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Domestic Relations -- Granting of Annulment or Support Where Parties Have Unclean Hands

was an entity distinct from its members[22] and that the partnership papers were therefore the property of the firm, the court re-examines the fundamental nature of the partnership relation as contrasted with that of the corporation or unincorporated association, and holds that papers of the small family partnership here involved belong to the partners as tenants in common. In accepting the aggregate theory of partnership, the court is in accord with the view of the jurisdictions which adopt the definition of partnership set forth in the Uniform Partnership Law.[23] In holding that the papers and books subpoenaed are the property of each of the partners and that to compel their production upon serving only one partner constitutes an unreasonable search and seizure of the property of the others, the decision is in accord with early Supreme Court cases holding that the compulsory production of one's private papers for use in criminal proceedings is compelling him to be a witness against himself and is *equivalent* to an unreasonable search and seizure within the meaning of the Fourth Amendment.[24]

As the determination of what is an "unreasonable search and seizure" is a judicial question[25] to be determined by the facts and circumstances of each case,[26] this decision may not be considered a binding precedent in the case of a large unincorporated association, e.g., a labor union, or, possibly, partnerships of large numbers, or partnerships in which there are special and limited as well as general partners. Such large bodies may be considered more analogous to corporations than to individuals, or small family partnerships, in which case the Fourth Amendment will not be as liberally construed in their favor.

DOMESTIC RELATIONS—GRANTING OF ANNULMENT OR SUPPORT WHERE PARTIES HAVE UNCLEAN HANDS

Petitioner, second husband of respondent, sought an annulment on grounds of respondent's prior subsisting marriage. Petitioner had knowledge prior to marriage to respondent that the divorce decree obtained by respondent's first husband was of the Mexican mail-order variety and void for want of jurisdiction. In the lower court, respondent's counter-claim for support for herself and the child of the disputed marriage was allowed, but the petitioner's request for annulment was denied. *Held,* on appeal, that the

22. Francis v. McNeal, 228 U. S. 695 (1913); Horner v. Hamner, 249 Fed. 134 (C. C. A. 4th 1918) (under the Federal Bankruptcy Act, a partnership is treated as a distinct entity).

23. UNIFORM PARTNERSHIP ACT § 6(1); Abbott v. Anderson, 265 Ill. 285, 106 N. E. 782 (1914) (a partnership is not an entity distinct from its members).

24. Gouled v. United States, 255 U. S. 132 (1921); Boyd v. United States, *supra.*

25. United States v. Vatune, 292 U. S. 497 (1923).

26. Peru v. United States, 4 F.2d 881 (C. C. A. 8th 1925); Go-Bart Importing Co. v. United States, 282 U. S. 344 (1931).

parties are in pari delicto. Petitioner may not attack the validity of the marriage because in equity he has "unclean hands," and the award of alimony is reversed since respondent failed to carry the burden of proof of a valid marriage. *Tonti v. Chadwick*, 64 A.2d 436 (New Jersey 1949).

A petitioner may not come into a court of equity with "unclean hands" since equity will not grant relief to one who has conducted himself in an unconscionable manner as to known facts.[1] This rule has been applied in suits for annulment,[2] and the principle upheld by the analogous rules of estoppel in separation and support,[3] and recrimination in divorce cases.[4] But, as to persons seeking decrees of annulment of void marriages, there is a split of authority on applying the "unclean hands" doctrine.

The English view,[5] followed by some American courts,[6] is that where a marriage is void ab initio, knowledge (by the petitioner) of an obstacle to a valid marriage is no defense, since a marriage is not an ordinary contract,[7] and the public interest is best served by determining the status of the parties.[8] Thus, consideration is given to the welfare of children born of void marriages by leaving the parties free to remarry and establish a normal home.

The contrary view,[9] taken by the principal case, is that equitable relief cannot be granted to one who acts with knowledge[10] of his wrongdoing. In denying relief to the guilty actor, bigamous marriages are discouraged, and women who enter into such marriages in good faith are protected from those who would take advantage of their plight.[11] However, it is difficult to perceive how the woman can be protected without also enforcing the obligation to support.

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1. Brown v. Brown, 66 Conn. 493, 34 Atl. 490 (1895); Vulcan Detinning Co. v. American Can Co., 72 N. J. Eq. 387, 67 Atl. 339 (Ct. Err. & App. 1907).

2. Ewald v. Ewald, 219 Mass. 111, 106 N. E. 567 (1914); Tyll v. Keller, 94 N. J. Eq. 426, 120 Atl. 6 (Ct. Err. & App. 1923); Bays v. Bays, 105 Misc. 492, 174 N. Y. Supp. 212 (Sup. Ct. 1918); Kaufman v. Kaufman, 177 App. Div. 162, 163 N. Y. Supp. 566 (1st Dep't 1917); theory applied *sub silentio* in Sorenson v. Sorenson, 219 App. Div. 344, 220 N. Y. Supp. 242 (2d Dep't 1927).

3. Krause v. Krause, 282 N. Y. 356, 26 N. E.2d 290 (1940); Senor v. Senor, 70 N. Y. S.2d 909 (1947).

4. Derby v. Derby, 21 N. J. Eq. 36 (Ch. 1870); Pease v. Pease, 72 Wis. 136, 39 N. W. 133 (1888); see Hoff v. Hoff, 48 Mich. 281, 12 N. W. 160 (1882) (where the analogy between recrimination and "unclean hands" was set out).

5. Miles v. Chilton, 1 Rob. Ecc. 683, 163 Eng. Rep. 1178 (Consistory Court of London 1849).

6. Davis v. Green, 91 N. J. Eq. 17, 108 Atl. 772 (Ch. 1919); Freda v. Bergman, 77 N. J. Eq. 46, 76 Atl. 460 (Ch. 1910).

7. Freda v. Bergman, *supra*.

8. Davis v. Green, *supra*.

9. See note 2 *supra*.

10. The court relied on Watkinson v. Watkinson, 67 N. J. Eq. 142, 58 Atl. 384 (Ch. 1904), where it was said that the burden imposed on the proposed new spouse is the same as that imposed on a purchaser of land. *Cf.* Stokes v. Stokes, 198 N. Y. 301, 91 N. E. 793 (1910); Gall v. Gall, 114 N. Y. 618, 21 N. E. 106 (1889) (where the first spouse was alive at the time of remarriage the duty of inquiry was placed solely on the party remarrying).

11. Tyll v. Keller, *supra;* Kaufman v. Kaufman, *supra;* 19 ST. JOHN'S L. REV. 153 (1945).

In an analogous situation, a defendant was estopped to deny the validity of his Nevada divorce and the estoppel entitled his second "wife," by the otherwise void marriage, to separation and support.[12] However, the *doctrine of estoppel* has never been invoked to prevent one who married with knowledge of the spouse's Mexican mail-order divorce from obtaining a divorce based on the prior-subsisting marriage,[13] since public policy is opposed to giving any substance to a decree obtained in this manner.[14] Nor does the "unclean hands" doctrine imply a duty to support, since its only function is to deny relief to the guilty actor. In the instant case, by finding the parties to be in pari delicto, the question of support is sidestepped and the desirable result of protecting women in such cases is not attained.

The court in the instant case, in applying the doctrine of "unclean hands," failed to determine the status of the parties. While, in an action for divorce, application of the similar doctrine of recrimination leaves the parties married, and in an action to annul a voidable marriage, application of "unclean hands" leaves the parties married, it is not clear what the status of the parties is, where it is contended that the marriage was void. An indication that the parties here are not married is a lower court ruling that the respondent's correct name was that of her first husband.[15] Even stronger is the view, set out in *Rooney v. Rooney*,[16] that whether or not a decree of nullity is issued a bigamous marriage has no binding effect for any purpose. Thus it appears that the petitioner in the principal case escapes all of the obligations of the marriage contract and suffers only the loss of any benefits which might result from a decree of nullity,[17] removing any doubt as to his status.

The effect of this decision upon respondent seems punitive in view of the circumstances. For, even though she would not have been entitled to alimony under the New Jersey statute[18] had the annulment been granted, she would have been aided in collecting her damages, if any.[19] Further, it is necessary, from a sociological aspect, to determine the status of the parties, since

12. Krause v. Krause, *supra*.

13. Note, 62 HARV. L. REV. 131 (1949).

14. Caldwell v. Caldwell, 298 N. Y. 146, 81 N. E.2d 60 (1948); Querze v. Querze, 290 N. Y. 13, 47 N. E.2d 423 (1943); Vose v. Vose, 280 N. Y. 779, 21 N. E.2d 616 (1939).

15. *Compare* the principal case *with* Miles v. Chilton, *supra*.

16. *See* 54 N. J. Eq. 231, 34 Atl. 682, 686 (Ch. 1896); *accord*, Krause v. Krause, *supra* at 360, 26 N. E.2d at 292.

17. Rooney v. Rooney, *supra* note 16 (the decree of nullity works an estoppel which prevents the question of fact, out of which the nullity arose, from being raised again).

18. N. J. REV. STAT. § 2:50-1 (1937), Wigder v. Wigder, 14 N. J. Misc. 880, 188 Atl. 235 (Ch. 1936).

19. Sclanberg v. Sclanberg, 220 Ind. 209, 41 N. E.2d 801 (1942) (niece who helped reduce uncle's indebtedness during their void marriage entitled to $1,000); Sanguinetti v. Sanguinetti, 9 Cal.2d 95, 69 P.2d 845 (1937) (where marriage was annulled on basis of wife's prior marriage and wife would have had grounds for divorce had the marriage been valid, wife was awarded $1,250 for services during time they lived together).

it is the responsibility of a domestic relations court to deal with the family as a unit. Included in this unit is the child, who is always the loser, no matter who succeeds in the suit, where the home is broken. In the instant case the court dismisses its duty to the child by pointing to the New Jersey statute[20] which provides support and legitimacy to the child in such cases. But it did not consider that a child needs a normal and secure home, which it cannot attain unless the status of the parties is determined with the consequent freedom safely to remarry.

There were three problems of public policy involved in the principal case: first, the utterly void character of the Mexican decree to which the court could not give substance; second, protection of women in this situation from men who act in bad faith, by enforcing the obligation to support; third, the determination of the status of the parties. A satisfactory disposition was made only of the first point. Both the first and third points could have been properly settled had the court granted an annulment, but the second point could only be properly disposed of by granting alimony to respondent and under prevailing statutes in New Jersey this could not be done. It would appear that the best available results could have been obtained by granting the annulment, but that equity cannot be fully served in such cases without statutes which allow alimony in suits for annulment, in the discretion of the court.[21]

LIENS—UNRECORDED CONDITIONAL SALES CONTRACT INFERIOR TO MECHANIC'S LIEN

Plaintiff, assignee of a conditional sales contract on which the buyer had defaulted, sought possession of an automobile from defendant, a mechanic who had commenced work on the automobile at the direction of the buyer after the execution of the conditional sales contract but prior to its recordation as required by statute.[1] The trial court first directed a verdict for plaintiff, and then issued an order for a new trial. On appeal, *held*, order affirmed. A mechanic who repairs an automobile without notice of an unrecorded conditional sales contract has a lien superior to that of the conditional seller. *G. F. C. Corp. v. Spradlin*, 38 So.2d 679 (Fla. 1949).

20. N. J. REV. STAT. § 9:15-2 (1937).

21. N. Y. CIV. PRAC. ACT § 1140-a, Johnson v. Johnson, 270 App. Div. 811, 59 N. Y. S.2d 698 (2d Dep't 1946) (where the bigamous wife was awarded alimony under the New York statute, though she was the sole wrongdoer).

1. FLA. STAT. § 319.15 (1941) ("No liens . . . as security . . . on a conditional bill of sale . . . on a motor vehicle . . . shall be enforceable in any of the courts of this state, against creditors or subsequent purchasers for a valuable consideration, without notice, unless a sworn notice of such lien . . . be recorded . . . shall be effective as constructive notice when filed . . . .").