

Case No. 5,139.

[1 Wkly. Notes Cas. 73.]

FRY V. GRIGG.

Circuit Court, E. D. Pennsylvania.

Nov. 11, 1874.

CONTRACTS AGAINST PUBLIC POLICY—INDUCEMENT TO SEPARATION OF HUSBAND AND WIFE.

[A father, in consideration of love and affection, gave a bond to pay to his daughter and her husband, if they should become reunited, \$6,000 annually, one-half to each, so long as they should live together as husband and wife, and in case they again be separated, for any cause save death, he should then pay \$50,000 to the husband. *Held*, that the two obligations were separate, and that the latter was void, as against public policy, and that, even if they were considered as connected, the effect would be to render both void.]

Action of debt on a bond. The declaration set forth the bond, which recited the consideration of love and affection for the obligor's daughter, who was the wife of plaintiff, and bound the obligor to pay, "during the term of my life, the sum of six thousand dollars annually, * * * one-half each," to the plaintiff and his wife, "provided that said payments shall be made and commenced only at and from the time at which the said" plaintiff and his wife "shall be reunited and live together as husband and wife, which is understood to be the day of the date hereof, and said payments shall

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continue only during my life, and the time during which the said" persons "shall live together as aforesaid, and, if at any time they shall, from any cause, or by the death of either of them, cease to live together as husband and wife, such payments * * * shall wholly cease and be at an end; and in the event of the ending of the conjugal relation as aforesaid between them from any cause whatever except by the death of either of them, I bind myself to pay to said" plaintiff "the sum of fifty thousand dollars"; it then alleged that after the execution of the bond, viz., in 1866, "the said plaintiff and his said wife did cease to live together as husband and wife, and the conjugal relation did end between them, and that without the death of either"; the death of the obligor in 1861, and administration of defendant, and the demand of and refusal to pay the said sum of fifty thousand dollars. To this declaration defendant demurred, and assigned for reasons: (1) For that said alleged agreement is illegal, against the policy of the law, and void; and (2) that the averment that said conjugal relation ended by the ceasing to live together of said plaintiff and his wife is not sufficiently made, and such ceasing to live together is not an ending of the conjugal relation.

Mr. Miller and Geo. W. Biddle, for demurrer, handed up brief, citing *Jones v. Waite*, 7 Scott, 317; *Durant v. Titley*, 7 Price, 577; *Westmeath v. Salisbury*, 5 Bligh (N. S.) 339; and *Burner's Appeal*, 4 P. F. Smith [54 Pa. St] 110,—but were not called on.

Mr. Sellers (with whom was Mr. Diehl), contra, argued: That the moving cause for giving the bond was evidently the "re-uniting" of the husband and wife; that it could not be said, as matter of law, that the receipt of the \$50,000 was more advantageous to the plaintiff than the keeping up of the annuity; that unless the obligor intended to give an inducement to separation, the bond is good; and (in answer to a question by the court) that the \$50,000 and the annuity should be taken together as an entire consideration.

THE COURT (CADWALADER, District Judge) entered judgment for defendant on the demurrer; being of opinion that, though the allegation that plaintiff and his wife "ceased to live together" was probably sufficient, as the instrument sued on seemed to define that as a "ceasing of the conjugal relation" by the words "as aforesaid," yet the demurrer must be sustained for the first reason assigned, the two obligations (viz., to pay the annuity and to pay the \$50,000) being entirely distinct; and, even if they could be connected, the effect would only be to render both void.