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Marriage and Annulment - Fraud - Concealment of Nationality

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MARRIAGE AND ANNULMENT—FRAUD—CONCEALMENT OF NATIONALITY—A wife sued for the annulment of her marriage on the ground of fraud, alleging that the husband—a German alien—had represented himself to be a naturalized American citizen. Apparently there had been no cohabitation after the wife learned of the husband's nationality. *Held*, the court, in ordering an annulment of the marriage, laid major stress upon the difference in political ideologies of the two nations. *Laage v. Laage*, 9 U.S. L. Week 2642 (N.Y. Sup. Ct. 1941).

Probably in an effort to compensate for its rigid divorce laws,¹ New York has extended the definition of "fraud" in its domestic relations statute² further than that of any other state in the union. It has abandoned the limitation imposed by a majority of the states that the fraud must go to the essentials of the marriage relation, such as misrepresentation or concealment of pregnancy or venereal disease.³ The present New York rule is that any misrepresentation without which a reasonably prudent spouse would not have entered into marriage is sufficient for annulment.⁴ Thus New York has granted annulment for the concealment of a prior marriage,⁵ dishonesty of character,⁶ addiction to drug,⁷ epilepsy,⁸ or tuberculosis.⁹ The same is true for the concealment of an intention not to consummate the marriage relationship,¹⁰ or an intention of breaking a promise to enter into a subsequent religious ceremony confirming civil wedlock,¹¹ as well as a representation

1. See Notes (1920) 20 Col. L. Rev. 708, (1923) 33 Yale L. J. 209.

2. N.Y. Domestic Relations Law, § 7(4).

3. See Drexler, *Annulment of Marriage for Fraud in New York* (1937) 71 U.S. L. Rev. 318; Vanneman, *Annulment of Marriage for Fraud* (1925) 9 Minn. L. Rev. 497.

4. *DiLorenzo v. DiLorenzo*, 174 N.Y. 467, 66 N.E. 121 (1903). Of course, cohabitation after discovery of the fraud will bar the action for annulment regardless of the nature of the misrepresentation.

5. *Weill v. Weill*, 104 Misc. 561, 172 N.Y. Supp. 589 (1918) (husband concealed previous marriage); *Costello v. Costello*, 155 Misc. 28, 279 N.Y. Supp. 303 (1934) (wife concealed prior marriage); *Heldig v. Heldig*, 8 N.Y.S.(2d) 405 (1938) (wife said she had been previously married to man with whom she had lived in illicit relations).

6. *Sheridan v. Sheridan*, 186 N.Y. Supp. 470 (1921).

7. *O'Connell v. O'Connell*, 201 App. Div. 338, 194 N.Y. Supp. 265 (1922).

8. *Lapides v. Lapides*, 254 N.Y. 73, 171 N.E. 911 (1930).

9. *Sobol v. Sobol*, 88 Misc. 277, 150 N.Y. Supp. 248 (1914).

10. *Miller v. Miller*, 132 Misc. 121, 228 N.Y. Supp. 657 (1928); *Lewine v. Lewine*, 170 Misc. 120, 9 N.Y.S.(2d) 869 (1938).

11. *Rubinson v. Rubinson*, 110 Misc. 114, 181 N.Y. Supp. 28 (1920); *Watkins v. Watkins*, 197 App. Div. 489, 189 N.Y. Supp. 860 (1921); *Rozsa v. Rozsa*, 117 Misc. 728, 191 N.Y. Supp. 868 (1922); *Auifero v. Auifero*, 222 App. Div. 479, 228 N. Y. Supp. 611 (1928). Where the marriage has been consummated the New York courts usually refuse annulment on this ground. *Russo v. Russo*, 168 Misc. 551, 5 N. Y. S.(2d) 845 (1938).

of a feigned intention to enter into a joint business venture,¹² and false protestation of love in furtherance of some reprehensible design.¹³

Insofar as the judge in the instant case entered into what appears to be an unnecessary discourse upon the objectionable features of things totalitarian,¹⁴ the case is subject to criticism. In near-war times even more than usually does it behoove a great people to avoid prejudices of race and nationality. Nevertheless, the court's conclusion finds partial support in the earlier case of *Truiano v. Truiano*,¹⁵ where a marriage was annulled under similiar circumstances, although the court there had based its decision upon the fact that marriage to an alien at that time would have resulted in loss of the wife's citizenship,¹⁶ with the consequent loss of her position as a school teacher.¹⁷ Since the passage of the Married Women's Citizenship Act,¹⁸ the force of the *Truiano* case should be little indeed.

It is hardly possible that this attitude could gain currency in the courts of Louisiana, where fraud is limited to a mistake of person, which has been construed to mean a mistake in physical identity.¹⁹ The English law with regard to annulment for fraud is equally uncompromising.²⁰ It is submitted that the more desirable system is that which makes annulment more difficult and divorce easier.²¹ Marriages should be dissolved upon the basis that the spouses are unable to live together amicably or to maintain their respect for one another, rather than upon the disillusionment following a discovery that the other party has certain unexpected shortcomings.

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12. *Robert v. Robert*, 87 Misc. 629, 150 N.Y. Supp. 366 (1914).

13. *Rubman v. Rubman*, 140 Misc. 658, 251 N.Y. Supp. 474 (1931).

14. 9 U.S. Law Week 2642 (1941).

15. 121 Misc. 635, 201 N.Y. Supp. 573 (1923), noted in (1924) 24 Col. L. Rev. 433, (1924) 33 Yale L. J. 793. Contra: *Kawabata v. Kawabata*, 48 N.D. 1160, 189 N.W. 237 (1922).

16. 34 Stat. 1228 (1907).

17. N.Y. Education Law, § 550, provides that all school teachers must be citizens.

18. 42 Stat. 1022 (1922), 8 U.S.C.A. § 9 (1927).

19. Arts. 91, 110, La. Civil Code of 1870. *Delpit v. Young*, 51 La. Ann. 923, 25 So. 547 (1899).

20. *Moss v. Moss* [1897] P. 263. The English rule appears to be that a marriage will be annulled for fraud only where there was no real consent. *Id.* at 274: "... the only fraud which annuls marriage is that which renders the mind of one of the parties not a truly consenting mind."

21. La. Act of 430 of 1938 [Dart's Stats. (1939) § 2202] providing for final divorce on grounds of two years' voluntary separation seems to be one of the most sensible answers to this perplexing problem.