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Domestic Relations: Estoppel and its Application to an Interlocutory Decree of Divorce

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The strict construction approach is illustrated by *Penn v. Standard Life and Accidental Insurance Co.*[23] The policy provided for "loss of sight caused directly and independently of all other causes, through external, accidental, and violent means." The insured was not allowed to recover for loss of sight due to an eye injury caused by accidentally falling from a train. The court said that the fall merely hastened the loss which would probably have occurred eventually because of a pre-existing cataract. The decision was that when disease or infirmity cooperated with accident, there could be no recovery.

In conclusion, it would seem the better theory that no distinction should be made between accidental means and accidental result. Recovery should be allowed under the terms of accident insurance policies when disease is not serious or virulent. When a dormant abnormality and accident combine to produce death or disability, the death or disability is caused solely by accidental means. This was precisely the holding in the *Lyons* case, and therefore it represents what the law should be in this field.

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DOMESTIC RELATIONS: ESTOPPEL AND ITS APPLICATION TO AN INTERLOCUTORY DECREE OF DIVORCE

Where two parties have entered into a Mexican marriage and one of those parties has obtained an interlocutory but not a final decree of divorce, can an estoppel theory be employed to disable the other party from claiming the invalidity of such marriage? In the case of *Spellens v. Spellens*[1] the California Supreme Court answered this question in the affirmative.

In the *Spellens* case, plaintiff brought an action for a declaration that she was the lawful wife of defendant and for a decree of separate maintenance. In the alternative if the court determined the marriage to be invalid, she asked for damages for alleged fraudulent misrepresentations leading to the marriage ceremony and for an award of quasi-community property of the parties.[2] Plaintiff was an unhappily maried woman. Defendant was a friend of the family who professed his love for plaintiff and expressed a desire to marry her. He was a man of considerable wealth and business acumen and represented to plaintiff that he also had wide legal experience. He told plaintiff that he was aware of her circumstances and that if she obtained a divorce he would marry her, provide for her children and make her a partner in all his property. Plaintiff filed for divorce and obtained an interlocutory decree, defendant having procured the attorney and paid his fees. Defendant also told plaintiff that they could be married in Mexico and that the marriage would be binding everywhere. They were married, but because of defendant's cruelty the plaintiff brought the action. Plaintiff contended that defendant was estopped to deny the validity of the Mexican marriage. Defendant maintained that the marriage had no validity because plaintiff was not divorced at the time she married defendant, and that an estoppel theory cannot be employed because of the public policy of the state.[3]

The trial court found, *inter alia,* that plaintiff relied on defendant's represen-

[23] 158 N.C. 29, 78 S.E. 99 (1911).

[1] 49 Cal. 2d 210, 317 P.2d 613 (1957).

[2] *Id.* at 210, 317 P.2d at 613.

[3] *Id.* at 214, 317 P.2d at 617.

tations; that he intended that she should rely on them; that plaintiff in good faith married defendant, believing the marriage to be valid; and that defendant knew he was not legally married and intended from the beginning that his marriage with plaintiff be invalid.[4] Nevertheless, the trial court did not estop defendant from asserting the invalidity of the marriage.

The rule of estoppel in this type of case was stated in *Rediker v. Rediker*[5] where the court said:[6]

> [T]he validity of a divorce decree cannot be contested by a party who has procured the decree or a party who has remarried in reliance thereon, or by one who has aided another to procure the decree so that the latter will be free to remarry.

In this case defendant obtained a divorce in Cuba which was invalid because his wife was never served with process. His later marriage to plaintiff was therefore bigamous and void. The court denied him the right to assert this defense to plaintiff's action for separate maintenance.

In *Harlan v. Harlan*,[7] plaintiff who was seeking to have his ceremonial marriage with defendant annulled was also estopped to deny the final out-of-state divorce decree. In the *Harlan* case the reasons for invoking estoppel were even stronger, for there plaintiff assisted defendant in procuring her divorce.

In the *Spellens* case, both the District Court of Appeal and the California Supreme Court relied on these decisions, but each court, employing the same precedents, reached a different result.

The District Court of Appeal, in deciding that estoppel could not be employed, pointed out that the *Rediker* and *Harlan* cases presuppose the entry of a final decree before estopping one of the parties from claiming the invalidity of the decree.[8] In both those cases a final decree was obtained out of state, but each was invalid because of jurisdictional problems. In the *Spellens* case no such situations existed. The appellate court stated[9] that the language in the cases regarding the presupposiiton that the final decree must be entered before estoppel can be applied

> . . . negates the argument that an estoppel may operate to create a marriage or the right to future support where only an interlocutory decree has been obtained by one of the parties.

The appellate court and the cases it relied on to support its decision refused to extend the estoppel doctrine because of the policy consideration enunciated in the California Civil Code, Section 61(1), which states:

> A subsequent marriage contracted by any person during the life of a former husband or wife of such person, with any person other than such former husband or wife, is illegal and void from the beginning, unless:
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> 1. The former marriage has been annulled or dissolved. *In no case* can a marriage of either of the parties during the life of the other, be valid in this state, if contracted within one year after the entry of an interlocutory decree in a proceeding for divorce. (Emphasis added.)

In *Parmann v. Parmann*[10] the court held that the equities of the situation

[4] See D.C.A. opinion 147 A.C.A. 348, 305 P.2d 628 (1957).
[5] 35 Cal. 2d 796, 221 P.2d 1 (1950).
[6] *Id.* at 805, 221 P.2d at 20.
[7] 70 Cal. App. 2d 657, 161 P.2d 490 (1945).
[8] 305 P.2d at 637 (1957).
[9] *Ibid.*
[10] 56 Cal. App. 2d 67, 132 P.2d 851 (1942).

could not be considered to work an estoppel for the reason that an inflexible rule of law on the basis of this statute fixed the status of the parties. In *Dominquez v. Dominquez*[11] the plaintiff through his own fault failed to obtain the final divorce decree after the interlocutory decree was rendered. It was held that he was entitled to have the ceremonial marriage annulled because to do otherwise would amount to judicial legislation. The decisions rely on the phrase of the statute "in no case" to establish the inflexible rule that a marriage entered into before the elapse of one year after an interlocutory decree is a nullity.[12]

As mentioned previously, the Supreme Court also relied on the *Rediker* and *Harlan* cases, but arrived at a contrary result. Namely that the estoppel theory could be applied to disable defendant from claiming the invalidity of the Mexican marriage. The court held that though these cases employ estoppel where a final decree has been rendered invalid because of the lack of jurisdiction of the court which purported to give it, there is no reason to limit the doctrine to merely analogous fact situations. The policy should be extended to include situations where there was a marriage within a year after the entry of the interlocutory decree.[13] A failure to extend the policy would be a detriment rather than a benefit to the public welfare and morals; it would invite people to attempt to circumvent the law by living in an unlawful state, and then to allow these persons to apply to the courts for relief when they wearied of the situation.[14] The Supreme Court in extending the estoppel theory overruled *Parmann, Dominquez,* and other similar cases.[15]

In recognizing a broadening of the policy considerations regarding divorce, the court at the same time had to preserve the integrity of the code section from which the policy stemmed. This preservation was accomplished by noting that *it was not that the marriage was found valid, but only that defendant by reason of his conduct was not permitted to question its validity or that of the divorce.*[16]

The conduct of the plaintiff in the *Spellens* case was not unreasonable in that the interlocutory decree declared that the parties were entitled to a divorce, and it was not unreasonable for her, after putting faith and confidence in defendant, to believe that the Mexican marriage would be valid. It would be difficult under these circumstances which showed fraud on the part of defendant, "to imagine a stronger case in this field of law."[17] By enlarging the estoppel concept to apply to circumstances similar to that in the *Spellens* case an equitable result was reached and no violence was done to the policy considerations adhered to in this state.

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[11] 136 Cal. App. 2d 17, 288 P.2d 195 (1956).

[12] Rediker v. Rediker, 35 Cal. 2d 796, 221 P.2d 1 (1950); Dominquez v. Dominquez, 136 Cal. App. 2d 17, 288 P.2d 195 (1955); Parmann v. Parmann, 56 Cal. App. 2d 67, 132 P.2d 851 (1942).

[13] 49 Cal. 2d at 216, 317 P.2d at 619.

[14] *Id.* at 215, 317 P.2d at 618.

[15] Sullivan v. Sullivan, 219 Cal. 734, 28 P.2d 914 (1934); *In re* Estate of Elliott, 165 Cal. 339, 132 Pac. 439 (1913).

[16] See note 13 *supra.*

[17] *Ibid.*