Evidence of Character and Threats Under a Plea of Self Defense in Homicide Cases

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gate a killing because it may be that the party making the threat has relented, or abandoned his purpose, or his courage may have failed, or the threat may have been idle gasconade. A hostile threat made by deceased against the accused and communicated to him prior to the killing is admissible as bearing upon the question of the prisoner's apparent imminent danger of death or bodily harm at the time of the killing.

While the status of uncommunicated threats has been subject to fluctuations and contradictions in the decisions, the following doctrines may now be regarded as well settled. First, uncommunicated threats are not admissible to justify or mitigate a homicide since they could have had no influence on the mental state of prisoner at the time of the killing. Secondly, such threats are admissible to corroborate other evidence of communicated threats, in so far as they tend to counteract any presumption of fabrication by the witness who gave the first testimony. Lastly, in a case where there is any doubt as to who was the aggressor, evidence of uncommunicated threats is admissible insofar as it may tend to show the animus of the deceased, and, in the absence of more direct evidence, show who was the probable aggressor.

—M. H. M.

PERSONS—MARRIAGE—ANNULMENT.—It may well be said that society does not desire that the lives of two young people be ruined because of one mistake. But on the other hand, society is vitally interested in preserving the dignity and sacredness of the marital relation. How can this be done if we permit people to be married in a spirit of jest, or to avoid inconvenience or embarrassment, and then to have the status, for it is a status, dissolved at will? In a recent West Virginia case it appeared that at a party it was suggested, in a spirit of jest, that a young woman and man be married. It became rumored and appeared in the press that the parties were to have been married but had failed to do so. The next afternoon the parties met and the man asked the girl to marry him to save further embarrassment and business inconvenience. It was agreed that they would be married in form only and that an annulment would be procured as soon as possible. A license was secured and the ceremony was performed by a minister in due form.

16 People v. Scroggins, 37 Cal. 676 (1869).
18 Cornelius v. Commonwealth, 65 Ky. 432 (1855); See, Wharton, Homicide, § 699.
19 Little v. State, 65 Tenn. 393, (1873); Wiggins v. People, 93 U. S. 465 (1873).
The parties separated and never lived together or assumed any of the relations or duties of marriage. A few days after the ceremony, annulment proceedings were instituted. The lower court dismissed the plaintiff’s bill. On appeal the marriage was annulled. The court in its holding says that where parties to a marriage ceremony prior thereto mutually agree that such ceremony shall not be binding and immediately after the ceremony separate and do not assume any of the duties of the marriage relation, equity will annul such marriage, it appearing that such ceremony originated in, and was consummated as the result of, a jest. It would appear that there was no fraud, force or coercion used to induce the plaintiff to enter into marriage. Consent was mutual to enter into a marriage according to statute. To be sure, the parties did not intend to be bound, and this perhaps would invalidate other contracts. But marriage is something more than an ordinary civil contract, for it creates a social status or relation. Not only the contracting parties are interested, but the state as well. Some courts have gone to the extent of holding that marriage is not a contract but a status created by mutual consent of one man and one woman and that the rights and obligations of the parties are not contractual, but are fixed, changed or dissolved by law.

Marriage is a civil status. Marriage differs from other civil contracts in that it creates a legal status and hence is not dissoluble at the will of the parties by their mutual consent or their renunciation of it. The marital relation, unlike ordinary contractual relations, is regarded by the law as the basis of the social organization. The preservation of that relation is deemed essential to the public welfare. In Christian nations marriage is not treated as a mere contract to be suspended or dissolved, at pleasure, but rather as a status based on public necessity, and controlled by law for the benefit of society at large. "Marriage arises to the dignity of a social status in which society, morals, religion, reason, and the state itself have an interest." It is submitted that the decision in Crouch v. Wartenberg deals too lightly with the sacred relation of marriage and, in providing for the welfare of the parties to this suit, disregards the interests of society in keeping marriage

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1 Crouch v. Wartenberg, 112 S. E. 234 (W. Va. 1922).
4 Mazes v. Young, 40 Miss. 194, 90 Am. Dec. 322 (1899).
5 18 R. C. L. 380.
9 People ex rel. v. Case, 241 Ill. 279, 89 N. E. 638 (1909).
10 L. R. A. 1915B, 15.
as inviolable as possible, and that a precedent is created that would seem to lead to a letting down of the bars so that marriage may subserve business ends or afford amusement rather than the purpose intended for it by divine and common law.

Perhaps in this particular instance the best interests of all involved will be subserved by the decision of the court. But such decision must of necessity have a demoralizing effect upon the young people of today. It must lessen their respect for marriage and cause them lightly to enter into marriage, thinking that if they find such relation disagreeable they can have it annulled. In answer to this it might be said that where there has been no cohabitation the relation has not changed. But the matter of proving cohabitation is met with difficulty when both parties deny it.

The English courts grant annulment only if there is no reality of consent and if there is consent, no fraud inducing that consent is material. Germany, Switzerland, and some of the other European countries seem to take a much more liberal view and grant annulment on ground of mistake in nationality or in personal qualities and characteristics. It is not contended that the extreme view of the English courts should be adopted, and surely, the most liberal ones are not advisable. It would seem that the view of most of the American courts, viz., granting annulment on the ground of mistake, fraud, duress or some incapacity to contract, is the wisest view. But it should not be extended.

It is not to be argued that parties unsuited to each other should be made to live together as husband and wife. But should people lightly enter into an illadvised marriage it would not be an uncommon or extreme punishment to require them to wait the statutory period for desertion—say, three years—to get a divorce. The same end would be accomplished, the parties to the transaction would have paid for their offense to society, and better example would be set for others, for people will not be prone to thoughtlessly rush into a situation that it will take three years to change.

—R. G. K.

Practice and Procedure—Nature of Motion for Judgment—Sufficiency.—The proceeding by notice of motion for judgment under Chapter 121 of the West Virginia Code is being used more and more frequently by practitioners in this state. The reason

11 Moss v. Moss (1897) P. 263.
12 26 Oyo 901.