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Effect of Invalid Marriage on Property Rights

This consideration, coupled with the vice of inducing illegality, makes the holding in the *Robbin's* case appear more extreme. Certainly the rule of thumb that all trusts tending to induce violation of the law are illegal should not be accepted without question by the courts. If, however, a court is inclined to balance the equities as the California court did, it is submitted that the individual facts should be viewed in the context of the favored position of charitable trusts in the eyes of the law. With this in mind, it might take more than care and support of a class of children to offset the resulting harm to society in such a situation as the one presented in the *Robbin's* case. In viewing the benefit bestowed on a part of society a court should as well be mindful of the effects of its decision on the whole society and its institutions.

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EFFECT OF INVALID MARRIAGE ON PROPERTY RIGHTS

When a marriage is wholly void, it gives rise to no civil rights.[1] It is subject to either direct or collateral attack[2] by anyone[3] at any time[4] in any proceeding in which the existence of the marriage is material.[5] It is usually said that neither party to a void marriage acquires any property rights by virtue of the marriage.[6]

Although the mere fact of cohabitation may not give rise to any property rights, the question of whether or not such a relationship nec-

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[1]Succession of Barth, 178 La. 847, 152 So. 543 (1934); Hunt v. Hunt, 23 Okla. 490, 100 Pac. 541 (1909); Toler v. Oakwood Smokeless Coal Corp.; 173 Va. 425, 4 S.E.2d 364 (1939).

[2]State v. Pass, 59 Ariz. 16, 121 P.2d 882 (1942). In re Karau's Estate, 26 Cal. App. 2d 606, 80 P.2d 108 (Dist. Ct. App. 1938); Jardine v. Jardine, 291 Ill. App. 152, 9 N.E.2d 645 (1937); Damron v. Danron, 301 Ky. 636, 192 S.W.2d 741 (1945); Christensen v. Christensen, 144 Neb. 763, 14 N.W.2d 613 (1944); Commonwealth ex rel. Knode v. Knode, 149 Pa. Super. 563, 27 A.2d 536 (1942); Bray v. Landergren 161 Va. 699, 172 S.E. 252 (1934).

[3]State ex rel. Willys v. Chillingworth, 124 Fla. 274, 168 So. 249 (1936); Jardine v. Jardine, 291 Ill. App. 152, 9 N.E.2d 645 (1937).

[4]Pridgen v. Pridgen, 203 N.C. 533, 166 S.E. 591 (1932); Carter v. Green, 64 S.W.2d 1069 (Tex. Civ. App. 1933).

[5]Kuehmsted v. Turnwall, 103 Fla. 1180, 138 So. 775 (1932); Succession of Barth, 178 La. 847, 152 So. 543 (1934).

[6]Frey v. Frey, 59 F.2d 1046 (D.C. Cir. 1932); Osoninach v. Watkins, 235 Ala. 564, 180 So. 577 (1938); Goff v. Goff, 52 Cal. App. 2d 223, 125 P.2d 848 (Dist. Ct. App. 1942); Schneider v. Schneider, 183 Cal. 335, 191 Pac. 533 (1920); Toler v. Oakwood Smokeless Coal Corp., 173 Va. 425, 4. S.E.2d (1939); Re Brencehley, 96 Wash. 233, 164 Pac. 913 (1917); In re Sloan, 50 Wash. 86, 96 Pac. 684 (1908).

essarily bars claims to property acquired during its existence, is not so easily answered.[7] This problem was presented to the California Supreme Court in the case of *Keene v. Keene*.[8] The approach taken by the court should be viewed in the context of the community property system since California adheres to this doctrine.[9] However, the problem is similar in common law states.[10]

In the *Keene* case, a man and woman cohabited for approximately seventeen years knowing that they were not legally married. The plaintiff alleged that during this time she and defendant owned and operated certain ranch properties and other businesses as joint ventures or partners. She further stated that she devoted her full time and effort to the improvement and maintenance of these properties and businesses. Plaintiff asked that she be adjudged the owner of an undivided one-half interest in proceeds obtained from the sale of such property, the defendant being deemed to hold such interest in trust for her benefit.

The trial court found that plaintiff had no interest in the funds in question.[11]

> "In particular, the court found that 'plaintiff had no interest in said ranch [in Butte County] at the time of said sale [in 1946] and that the same was the sole and separate property of defendant . . . defendant alone'; and that defendant 'did use the proceeds of said sale to purchase certain other properties in the State of California, but that the same were not purchased by plaintiff and defendant as partners or joint ventures . . . but the same were purchased by defendant as an individual dealing with his own separate property. . . .' "[12]

The California Supreme Court affirmed the lower court's decision holding, in substance, that where a woman cohabits with a man know-

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[7]Some of the problems encountered by courts seeking to answer this question are discussed in Stevens v. Anderson, 75 Ariz. 331, 256 P.2d 712 (1953), and Vallera v. Vallera, 21 Cal. 2d 681, 134 P.2d 761 (1943).

[8]21 Cal. Rptr. 593, 371 P.2d 329 (1962).

[9]For a discussion of the community property system see de Funiak, Principles of Community Property (1943); Keezer, Marriage and Divorce, §§ 16, 236, 540 (3d ed. Morland 1946); Madden, Persons and Domestic Relations, § 46 (1931).

[10]In the common law system the question presented in the Keene case is much more likely to arise in states which do not recognize common law marriages than in states which do recognize such marriages. As a result, many of the leading cases are from these states. The point is, that once a purported marriage has been found to be invalid, the problems encountered by the courts seeking to settle property disputes are similar regardless of the jurisdiction.

[11]371 P.2d at 331.

[12]Ibid.

ing they are not lawfully married, she is not entitled to an interest in property acquired in the latter's name during the period of cohabitation, even to the extent that she rendered services other than as a housewife.[13]

A dissenting judge in the Supreme Court argued that the court should have found an implied trust for plaintiff to the extent that her services contributed to the property. The dissenting opinion points out that one who furnishes consideration for the acquisition of property is entitled to a corresponding interest in it. The dissent concluded that the fact that plaintiff's alleged consideration consisted of services as opposed to actual monetary contribution should not defeat the existence of an implied trust.[14]

The majority rule seems to be that when a woman enters into a marriage with an honest belief in its validity, she is entitled to a portion of the property accumulated by the joint efforts of the parties during their relationship.[15] One of the leading authorities on this point is the California case of *Vallera v. Vallera*[16] which was frequently referred to in the majority opinion of *Keene*.

In *Vallera v. Vallera*, the California Supreme Court was confronted with a fact situation similar to the one in the *Keene* case. The court held that a woman who cohabited with a man, without genuine belief that she was legally married to him, could not acquire the rights of a co-tenant in his earnings and accumulations during their illicit relationship.[17]

It is important that two situations be distinguished: (1) where one of the parties acts in a good faith belief that there is a valid marriage, and (2) where both parties know the relationship is meretricious.

In the *Vallera* case, several possible approaches were discussed hypothetically. However, the case seems to have actually been decided on the basis of the putative marriage doctrine.[18]

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[13]Id. at 333.

[14]Id. at 339.

[15]Albae v. Harbin, 249 Ala. 201, 30 So. 2d 459 (1947); Lazzarevich v. Lazzarevich, 88 Cal. App. 2d 708, 200 P.2d 49 (Dist. Ct. App. 1948); Vallera v. Vallera 21 Cal. 2d 681, 134 P.2d 761 (1943); Sclamberg v. Sclamberg, 220 Ind. 209, 41 N.E.2d 801 (1942); Titus v. Titus, 151 Kan. 156, 97 P.2d 1113 (1940); Walker v. Walker, 330 Mich. 332, 47 N.W.2d 633 (1951); Chrismond v. Chrismond, 211 Miss. 746, 52 So. 2d 624 (1951); Conkling v. Conkling, 126 N.J. Eq. 142, 8 A.2d 298 (1936); Krauter v. Krauter, 79 Okla. 30, 190 Pac. 1088 (1920); Jenkins v. Jenkins, 107 Utah 239, 153 P.2d 262 (1944); Philips v. Philips, 106 W. Va. 105, 144 S.E. 875 (1928). For authority contra see DeFrance v. Johnson, 26 Fed. 891 (C.C.D. Minn. 1886); Schmitt v. Schneider, 19 Ga. 628, 35 S.E. 145 (1900).

[16]21 Cal. 2d 681, 134 P.2d 761 (1943).

[17]Ibid.

[18]Ibid.

"The essential basis of a putative marriage, however, is a belief in the existence of a valid marriage. In addition, in the majority of cases, the defacto wife attempted to meet the requisites of a valid marriage, and the marriage proved invalid only because of some essential fact of which she was unaware, such as the earlier undissolved marriage of one of the parties. . . ."[19]

In jurisdictions recognizing the putative marriage doctrine, the property rights of a good faith party to an invalid marriage are determined as though the marriage was in fact valid.[20] In effect the innocent party is given the standing of a lawful spouse before the court.

Although there is contrary authority,[21] some jurisdictions which do not recognize the putative marriage doctrine will grant a woman relief as to property acquired during cohabitation, if she believed in good faith that a valid marriage existed.[22] Several theories have been advanced in support of the proposition that a good faith spouse has an enforceable interest in property accumulated during an invalid marriage.[23]

In the Mississippi case of *Chrismond v. Chrismond*[24] where the evidence showed that plaintiff married defendant in good faith, when the latter was in fact incapable of contracting a legal marriage because of a prior existing marriage, plaintiff was awarded a portion of the parties' joint accumulations. Relief was granted under the broad power inherent in a court of equity to prevent injustice. Likewise, in the Washington case of *Buckley v. Buckley*[25] recovery was allowed, the court saying:

"Where a woman in good faith enters into a marriage contract with a man . . . and where in such a case the facts are as they have been found here, where the woman helped to acquire and very materially to save property, the court has jurisdiction, as between the parties, to dispose of their property as it would do . . . in a case of granting a divorce, awarding to the innocent,

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[19]134 P.2d at 762.

[20]Feig v. Bank of Italy Nat'l Trust & Sav. Ass'n, 218 Cal. 54, 21 P.2d 421 (1933); Anderson v. Anderson, 7 Cal. 2d 265, 60 P.2d 290 (1936); Eaton v. Eaton, 125 S.W.2d 624 (Tex. Civ. App. 1939); Cameron v. Cameron, 103 S.W.2d 464 (Tex. Civ. App. 1937.)

[21]Schmitt v. Schneider, 109 Ga. 628, 35 S.E. 145 (1900).

[22]Fung Dia Kim Ah Leong v. Lau Ah Leong, 27 F.2d 582 (9th Cir. 1928); Werner v. Werner, 59 Kan. 399, 33 Pac. 127 (1898); Fuller v. Fuller, 33 Kan. 582, 7 Pac. 241 (1885); Rakestraw v. City of Cincinnati, 69 Ohio App. 504, 44 N.E.2d 278 (1953); See 31 A.L.R.2d 1255 (1942).

[23]31 A.L.R.2d 1255, 1260 (1953).

[24]211 Miss. 746, 52 So. 2d 624 (1951).

[25]50 Wash. 213, 96 Pac. 1079 (1908).

injured woman such portion of the property as, under all the circumstances, would be just and equitable."[26]

Some courts in granting relief to an innocent party to a void marriage have likened the relationship of the parties to that of a partnership.[27] This theory was advanced in the Washington case of *Knoll v. Knoll*.[28] Both parties entered into the marriage in good faith. The putative wife assisted defendant in the preparation of free lunches which were served in the saloon of which he was a part owner. Furthermore, she worked as a seamstress in addition to performing the normal household duties of a wife. Notwithstanding defendant's contention that much of the money earned by plaintiff was spent for her personal expenses, the court said that the property in dispute was acquired by the joint efforts of the parties, and upon annulment of the marriage should be divided equally between them as partners. Thus the court treated the illicit relationship between the parties as a partnership with reference to all property acquired by the "joint efforts" of the paries.

A quasi-contract theory has been invoked in at least one case, as a predicate for relief to an innocent spouse seeking an interest in property accumulated during a purported marriage. Thus the federal court in *Fung Dai Kim Ah Leong v. Lau Ah Leong*[29] observed that even though the plaintiff could not refer to any express contractual obligation within the strict legal definition, such a consideration was not conclusive because she might be entitled to recovery based upon quasi-contract for the services she rendered during the relationship with the defendant.

Two other theories have been advanced by the courts in protecting

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[26]96 Pac. at 1081. Other cases have been decided in part, at least, on the ground that a court of equity has inherent jurisdiction to grant relief where justice demands it. Feig v. Bank of Italy Nat'l Trust & Sav. Ass'n, 218 Cal. 54, 21 P.2d 421 (1933); Sclamberg v. Sclamberg, 220 Ind. 209, 41 N.E.2d 801 (1942); Reese v. Reese, 132 Kan. 438, 295 Pac. 690 (1931); Walker v. Walker, 330 Mich. 332, 47 N.W.2d 633 (1951); Fowler v. Fowler, 97 N.H. 216, 84 A.2d 836 (1951).

[27]Werner v. Werner, 59 Kan. 399, 53 Pac. 127 (1898); King v. Jackson, 196 Okla. 327, 164 P.2d 974 (1945); Whitney c. Whitney, 192 Okla. 174, 134 P.2d 537 (1942); Krauter v. Krauter, 79 Okla. 30, 190 Pac. 1088 (1920); Knoll v. Knoll, 104 Wash. 110, 176 Pac. 22 (1918). In some instances the property acquired has been apportioned on the theory that the purported spouses were tenants in common. Donnelly v. Donnelly, 198 Md. 341, 84 A.2d (1951); Texido v. Merical, 132 Misc. 764, 230 N.Y.S. 605 (Sup. Ct. 1928); Lawrence v. Heavner, 232 N.C. 557, 61 S.E.2d 697 (1950).

The partnership theory was adverted to in Poole v. Schrichte, 39 Wash. 2d 558, 236 P.2d 1044 (1951) where recovery was allowed even though there was no good faith belief in the validity of the marriage.

[28]104 Wash. 110, 176 Pac. 22 (1918).

[29]27 F.2d 582 (9th Cir. 1928).

the rights of a putative spouse. However, they do not seem to be applied as frequently as those discussed above. One of these is the trust theory. Property is said to be impressed with a trust in favor of the innocent party, in order to protect his interests therein where legal title is held in the name of another.[30] Likewise, the doctrine of equitable mortgages has been applied to protect the interests of the innocent spouse to an invalid marriage.[31]

Where both parties know that their relationship is meretricious, a number of cases have taken the view that if the evidence establishes an agreement to pool earnings, or a joint venture, or partnership, each of the parties may have an interest in property jointly accumulated.[32]

The Washington case of *Poole v. Schrichte*[33] presents a fact situation quite similar to that in *Keene*. Parties cohabiting meretriciously acquired certain property through their joint efforts. However, here the wife made monetary contributions toward its acquisition in addition to rendering nonmarital services. Title to the dsiputed property was taken in the man's name. The defendant subsequently sought to exclude the wife from any interest in the property. There was no formal pooling arrangement or partnership. However, the court said:

> "The evidence establishes here a joint venture if not a partnership between the parties so far as their interests in the tavern are concerned. Their social relationships, legal or illegal, moral or immoral, are not material on this phase of the case."[34]

In *Vallera v. Vallera,* the court said that even in the absence of an express agreement by a man and woman cohabiting meretriciously to

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[30]Schwartz v. United States, 191 F.2d 618 (4th Cir. 1951); Titus v. Titus, 151 Kan. 824, 101 P.2d 872 (1940); Morin v. Kirkland, 226 Mass. 345, 115 N.E. 414 (1917); Batty v. Greene, 206 Mass. 561, 92 N.E. 715 (1910).

[31]Conkling v. Conkling, 126 N.J. Eq. 142, 8 A.2d 298 (1936). Not included in the discussion above are the California cases where the courts have analogized the situation to that where community property is involved although, strictly speaking, community property cannot exist without a valid marriage. California courts generally subscribe to the theory that where there is a good faith spouse to an invalid marriage, the property acquired during that relationship should be treated as quasi-community property. Sanguinetti v. Sanguinetti, 9 Cal. 2d 95, 69 P.2d 845 (1937); Santos v. Santos, 32 Cal. App. 2d 62, 89 P.2d 164 (District Ct. App. 1939); In re Foy's Estate, 109 Cal. App. 2d 329, 240 P.2d 685 (1952). However, most California courts while adhering to this doctrine, prefer to go beyond this reasoning and base recovery upon one of the theories discussed above.

[32]Garza v. Fernandez, 74 Ariz. 312, 248 P.2d 869 (1952); Mitchell v. Fish, 97 Ark 444, 134 S.W. 940 (1911); Garcia v. Venegas, 106 Cal. App. 2d 364, 235 P.2d 89 (Dist. Ct. App. 1951); Bracken v. Bracken, 52 S.D. 252, 217 N.W. 192 (1927); Poole v. Schrichte, 39 Wash. 2d 558, 236 P.2d 1044 (1951); See Muller v. Sobol, 227 App. Div. 884, 97 N.Y.S.2d 905 (1950).

[33]39 Wash. 2d 558, 236 P.2d 1044 (1951).

[34]Id. at 1049.

pool their accumulations, the woman is entitled to share in property jointly acquired in the proportion that her funds contributed toward its acquisition.[35] However, the court denied the plaintiff's claim because she made no monetary contribution towards acquisition of the disputed property, nor did she perform any nonmarital services.

An examination of the cases which have involved the possibility of allowing recovery to a party to a meretricious relationship leads to the conclusion that the courts prefer not to allow recovery in the absence of an express binding agreement. Going even further, in some cases courts have refused to give effect to express agreements upon the theory that any service rendered or monetary contributions made grew out of an illicit relationship.[36] It is said that courts cannot give effect to such contracts or partnerships.

Perhaps the most important factor militating against the plaintiff's recovery in *Keene* was the lack of a good faith belief in the existence of a valid marriage. The court readily acknowledged that if the plaintiff could have shown good faith, it would have been much more sympathetic to her claim.[37] The court discussed the partnership, quasi-contract, and trust theories of recovery. However, the court's emphasis upon the lack of an express agreement between the parties and the fact that plaintiff made no monetary contribution to the joint efforts of the parties makes it uncertain whether the majority felt that good faith was a pre-requisite to any consideration of the plaintiff's claim in the disputed property.

The majority opinion went to some length to rule out the existence of a joint venture. The court said that without an express agreement, no joint venture could be found, absent monetary contribution by the plaintiff wife. In so holding, the court said it was following the *Vallera* opinion which stated that such a plaintiff was entitled to share in property jointly accumulated in the proportion that her funds contributed toward the acquisition. The court refused to consider nonmarital services within the term "funds."[38] The term was used in *Vallera* with specific reference to the Texas case of *Hayworth v. Williams*.[39]

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[35]See note 15 supra.

[36]Morales v. Velez, 18 F.2d 519 (1st Cir. 1927); Wellmaker v. Roberts, 213 Ga. 740, 101 S.E.2d 712 (1958). See Creasman v. Boyle, 31 Wash. 2d 345, 196 P.2d 835 (1948). (Court refused relief to one who had paid purchase price of land and had title issued in the name of the other purported spouse.)

[37]371 P.2d at 331, 336.

[38]Id. at 332.

[39]102 Tex. 308, 116 S.W. 43 (1909).