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CONNELLY VS CONNELLY: comments by Dr. Bernard Hargrove, St. Leonards, 29 September 1976, to the positio group

The real problem, I think, which we have in trying to understand the Connelly-Connelly case is that at the present moment most of us are acquainted with problems of litigation where both parties stand on an equal or almost equal footing.

In the Connelly case, the parties were never on an equal footing, and the reason for this was that the whole approach of the courts at that time to matrimonial matters--I use the word "matrimonial" in its very wide sense--was one of property and not of personality. So if a person came to the court, the court was really concerned with how its decision would affect property rights.

You may ask, how much does that affect a situation as between husband and wife. The answer is twofold. First of all it affected them in relation to the children and any property which was settled on the children. I venture to think that that aspect of this case formed a very considerable part of Pierce Connelly's behavior, particularly at the later stages. Secondly, I think it affected because the wife as such was property. That doesn't quite accord with modern views of women's lib, but it was certainly the view held even as late as 1860. In 1857 when the first effective acts of parliament were passed in relation to divorce, it was made quite clear that the grounds a man would have for divorce or separation or restitution of conjugal rights were to be less than those of the wife; this was regarded as a compensation for the chance of his losing his property. From that aspect any rights given to the wife were given as exceptional rights. Many of us have wondered when we looked at these cases--I don't mean just Connelly and Connelly--back through many volumes of early matrimonial law cases, why wasn't the wife doing something about it, why didn't the wife take certain steps. You might just as well ask today why doesn't a lunatic take certain steps--because that was the group into which she fell: bankrupts, lunatics, married women, peers of the realm!*

* Peers suffered from a disability, just as women did, from their status. Peers could not vote, could not hold certain offices, and at one stage could not be tried in an ordinary court, but in the House of Lords --according to Magna Carta, by their peers.

There is evidence that Cornelia Connelly was a woman, if not of property and wealth, at least entitled in expectation to property. That I think is very important, because as soon as she married, by English law, but not, as I now discover, by the law of Philadelphia as it then existed, the husband would have been entitled to the entirety of her estates and probably also of all her moneys and chattels as well. There was one brake on that, and you will notice here that the protection is provided, not for the wife but for the property again. Protection was provided that the husband could not lay his hands upon all her property insofar as it was settled on her as a single woman--an expression "femme seule" was used frequently in this context. There were circumstances whereby property so held on trust could fall into the hands of the husband. /If he wished to take it/ he could do this in two ways: First by making allegations that the wife was in breach of her duties towards him, in other words, that the property was better in his hands; and secondly where he could say that she was unfit to have the care of the children. Now in modern law, all you'd have to do if you wanted to prove the latter point is merely to go before the court and say, "I want to make the children wards of court; the mother is no longer fit to have the care of the child"--the mother is insane or something of that nature. But you couldn't do that immediately in any period between 1832 and 1880. If you were a married man you had first to indicate that the wife was in breach of her matrimonial duties, and you could do this only in one of two ways: by going for a decree of separation before 1853, or by going for a decree of restitution of conjugal rights. And that is of course the first step that Pierce took. I think one has to bear that in mind insofar as we are not saying that the Pierce Connelly / Cornelia Connelly action is merely the emanation of a deranged mind (I hesitate with great respect to say that it was). We are trying to find something logical and legal as an explanation of the Connelly action.

The first thing to say about it is that it was the initial step in a prolonged running battle which was intended to obtain first of all possession and legal custody of the children, and secondly access to her fortune. The best proof of that, which I just checked a month or so ago, is that in fact the collapse, so to speak, of the action was really on financial grounds, that Pierce Connelly could not go forward any further. He had had a judgment made

against him to pay some costs which must in the light of the matters involved have been comparatively trivial and this he failed to do, preferring, as you know, to pursue other lines of approach.

The second method that he used to force her was really to deprive her of the children. I realize that there are ways of putting this--saying that she had abdicated her position as mother some time before. But I don't think that could be borne out; my impression is that she wished still to retain contact with the children. Now again one would ask the question: why didn't she take some steps to rectify her position in relation to the children. Can I take you back once again to the aspect of property? Property encompassed not just your house, your lands, your cattle, your money at the bank. It also comprised your children, and those of you who have the advantage or disadvantage of being classicists or taking Greats will know the difficulty which arose even in Roman times about a child being within the power of parents. In English law, a child belonged prima facie, and until it was proved that he was totally unfit to have him, to the father. English law regarded a child as being under the paternal care. The mother's position was that in default of the husband some of her rights might arise. And of course it took a great deal for the husband's piece-of-property A to be able to prove that she was entitled to have the custody, care and control of piece of property B, not just because of the aspect of the husband being in the marriage the one "person," but also because the financial settlements made in the 18th and 19th centuries were all geared to providing for the children. Therefore, if the mother became entitled to the sole custody of the children, she also had sole control over all funds--I say sole, meaning to the exclusion of the husband; she would have to have another trustee acting with her and for the benefit of the children.

What you've got there is an extraordinary situation where the mother really has to take the greatest possible care not to start proceedings unless she is absolutely certain of winning, because the moment she starts proceedings the whole burden of proof rests on her. It was a heavy burden of proof from the outset, even if she had to discharge some element of proof in her own defense. It became greater when she was making the allegations. And the difficulty in Cornelia Connelly's case, looked at carefully with the benefit of hindsight, was that Pierce was probably totally unfit to have care of any children after the moment

when he began his action. But put yourself in the position of her advisers. I think it is fair to say that you would have great difficulty in proving in terms which a judge of the middle or late 19thC would understand that Pierce was an unfit father. The fact that he was domineering, the fact that he wanted his own way, the fact that he changed his mind and expected everyone else to change their minds with him--these were the natural attributes, the rightful attributes, of the Victorian paterfamilias, and there was really nothing that could be said against it.

The other interesting aspect of the Connelly case is the situation which arose upon the pleading of the case itself. Essentially this is an action taking place in the court where the facts are not necessarily in dispute--the documents and their interpretations may be, but /dispute about/ the facts, insofar as witnesses are called, does not occur. And this I think is relevant because, when all the documents were got together, the answer--I'll use that expression because I think it most nearly covers what we know today--to the petition of Pierce Connelly by Cornelia Connelly made a large number of allegations; indeed, it set up a whole defense. The answer was susceptible of a reply--Pierce Connelly could have put in a reply saying the whole of this was nonsense. Had he done so, the next step would have been the calling of witnesses on both sides, to be heard under oath by a judge, examined, cross-examined and re-examined, and the judge to have given judgment of fact on which witnesses he believed and which he disbelieved. Had that process gone through, our problems would be easier today. But of course it didn't happen. What occurred was that the final pleading was Cornelia Connelly's answer, the final substantive pleading. The facts of that pleading were not denied by Pierce Connelly. It was merely said that those facts and matters as pleaded did not constitute a defense to the action in law. That was his approach, or rather the approach of his advisers. Otherwise he would have said first of all there is no answer in law here, and secondly and more important, we deny facts A to Z on the first ten pages or wherever. The result would have been, I think, that we would have had a full trial. As there was no full trial one is perfectly justified in saying the facts as put forward in her defense were undisputed. If Pierce had said, "I deny 1, 2, 3 and 4 of your allegation; what really

happened was this," he would have been cross-examined and liable to all the penalties of perjury if his assertion was disproved. As he had made the whole matter so public it is highly probable that prosecution for perjury would have followed had he taken that step. But he did not take that step, and I find that an illuminating sidelight on the whole case.

Q. Why did he then appeal to the House of Commons? What did he expect to get from his two appeals to the House of Commons? The first was tabled and was published for members only; the second was merely published in pamphlet form /by himself/, a kind of appeal as a public letter the following year.

I think what he hoped for was this: the Commons had at that time a power of dispensing with the effects of a law in a particular case. They could pass through a motion which would then be incorporated into a bill and sent to the Lords, who would approve it; then it would be entered as proceedings of the House, and the person could be dispensed from the penalties he might incur. I suppose that is what Pierce hoped for. It is interesting that it never got beyond the stage of merely being presented; it didn't go through any of the other stages that I have indicated. The second time I don't know what he expected to do by publishing the pamphlet. I think the answer to that lies more in his medical than in his legal history.

Q. What exactly is the meaning of the term, "read and discharged" /as used of the first appeal to the House of Commons/?

That merely means that the members had gone through the document, considered it. But they were asked to take no action upon it, save that it was to form part of their general research papers. It had no legal effect at all.

One comes back, as I've done so often in this case to the problems which are involved. One is Pierce Connelly's very understandable difficulty in that he had failed in so many ways and was really looking for a scapegoat. The second is that he was suffering from varying degrees of paranoia, /that he was/ what was called before 1959 a "certifiable paranoid" /or after the 1959 mental health act/, "a person who would benefit by treatment," "a psychopathic personality."