

Balfour v Balfour [1919] 2 KB 571

Chapter 5 (page 214)

Relevant facts

Mr and Mrs Balfour were married in 1900. They spent the first 15 years of their marriage in Ceylon where Mr Balfour was employed as a civil engineer. The Balfours were in England from November 1915 to August 1916 on vacation. Towards the end of the vacation, Mrs Balfour received advice that she should remain in England for treatment of her rheumatic arthritis. On 8 August 1916, before returning to Ceylon, Mr Balfour agreed to send Mrs Balfour a monthly allowance of £30 until she could rejoin him. Mr Balfour later asked to remain separated.

In 1918 Mrs Balfour sued for alimony of £30 per month on the basis of the agreement. The lower court decided in favour of Mrs Balfour and held that Mr Balfour's promise to send money was legally enforceable. Mr Balfour appealed the decision.

Legal issue

Was the agreement between Mr and Mrs Balfour reached on 8 August 1916, and made in domestic context, legally binding?

Decision

On 25 June 1919, the English Court of Appeal unanimously held that the agreement between the Balfours was not a legally enforceable contract but merely an ordinary domestic arrangement. There was no intention to create legal relations and Mrs Balfour could not sue for the alleged breach of it.

The Court was of the view that mutual promises made in the context of an ordinary domestic relationship between husband and wife do not usually give rise to a legally binding contract because there is no intention that they be legally binding. In other words there is no intention that one party will be able to take action for breach of the agreement by the other if they fail to perform. However, the Court did concede that there may be circumstances in which a legally binding agreement between a husband and wife may arise.

According to Lord Justice Atkin (at 578):

[T]here are agreements between parties which do not result in contracts within the meaning of that term in our law. The ordinary example is where two parties agree to take a walk together, or where there is an offer and an acceptance of hospitality.

Nobody would suggest in ordinary circumstances that those agreements result in what we know as a contract, and one of the most usual forms of agreement which does not constitute a contract appears to me to be the arrangements which are made between husband and wife. It is quite common, and it is the natural and inevitable result of the relationship of husband and wife, that the two spouses should make arrangements between themselves - agreements such as are in dispute in this action - agreements for allowances, by which the husband agrees that he will pay to his wife a certain sum of money, per week, or per month, or per year, to cover either her own expenses or the necessary expenses of the household and of the children of the marriage, and in which the wife promises either expressly or impliedly to apply the allowance for the purpose for which it is given. To my mind those agreements, or many of them, do not result in contracts at all, and they do not result in contracts even though there may be what as between other parties would constitute consideration for the agreement. The consideration, as we know, may consist either in some right, interest, profit or benefit accruing to one party, or some forbearance, detriment, loss or responsibility given, suffered or undertaken by the other. That is a well-known definition, and it constantly happens, I think, that such arrangements made between husband and wife are arrangements in which there are mutual promises, or in which there is consideration in form within the definition that I have mentioned. Nevertheless they are not contracts, and they are not contracts because the parties did not intend that they should be attended by legal consequences. To my mind it would be of the worst possible example to hold that agreements such as this resulted in legal obligations which could be enforced in the Courts. It would mean this, that when the husband makes his wife a promise to give her an allowance of 30s. or 2l. a week, whatever he can afford to give her, for the maintenance of the household and children, and she promises so to apply it, not only could she sue him for his failure in any week to supply the allowance, but he could sue her for non-performance of the obligation, express or implied, which she had undertaken upon her part ... I think the onus was upon the plaintiff, and the plaintiff has not established any contract.

Significance

This decision established that there is a rebuttable presumption in relation to agreements of a domestic nature that the parties did not intend to create a legally enforceable agreement. Further, it established that the onus is on the party alleging that a legally binding contract exists to rebut the presumption.