Michigan Law Review

Volume 41 | Issue 6

1943

HUSBAND AND WIFE-ANTENUPTIAL CONTRACTS

B. Bernard Wolson
Member of the Toledo, Ohio bar

HUSBAND AND WIFE—ANTENUPTIAL CONTRACTS—Prior to the enactment of the statute of uses the wife's dower could not be bargained away.[1] Thus dower constituted a clog upon alienation. Antenuptial contracts therefore were not recognized. However, with the passing

[1] For a study of the history of antenuptial contracts, see Gibson v. Gibson, 15 Mass. 106 (1818); Rieger v. Schaible, 81 Neb. 33, 115 N.W. 560 (1908); Logan v. Phillips, 18 Me. 22 (1853), where the court said that the reason for the common-law rule lay in the fact that the settlement having been executed prior to marriage, no dower existed, and that no right can be barred before it accrues. A well-considered historical review may be found in Ronken, "Antenuptial Contracts: Their Origin and Nature," 24 YALE L. J. 65 (1914).

of the statute of uses, jointures came into existence as means of barring dower and making alienation free. Jointures were of two kinds, viz., legal and equitable.[2] As the law developed in England both types were recognized; but as the law developed in the United States, statutes were enacted specifically providing for jointures and antenuptial contracts.[3] Our courts generally considered them as equitable in nature. These early statutes enacted by the various states were modeled after the statute of Henry VIII,[4] which enacted that where lands are settled to the use of the wife, "then in every such case, every woman married having such jointure . . . shall not claim nor have title to have any dower in the residue."

The value of jointures lay in the fact that they were a protection for the wife since under the statute the wife was possessed of a present interest, whereas under the common law the wife would have been compelled to file an action for her dower.[5] Today, however, the use of the antenuptial contract, which is the outgrowth of a jointure, is not so much to protect the intended wife, as it is to protect the intended

[2] 2 BLACKSTONE, COMMENTARIES 136 (1756). Before the statute of uses, the wife could have no dower in land conveyed to the use of the husband because he had no seisin thereof. Consequently, it was the custom to make a separate settlement before marriage for the husband and wife in joint tenancy or "jointure." After the statute of uses, the wife would have had this property and dower in her husband's other property as well had not express provision been made barring dower where there was a jointure. In addition to jointures expressly within the terms of the statute, equity recognized certain other types (such as contracts by infants) as barring dower. 2 TIFFANY, REAL PROPERTY, 3d ed., § 537 (1939).

An example of an attempted antenuptial contract is found in the English case of Druey v. Druey, 2 Eden 39, 28 Eng. Rep. 810 (1762), where a minor, prior to marriage, contracted to accept a provision in lieu of dower. The court held that this was not a contract, but merely a provision wherefore dower was barred. Ordinarily, however, the provision would not constitute a legal bar of dower. The English court took the equitable concept that a wife could not have her provision and dower too. At law this decision would have been impossible.

[3] A collection of statutes is found in 3 VERNIER, AMERICAN FAMILY LAWS, §§ 196, 197 (1935). Ohio Gen. Code (Page, 1938), § 10502 (2), provides: "The conveyance of an estate or interest in real property, to a person in lieu of dower, to take effect on the death of the grantor, if accepted by the grantee, will bar the grantee's right of dower in the real property of the grantor."

Mich. Comp. Laws (1929), § 13081, provides: "A woman may also be barred of her dower in all the lands of her husband by a jointure settled on her with her assent before the marriage, provided such jointure consists of a freehold estate in lands for the life of the wife at least, to take effect in possession or profit immediately on the death of the husband."

[4] 27 Hen. VIII, c. 10, § 6 (1535).

[5] Grogan v. Garrison, 27 Ohio St. 50 (1875), a very well-considered case involving an early jointure statute in Ohio. It is interesting to observe that the early Ohio cases have generally upheld these equitable jointures. Mintier v. Mintier, 28 Ohio St. 307 (1876); Stilley v. Folger, 14 Ohio 610 (1846).

husband's heirs or children of a prior wife, or to protect the property from the intended wife herself. The use of the antenuptial contract is now often abused. It is apparent then why the courts have sought so jealously to protect the wife's interests. The body of law relative to antenuptial contracts has yielded the following general rules:

(a) Antenuptial contracts are greatly favored by the courts except when they are used as an instrument of fraud or include matters against public policy.

(b) These contracts must be in writing under the statute of frauds.

(c) As between parties engaged to marry, a confidential relationship arises that is jealously guarded by the courts.

(d) The antenuptial contract must be fair, just, reasonable and adequate.

(e) Disclosure of the nature, value and extent of the prospective husband's property is essential.

These rules will be discussed in order except for the second, which is obvious, since an antenuptial contract is an agreement in consideration of marriage.

Public Policy

Before proceeding further, it may be well to define the modern antenuptial contract. In *Matter of Carnevale*[6] the court defines an antenuptial contract as an agreement "between a man and woman before marriage, but in contemplation and generally in consideration of marriage whereby the property rights and interests of either the prospective husband, or wife, or both of them, are determined, or where property is secured to either or both of them, or to their children." This contract is variously known as "marriage settlement," "prenuptial contract," or "antenuptial contract."

Since marriage is the foundation of our civilized structure, society has an interest in these antenuptial contracts. Prenuptial agreements are generally favored because they tend to promote domestic peace and happiness.[7] However, they are void if they offend public policy. Thus where a prospective wife waived her rights to any homestead, the agreement was held invalid.[8] Likewise agreements which provide for property settlement in anticipation of future separation or divorce,[9]

[6] 248 App. Div. 63 at 65, 289 N.Y.S. 185 (1936).

[7] Stilley v. Folger, 14 Ohio 610 (1846).

[8] Swingle v. Swingle, 36 N.D. 611, 162 N.W. 912 (1917).

[9] Oliphant v. Oliphant, 177 Ark. 613, 7 S.W. (2d) 783 (1928); Williams v. Williams, 29 Ariz. 538, 243 P. 402 (1926); Cumming v. Cumming, 127 Va. 16, 102 S.E. 572 (1920), where a contract provided for payment of alimony on separation or divorce; Stratton v. Wilson, 170 Ky. 61, 185 S.W. 522 (1916).

or for waiver by the wife of her right of support,[10] have been considered void. Many cases have arisen where the parties have married to legitimatize a child and in contemplation of divorce have executed an antenuptial contract. The courts have unanimously held these agreements illegal and void as against public policy.[11]

Confidential Relationship

The prospective husband and wife entering into an antenuptial contract stand in such a confidential relationship that the courts will protect it with jealousy. As a lower Ohio court said in *Speckman v. Speckman*,[12] "The relation existing between persons who have entered into an agreement to marry is of a confidential character" and the courts "will carefully scrutinize all such contracts to see if they are fair in their terms and provisions for the wife and were entered into by such wife with full and complete knowledge of all the facts and of her rights in the premises." Likewise the Ohio Supreme Court said, in the case of *Juhasz v. Juhasz:*[13] "An engagement to marry creates a confidential relation between the contracting parties and an antenuptial contract entered into after the engagement and during its pendency must be attended by the utmost good faith."

The existence of this confidential relationship imposes a strict duty of fairness upon the prospective husband. Thus in the case of *Pierce v. Pierce*,[14] the court held (first paragraph of the syllabus): "While an antenuptial contract by which the future wife releases all claims against the estate of her husband . . . will be sustained when fairly made, yet, from the confidential relations between the parties, it will be regarded with most rigid scrutiny." The same court continued,[15] "These authorities go very far in holding that the courts require strict proof of fairness when called upon to enforce an antenuptial contract against the wife." The courts will protect the wife in such cases on the ground that equity always protects the weak from the strong and is alert where a fiduciary relationship is found to exist; and parenthetically, this fiduciary duty is not a reciprocal one, but one which the husband owes to the wife.[16] The courts recognize that a woman is presumed to be subject in such matters to the influence of her prospective husband and has the right to

[10] Warner v. Warner, 235 Ill. 448, 85 N.E. 630 (1908).

[11] Smith v. Smith, 154 Ga. 702, 115 S.E. 73 (1922), where the wife's father agreed that the husband would not be compelled to support child; Slingerland v. Slingerland, 115 Minn. 270, 132 N.W. 326 (1911).

[12] 15 Ohio App. 283 at 287, 286 (1921).

[13] 134 Ohio St. 257 at 264, 16 N.E. (2d) 328 (1938).

[14] 71 N.Y. 154 (1877).

[15] Id. at 158.

[16] Denison v. Dawes, 121 Me. 402, 117 A. 314 (1922).

repose the fullest confidence in him, and, without seeking outside advice, rely on him to deal fairly with her in an agreement of this nature. She is not dealing with him at arm's length.[17]

An antenuptial contract must be based upon consideration, which is generally marriage. As to the wife, however, marriage alone is not adequate consideration.[18] As between the spouses, more consideration is required, such as mutual grants, reciprocal waivers of property rights, etc.[19] It has been held that it is not the promise to marry but the marriage itself that constitutes the consideration in such an agreement.[20]

If the contract on its face does not offend public policy and is based upon some consideration, the courts will next look into the contract in order to determine whether the contract is fair and just in the light of surrounding circumstances. In this the courts are very strict.

The Agreement Must be Fair, Just and Adequate in the Light of Surrounding Circumstances

That the contract be fair, just and adequate is the primary concern of every court deciding the validity of antenuptial contracts. The reason is found in the opinion of the *Pierce* case:[21] "The relationship of parties who are about to enter into the married state, is one of mutual confidence, and far different from that of those who are dealing with each other at arms length." All of the early Ohio cases[22] have held that antenuptial contracts are favored by the courts and will be upheld if fair and reasonable. The last word of the Ohio Supreme Court, as expressed in the *Juhasz* case[23] is as follows:

> "...if the provision for the prospective wife is, in the light of surrounding circumstances, wholly disproportionate to the means

[17] LINDEY, SEPARATION AGREEMENTS 651 (1937).

[18] Welsh v. Welsh, 150 Minn. 23, 184 N.W. 38 (1921); Young v. Hicks, 92 N.Y. 235 (1883); Deller v. Deller, 141 Wis. 255, 124 N.W. 278 (1910). There are several late cases that have held marriage to be sufficient consideration to uphold an antenuptial contract where the intention of the wife to waive everything else is clear. La Liberty v. La Liberty, 127 Cal. App. 669, 16 P. (2d) 681 (1933); Seuss v. Schukat, 358 Ill. 27, 192 N.E. 668 (1934); Geiger v. Merle, 360 Ill. 497, 196 N.E. 497 (1935). But in all these cases the wife received more than just a marriage certificate. The courts frown upon contracts where the prospective wife waives all her rights for marriage only.

[19] See LINDEY, SEPARATION AGREEMENTS 667 (1937).

[20] Campbell v. Jeff, 296 Pa. 368, 145 A. 912 (1929).

[21] Pierce v. Pierce, 71 N.Y. 154 at 158 (1877). See also Rolfe v. Rolfe, 125 Me. 82, 130 A. 877 (1925); Stanger v. Stanger, 152 Minn. 489, 189 N.W. 402 (1922); Re Haberman's Estate, 239 Pa. 10, 86 A. 641 (1912).

[22] Stilley v. Folger, 14 Ohio 610 (1846); Murphy v. Murphy, 12 Ohio St. 407 (1861); Phillips' Exrs. v. Phillips, 14 Ohio St. 308 (1863); Grogan v. Garrison, 27 Ohio St. 50 (1875); Mintier v. Mintier, 28 Ohio St. 307 (1876).

[23] Juhasz v. Juhasz, 134 Ohio St. 257 at 264, 16 N.E. (2d) 328 (1938).

> of her future husband and to what she would receive under the law, the burden rests on those claiming the validity of the contract to show that there was full disclosure of the nature, extent and value of the intended husband's property, or that she had full knowledge thereof without such disclosure, and that she, with this knowledge, voluntarily entered into the antenuptial settlement. . . . disclosure as a justification or excuse for the disproportionateness is an affirmative defense."

This is generally in accord with the weight of authority.[24]

The questions which emanate from these rules are issues of fact as to what constitutes "wholly disproportionate," "fair and reasonable," "surrounding circumstances," "full disclosure," and "full knowledge."

The court in *Re Clark's Estate*[25] lays down a test of fairness and adequacy which is stated as follows: "the true test, as to the adequacy of the provision in favor of the intended wife, is whether or not it is sufficient to enable her to live comfortably after his death, in the same way as . . . she had previously lived." This test has, however, seldom been followed, for the courts of this country will invariably consider all of the surrounding circumstances and facts of the case. No ironclad rule can be laid down. A study of the cases indicates, however, that the courts have taken into consideration generally the estate of the intended husband and that of the intended wife;[26] the children of each by a prior marriage;[27] the relative value of the grants and waivers in

[24] Watson v. Watson, 104 Kan. 578, 180 P. 242, 182 P. 643 (1919); Pattison v. Pattison, 129 Kan. 558, 283 P. 483 (1930); Megginson v. Megginson, 367 Ill. 168, 10 N.E. (2d) 815 (1937); Debolt v. Blackburn, 328 Ill. 420, 159 N.E. 790 (1928). These cases differ only in that the courts have held that where the contract is wholly disproportionate, the burden of proof shifts to the party seeking to uphold the validity of the contract. In Ohio the burden of proof does not shift but the duty to show disclosure is only an affirmative defense, which Supreme Court Judge Williams was emphatic to indicate.

[25] Re Clark's Estate, 303 Pa. 538 at 543, 154 A. 919 (1931).

[26] Re Enyart's Estate, 100 Neb. 337 at 349, 160 N.W. 120 (1916), where the court said: "it is to be remembered that the intended wife had no property, and the intended husband had a great deal of property and had no children"; Warner v. Warner, 235 Ill. 448, 85 N.E. 630 (1908), where the court held that the financial condition of the husband only is the test. And see Watson v. Watson, 104 Kan. 578, 180 P. 242, 182 P. 843 (1919); and Mauk's Estate, 19 Pa. Super. 338 (1902).

[27] Juhasz v. Juhasz, 134 Ohio St. 257, 16 N.E. (2d) 328 (1938); Henry v. Butler, 87 Kan. 122, 123 P. 742 (1912); In re Uker's Estate, 154 Iowa 428, 134 N.W. 1061 (1912), where the husband had eight children by a prior marriage; also see Slater v. Slater, 310 Ill. 454, 142 N.E. 177 (1924), where the husband wrote plaintiff he wanted his children cared for and the wife said she wasn't marrying for money. Contract upheld even though the wife received nothing under the contract.

the contract;[28] the state of health and age of the parties;[29] who prepared the agreement and the business experience of each.[30]

Disclosure

Where it appears on the face of the contract or it is shown by extrinsic circumstances that the contract is unfair, that is, the provision for the wife is wholly disproportionate to the means of the intended husband and to what she would receive under the law, some courts have said that there is a presumption of fraud,[31] that designed concealment is presumed.[32]

The effect of showing disproportion is to impose the burden of proof on those claiming the validity of the contract, to show that there was a full disclosure to the intended wife of the nature, value and extent of the husband's property or that the wife had independent knowledge thereof,[33] and voluntarily signed the agreement.[34]

[28] Taylor v. Taylor, 144 Ill. 436 at 444, 33 N.E. 532 (1893), where the court said "Having no separate property and the acquisition of none in contemplation, the surrender of his [the husband's] rights as to such property is meaningless."

[29] Ellis v. Ellis, 1 Tenn. Ch. App. 198 (1901), where a young girl married an elderly man; also In re Koeffler's Estate, 215 Wis. 115, 254 N.W. 363 (1934), where the court held where a wife is not young and love is not the motive for marriage, complete disclosure is unnecessary. It may be noted that Wisconsin courts have always gone a long way to uphold antenuptial contracts. See Harlin v. Harlin, 261 Ky. 414, 87 S.W. (2d) 937 (1935), where an 80-year-old man married a 54-year-old woman. Held: marriage was one of convenience.

[30] Mines v. Phee, 254 Ill. 60, 98 N.E. 260 (1912), where the contract was drawn by the defendant's attorney who asked the intended wife to sign, the contract was set aside as being unfair. Maze's Exrs. v. Maze, 30 Ky. L. Rep. 679, 99 S.W. 336 (1907).

[31] Re Maag's Estate, 119 Neb. 237, 228 N.W. 537 (1930). There the court held that the disproportion was so great as to lead to the conclusion, whether intentional or otherwise, that it constituted a legal fraud. In Pierce v. Pierce, 71 N.Y. 154 (1877), the court held that in cases of disproportion every presumption is against the validity of the contract. In Re Flannery's Estate, 315 Pa. 576, 173 A. 303 (1934), the court held that constructive fraud existed. The Wisconsin courts have held that the antenuptial contract is presumed valid if it is fair on its face.

[32] Re Waller's Estate, 116 Neb. 352, 217 N.W. 588 (1928), the court, after finding a gross disproportion between the wife's interest under the contract and the husband's means, held that the presumption of designed concealment is raised and the burden of disproving the charge rests on the husband. In Brown v. Brown, 329 Ill. 198, 160 N.E. 149 (1928), the court held that the plaintiff established a prima facie case of fraud by showing the disproportion and the engagement of the parties. Denison v. Dawes, 121 Me. 402, 117 A. 314 (1922).

[33] Juhasz v. Juhasz, 134 Ohio St. 264, 16 N.E. (2d) 328 (1938), and cases cited. The courts are quite unanimous as to the burden of proof. Compare Ray v. Ray's Ex'x., 249 Ky. 347, 60 S.W. (2d) 935 (1933), where the court held the burden to be on wife where there was no showing that the wife was without property.

[34] The intent of the prospective wife to waive her rights must be unmistakable. Hardesty v. Hardesty's Exr., 236 Ky. 809, 34 S.W. (2d) 442 (1930), where the

In the *Juhasz case*,[35] the plaintiff was an illiterate Hungarian woman who was the third wife of the defendant's testator. The plaintiff and the defendant's testator had entered into an antenuptial agreement whereby the plaintiff was given "an undivided one-sixth interest in the Cuyahoga County Real Estate." The court held that as a matter of law full disclosure was not proven for:

> "Although the disclosure as to the nature and amount of property of the prospective husband was fairly full and complete, an examination of the evidence shows no mention of the value of the real estate was ever made to her by him or his attorney. Under the rule laid down and sustained by the weight of authority, good faith requires full disclosure not only as to the nature and amount of the intended husband's property but also of its value."

The same rule was announced in an earlier Ohio case[36] where the court said "it was the duty of the dominant party, in the instant case the intended husband... to make a full and clear statement of all facts which related to the subject matter of the contract and which would fully and completely put his intended wife in the full possession of all his property rights and interests."

And the courts have generally held that the wife is not bound to inform herself of the prospective husband's property, for as was said in *Denison v. Dawes*,[37] "The burden was not upon her to inquire but upon him to inform." Neither does the fact that the intended wife knew of the prospective husband's reputation as a prosperous and wealthy man,[38] nor the fact that she lived near the prospective husband,[39] relieve the husband from the duty of fully disclosing to his intended bride the

contract did not recite the waiver of dower. And the wife must not be too much hurried into it. Re Maag's Estate, 119 Neb. 237, 228 N.W. 537 (1930); White v. White, 112 Neb. 850, 201 N.W. 662 (1924).

[35] 134 Ohio St. 257 at 267, 16 N.E. (2d) 328 (1938).

[36] 15 Ohio App. 283 at 287 (1921).

[37] 121 Me. 402 at 407, 117 A. 314 (1922). See Re Maag's Estate, 119 Neb. 237, 228 N.W. 537 (1930), where the executor argued that the intended wife was charged with the duty of ascertaining the value of the property, and the court held that such a duty did not exist and approved the Denison v. Dawes case. Also see Mines v. Phee, 254 Ill. 60, 98 N.E. 260 (1912); Hessick v. Hessick, 169 Ill. 486, 48 N.E. 712 (1897); Re Waller's Estate, 116 Neb. 352, 217 N.W. 588 (1928); In re Flannery's Estate, 315 Pa. 576, 173 A. 303 (1934).

[38] Warner v. Warner, 235 Ill. 448, 85 N.E. 630 (1908); Hessick v. Hessick, 169 Ill. 486, 48 N.E. 712 (1897); Re Enyart's Estate, 100 Neb. 337, 160 N.W. 120 (1916); Stahl v. Stahl, 115 Neb. 882, 215 N.W. 131 (1927).

[39] See In re Flannery's Estate, 315 Pa. 576, 173 A. 303 (1934); Murdock v. Murdock, 219 Ill. 123, 76 N.E. 57 (1905).

nature, value and extent of his property. As the court said in *Warner v. Warner*,[40]

> "But even if it is admitted that appellee had been told by Dr. Warner that he was a 'banker' and 'large land owner' and 'wealthy'... yet proof of such general facts does not discharge the burden which the law casts upon the appellants to show that appellee had such knowledge of the nature, character and value of Dr. Warner's property as the law requires."

A well-considered case is that of *Parker v. Gray*,[41] wherein the court said "The fact that testator was a wealthy man and that appellee lived in his family five years before the contract was made cannot be said to be sufficient to charge her with knowledge of the extent and value of his property." Even the signing of a memorandum in the office of the husband's attorney acknowledging that the wife was informed of the nature, extent and value of the intended husband's estate has been held not binding upon the intended wife.[42]

Some courts, however, have held the intended wife chargeable with knowledge of the extent and value of the prospective husband's property;[43] and where it is apparent that the wife had an understanding of the terms of the contract and fair knowledge of the intended husband's property, the courts have not hesitated in holding the contract valid and binding.[44] Neither the reading of the contract by the prospective husband to the prospective wife nor by the intended wife herself, relieves the former of the duty to disclose. Thus in the case of *Murdock v. Murdock*,[45] it was held that although the contract was read in the presence of the prospective husband and wife and although each paragraph was explained, there was not sufficent disclosure as required by law.

Many courts have held that it is not sufficient to the validity of

[40] 235 Ill. 448 at 465, 85 N.E. 630 (1908).

[41] 317 Ill. 468 at 476, 148 N.E. 323 (1925).

[42] In re Warner's Estate, 207 Pa. St. 580, 57 A. 35 (1904). To the same effect, see Parker v. Gray, 317 Ill. 468 at 475–476, 148 N.E. 323 (1925), where the court said "The fact that the contract recites the parties had explained to each other the amount and value of their respective property is not of itself sufficient to prove full knowledge on her part."

[43] Kuhnen v. Kuhnen, 351 Ill. 591, 184 N.E. 874 (1933); Megginson v. Megginson, 317 Ill. 168, 10 N.E. (2d) 815 (1937).

[44] Re Uker's Estate, 154 Iowa 428, 134 N.W. 1061 (1912); Yockey v. Marion, 269 Ill. 342, 110 N.E. 34 (1915).

[45] 219 Ill. 123, 76 N.E. 57 (1905). To the same effect see Re Enyart's Estate, 100 Neb. 337, 160 N.W. 120 (1916), and Re Maag's Estate, 119 Neb. 237, 228 N.W. 537 (1930). In Re Waller's Estate, 116 Neb. 352, 217 N.W. 588 (1928), the court held the language too intricate for the layman, hence no disclosure.

antenuptial contracts merely to disclose the nature, value and extent of the intended husband's property; but good faith requires that the prospective wife in addition be informed of the value of the estate which she would receive under the law were there no agreement.[46]

Good faith requires that the prospective wife be permitted and given independent advice as to her rights under the antenuptial contract.[47] It is often that a prenuptial contract is drawn to defraud the wife; however, oftentimes the device of the antenuptial contract is used to protect the heirs of the husband by a prior marriage. But no matter how proper the motive, the law fully protects the intended wife particularly if she has had no independent advice and advantage is taken of her ignorance in law matters. So in *Pattison v. Pattison*,[48] where Mr. Pattison sought to protect his children of a prior marriage by executing an antenuptial contract with his wife, the court said, "The safe and certain way to have safeguarded that matter was for Pattison to have dealt fairly with his affianced bride . . . to have made sure that she understood what she was doing . . . to see to it that [she] had independent advice."

Some courts have gone so far as to say that a burden is imposed upon the intended wife to inquire as to the intended husband's property,[49] but these courts failed to appreciate that such a decision does not take into consideration that any appearance of being mercenary on the

[46] Denison v. Dawes, 121 Me. 402 at 406, 117 A. 314 (1922), where the court said, "It is not enough that she was an intelligent woman. The confidential relations . . . required the plaintiffs to show that she did know . . . not only the nature of the instrument, but its effect upon her in case she survived her husband." To the same effect, see Re Enyart's Estate, 100 Neb. 337 at 345, 160 N.W. 120 (1916), where the court said "the burden rests upon those claiming the validity of the contract to show that she was aware . . . of the nature, character and value of the estate she was relinquishing if the marriage took place." *Contra:* Kingsley v. Noble, 129 Neb. 809, 263 N.W. 222 (1935), where the court held that ignorance of the intended wife's rights will not entitle her to avoid the contract.

[47] An early case, Taylor v. Buttrick, 165 Mass. 547, 43 N.E. 507 (1896), held that an antenuptial contract will not be set aside merely because the wife did not understand the legal effect of the contract where she voluntarily signed and knew its contents.

[48] 129 Kan. 558 at 562, 283 P. 483 (1930). See Maze's Exrs. v. Maze, 30 Ky. L. Rep. 679, 99 S.W. 336 (1907), where the court required convincing evidence of lack of fraud because the intended husband, a shrewd businessman, did not afford the wife an opportunity of loyal counsel. Also see Stanger v. Stanger, 152 Minn. 489, 189 N.W. 402 (1922), where the court said the wife "had no counsel" and was "without business experience. She was not a match for her husband in making such an agreement."

[49] Wellington v. Rugg. 243 Mass. 30, 136 N.E. 831 (1922), where the court said that the mere failure of the husband to disclose the amount of property was not fraud where the intended wife could have made inquiry.

part of the prospective wife would wreck many marriages and thereby be contrary to public policy. The parties are not dealing at arm's length and as the Pennsylvania court said in *Morrish v. Morrish*,[50] "she [the wife] cannot be expected to treat her husband as a stranger."

It must be apparent to the student of antenuptial contracts that in the protection of the prospective wife the courts regard these contracts with rigid scrutiny and the most important element is a full and complete disclosure of the extent and value of the prospective husband's property—or in the alternative, clear proof that good faith was manifested and that the intended wife had a full and fair understanding of the nature, value and extent of said property and some knowledge of what she was relinquishing under the law. After a thorough study of the cases one is convinced that the only certain way (if there is a certain way) to draw up a valid antenuptial contract is: (1) Allow the intended wife a fair share of the property taking into consideration the means of the husband. (2) Outline in the contract the nature of all the property owned by the husband, its extent and value, or attach a financial statement.[51] (3) Suggest and procure independent advice for the intended wife. (4) Have witnesses as to the disclosure of the nature, extent and value of the husband's property.

*B. Bernard Wolson**

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[50] 262 Pa. 192 at 201, 105 A. 83 (1918), quoted in Re Flannery's Estate, 315 Pa. 576 at 579, 173 A. 303 (1934).

[51] See Landes v. Landes, 268 Ill. 11, 108 N.E. 691 (1915), where each party admitted that he had been fully informed as to the nature, extent and value of all the property of the other and without regard to proportions and in which contract all the property of both parties was scheduled. The court there held the contract valid. To the same effect, see Harlin v. Harlin, 261 Ky. 414, 87 S.W. (2d) 937 (1935), and Hockenberry v. Donovan, 170 Mich. 370, 136 N.W. 389 (1912).

* Member of the Toledo, Ohio bar.—*Ed.*