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## Torts—Interference With Contracts to Marry

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others,<sup>4</sup> and the requirement of malice is merely nominal for it is inferable from the wrongful character of the act.<sup>5</sup> Notwithstanding this tendency to provide greater protection for contract rights, marriage contracts continue to maintain their unique position as an exception to the general rule. This is exemplified in the recent decision of *Claraham v. Cospers*.<sup>6</sup>

In that case relief was denied under the following circumstances. The plaintiff and Lillian Drenkhan were engaged to be married. Her employer, fully cognizant of the fact, feared the loss of her services, and in order to induce her to break her contract, he became unduly attentive to Lillian, and engaged in a questionable sort of conduct. He showered her with gifts and automobile rides, and raised her salary from \$150 to \$250 a month. When Lillian refused to marry the plaintiff, he brought an action for damages against the employer. A demurrer to the declaration was sustained, and affirmed on appeal. The court held that the prevention of a marriage by the interference of a third person cannot in itself be a legal wrong. The court censured "the shameful conduct of the defendant", and especially "in view of the fact that he was a married man", but with judicial aloofness announced that "a wrong had been done to the plaintiff for which the law provides no remedy." The case is not put upon any ground of privilege, for the defendant was obviously actuated by selfishness and bad faith, and his conduct had no legal justification. Moreover, the case was decided on a demurrer, thus obviating the necessity of discussing the merits of any possible defense. In view of the insufficiency in law of the declaration which charged malicious and wanton interference with plaintiff's engagement contract it may be said that the defendant had an unqualified and conclusive privilege to induce the breach of this type of contract.

Prior cases refusing to recognize a cause of action under similar circumstances, although unsatisfactory in their reasoning, can be separated into three classes. *First*, a parent clearly should have a wide privilege in advising his child, even to the extent of inducing him to break the contract to marry.<sup>7</sup> The parental

<sup>4</sup> *Wheeler Stenzel Co. v. American Window Glass Co.*, 202 Mass. 471, 89 N. E. 28 (1909). *Contra*: *Chambers v. Baldwin*, 91 Ky. 121, 15 S. W. 57 (1891).

<sup>5</sup> *Thacker Coal Co. v. Burke*, *supra* n. 1. The common law rule that one who causes a breach of a contract of employment is liable in damages is one based on common sense and justice . . . . The wilful violation of a known right constitutes malice.

<sup>6</sup> 160 Wash. 642, 296 Pac. 140 (1931).

<sup>7</sup> *Leonard v. Whetstone*, 34 Ind. App. 383, 68 N. E. 197 (1903).

privilege is absolute. *Second*, friends of the engaged parties are extended a similar privilege to advise regarding the merits and character of the prospective spouse. Before entering into the performance of a contract of such importance as that of marriage, it is deemed advisable on grounds of social policy that there be no restriction on the information available to the affianced parties.<sup>8</sup> *Third*, on grounds of policy a cause of action should not be recognized, lest the courts be opened to suits by every disappointed lover against his successful rival.<sup>9</sup> None of the reasons given in these three types of cases are applicable to the facts of the *Clarahan* case. The defendant was neither a parent, nor a friend actuated by a worthy motive, nor a rival for the girl's hand. The court could well have permitted a recovery without deviating from *stare decisis*, for the adjudicated cases can all be explained on the ground of privilege or policy, whereas the principal case can be put on neither ground. As a matter of fact the policy of the law is decidedly favorable towards promotion of marriage and removal of restrictions on the right to marry.

By far, the greatest influence on the courts seems to be a statement in *Cooley on Torts*,<sup>10</sup> which is invariably cited in support of the conclusion reached: "The prevention of a marriage by the interference of a third person cannot, in general, in itself, be a legal wrong. Thus if one by solicitations, or by the arts of ridicule or otherwise, shall induce one to break off an existing contract of marriage, no action will lie for it however contemptible and blamable may be the conduct." Singularly enough, the statement is unsupported by authority, but since the cases cite it with approval,<sup>11</sup> there is no dearth of judicial sanction behind it. There is reason to believe that Cooley meant the statement to apply to conduct short of malicious interference. However that may be, the cases hold no conduct is actionable as such. Under the absolute privilege, recognized by the *Clarahan* case, to break such a contract, a defendant may openly flaunt all the spite, ill will, and malevolence that he is capable of, provided he stops short of slander, libel, fraud, or other torts well recognized in law. Of

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<sup>8</sup> *Homan v. Hall*, 102 Neb. 70, 165 N. W. 881, L. R. A. 1918 C, 1195 and note.

<sup>9</sup> *Ibid.*

<sup>10</sup> 1 COOLEY ON TORTS (3d ed. 1906) 494. Even where the marriage is prevented by a forcible separation of the parties, the wrong does not consist in the loss of the marriage, but rather in assault or false imprisonment.

<sup>11</sup> *Supra*, n. 6 and 7.

course, if the conduct of the defendant amounts to a distinct tort, the plaintiff is not precluded from suing for such.<sup>13</sup>

The adjudicated cases are not many and can be briefly reviewed. In *Leonard v. Whetstone*<sup>13</sup> a parent was held not liable to her son's fiancée for inducing him to break his contract to marry her, although the son had seduced the plaintiff and she was with child. The court declared a parent has a perfect right to advise his own child to break his contract of marriage, when in the judgment of the parent the marriage ought not to take place. The court suggested that in an action of slander against the parent the breach of contract would be considered as an element of damages. *Homan v. Hall*<sup>14</sup> extends a similar privilege to friends of the engaged parties. The defendant there induced his friend to break the engagement with the plaintiff by fraudulent misrepresentations that she was of unchaste character. An action of slander was barred by the statute of limitations.<sup>15</sup> Consequently the plaintiff was without remedy against her wrongdoer.

Until a marriage is solemnized, the law recognizes no existent domestic rights between the parties, and a seduction of the plaintiff's promised wife did not give him a cause of action. Such is the doctrine in *Case v. Smith*.<sup>16</sup> No action can be based on the alienation of affections, for such a right arises from the marital relation, and not that of betrothal. By way of dicta it is said that if defendant's conduct had induced the plaintiff's affianced to breach her contract, as distinguished from the plaintiff's right to terminate it as the consequence of defendant's act, then the wrong might be actionable. The dicta is contrary to all the cases already discussed.

Strangely enough, although the courts are unwilling to hold a person liable who deliberately interferes with a contract to marry, where the defendant's negligence had the effect of breaking such a contract, a cause of action was recognized. In the case of *Harriot v. Plimpton*,<sup>17</sup> a physician negligently diagnosed plaintiff's ailment as venereal, whereupon the other party broke the engagement. The physician was held liable; the damage was not too re-

<sup>13</sup> *Supra*, n. 10.

<sup>14</sup> *Supra*, n. 7.

<sup>15</sup> *Supra*, n. 8.

<sup>16</sup> The declaration though averred enough facts to constitute a good cause of action for slander.

<sup>17</sup> 107 Mich. 416, 65 N. W. 279, 31 L. R. A. 282 (1895); *Davis v. Condit*, 124 Minn. 365, 144 N. W. 1089 (1914).

<sup>18</sup> 166 Mass. 585, 44 N. E. 992 (1896). *Contra*: 117 Ga. 191, 43 S. E. 419 (1903).

mote to sustain an action. The decision was reached despite the fact that the plaintiff was seeking information rather than medical advice. A New York case purports to hold that contracts to marry will not be distinguished from ordinary contracts in fixing liability for inducing their breach. But the rule there as to any contract is said to be that mere malicious interference is not enough to impose liability. The defendant's act must be fraudulent or tortious in itself.<sup>18</sup>

No case appears to have ever been up for decision in West Virginia on the point under discussion. Our court in *Thacker Coal Co. v. Burk*,<sup>19</sup> which involved a contract of employment, held quite emphatically that a malicious interference with a contract by enticing servants away from plaintiff's service, inducing them to violate contracts with their master, is actionable. It is quite probable though, that when a case arises regarding a contract to marry, a distinction will be drawn, in view of the law as developed by the preceding cases. It is to be hoped, however, that if a case arises similar to the *Clarahan* case, our court will not feel so bound by precedent that it must deny recovery apologetically as the court did in that case, and say that "the conduct of the defendant is shameful and contemptible, but a wrong has been done for which the law provides no remedy." There can be no theoretical objection to allowing a recovery in cases where the defendant can not shield himself under some kind of justification, for the theory of recovery is already well-established law in the field of torts. It is not clear why contracts to marry should be segregated for special treatment in the absence of privileged conduct.

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<sup>18</sup> *Guida v. Pontrelli*, 186 N. Y. Supp. 147, 114 Misc. Rep. 181 (1921); *Ableman v. Holman*, 190 Wis. 112, 208 N. W. 889 (1926). An engagement contract cannot be the subject of a conspiracy between one of the parties and a stranger to the contract, for inducing the breach of such a contract cannot entail any legal responsibility.

<sup>19</sup> *Supra*, n. 1. See *Iron Molders' Union No. 125 v. Allis Chalmers Co.*, 166 Fed. 45, 20 L. R. A. (N. S.) 315 (C. C. A. 7th 1908) and *Martens v. Reilly*, 109 Wis. 494, 84 N. W. 840 (1901).