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Stanley v. Stanley

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STANLEY V. STANLEY—OCCUPATION OF AND CONTRIBUTION TO "MATRIMONIAL" HOME BY MISTRESS — RIGHTS TO PROPERTY IN CONTRACT, QUANTUM MERUIT, EQUITABLE ESTOPPEL OR TRUST. The 1960 decision of the Supreme Court of Alberta in the case of *Stanley v. Stanley*[1] raised the problem of the right of a mistress to remain in occupation of a house purchased by her paramour when the relationship between the parties ceases. Milvain J. held that, in the particular circumstances, the mistress was entitled to half interest in the property. Although it is somewhat difficult to say upon what principles the case was decided, the result would seem to be proper in the circumstances.

The defendant proposed marriage to the plaintiff in March, 1944, shortly after the parties first met, but was informed by the plaintiff that she was already married to a man from whom she had not heard since 1940. The parties cohabited thereafter for a period of fourteen years, despite the facts that the plaintiff had not obtained a divorce and that a valid marriage ceremony with the defendant had not taken place. Their relationship was harmonious and the plaintiff was of material assistance in the advancement of the defendant's career.

In the spring of 1953, the parties decided to build a home on a lot that was acquired by the defendant. At that time, the plaintiff asked the defendant whether her name was "on the title", and the defendant replied: "This is your house". The defendant, on a second occasion prior to the completion of the mortgage, gave the plaintiff a similar assurance. The plaintiff signed the mortgage three times; once as what the learned judge referred to as a maker though her name did not appear as a mortgagor, again as a guarantor and lastly as a wife executing her consent under the *Dower Act*. The plaintiff took an active part in the construction of the house, purchased the furniture and furnishings and paid landscaping costs. She did not, however, actually contribute to the purchase price. In 1957, "marital" difficulties arose, and the defendant departed, leaving the plaintiff in occupation of the premises.

Milvain J. begins his analysis of the rights of the plaintiff by a statement of the principle that any contract made in consideration of future illicit co-habitation is void and of no effect. After a review of various English and Canadian cases, the learned Judge says:[2]

> "I am therefore of the opinion that had the title to the property in question been placed in the name of the plaintiff or in the joint names of the two parties, the situation could not be attacked on the ground of immoral consideration. Furthermore, had the defendant merely entered into a formal agreement to place the property in their joint names, or in the name of the plaintiff, that agreement would be enforceable, unless it appeared in evidence that the consideration was in fact that the illicit co-habitation should continue. In this case, there was no such formal agreement and one wonders whether that should end the matter".

This passage would appear to indicate that the evidence here did not disclose an illegal consideration. However, nowhere in the reasons

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1 (1960), 30 W.W.R. 686; 23 D.L.R. (2d) 620.
2 23 D.L.R. (2d) at p. 624; 30 W.W.R. at p. 690.

for judgment does the trial judge make a positive finding that a contract had been formed; nor does he state the manner in which the requisites for the formation of a contract were satisfied. It is conceivable that the statement of the defendant, "This is your house", could be said to be an offer and that the conduct of the plaintiff could amount to an acceptance. Consideration could be found in promises of the plaintiff to supervise construction, to furnish the house, to landscape the grounds and to guarantee the mortgage. The difficulty is that there were no express promises and no basis warranting an implication as suggested. Further objection may be made on the ground that there is no evidence that the defendant requested or bargained for any such promises of performances. Literally, his words are apt only to express a present gift or, possibly an intention to make a gift in the future.

Milvain J. continues:[3]

> "It is my conclusion that when the defendant stated 'this is your house' or 'Donna, this is your house' he gave her an assurance of a legal position that the property was hers at least to the same extent as if it were the matrimonial home of a married couple. She acted upon that assurance in spending her money and effort in developing the property and in furnishing it as she has related. Moreover, it his uncontradicted evidence that she believed the defendant when he gave assurance, which he must have intended she would believe and act upon".

To support this result the statement of the doctrine of equitable estoppel of Denning L.J., in the case of *Lyle-Meller v. Lewis & Co. (Westminster) Ltd.*,[4] is quoted. However, if there is a valid contract supported by consideration there would appear to be no need to rely on equitable estoppel. On the other hand, if there is no contract the plaintiff in these circumstances would appear to be under the necessity of relying upon equitable estoppel as constituting, in itself, a cause of action. Yet the English courts, including the Court of Appeal in the *Lyle-Meller* case, have refused to recognize that the doctrine has any such wide application.[5] Moreover, the Supreme Court of Canada in *The Governors of Dalhousie College at Halifax v. The Estate of Arthur Boutilier, Dec'd.*[6] has indicated that no such extension of the doctrine should be made.

The learned trial judge also recognizes the possibility of a claim in *quantum meruit*.[7] However, if there is a contract, it seems reasonably clear that there cannot be a *quantum meruit* recovery on the basis of an implied promise and it remains doubtful whether such a recovery could be sustained on the theory of an obligation imposed by the court. If there is no contract, there would be no bar to the implication of a promise, but the promise found by implication has usually been limited to a pecuniary award of reasonable remuneration

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[3] 23 D.L.R. (2d) at p. 625; 30 W.W.R. at p. 691.
[4] [1956] 1 All E.R. 247 at 250, 251; [1956] 1 W.L.R. 29 (C.A.).
[5] *Combe v. Combe,* [1951] 1 All E.R. 767; [1951] 2 K.B. 215.
[6] [1934] S.C.R. 642, at 652; [1934] 3 D.L.R. 593, at 600 (S.C.C. on appeal from S.C.N.S.).
[7] *Supra* footnote 2.

for services of a reasonable price for goods, and has not been extended to confer an interest in real property.

Milvain J. seems to equate the relationship of the parties in this case to cases involving property rights in a matrimonial home where one spouse has deserted, leaving the other in occupation. Although many may find it difficult to find a satisfactory reason for distinguishing between the property rights of married persons and those of unmarried persons living together, the English Court of Appeal in the recent case of *Diwell v. Farnes*[8] decided that there was a difference. There, Hodson L.J. held that the principle of equality of division as laid down by Lord Evershed M.R. in *Rimmer v. Rimmer*[9] could not be applied because:[10]

> "No contract or joint enterprise can be spelled out of the relationship of man and mistress".

The matrimonial cases could not be applied even by analogy because:

> "The dispute is not concerned with a matrimonial home and is to be treated accordingly, in my opinion, as a dispute between strangers, the plaintiff's position being that she stands in the shoes of the deceased who was a stranger in law to the defendant".

Although the decision would thus appear to be in direct conflict with that of the English Court of Appeal, nevertheless it is submitted that the better reasoning would be that the principle laid down in *Rimmer v. Rimmer* should not be confined to cases between husband and wife. It would appear to be of a much wider application and should be invoked in cases where it can be shown that both parties have equitable interests in the property, but where it would be difficult or impossible to determine with exactitude the proportions in which they have respectively contributed to the acquisition of the property. It is submitted that in those cases recourse should be had to the principle "equity delighteth in equality".

Milvain J. concludes:[11]

> "It is my conclusion and I so find, that the defendant holds title to the property in question in trust for himself and the plaintiff in equal shares".

Some ambiguity is evident in the use of the term "in trust". The learned trial judge apparently does not mean that an express trust was declared by the defendant by his statement that the house belonged to the plaintiff for, if that statement is to be taken literally, the result would be that the entire financial interest in the property would pass to the plaintiff and not, as the learned Judge concludes, simply a one-half interest. Nor from the evidence stated in the reasons for judgment is it possible to conclude that there was a sufficiently clear manifestation of intention to create a trust on the part of the defendant. Furthermore, the requirement of writing to

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[8] [1959] 1 W.L.R. 624 (C.A.).
[9] [1953] 1 Q.B. 67 at 72 (C.A.).
[10] *Supra* footnote 8 at p. 627.
[11] 23 D.L.R. (2d) 620 at 625; 30 W.W.R. 686 at 690.

evidence the declaration of a trust of land would not appear to be met. Neither does this factual situation fall within the categories of resulting trusts. This is not the case of the purchase and payment for land by one person, title being taken in the name of another person. Perhaps, therefore, the best explanation is that a constructive trust was imposed to prevent an unjust enrichment, upon analogy to section 160 of the American Restatement of Restitution.[12]

There is a manifest difference between an action for remuneration promised in consideration of an ilicit relationship and a suit for property, the result of capital, industry, labour and economy. A person in the position of this plaintiff should be entitled to half the property where her capital and effort have so largely contributed toward the end product. If law is to be an expression of social values and to keep pace with the changing views of private and social interests, the decision of Milvain J., is to be preferred over the "strangers in law" theory of the English Court of Appeal.

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