

Domestic Relations--Declaratory Judgments (Somberg v. Somberg, 263 N.Y. 1 (1933))

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prisonment, then the Penal Law¹⁶ says that it was done without felonious intent.¹⁷ The definition of felony murder in this state is the unintentional killing of a person by another in the act of committing a felony or in the attempt to commit a felony.¹⁸ Therefore, since a child under the age of sixteen cannot be convicted of a crime which does not amount to treason, murder in the first or second degree, or kidnapping, then he cannot be convicted of felony murder.¹⁹

J. A. R., JR.

DOMESTIC RELATIONS—DECLARATORY JUDGMENTS.—The plaintiff's husband and the second defendant are living together in illicit relations, as man and wife. To them has been born an illegitimate child. The two defendants hold themselves out to all as man and wife. The marriage between plaintiff and defendant has never been dissolved by any court. The plaintiff seeks judgment declaring that she is the lawful wife of the defendant, that the second defendant be restrained from using the name of Somberg, that they be enjoined from holding themselves out as man and wife, and the child born to them as their lawful issue. *Held*, declaratory judgments will not be decreed where there is no necessity for it. *Somberg v. Somberg*, 263 N. Y. 1, 188 N. E. 152 (1933).

Courts of Equity will not ordinarily administer relief for an invasion of personal or individual rights, but where the invasion involves a property right or right of substance we find many cases where courts have protected such right.¹ Courts have repeatedly refused to enjoin the use of another's name where there is merely an invasion of the right of privacy.² No such right was recognized at common law.³ However, by statute⁴ today, no person may use the name, portrait or photograph of any living person for advertising purposes without his permission. It is to be observed that this personal right is protected only where it is to be used for advertising purposes. An injunction will not lie so as to enable a lawful wife to restrain another woman and her lawful issue from using the name of another.⁵

¹⁶ *Supra* note 5.

¹⁷ *People v. Roper*, *supra* note 6.

¹⁸ N. Y. PENAL LAW (1909) §1044, subd. 2.

¹⁹ *People v. Roper*, *supra* note 6.

¹ *Routh v. Webster*, 10 Beav. 561, 50 Eng. Rep. 698 (1847); *Walton v. Ashtov*, 2 Ch. 282 (1902); *Edison v. Edison Polyform Co.*, 73 N. J. Eq. 136, 76 Atl. 392 (1907).

² *Roberson v. Rochester Folding Box Co.*, 171 N. Y. 538, 64 N. E. 442 (1902).

³ *Supra* note 2.

⁴ N. Y. CIVIL RIGHTS LAW (1903) §§50-51.

⁵ *Hodecher v. Stricher*, 39 N. Y. Supp. 515 (1896).

A declaratory judgment may be resorted to only when circumstances render it useful and necessary, where it will serve some practical end in stabilizing or quieting an uncertain or disputed jural relation as to present or prospective obligations.⁶ Where mere rumors cast doubt upon the marital status of the parties concerned, no declaration by the court that it is false will be useful to suppress it.⁷

Equity will not restrain by an injunction an act which merely injures a person's feeling and causes mental anguish.⁸ Casting doubt upon one's position as a wife and consequent loss of social position and reputation will not be enjoined by a court of Equity.⁹ Since injunctions against immoral conduct open such a wide field of possible litigation with so much doubt of effective results, and strong probability that the administration of the law might be made an object of ridicule, it will not be expedient to extend equitable relief in those cases of injuries to family relations.¹⁰ It is well settled that equity will not enjoin the commission of a crime.¹¹ Under the law it is a matter of their own consequences. The same may be said of individual morals.¹² Any attempt to regulate the morals of the people by injunctions can only result in making ridiculous the courts which grant such decrees.¹³ The injured wife may resort to other remedies. A civil suit may be maintained for alienation of affections or criminal conversation against the paramour,¹⁴ or the wife may have her husband prosecuted criminally for his adultery.¹⁵

I. L. K.

DYING DECLARATIONS—ADMISSIBILITY.—The defendant was convicted of poisoning his wife. At the trial the Prosecutor offered in evidence a conversation between the deceased and her nurse, in rebuttal to a suicidal intent set up by the defense. The evidence was

⁶ James v. Alderton Dock Yards, 256 N. Y. 298, 176 N. E. 49 (1931); Wardrop v. Fairfield Gardens, 237 App. Div. 605, 262 N. Y. Supp. 95 (1st Dept. 1933); Marine Lighterage Corp. v. Luckenbach S. S. Co., 139 Misc. 612, 248 N. Y. Supp. 71 (1931).

⁷ Instant case; cf. Bauman v. Bauman, 250 N. Y. 382, 165 N. E. 819 (1929).

⁸ Vassar College v. Loose-Wiles Biscuit Co., 197 Fed. 982 (D. C. W. D. Mo. 1912); Marlin Fire Arms Co. v. Shields, 171 N. Y. 384, 64 N. E. 163 (1902); Atkinson v. Doherty & Co., 121 Mich. 372, 80 N. W. 285 (1899).

⁹ *Supra* note 5. *Contra*: Burns v. Stevens, 236 Mich. 443, 210 N. W. 482 (1926).

¹⁰ Pound, *Equitable Relief Against Defamation and Injuries to Personality* (1916) 29 HARV. L. REV. 674. *Contra*: instant case, Crane, J., dissenting opinion.

¹¹ *Supra* note 7.

¹² *Ibid.*

¹³ *Ibid.*

¹⁴ WALSH, EQUITY (1930) §52.

¹⁵ N. Y. PENAL LAW (1909) §§100-103.