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Domestic Relations--Marriage--Annulment--Former Husband or Wife Living (Seacord v. Seacord, 139 A. 80 (1927))

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to circumvent the statute relative to resident licenses?" The final conclusion we already have.

The determination in the instant case is indeed a far cry from those decisions of not many years past, holding a corporation incapable of acting beyond the state of its creation.[6] Here we have a foreign corporation, represented merely by stock ownership, held capable of "a fraud or an illegal act" in the event that the domestic corporation, in which it is financially interested, applies for a license procurable by residents of the state.[7] From the opinion,[8] there appears no ground of objection to the conduct of the proposed business by the domestic corporation. Assuredly, if facility of control be the desideratum, a domestic corporation would seem preferable. Apparently, the Court, following the interpretation of the Insurance department "under facts so similar as to make the situation almost parallel," has seen fit to superimpose a further requirement in addition to that of residence, and will insist that the source of the capital used be domestic. In a word, the rule here enunciated seems neither practicable in administration nor conducive to the honest and convenient conduct of business.

DOMESTIC RELATIONS—MARRIAGE—ANNULMENT—FORMER HUSBAND OR WIFE LIVING.—The petitioner seeks an annulment of his marriage with the respondent under section 3004 of the Delaware Code, providing that the court may annul a marriage contracted while either party has a husband or wife living. It appeared that the wife had a husband living when she married the petitioner, but that the petitioner, after he had learned that she had not been divorced from her former husband, had continued to live and cohabit with her. The court granted the annulment on grounds of public policy, holding that the equitable maxim of unclean hands was not applicable in such a case. Seacord *v.* Seacord, 139 Atl. 80, Advance Sheets of November 24, 1927.

The question at issue in this case was whether or not the act of the petitioner in cohabiting with the respondent after knowledge of the prior existing marriage precluded the granting of relief. At the common law such a marriage was absolutely void.[1] By the statutes of Delaware such a marriage was unlawful.[2] The rule of *pari delicto* does not apply in annulment cases. Because the state is an interested party the equitable maxim that "He who comes into equity must do so with clean hands" cannot be resorted to.[3] Rice, J., in directing the entry of a decree annulling the marriage, referred to what is considered the leading case in New

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[6] See 1 St. John's L. Rev. 48.

[7] The fact that the relator had been incorporated in Ohio prior to the passage of the resident agents law was regarded as "immaterial."

[8] The record upon which the court passed may have included further facts, but the opinion is apparently based upon the conviction that the relator had resorted to subterfuge.

[1] 2 Schouler on Marriage, Divorce, Separation and Domestic Relations, 6th ed., 1386.

[2] Delaware Rev. Code, 1915, §§ 3004, 3008 and 4785; also § 3016 Rev. Code 1915, as amended by chapter 217, 28 Laws of Delaware.

[3] 2 Schouler, op. cit., *supra*, note 1, 1420.

York on this point.[4] In that case it was held that since a polygamous marriage was void under the New York Domestic Relations Law, and since an action to annul such a marriage on that ground is expressly authorized, such a marriage being void and not voidable, could not be ratified under the weight of controlling authority;[5] the case further held that the fact that the parties lived together after it was competent for them to contract a legal marriage was no bar to an action for annulment.

As opposed to this doctrine there is a recent decision in which the Court of Chancery of New Jersey refused, on a very similar state of facts, to grant an annulment, on the ground that it would not permit one to thereby gain an unfair advantage over the other, and holding that the equitable doctrine of unclean hands was applicable.[6] It is of interest to note that while in the case under review the petitioner did not know of the existing marriage until after his marriage to the respondent, in most of the New Jersey cases cited in support of the *Keller* case there was such knowledge from the beginning.[7] However, the New Jersey decision is contrary in spirit to the New York cases above referred to and to the case first reviewed.

FRAUD—RESCISSION—INNOCENT MISREPRESENTATIONS—ACTIONS AT LAW.—The plaintiff purchased certain corporate notes from the defendant upon the latter's representation that they were, or were to be, listed on the New York Stock Exchange. This statement was in fact false, though innocently made. The plaintiff immediately upon ascertaining the facts rescinded the sale, offered to return the securities and demanded back the purchase price. The defendant refusing to comply with the plaintiff's request, the latter brought this action at law on the rescission to get its money back. The judgment of the Trial Term dismissing the complaint was affirmed by the Appellate Division, but the Court of Appeals reversed these rulings and held that the plaintiff made out a cause of action. Seneca Wire & Mfg. Co. *v.* A. B. Leach & Co., Inc., 247 N. Y. 1 (1928).

The principal question in this case arose regarding the remedy sought by the plaintiff. It did not attempt to prove that the misrepresentations were fraudulently made, but sought relief by proving that the representations were false in fact and misled the plaintiff into making the purchase. This is the same ground for which an action might be maintained in equity.[1] But the plaintiff did not seek equitable relief, but rather only sought the return of its money, which constitutes a proper action at law.[2] The rule that it is not necessary that the misrepresentation should have been known to the party making it to be false, applies

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[4] Earle *v.* Earle, 141 App. Div. 611, 126 N. Y. Supp. 317 (1910).

[5] Petit *v.* Petit, 105 App. Div. 312, 93 N. Y. Supp. 1001 (1905).

[6] Keller *v.* Linsenmeyer, 139 Atl. 33, Advance Sheets of November 24, 1927.

[7] Edtl., N. Y. L. J., Feb. 14, 1928, at 2336.

[1] Bloomquist *v.* Farson, 222 N. Y. 375, 118 N. E. 855 (1918).

[2] Bosley *v.* Nat. Machine Co., 123 N. Y. 550, 555, 25 N. E. 990 (1890); U. S. *v.* Bitter Root Dev. Co., 200 U. S. 451 (1906); Equitable Life Assurance Society *v.* Brown, 213 U. S. 25, 50 (1909); Curriden *v.* Middletown, 232 U. S. 633 (1914).