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The Intention to Create Legal Relations

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refusal to dissolve or annul actually monogamous but potentially polygamous and/or polyandrous marriages.

In the result, therefore, it was very fortunate for the wife that she promoted the idea of the London ceremony, for it was the celebration of that ceremony that enabled the judge to cut the Gordian Knot and put an end to her marriage. But for that marriage, she would have had to obtain a divorce valid according to her husband's domiciliary law and trust to recognition thereof by the English courts.¹⁷

P. R. H. WEBB.

THE INTENTION TO CREATE LEGAL RELATIONS

THE recent case of *Parker v. Clark*¹ shows that however well a legal principle may be established, its particular application to the facts may still give rise to litigation. The facts, which were not really in dispute, were that an elderly couple living in their own house in Torquay wrote to another much younger couple, the plaintiffs in the case, on September 25, 1955, inviting them to come and live with them. The invitation was issued on the basis that both couples should share in the maintenance of the house and that the landlords should contribute a television set, a car and the cost of the employment of a daily woman. The letter was sufficiently detailed to suggest that the difficulty regarding the plaintiffs' cottage, which would have to be given up, "can be solved by our leaving 'Cramond' and its major contents to Madeline, Mavis and Pamela [the wife plaintiff, sister and daughter respectively] when we both pass away and if you cannot maintain it they can sell out. Its present value is £9,000 to £12,000 without contents." As an inducement the same letter suggested that the plaintiffs could sell their cottage, pay off the mortgage and "invest the proceeds to increase your income."

The plaintiffs accepted the invitation and settled in the house in Torquay. About Easter 1957 a will was duly executed giving effect to the terms of the letter of invitation. However, a few months later it became clear that the owners of the house regretted the arrangement. After much unpleasantness and on being told that "there are other ways of getting you out" the plaintiffs eventually left the house in December 1957 in return for a cheque for £150 and a promise to pay removal expenses but, as the plaintiffs claimed, without prejudice to any of their rights under the original letter. A claim was made about eight months later and a writ was issued against the owners of the house on November 18, 1958.

¹⁷ Presumably an English court would have recognised a dissolution of the English marriage by means appropriate to dissolve a polygamous marriage afforded by the law of the husband's domicile—if, that is, it followed *El-Riyami v. El-Riyami* (*The Times*, April 1, 1958) rather than the so-called "Hammersmith Marriage Case" [1917] 1 K.B. 634 (C.A.).

¹ [1960] 1 All E.R. 93; [1960] 2 W.L.R. 286.

Two of the defendants' answers are of particular interest here. First, they contended that the correspondence between the parties did not disclose a serious intention to enter into legal relations. The parties had only made a friendly arrangement. Secondly, it was claimed that the letter of September 25 was not a sufficient memorandum under section 40 (1) of the Law of Property Act, 1925.

On all points Devlin J. in a reserved judgment found for the plaintiffs. While recognising that certain family arrangements of the type of *Balfour v. Balfour*² may not disclose an intention to enter into a binding contract, the learned judge relied on a dictum of Lord Lyndhurst L.C. in *Hammersley v. De Biel* that "if a party holds out inducements to another . . . and holds them out deliberately and plainly, and the other party consents, . . . a court of equity will take care that he is not disappointed, and will give effect to the proposal."³ It is clear that the courts have never accepted the proposition that friendship is an unsurmountable obstacle to the conclusion of a binding contract. In *Simpkins v. Pays*, for example, when the landlady refused to give a contributing lodger her share of the prize money of a newspaper competition, Sellers J. (as he then was) suggested that in friendly arrangements the test of a serious intention is "mutuality."⁴ A similar idea prevailed in the judgment of Devlin J. when he said: "There is, undoubtedly, in the arrangement a lack of formality on which counsel for the defendants greatly relies . . . it is easier to demand formal documents from a stranger than it is from a relation or friend."⁵ And he added later: "Because the terms of the defendants' offer was generous, one must not overlook the benefits which they were receiving . . ." ⁶ such as domestic assistance, comfort and security. In other words, it may be more difficult to establish the existence of a serious intention when the bonds of kinship and friendship are involved but it does not follow that the courts will therefore refuse to uphold agreements that bear all the characteristics of a bargain. A similar rule applies to informal contracts.⁷ "There is nothing in the world," said Lord Greene in *Clifton v. Palumbo*, "to prevent an owner of an estate of this kind (valued at £600,000) contracting to sell it to a purchaser . . . on terms written out in a half-sheet of notepaper of the most informal

² [1919] 2 K.B. 571.

³ (1845) 12 C.P. & Fin. at p. 78, quoted by Kay L.J. in *Synge v. Synge* (1844) 1 Q.B. 466, at p. 469.

⁴ [1955] 3 All E.R. 10, at p. 13.

⁵ At pp. 100-101.

⁶ At p. 102.

⁷ Informality by itself is by no means fatal even when some of the terms of the contract have not been settled, provided that the agreement exists in its essentials. Both the Sale of Goods Act, 1893, and custom are often used to imply terms into incomplete contracts. See *British Bank for Foreign Trade v. Novinez* [1949] 1 K.B. 603. It is otherwise, of course, when there is doubt as to whether there is a contract at all.

description. . . . If they have done it, they have done it, however unwise or however unbusinesslike.”⁸ In this case the proposal contained in the letter of September 25 was informal but far from unbusinesslike, for it listed the financial benefits that the acceptance of the proposal would entail, such as a rent-free house, the increase in the plaintiffs’ income through the investment of the purchase price of their home and the security after the death of the plaintiffs for their sister and daughter. There was, therefore, ample evidence that the parties seriously intended to enter into a contract.

The other main submission that the letter was not a sufficient memorandum within section 40 (1) of the Law of Property Act, 1925, is also of considerable interest. It was based on the assumption that the memorandum is not sufficient unless an agreement was in existence before it was signed. Could a written offer constitute a sufficient memorandum? Counsel for the defendants relied on *Munday v. Asprey*⁹ in which the law was stated in these terms. It is noteworthy, however, that that statement was too wide as that court was only dealing with the specific point of an engrossment of a contract. Devlin J. expressed no opinion on this particular point but as a general principle he preferred the cases of *Smith v. Neale*¹⁰ and *Reuss v. Picksley*.¹¹ In the former the court found that a memorandum was not necessary but it was stated *obiter* that if a memorandum were necessary the written offer would be sufficient. In the latter case a strong bench, which included both Willes and Blackburn JJ., held that “As to this, it is clear both on reasoning and authority, that the proposal so signed and asserted to does become a memorandum or note of agreement. . . .”¹² The learned judge in this case was in no doubt that the letter of September 25 “was an offer and expressed as such.”¹³

It must be recognised that the interpretation of section 40 (1) of the Law of Property Act, 1925, has frequently been a source of confusion. A learned writer has spoken characteristically of the “wilderness of cases through which it is possible only to indicate the hazardous and inconsistent path trodden by the unwilling feet of litigants.”¹⁴ But in connection with the present case at least two principles clearly emerge. First, that the memorandum is not the embodiment of contract but evidence that may be obtained in the most devious ways.¹⁵ Secondly, there is respectable authority for

⁸ [1944] 2 All E.R. 497, at p. 499.

⁹ (1880) 13 Ch.D. 855.

¹⁰ (1857) 2 C.B.(N.S.) 67.

¹¹ (1866) L.R. 1 Exch. 342.

¹² At p. 351. The court there relied on *Coleman v. Upcot*, 5 Vin.Abr. 527; *Warner v. Willington*, 3 Drew 523; and *Liverpool Borough Bank v. Eccles*, 4 H. & N. 139. Cf. also Chitty, *The Law of Contracts* (21st ed., 1955), Vol. I, § 266; Pollock’s *Principles of Contract* (13th ed., 1950), at p. 180.

¹³ At p. 103.

¹⁴ Cheshire and Fifoot, *Law of Contract* (4th ed., 1956), at p. 157.

¹⁵ e.g., *Buxton v. Rust* (1872) L.R. 7 Exch. 279, where a letter repudiating all liability under the contract was held to be a sufficient memorandum.

the proposition that a written offer, which is acted upon as in this case, may be relied upon as a sufficient memorandum. Thus, in an early case it was decreed that an offer to pay £1,500 to the husband made prior to the marriage on condition that he marry the defendant's daughter was a good promise within the Statute of Frauds.¹⁶ This principle was also confirmed in *Watts v. Aims-worth*¹⁷ where the Court of Exchequer agreed unanimously that a written offer to buy a certain quantity of white globe turnip, which was acted upon by the offeree, was a sufficient memorandum.

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¹⁶ *Anon.* (1682) Skin. 142; 90 E.R. 67.

¹⁷ (1862) 1 H. & C. 83; 31 L.J.Exch. 448; 6 L.T. 252; 158 E.R. 810; see also *Lever v. Kaffler* [1901] 1 Ch. 543.