 N. Y. 605 (1882); *Bowen v. Mandeville*, 95 N. Y. 237 (1884); *Frey v. Tarrey*, 175 N. Y. 501, 67 N. E. 1082 (1903); *American Surety Co. of N. Y. v. Conner*, 251 N. Y. 1, 166 N. E. 783 (1929).

<sup>7</sup> *Thorn v. Knapp*, 42 N. Y. 474 (1870); *Chellis v. Chapman*, 125 N. Y. 214, 26 N. E. 308 (1891).

<sup>8</sup> *Supra* note 7.

<sup>9</sup> *Chellis v. Chapman*, *supra* note 7; *Vanderpool v. Richardson*, 52 Mich. 336, 17 N. W. 936 (1883); *SEDGWICK, DAMAGES* (9th ed.) §§473, 480b; *MAYNE, DAMAGES*, 481; *SUTHERLAND, DAMAGES*, §1285, 4973.