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Domestic Relations—Marriage—Annulment—Fraudulent Concealment of "Epilepsy"

DOMESTIC RELATIONS — MARRIAGE — ANNULMENT — FRAUDULENT CONCEALMENT OF "EPILEPSY."— Busch v. Gruber, 131 Atl. (N. J.) 101.

The petitioner in this case seeks to annul the marriage between herself and her husband on the ground that the husband had fraudulently concealed from her the fact that he was subject to epileptic fits. It is not alleged nor proved that he made affirmative false statements in regard to the particular fact of epilepsy, but it is alleged and proved that he had suppressed his true condition and further that he had represented himself to be in good health. The petitioner claims that had she known these facts she never would have married the defendant. The Court held that the proving of these facts showed such fraud as would vitiate the whole marriage contract and therefore annulled the marriage. The court was strongly influenced by two earlier New Jersey cases. In Crane v. Crane, 62 N. J. Eq. 21, 49 Atl. 743, it was held that concealment of the fact by one of the parties that he was suffering from syphilis was sufficient to justify the Equity Court in annuling the marriage. In Davis v. Davis, 90 N. J. Eq. 158, 106 Atl. 644, the Court held that the suppression by one party of the fact that he was suffering from a disease (tuberculosis) which renders the close intimacy of the marriage relation dangerous to the other, and which may result in a transmittal of the disease to the offspring, is such fraud as will warrant a Court of Equity in annuling the marriage.

That venereal disease, when concealed from the other party prior to marriage, is a ground for annulment, seems to be established by the weight of authority. Sevenson v. Sevenson, 178 N. Y. S. 54, 70 N. E. 120. However, Vondal v. Vondal, 175 Mass. 383, 56 N. E. 586, 78 A. S. R. 502, is contra.

There are only a few cases in the books where epilepsy has been urged as a ground of annulment, and in a number of cases where it has been urged the decision has been influenced by local statutes. There are, however, a few instances where the question has been decided wholly apart from statute, as it was in the principal case. In Elser v. Elser, 160 N. Y. S. 724, and McGill v. McGill, 179 App. Div. 343, 166 N. Y. S. 397 (affirmed without opinion in 226 N. Y. 673, 123 N. E. 877), the New York Court refused to annul the marriage because of the concealment of epilepsy. Neither of these cases, however, can be cited as contra authority to the principal case because in both cases the final decision really rested upon the ground that the facts alleged were not sufficiently proved, the intimation being that had they been

sufficiently proved the Court would have annuled the marriage. In Lyon v. Lyon, 230 Ill. 366, 82 N. E. 850, 13 L. R. A. (N. S.) 996, it was held that a false representation that defendant had not had an attack of epilepsy for eight years is not sufficient to warrant the annuling of the marriage. In a dictum in Reynolds v. Reynolds, 3 Allen 605, 606 Chief Justice Biglow said: "No misconception as to . . . health . . . however brought about, will support an allegation of fraud on which a dissolution of the marriage contract, when once executed, can be obtained in a Court of Justice."

Positive authority against the conclusion in the principal case can be found in Richardson v. Richardson, 140 N. E. (Mass.) 73, holding that if the wife prior to marriage concealed the fact that she was afflicted with epilepsy, an incurable disease, nevertheless it would not be a ground for annuling the marriage.

All that can be said after reviewing the cases is that the Courts are in conflict without enough cases being decided on one side or the other to establish a clear line of authority.

H. C. A., '27.

PARTNERSHIP—GUARANTY OR SURETYSHIP—AUTHORITY OF PARTNER TO BIND FIRM BY CONTRACT OF.—Nicolai-Nepach Co. v. Abrams et al., 240 Pac. 870 (Supreme Court of Oregon, November 3, 1925).

This was an action by the Nicolai-Nepach Co. against M. Abrams and his son, Ben Abrams, as partners in the hardware business, for $650. M. Abrams guaranteed on behalf of the partnership the payment of $700 due the plaintiff from the Columbia City Furniture Co., "and if they fail to make their payments, we or either of us promise to pay said accounts." The answer, by Ben, was that the business of the Oregon Hardware Co. was strictly in hardware, and that neither Ben nor the partnership at any time authorized any contract or agreement of guaranty or suretyship in the name of the partnership. The reply alleged that Ben obtained or had the means of obtaining knowledge of the agreement on or about the date of its execution; that Ben failed to give notice; that thereby the plaintiff was damaged through reliance on the contract; and that M. Abrams had authority to make the agreement because the partnership was a creditor of the Columbia City Furniture Co., and it was therefore to the interest of the partnership to keep the Columbia City Furniture Co. a going concern in order