

Balfour v Balfour [1919] 2 KB 571

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Facts

- Mr and Mrs Balfour were a married couple.
- Mr Balfour was a civil engineer who worked in Ceylon (modern-day Sri Lanka).
- In 1915, Mr and Mrs Balfour returned to England briefly. While they were there, Mrs Balfour's doctor advised that she should not return to Ceylon due to her arthritis.
- The couple therefore decided that Mrs Balfour would stay in England while Mr Balfour returned to Ceylon. During this time, Mr Balfour told Mrs Balfour that he would pay her £30 a month.
- This worked for a little while, but the couple eventually drifted apart and decided to divorce.
- Mrs Balfour sued, stating that Mr Balfour had a legal obligation (under contract) to continue paying her the £30 a month.

Issue

- Was there a valid contract between the two?

Held

- Although Mrs Balfour succeeded at first instance, it was unanimously overruled on appeal - however the judges took slightly different approaches.
- In essence, the three Justices focussed on the husband and wife relationship between the parties, holding that a promise made between a husband and wife would not, generally, create a contract.
- Most significantly, Lord Justice Atkin held that there was a presumption in such circumstances that there was no intention to create legal relations - i.e., the husband and wife, when making the agreement, did not intend for it to be a legally enforceable contract.
- He spoke about the difficulties it would create should the courts try to enforce these promises, which are "outside the realm of contracts altogether" as they are motivated by care and affection - unlike the cold courts!
- While it is possible that the presumption could be rebutted in some circumstances, Mrs Balfour had not rebutted it in this case.