

DOMESTIC RELATIONS—*Effect of Separation Agreement upon the Husband's Duty to Support His Wife.* (New York)

The defendant entered into a separation agreement with his wife a few months after they had separated. By it he promised to pay her \$100 a week for her support, such payments to be suspended for any period in which the wife was engaged in a competitive business.¹ Subsequently the wife engaged in a competitive business and the husband discontinued his weekly payments. The lower court dismissed the complaint of the wife seeking a decree of separation based upon charges of non-support. On appeal, *held*: Reversed. The defendant by this agreement was to be relieved from his obligation to support his wife. Such an agreement offends against the public policy of this State and is void. *Haas v. Haas*, 298 N.Y. 69, 80 N.E.2d 337 (1948).

Today separation agreements where separation has already taken place or is immediately contemplated are not invalid *per se*.² The question presented in the *Haas* case was to what extent such agreements may effect the husband's obligation to support his wife and yet be enforceable. The rule of the common law was that the husband and wife were incapable of bargaining away the latter's right to support, lest she become a public charge.³ A New York statute, substantially incorporating this view, provides that a "husband and wife cannot contract . . . to relieve the husband from his liability to support his wife."⁴ With this outlook upon public policy the court has upheld only those agreements in which the husband recognizes his continuing obligation to provide for the adequate support of his wife. Thus the court has consistently struck down agreements in which the husband by a lump sum payment sought to purchase enduring exemption from his duty to support his wife, whatever the amount,⁵ and likewise agreements stipulating payments over a limited number of years.⁶ Also void was an agreement in *Moore v. Moore*,⁷ where a husband promised to pay his wife an equitable amount for her support only if she were physically incapable of gainful employment. The court declared that though physically capable the wife might not sustain herself and therefore the husband did not recognize his persisting

¹ The court stated that the promise to refrain from competition was not the prime consideration for the agreement.

² *Winter v. Winter*, 191 N.Y. 462, 84 N.E. 382 (1908); *French v. French*, 302 Ill. 152, 134 N.E. 85 (1922); *Walker v. Walker*, 9 Wall. 743, 19 L.ed. 814 (1870); *Baily v. Dillon*, 186 Mass. 246, 71 N.E. 538 (1904); see 120 A.L.R. 1334.

³ See 54 L.R.A. 544.

⁴ N.Y. Domestic Relation Law, c. 14, § 51.

⁵ *Kyff v. Kyff*, 286 N.Y. 71, 35 N.E. 2d 655 (1941); *Jackson v. Jackson*, 290 N.Y. 513, 49 N.E. 2d 988 (1943).

⁶ *Rubinfield v. Rubinfield*, 264 App. Div. 888, 35 N.Y.S. 2d 781 (1942); *Leeds v. Leeds*, 265 App. Div. 189, 38 N.Y.S. 2d 515 (1942).

⁷ 59 N.Y.S. 2d 22 (1945).

duty to support her. Nonetheless in *Winter v. Winter*⁸ an agreement providing for certain payments to his wife for the life of the husband was upheld. The New York court has repeatedly stated that an agreement for regular, substantial, periodic payments to the wife merely measures the husband's continuing obligation to support and does not relieve him of that duty.⁹

Viewed in the light of the New York statute and the decisions illustrating its application the position of the dissent in the *Haas* case seems untenable. The three dissenting judges conceded that a husband may not be relieved of his duty to support his wife. They then contended that in the present case there was no question as to the husband's relieving himself from the duty to support the wife because whenever she desired she could stop competing with her husband and resume receipt of payments which he is bound to make. But as the majority pointed out, there is a question as to her support when she does not desire to so refrain and yet does not earn enough to support herself. The validity of the agreement must be determined by its possible consequences. Under the terms of this agreement the wife could by her voluntary conduct release her husband from his duty to see that she was adequately-maintained. Since husband and wife are stripped by statute of all power to release the former from this duty, such an agreement is clearly against the declared public policy of New York. This decision is in line with those cases previously discussed. The husband did not recognize in this agreement a continuing duty to provide for his wife. He would provide for her only if she desired it.

In Illinois there is no statute which compels the court to accept the strict view of the common law. Nevertheless the Illinois court clings tenaciously to the common law rule¹⁰ and would undoubtedly upon consideration of the problem in the *Haas* case arrive at the same conclusion as that of the majority of the New York court. The law of both states upon the subject may be stated as follows: a separation agreement will be void as being against public policy unless by its terms adequate support of the wife is assured at all times during the life of the husband.

As applied to the realities of modern times, the common law rule is necessarily harsh and unjust. In a leading Illinois case, *Lyons v. Schanbacher*,¹¹ a woman with considerable wealth of her own entered into an agreement with her husband by which she released him from all future obligation to support her in consideration for his relinquishment of all

⁸ 191 N.Y. 462, 84 N.E. 382 (1908).

⁹ *Goldman v. Goldman*, 282 N.Y. 296, 26 N.E. 2d 265 (1940); *Galusha v. Galusha*, 116 N.Y. 635, 22 N.E. 1114 (1889).

¹⁰ *Lyons v. Schanbacher*, 316 Ill. 569, 147 N.E. 440 (1925); *Von Koten v. Von Koten*, 323 Ill. 323, 154 N.E. 146 (1926); *Vock v. Vock*, 365 Ill. 432, 6 N.E. 2d 843 (1937); *Berge v. Berge*, 366 Ill. 228, 8 N.E. 2d 623 (1937).

¹¹ 316 Ill. 569, 147 N.E. 540 (1925).

his future rights in her property. Upon the death of the wife the husband was allowed to set aside the agreement, though he had never contributed to the support of his wife, on the grounds that the parties could not bargain away the wife's right to support. In *Kyff v. Kyff*,¹² a New York case, a woman who had spent \$30,000 paid her by her husband in lieu of future duty of support had the agreement declared void. The situation present in both of these cases and all other cases raising this problem did not exist when the common law rule was formulated. At that time a married woman could not own property apart from her husband and had no opportunities for gainful employment. In effect, she was utterly dependent upon him for her support and if he did not support her there was a strong probability that she would have to be supported by the state. With the appearance of employment opportunities for women and laws giving a married woman equal right to her property the dependence of the married woman disappeared and along with it the danger that she would have to be supported by the community if not provided for by her husband.

Recognizing the position of the married woman under present day conditions, the majority of other jurisdictions have changed the common law either by statute¹³ or by judicial decision.¹⁴ Numerous decisions uphold the validity of lump sum payments as a complete discharge of further obligation upon the part of the husband to support his wife.¹⁵ Also an agreement in *Fischer v. Fischer*,¹⁶ where the parties agreed to release each other from all obligations and rights owed the other, was not thought to be contrary to public policy. Their only requisite for a separation agreement is that it be fair in light of attending circumstances. It is submitted that this is a desirable view and is more compatible with the mores of our modern society.

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INCOME TAX—Deductions Under Section 23(a)(2) of the Internal Revenue Code by a Fiduciary Charged With Mismanagement.
(Federal)

Respondent, administrator of an estate, was charged with mismanagement in a suit brought by the heirs. Pursuant to the demand of the heirs, a final accounting was filed by the respondent which was approved

¹² 286 N.Y. 71, 35 N.E. 2d 655 (1941).

¹³ Calif.

¹⁴ See 120 A.L.R. 1335.

¹⁵ *Daniels v. Benedict*, 38 C.C.A. 592, 97 Fed. 367 (1889); *Baily v. Dillon*, 186 Mass. 244, 71 N.E. 538 (1904); *Carrol v. Springer*, 14 Tenn. App. 195 (1931); *Lee v. Lee*, 55 Mont. 426, 178 P. 173 (1919); *In re Hoy's Estate*, 308 Pa. 131, 162 A. 155 (1932).

¹⁶ 53 N.D. 631, 207 N.W. 434 (1926).