

be considered "quasi-property," and hence protected, irrespective of the rights as against the general public.

The inconvenience of conflicting decisions is obvious against a background of national chain broadcasting. Congressional action seems the only expedient way to uniformity. An amendment to the Copyright Act, whereby performers would be protected in their recorded renditions by regular statutory copyright, or a declaration that limiting legends do or do not restrict publication, would provide the desired certainty.

R. W. K.

DOMESTIC RELATIONS—ANNULMENT—CONCEALMENT OF VENEREAL DISEASE—[Missouri].—Plaintiff, upon proposing marriage to defendant, asked about the condition of her health. Defendant, knowing that she had a venereal disease assured plaintiff that there was nothing the matter with her. Some time after the marriage a doctor examined defendant and found that she had syphilis. Plaintiff then brought suit to have the marriage annulled. *Held*: Defendant's fraudulent misrepresentation and concealment was ground for annulment of the marriage. *Watson v. Watson*.<sup>1</sup>

Fraud is the basis for annulment of marriage because of concealment of a venereal disease. The majority (or "Massachusetts") rule<sup>2</sup> requires that fraud relied upon as a ground for annulment go to the "essentials" of the marriage contract.<sup>3</sup> The "essentials" of the contract include the legalization of sexual relations and the procreation of children; hence anything which was fraudulently concealed and which makes natural sexual intercourse impossible is ground for annulment.<sup>4</sup> Prior to 1903 New York followed the Massachusetts rule.<sup>5</sup> But in 1903, in *Di Lorenzo v. Di Lorenzo*,<sup>6</sup> the New York Court adopted a rule more favorable to annulment. It held that if consent to the marriage is given in reliance on a misrepresentation which would deceive an ordinarily prudent person, the marriage will be annulled. Thus in New York the fraud need go merely to the giving of the

1. (Mo. App. 1940) 143 S. W. (2d) 349.

2. Vanneman, *Annulment of Marriage for Fraud* (1925) 9 Minn. L. Rev. 497.

3. *Reynolds v. Reynolds* (Mass. 1862) 85 Allen 605; *Foss v. Foss* (Mass. 1866) 94 Allen 26; *Hanson v. Hanson* (1934) 287 Mass. 154, 191 N. E. 673, 93 A. L. R. 701.

4. Huberich, *Venereal Disease in the Law of Marriage and Divorce* (1903) 37 Am. L. Rev. 226. In two cases the Massachusetts Court said that if the marriage were consummated it would not grant annulment. *Smith v. Smith* (1898) 171 Mass. 404, 50 N. E. 933, 41 L. R. A. 800, 68 Am. St. Rep. 440; *Vondal v. Vondal* (1900) 175 Mass. 383, 56 N. E. 586, 78 Am. St. Rep. 502. But there seems to be some doubt whether this is really the Massachusetts law. A note, in (1920) 5 A. L. R. 1016, 1023, points out that in the *Vondal* case, where the court said no annulment would be granted where a marriage was consummated, the disease was curable, while in the *Smith* case, in which an unconsummated marriage was annulled, the disease was incurable. As yet no case of a consummated marriage in which the disease is incurable has arisen.

5. *Clarke v. Clarke* (N. Y. 1860) 11 Abb. Pr. 228.

6. (1903) 174 N. Y. 467, 67 N. E. 63, 63 L. R. A. 92, 95 Am. St. Rep. 609.

consent, while in Massachusetts the fraud must go the very foundation of the marriage.

From the instant case it is difficult to determine which rule Missouri follows. There have been no previous decisions on the question in Missouri.<sup>7</sup> In the instant case, since the fraud went to the sexual aspect of the marriage, the court could be said to have followed the Massachusetts rule. On the other hand, the court could have been following the New York rule inasmuch as there was a concealment which induced the plaintiff's consent to the marriage. Neither the language of the opinion nor the cases cited therein clarify the ambiguity.<sup>8</sup>

Where annulment is not a practical remedy, divorce may also be granted for concealment of a venereal disease. Where divorce is granted for concealment of a venereal disease, it is granted on grounds of cruelty.<sup>9</sup> To secure a divorce on that ground, defendant must have known he had the venereal disease,<sup>10</sup> and he must have concealed it.<sup>11</sup> Usually, however, any state of facts rendering a marriage wholly or partly invalid from the beginning is grounds for annulment.<sup>12</sup> Of the alternative measures of relief, the better would seem to be annulment. This is true because in annulment there are no problems raised as to support of the defendant, disposition of property, *et cetera*. On the other hand, if there are children, the better solution would be divorce, since questions of legitimacy, and support of the issue can be more easily resolved.

J. E.

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EQUITY—SPECIFIC PERFORMANCE—STATUTE OF FRAUDS—ORAL CONTRACT TO CONVEY LAND—[Missouri].—X orally promised to convey or devise certain real property to plaintiff if she would care for him for the rest of his life. Plaintiff did so, performing manifold household duties and ministering generally to his needs until his death a year later. When his will

7. In *Jordan v. Missouri & Kan. Tel. Co.* (1909) 136 Mo. App. 192, 116 S. W. 432, the Missouri Court merely gave full faith and credit to a New York judgment.

8. The court said that such fraud pertains to an essential of the marriage relation and entitled plaintiff to an annulment of the marriage; thus following the Massachusetts rule. But the court also said that it is not necessary that plaintiff state in his petition that he was misled in giving his consent, but that it appears so from necessary intendment; thus bringing in a consideration of the New York rule.

9. *Bowman v. Bowman* (Del. 1934) 6 Harr. 84, 171 Atl. 444; *Holmes v. Holmes* (1919) 186 Iowa 336, 170 N. W. 793, 8 A. L. R. 1534; *Danielly v. Danielly* (1922) 93 N. J. Eq. 556, 118 Atl. 335; *McMahon v. McMahon* (1898) 186 Pa. 485, 40 Atl. 795, 41 L. R. A. 802.

10. *Holmes v. Holmes* (1919) 186 Iowa 336, 170 N. W. 793, 8 A. L. R. 1534; *Carbajal v. Fernandez* (1912) 130 La. 812, 58 So. 581; *Curtiss v. Curtiss* (1922) 243 Mass. 51, 136 N. E. 829; *Lazarwitz v. Lazarwitz* (1928) 102 N. J. Eq. 132, 139 Atl. 881; *Abramowitz v. Abramowitz* (Sup. Ct. 1913) 140 N. Y. S. 275.

11. *Holmes v. Holmes* (1919) 186 Iowa 336, 170 N. W. 793, 8 A. L. R. 1534; *Leach v. Leach* (Me. 1887) 8 Atl. 349; *Abramowitz v. Abramowitz* (Sup. Ct. 1913) 140 N. Y. S. 275.

12. 1 Vernier, *American Family Laws* (1931) 239, sec. 50.