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Is an Engagement Ring an Absolute Gift?

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than he is entitled to receive. For instance, if his mortgage were a small one in proportion to the value of the property, he would collect the full amount of the damage even though it greatly exceeded his lien on the property. That would obviously be unwise and unfair.

A recent Massachusetts decision would seem to sustain the majority decision in the case at hand.[11]

Thus it will be seen that a mortgagee may recover when his interest is insured in a policy taken out by the mortgagor, paid for by the mortgagor, and which may be cancelled by the mortgagor. The courts, in allowing him to recover, proceed not on the ground of indemnity but rather on the theory that the insurance company is bound by contract to pay the amount of the loss to him. Indeed it would be difficult to justify the recovery on the grounds of indemnity.

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IS AN ENGAGEMENT RING AN ABSOLUTE GIFT?

If a ring is presented to a woman after an engagement is entered into and the woman refuses to marry the man, can he recover the ring? This proposition was before the court in *Beck* v. *Cohen,* an Appellate Division decision, First Department, reported in the *Law Journal* March 16, 1933. In that case the plaintiff pleaded that in consideration of the defendant's promise to marry him, he agreed to marry her and delivered to her an engagement ring in anticipation of their marriage and conditioned upon the fulfillment by the defendant of her agreement to marry him. After having plighted her troth and received the ring, the defendant refused to marry him, although he stood ready and willing to perform the agreement, and she has declined to return the engagement ring to him upon his demand and continued to retain it to his damage. The plaintiff met with a dismissal of his complaint on the ground that it does not state facts sufficient to constitute a cause of action. On appeal, he was allowed, in a three-two decision, to recover his ring. The consequence of that decision is that new law has been laid down reversing the leading case on the subject, *Rosenberg* v. *Lewis.*[1]

In that case, the facts of which are substantially the same as the principal case, except that valuable pieces of jewelry were given and not an engagement ring in particular, the Court said:

> "Assuming that there was a promise of marriage and that relying upon that promise plaintiff presented gifts to defen-

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[11] Silver v. United States Trust Co., Mass. Adv. Sh. 1589, 182 N. E. 372 (1932).

[1] 210 App. Div. 690, 206 N. Y. Supp. (1st Dept. 1924).

> dant which she now refuses to return, we are not warranted in concluding that the gifts were given upon condition that they would be returned if defendant refused to keep her promise. Gifts of the kind referred to may be conditionally made, but to state a cause of action for their recovery the complaint must allege facts to show that there was an understanding that they were so presented to the donee. Where an unconditional gift is made, title passes to the donee and its return may not be enforced by the donor. The complaint fails to show that defendant knew that any such condition attached to the gifts and that she agreed to return them if she failed to marry plaintiff."

The Court then refers to *Stromberg* v. *Rubenstein*,[2] in which an infant was the defendant. In that case it was held that the plaintiff knew when he gave the ring to defendant that he was parting with all dominion over the property.

It follows from the *Stromberg*[3] and the *Rosenberg*[4] cases, where under the circumstances in the principal case there had been no expression of the intention of the parties, that the most likely inference is that there was an absolute gift. A gift or delivery of any *indicia* or token of friendship or affection must be governed by the intention of the donor and donee as of the time it is made. It may be that at the time of the presentation of an engagement ring a man cannot be expected to say what he means or do what he intends, and that his mental faculties are at the time, totally disjointed. Nevertheless, we must, in our spiritual, as well as economic and social conduct, be precise in our intent, so that we do not mislead and deceive. The intention can only be diagnosed and determined by either a certain definite writing, clearly setting forth a conceived purpose, or by some acts which reveal a particular design.

Where an act may be productive of the possibility of an equivocal interpretation, it is the better rule that the parties be left to fix their intent by contract, oral or written, rather than to set up an arbitrary implication in law. Consequently, the parties will be held responsive to their prudence and caution when arranging the marriage contract, and neither will be lulled into a false misunderstanding.

The *Rosenberg*[5] case is not too strict. It does not hold that the condition cannot be implied but, rather, states that where an express understanding is lacking some acts must be shown to explain or indicate that the parties intended the gift to be conditional.

On the other hand, if we assume that in the great majority of cases the ring is returned, it might well be argued that such was

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[2] 19 Misc. 647, 44 N. Y. Supp. 405 (1897).
[3] *Supra* note 1.
[4] *Supra* note 2.
[5] *Supra* note 1.

the intention of the parties. If this is the proper inference of fact there seems no reason or policy why the intention should not be carried out. But it is difficult to find a legal basis for the recovery of the ring.

In *Jacobs* v. *Davis* [6] it has been held that an engagement ring is in the nature of a pledge for the contract of marriage, and that if the recipient break the contract she should return the ring. This view seems to be in accord with the history of betrothal gifts.[7]

But if we construe it as a pledge, plaintiff could recover if he had broken the contract provided he paid damages for the breach.[8] This is carrying it very far since it seems probable from a review of the authorities that unless the defendant has broken the contract, the plaintiff would not recover.[9] A similar difficulty arises if the theory of ordinary bailment is adopted.[10] Another basis for recovery is suggested in a case where money has been advanced by plaintiff to defendant to purchase a trousseau. It was held [11] that upon the defendant's breach of the contract to marry, plaintiff could recover in *assumpsit*. While the reasoning in this case is confused, the basis of the opinion seems to be that of conditional gift. It has been held [12] that there cannot be a gift of personalty on condition subsequent. But there seems no reason in the nature of things why there could not be such a gift and there is authority for holding it valid.[13] It would seem that this theory affords the most satisfactory basis for an action at law.

In *Robinson* v. *Cummings* [14] where suit was brought for the value of a present given to a lady who afterwards married another the Lord Chancellor concluded that if a person has made his addresses to a lady for some time, upon a view of marriage, and upon reasonable expectation of success makes presents to a considerable value and she thinks proper to deceive afterwards, it is very right that the presents themselves should be returned or the value of them allowed to him, but, where presents are made only to introduce a person to a woman's acquaintance and by means thereof to gain her favor, such person is looked upon only in the light of an adventurer, especially where there is a disproportion between the lady's fortune and his and, therefore, like all other adventurers, if he will run risks, and loses by the attempt, he must take it for his pains.

This case has been followed constantly in other jurisdictions, yet it is nothing but a display of language and an arbitrary distinc-

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[6] 2 K. B. 532 (1917).

[7] POLLOCK AND MAITLAND, HISTORY OF ENGLISH LAW (2d ed.) 366.

[8] GOODEVE, PERSONAL PROPERTY (5th ed.) 28.

[9] Robinson v. Cummings, 2 Atk. 409 (1742); FONBLANQUE, EQUITY (3d ed.) 6.

[10] See Recent Decision (1918) 18 HARV. L. REV. 174.

[11] Williamson v. Johnson, 62 Vt. 378, 20 Atl. 279 (1890).

[12] Irish v. Nutting, 47 Barb. 370 (N. Y. 1867).

[13] Blanchard v. Sheldon, 43 Vt. 512 (1871); CHILDS, PERSONAL PROPERTY §228; *supra* note 8; THORNTON, GIFTS AND ADVANCEMENTS §94.

[14] *Supra* note 9.

tion. It would seem that it is as necessary for a man to bestow gifts upon his fiancee to hold her favor as to win her favor.

We think that the latest word on the proposition, namely, the principal case, *Beck* v. *Cohen*,[15] is good law. It seems to be a good solution of the problem. The defendant is allowed to set up as an affirmative defense and counterclaim that the plaintiff misled her by falsely representing to her that he was a man of considerable means, in possession of sufficient moneys with which to support her in the event of their marriage and to provide and furnish an apartment for their prospective home, and also that he was engaged in a business in which he had invested considerable money so that he would be able, from the returns of that business to support the defendant in the event of their marriage; that these representations upon which she relied in promising to marry him were discovered to be false after she had in reliance upon them proceeded to make the necessary preparations for her marriage and expended in that connection a sum in excess of the value of the ring; and upon discovering their falsity she repudiated the agreement, and declined to wed the plaintiff. The defendant had a right to repudiate upon discovery of the plaintiff's fraudulent purpose, and he should not be permitted to reclaim his gift, for he is the one whose conduct prevented the marriage, and her refusal to perform is justified. The gift being conditional, the donor would by his conduct have rendered it impossible for the condition to be performed and therefore not be entitled to recover the ring.

The trend of judicial opinion seems to be leaning towards abandonment of the policy of the law to consider marital contracts as one of special caste. Here we have a marriage contract treated in exactly the same manner as one of commercial character, with its defenses and counterclaims of fraud. It seems that the philosophy of the courts today is that woman is taking her place with man today, economically, politically and socially and therefore she should take it judicially. She no longer needs greater protection of the law. The recent *Shonfeld* case [16] in which a man was allowed an annulment of his marriage on the ground of the defendant's fraudulent misrepresentations as to her financial status, and the recent agitation for legislation concerning the alimony laws are indicative of the present attitude of the legislature and the courts towards marital contracts.

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CONFESSIONS—FELONY MURDER.

The courts of New York in the administration of criminal justice are bound by legislative enactment and judicial interpretation to extend to an accused all possible safeguards for his protec-

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[15] N. Y. L. J., March 15, 1933, at 1507.
[16] 260 N. Y. 477, 184 N. E. 60 (1933).