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CONSTITUTIONAL LAW - VALIDITY OF STATUTE ABOLISHING BREACH OF PROMISE ACTION

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CONSTITUTIONAL LAW — VALIDITY OF STATUTE ABOLISHING BREACH OF PROMISE ACTION — Plaintiff sued for damages for breach of promise to marry and seduction, after the enactment of a New York statute which abolished such causes of action. The court *held* for the defendant, basing its recognition of the validity of the statute on the ground that the legislature has plenary power to deal with the subject of marriage. *Fearon v. Treanor*, 272 N. Y. 268, 5 N. E. (2d) 815 (1936).[1]

The New York statute follows in form the Indiana statute of recent date [2] which was the prototype of all such legislation.[3] Declaration of public policy is explicit, and the purpose of the legislation, which was to terminate grave abuses which had grown out of certain types of actions, is also set forth.[4] Although marriage is treated as a contract for certain purposes,[5] a decision of the United States Supreme Court has determined that it is not within the constitutional prohibition forbidding impairment of the obligation of contracts.[6] The serious question which has concerned commentators on these statutes is

[1] Affirming Fearon v. Treanor, 248 App. Div. 225, 288 N. Y. S. 368 (1936), and, in effect, overruling Hanfgarn v. Mark, 248 App. Div. 325, 289 N. Y. S. 143 (1936). In the latter case the court denied a motion to dismiss an action for criminal conversation and alienation of affections on the ground that the statute was invalid since the legislature was without power to abolish a cause af action without providing a substitute. There was a vigorous dissent and the case is criticised in 5 GEO. WASH. L. REV. 89 at 96 (1936) and in 3 UNIV. CHI. L. REV. 654 (1936).

[2] Ind. Laws (1935), c. 208.

[3] For the characteristics and effects of these laws see Feinsinger, "Legislative Attack on 'Heart Balm,'" 33 MICH. L. REV. 979 (1935).

[4] N. Y. Laws (1935), c. 263, § 61a.

[5] Duling v. Salaz, 93 Colo. 453, 26 P. (2d) 1069 (1933); Sawicki v. Slahor, 11 N. J. Misc. 604, 167 A. 691 (1933).

[6] Maynard v. Hill, 125 U. S. 190, 8 S. Ct. 723 (1888).

whether or not they violate the due process clause of the Fourteenth Amendment.[7] There is further disagreement as to the desirability of such statutes.[8] It is, perhaps, too soon to forecast whether the ultimate effect of social legislation of this character will prove beneficial or detrimental. Certainly the principal case does much to settle the question of constitutionality.

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[7] Valid: 22 VA. L. REV. 205 (1935) (peculiar nature of marriage contract which is especially subject to state regulation); 13 N. Y. UNIV. L. Q. REV. 104 (1935); 5 GEO. WASH. L. REV. 89 (1936) (justified as exercise of police power); 85 UNIV. PA. L. REV. 110 (1936); 5 BROOKLYN L. REV. 196 (1936). Invalid: Hibschman, "Can 'Legal Blackmail' Be Legally Outlawed?" 69 U. S. L. REV. 474 (1935); 30 ILL. L. REV. 764 (1936). The statute is concededly valid in so far as it abolishes the cause of action for seduction by the woman seduced since there was no such action at common law. 22 VA. L. REV. 205 at 208 (1935); Hamilton v. Lomax, 6 Abb. Pr. 142, 26 Barb. 615 (N. Y. Sup. Ct. 1858).

[8] Desirable: 22 VA. L. REV. 205 (1935); Feinsinger, "Legislative Attack on 'Heart Balm,'" 33 MICH. L. REV. 979 (1935). Undesirable: 5 GEO. WASH. L. REV. 89 (1936); 30 ILL. L. REV. 764 (1936).