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Divorce -- Alimony -- Permanent Alimony Incident to Absolute Divorce

Kenneth A. Griffin

Court approved the doctrine in a previous case where a strip of land not covered in the deed was the subject of the controversy.[19]

EARLE GENE RAMSEY

Divorce—Alimony—Permanent Alimony Incident to Absolute Divorce

The recent case of *Feldman v. Feldman*,[1] following close on the heels of *Livingston v. Livingston*[2] and involving the same procedural question, once again explains the status of North Carolina law on the subject of permanent alimony as an incident to an absolute divorce decree. The plaintiff, husband, instituted an action for absolute divorce on the grounds of two years' separation. Subsequent to the filing of the complaint but prior to the decree for absolute divorce, the parties made an agreement whereby the plaintiff was to pay the defendant a monthly sum for the support of herself and the child of the marriage. This agreement was entered as a consent order. Thereafter a decree for absolute divorce was granted. Some years later the plaintiff ceased to make the monthly payments. The defendant, after notice, moved that the plaintiff be adjudged in contempt of court and the plaintiff moved to strike the consent order. Upon hearing the plaintiff's motion, the lower court relying on *Livingston v. Livingston, supra,* ruled that the consent order was inoperative as an order of the court. The Supreme Court in affirming the decision points out that the consent order (permanent alimony) was not reduced to a court judgment or decree before the commencement of the suit for absolute divorce and consequently did not come within the protective provision of G. S. 50-11.[3]

"In Roman Catholic times, that is, until the reign of Henry VIII, marriage was regarded by the church as a sacrament, and as therefore indissoluble. This being the view of the canon law, it was applied by the ecclesiastical court in England, which had jurisdiction over matri-

[19] In Hanstein v. Ferrell, 149 N. C. 240, 62 S. E. 1070 (1908), ownership of a narrow strip between two city lots was in question. The plaintiff and his predecessors in title and the defendant had both acquiesced in a boundary line formed by a common trench caused by water dripping from the eaves of two wooden buildings formerly on the premises. The court held that recognition of, and acquiescence in a line as the true boundary line of one's land, not induced by mistake, and contained through a considerable period of time, affords strong, if not conclusive, evidence that the line so recognized is the true line.

[1] 236 N. C. 731, 73 S. E. 2d 865 (1952). In the even later case of Merritt v. Merritt, 237 N. C. 271, 74 S. E. 2d 529 (1953), the same procedural point was raised. There the husband and wife had consented to the continuance of a separation agreement for alimony after the absolute divorce which was then in suit. The court *citing* the principal case held the alimony liability was contractual only and could not be enforced by contempt as it had been decreed incident to the absolute divorce rather than prior to the commencement of the said suit.

[2] 235 N. C. 515, 70 S. E. 2d 480 (1952).

[3] N. C. GEN. STAT. § 50-11 (1949, recompiled 1950).

monial causes."[4] These courts did, however, grant a divorce *a mensa et thoro*,[5] which legally authorized the separation of the parties without disturbing the bonds of matrimony.[6] As the marital status was not thereby destroyed, neither were the common law incidents of marriage.[7] Accordingly, after a divorce *a mensa* the husband continued to enjoy the usual rights to the various property interests of his wife,[8] while she, in turn, continued to hold her inchoate right to dower and, if without fault, was awarded a reasonable amount of alimony.[9]

Although the ecclesiastical courts could not dissolve a valid marriage, they could, in an action then called divorce *a vinculo matrimonii*[10] declare the marriage void *ab initio*[11] where, due to certain impediments,[12] a valid marriage never existed. Accordingly, the common law duty of a man to support his wife was decreed to have never existed and consequently the court was without a basis upon which to award alimony.[13] In contradistinction to these courts, Parliament could, by special act, grant an absolute divorce dissolving a valid marriage, but due to the expense involved in obtaining such a divorce, it was a privilege of the wealthy.[14] Few divorce bills were passed at the instance of the wife; therefore, no definite practice was set as to alimony awards incident to an absolute divorce.[15] However, there were several cases

[4] MADDEN, PERSONS AND DOMESTIC RELATIONS § 81 (1931).

[5] *Ibid.*

[6] Vernier and Hurlbut, *The Historical Background of Alimony Law and Its Present Stautory Structure*, 6 LAW AND CONTEMP. PROB. 197 (1939).

[7] MADDEN, *op. cit. supra* note 4, at 257.

[8] 2 POLLOCK AND MAITLAND, THE HISTORY OF ENGLISH LAW 409 (2 ed. 1923) (". . . the husband can deprive his wife of the enjoyment of her land by alienating it, and . . . it will be valid at least so long as the marriage lasts."). See also Bird v. Bird, 1 Lee 209, 212, 161 Eng. Rep. 78, 79 (1753), where Sir George Lee in granting the wife alimony *pendente lite* said, ". . . under that marriage he had a right *jure mariti* to possess himself of whatever she had . . .").

[9] Otway v. Otway, 2 Phill. Ecc. 109, 161 Eng. Rep. 1092, 1093 (1813) (". . . the wife is the injured party; she is separated from the comfort of matrimonial society, from the society of her family, not by act of Providence, but by the misconduct of her husband; she must be liberally supported. . . . The law has laid down no exact proportion; it gives sometimes a third, sometimes a moiety; according to circumstances."). The alimony was based on the common law duty of the man to support his wife. Emerson v. Emerson, 120 Md. 584, 87 Atl. 1033 (1913).

[10] 1 HOLDSWORTH, A HISTORY OF ENGLISH LAW 623 (3d ed. 1922); MADDEN, *op. cit. supra* note 4 at 257; 2 POLLOCK AND MAITLAND, *op. cit. supra* note 8 at 396.

[11] 1 HOLDSWORTH, *op. cit. supra* note 10.

[12] 12 HOLDSWORTH, A HISTORY OF ENGLISH LAW 686 (1938) ("consaguinity or the fact that one of the parties was already married . . . physical incapacity to consummate; . . .").

[13] See Bird v. Bird, 1 Lee 621, 622, 161 Eng. Rep. 227, 228 (1754), which involved nullity of a marriage because of prior marriage. Eight children were born to the second marriage. Sir George Lee after pronouncing the marriage void *ab initio* said, "As to allowing her a sum of money (though I thought her case a very compassionate one), I was of the opinion I had no warrant to do it by law or practice."

[14] 1 HOLDSWORTH, *op. cit. supra* note 10.

[15] See Fisher v. Fisher, 2 Swa. & Tr. 410, 413, 164 Eng. Rep. 1055, 1056 (1861).

where a divorce bill was sought by the husband and Parliament provided for the maintenance of the delinquent wife.[16]

In 1857 the jurisdiction over divorce proceedings in England was by statute removed from the ecclesiastical courts and placed in the Court for Matrimonial Causes.[17] The right to an absolute divorce upon certain grounds was made available[18] and alimony incident thereto was left to the discretion of the court.[19]

North Carolina's statutory development of divorce and alimony was begun some forty-three years prior to England's by the Public Laws of 1814.[20] Respecting but not adhering to the doctrine of marriage as a sacrament, the law provided for an absolute divorce decree[21] as well as a divorce *a mensa et thoro*[22] and an action for alimony without divorce.[23] In order, however, that dissolution of the marriage should not be too readily available, the law produced various obstacles.[24] Alimony for the wife upon a decree for absolute divorce, or a divorce *a mensa,* was provided for in the discretion of the court.[25] This state of the law as to alimony incident to absolute divorce obtained for over fifty-five

[16] *Id.* at 412, 164 Eng. Rep. at 1056.
[17] 20 & 21 Vict., c. 85 (1857).
[18] *Ibid.* Vict., c. 85, § 27.
[19] *Ibid.* See also Fisher v. Fisher, 2 Swa. & Tr. 410, 413, 164 Eng. Rep. 1055, 1056 (1861) (Suit for absolute divorce at the instance of the wife where the judge ordinary said; "In the present case the wife elects to have the marriage dissolved, ... She might have been relieved from the necessity of living with her husband and have remained his wife, but her election was not to do so. Still, although she did so elect, having good grounds for complaint, the respondant may be considered as in some sort depriving her of her position, and the Legislature no doubt intended that she should not seek a remedy at the expense of being left destitute. . . . I must take upon myself the arduous duty of deciding what is reasonable in this case.").
[20] N. C. Sess. Laws 1814, c. 869; Dickinson v. Dickinson, 7 N. C. 327 (1819); Reeves v. Reeves, 82 N. C. 348 (1880).
[21] N. C. Sess. Laws 1814, c. 869, § 1.
[22] N. C. Sess. Laws 1814, c. 869, §§ 1, 5.
[23] N. C. Sess. Laws 1814, c. 869, § 3.
[24] Some of these impediments were: a ten pound tax on filing the complaint; security for the cost of the action by the complainant; no absolute divorce decree valid until ratified by the General Assembly. N. C. Sess. Laws 1814, c. 869. No provision for alimony *pendente lite* or suit money to the wife. Wilson v. Wilson, 19 N. C. 377 (1837). Strict grounds and meticulous pleading requirement. N. C. Sess. Laws 1814, c. 869, § 2; Whittington v. Whittington, 19 N. C. 64, 77 (1836) ("In the ecclesiastical courts of England, the course is to require the libel to state a perfect case for a divorce, before it is admitted to proof; so that it can never be helped out by the evidence. This is probably the true meaning of the provision in our statute . . ."). Defenses of connivance, collusion, condonation or recrimination closely watched for. N. C. Sess. Laws 1814, c. 869, § 3; Hansley v. Hansley, 32 N. C. 505 (1849); Little v. Little, 63 N. C. 22 (1868); Horne v. Horne, 72 N. C. 530 (1875). Right to remarry expressly given only to the innocent party. N. C. Sess. Laws 1814, c. 869 § 4. Right of offending party to remarry expressly denied subject to bigamy punishment for violation. N. C. Sess. Laws 1827, c. 19, § 5.
[25] N. C. Sess. Laws 1814, c. 869, § 4, Wilson v. Wilson, 19 N. C. 377, 378, 379 (1837); N. C. Rev. Code c. 39, § 9 (1837); N. C. Rev. Code c. 39, § 11 (1854).

years[26] and the express power to grant alimony, *inter alia,* appeared in N. C. REV. CODE c. 39, § 11 (1854) as follows: ". . . and the court *shall have power* also to decree alimony to the wife in the case of absolute divorce upon the petition of the wife; and after a sentence nullifying or dissolving the marriage, all and every the duties, rights, and claims of the parties, in virtue of said marriage, shall cease and determine; and the plaintiff, or innocent person, shall be at liberty to marry again. . . ." [Italics added.] In the session of 1871-1872 the General Assembly revised the above section and without expressly repealing the power to grant alimony incident to absolute divorce they simply omitted it and adopted in lieu of the above quoted language the following: "After a judgment of divorce from the bonds of matrimony, all rights arising out of the marriage shall cease and determine, and either party may marry again: . . . ."[27] This section has been re-enacted down to the present and is now part of G. S. 50-11. In construing this statute our court has held that since one incident of the marriage is the duty of the man to support his wife, this section by failing to preserve that duty denies a basis for alimony as an outcome of an absolute divorce proceeding.[28] In 1919 a modification of the law in respect to alimony was enacted as follows: "That in all cases where an absolute divorce is *granted upon the grounds of separation of husband and wife for ten (now two)* successive years as provided by law, such decree granting such divorce shall not have the effect of impairing or destroying the

[26] See Davis v. Davis, 68 N. C. 180 (1873) (Case of absolute divorce on appeal as to amount of alimony).

[27] "Provided . . ." (Proviso relates to children) N. C. Sess. Laws 1871-72, c. 193 § 43; N. C. REV. STAT. c. 37, § 15 (Battle 1873). As chapter 193 made no express statement repealing the power to grant alimony incident to absolute divorce nor did the title of the act mention alimony (An Act Concerning Marriages, Marriage Settlements and The Contracts of Married Women), the policy of the Legislature in 1872 as to alimony incident to absolute divorce was not made clear. However, their attitude as to alimony incident to divorce *a mensa* seems to be somewhat modern as they provided a basis for alimony awards to the innocent hubsand as well as the innocent wife, which, in effect, gave the court the power to recognize not only the common law duty of the man to support his wife but in addition a new statutory duty of the wife to support her husband if the circumstances of the case warranted such a decision. Compare language of N. C. Sess. Laws 1871-72, c. 193 § 37 with that of N. C. REV. CODE c. 39, § 3 (1854). Also, alimony *pendente lite* and alimony without divorce was provided for the wife. N. C. Sess. Laws 1871-72, c. 193, §§ 38, 39; Webber v. Webber, 79 N. C. 572 (1878); approved in Medlin v. Medlin, 175 N. C. 529, 95 S. E. 857 (1918). Thus, there seemed to be no legislative policy against alimony in general and if this act did contemplate repealing the power to grant alimony incident to absolute divorce the logic behind the preservation of dower, year's provision and share in the personal estate to the innocent wife after absolute divorce (as was done by N. C. Sess. Laws 1871-72, c. 193 § 42) seems to impeach whatever logic was behind the denial of alimony incident to absolute divorce, as both are for the purpose of giving support and maintenance to the wife.

[28] Merritt v. Merritt, 237 N. C. 271, 74 S. E. 2d 529 (1953); Feldman v. Feldman, 236 N. C. 731, 73 S. E. 2d 865 (1952); Livingston v. Livingston, 235 N. C. 515, 70 S. E. 2d 480 (1952); Stanley v. Stanley, 226 N. C. 129, 37 S. E. 2d 118 (1946); Duffy v. Duffy, 120 N. C. 346, 27 S. E. 28 (1897).

right of the wife to receive alimony under any *judgment or decree of the court rendered before the commencement* of such proceeding for absolute divorce."[29] [Italics added.] This section of the 1919 act, as amended from ten to two years, appeared as a second proviso to G. S. 50-11 at the time of the decision in the principal case.[30] In effect this modification was a partial restoration of the law as it existed prior to 1872[31] in that it permitted some court directed alimony payments to be continued subsequent to an absolute divorce. However, this law required two separate judicial proceedings (the first for alimony, the second for absolute divorce) in order to obtain the same result which was reached in one proceeding under the old law. And, further, this provision only protected the prior alimony award from being destroyed by the absolute divorce if it was based on two years' separation; thereby leaving the absolute divorce based on the other various grounds free to destroy the alimony decree entered prior to the commencement of the action for absolute divorce.[32] Conseqently, a wife subsisting on a prior award of alimony could not obtain an absolute divorce grounded, for example, on her husband's adulterous conduct without destroying her court decree for alimony but she could seek her remedy based on two years' separation without disturbing that decree.[33] Although this modification afforded in some degree a legislative recognition of the need for extending the husband's duty to support past the decree for absolute divorce, its restrictive coverage to only one of the several grounds for absolute divorce and its procedural requirement involving a multiplicity of suits made it an inadequate protection of the wife.

In the case of *Livingston v. Livingston*,[34] where a consent order for alimony was, as in the principal case, entered subsequent to the commencement of the absolute divorce grounded on two years' separation, the court invalidated the consent order as an alimony judgment because it *"was not rendered before the commencement of the present action, ..."*[35] (as required by the language of the 1919 act above quoted). The court further stated, "The defendant did not pursue the statutory

[29] N. C. Sess. Laws 1919, c. 204, § 1.
[30] Feldman v. Feldman, 236 N. C. 731, 73 S. E. 2d 865 (1952).
[31] N. C. Rev. Code c. 39, § 11 (1854).
[32] See Stanley v. Stanley, 226 N. C. 129, 134, 37 S. E. 2d 118, 121 (1946) where the court interpreting the saving proviso of G. S. 50-11 said: ". . . a prior award of alimony is protected from annulment by a decree in absolute divorce, *based on two years' separation,* which would otherwise probably have resulted." [Italics added.]
[33] It has been argued that the Legislature only intended this section to protect the prior alimony decree from the destructive effect of an absolute divorce *at the instance of the husband.* But the court has held this erroneous and allowed the wife to pursue her right to an absolute divorce without prejudice to her formerly decreed right to alimony. Deaton v. Deaton, 237 N. C. 487,—S. E. 2d—(1953). See also Lentz v. Lentz, 193 N. C. 742, 138 S. E. 12 (1927).
[34] 235 N. C. 515, 70 S. E. 2d 480 (1952).
[35] Livingston v. Livingston, 235 N. C. 515, 517, 70 S. E. 2d 480, 482 (1952).

authority for the establishment of her rights to collect alimony from her husband, but attempted to secure the same results by the filing of a consent order in her husband's pending suit for absolute divorce. A decree providing for permanent alimony as an outcome of an action for absolute divorce is in violation of public policy and contrary to the statutory laws of North Carolina."[36] Clearly an alimony decree, with its contempt procedure advantage, cannot be upheld when obtained outside the necessary procedural steps required by statute[37] as it would run counter to the constitutional protection[38] against imprisonment for debt and thereby violate public policy.[39] But in support of an equally sound public policy, that a person shall not profit by his own wrong, it seems that the statute[40] itself violated public policy[41] by not making express provision for alimony in absolute divorce proceedings. For the ultimate outcome of an absolute divorce at the instance of the injured wife is the destruction of the marriage because of the husband's misconduct[42] which in turn destroys all the incidents of the marriage including the wife's right to maintenance. Thus it would seem that the law, which regards the husband unfit to enjoy the marital relation, not only destroys the marriage but also, Janus-like, turns its face to the opposite direction and rewards the husband for his misconduct by destroying his previously imposed duty to support. The ecclesiastical

[36] *Ibid; citing* Stanley v. Stanley, 226 N. C. 129, 37 S. E. 2d 118 (1946).
[37] N. C. GEN. STAT. § 50-11 (1949). [38] N. C. CONST. Art. I § 16.
[39] Stanley v. Stanley, 226 N. C. 129, 37 S. E. 2d 118 (1496).
[40] See note 37 *supra.*
[41] Parmly v. Parmly, 5 A. 2d 789, 790 (N. J. 1939), where, after stating that the New Jersey law imposes a continuing duty on the husband to support his divorced wife, the court said: "The continuing duty of support thus imposed is grounded in a public policy designed to make for permanence in the marriage relation, as well as to accord a measure of protection to the innocent wife. The Legislature has deemed it to be contrary to the public interest to permit the guilty husband, whose wilful misconduct had brought about a dissolution of the marriage, to also cast off the duty of support arising from the marriage status." See also Alexander v. Alexander, 13 App. D. C. 334, 347 (1898) where in referring to a statue which imposed a continuing duty, the court said: "But the statute, for obvious reasons of public policy and upon equitable grounds, authorizes the allowance of alimony . . ."; Fickel et. al. v. Granger 83 O. 101, 106, 93 N. E. 527, 528 (1910) ("Alimony is an allowance for support, which is made upon considerations of equity and public policy.") Likewise in Stearns v. Stearns, 66 Vt. 187, 189, 28 Atl. 875 (1894) the court stated: "It is apparent that such allowance is given for the support to which she was entitled by the marriage, and which she has been compelled to forego and been deprived of through his default in failing to perform the marriage contract and covenant."
[42] Misconduct of the defendant resulting in injury to the plaintiff is not required in the divorce based to two years' separation. See Taylor v. Taylor, 225 N. C. 80, 33 S. E. 2d 492 (1945) and cases there cited. However, the plaintiff cannot obtain a divorce on this ground if the separation was caused by the plaintiff's own wrong. Brown v. Brown, 213 N. C. 347, 193 S. E. 333 (1938); Byers v. Byers, 222 N. C. 298, 22 S. E. 2d 902 (1942); Reynolds v. Reynolds, 208 N. C. 428, 181 S. E. 338 (1935); Same case 223 N. C. 85, 25 S. E. 2d 466 (1943). Therefore it would seem that the judgment for divorce given the plaintiff would show innocence on the part of the plaintiff and in some degree may imply misconduct on the part of the defendant even in this type of divorce.

law, or common law,[43] offers no precedent for this result as the early courts, in respect to the sacrament of marriage, were obliged to use the legal fiction of voidance *ab initio* in order not to transgress a valid marriage.[44] Consequently, if the ecclesiastical court had awarded alimony incident to its divorce *a vinculo* the decree would have *created* a duty to support without a valid marriage to serve as a basis. In North Carolina the first issue to the jury in an absolute divorce proceeding is the determination of a valid marriage.[45] Accordingly, absolute divorce under our law does dissolve a marriage and incident thereto does destroy an existing duty to support, without substituting alimony.[46]

The General Assembly recently revised the second proviso of G. S. 50-11 to read as follows: ". . . . *provided further,* that except in the case of divorce obtained with personal service on the wife, either within or without the State, upon the grounds of the wife's adultery *a decree of absolute divorce* shall not impair or destroy the right of the wife to receive alimony and other rights provided for her under any judgment or decree of a court *rendered before the rendering* of the judgment for absolute divorce."[47] [Italics added.] This new provision has extended the scope of the old provision so that the prior alimony award cannot be destroyed by an absolute divorce on any ground, save the wife's adultery. However, it is submitted that this is not a complete solution, in that the statute still requires two separate judicial proceedings. If the wife has a just claim to alimony and also a ground for absolute divorce there does not appear to be any logical reason why she should not be permitted to have both claims adjudicated in one proceeding. In the case of *Cameron v. Cameron*[48] the court in recognizing the husband's right to a cross demand for absolute divorce in his wife's pending action for divorce *a mensa* with alimony[49] said, ". . . . right and justice require that an amendment be allowed which will enable the parties to end the . . . controversy in one and the same litigation. . . ."[50]

As the 1953 change of G. S. 50-11 now requires the alimony decree to be rendered prior to the rendering of the judgment for the absolute divorce rather than prior to the commencement of the action for it, fact situations like those in the *Feldman* and *Livingston* cases would apparently still be decided the same way because the alimony awards in

[43] The ecclesiastical law, which has not been abrogated or modified by statute, is now considered as part of the common law by our court. Medlin v. Medlin, 175 N. C. 529, 95 S. E. 857 (1918).

[44] See note 10 *supra.*

[45] Long v. Long, 206 N. C. 706, 175 S. E. 85 (1934).

[46] See note 28 *supra.*

[47] Senate Bill No. 348 Ratified April 30, 1953.

[48] 235 N. C. 82, 68 S. E. 2d 796 (1951).

[49] Cameron v. Cameron, 232 N. C. 686, 61 S. E. 2d 913 (1950), and 231 N. C. 123, 56 S. E. 2d 384 (1949).

[50] Cameron v. Cameron, 235 N. C. 82, 88, 68 S. E. 2d 796, 800 (1951) *citing* Smith v. French, 141 N. C. 1, 53 S. E. 438 (1906).

both cases were not rendered prior to, but at the same time as, the rendering of the judgment for absolute divorce. However, if the parties consent to a judgment for alimony and it is rendered prior to the dissolution of the marriage[51] (even after the commencement of the suit for absolute divorce) it seems clear that the alimony decree thus obtained would be protected.[52]

Within fifty judicial jurisdictions, including the forty-eight states,[53] the District of Columbia[54] and England[55] only North Carolina and Pennsylvania[56] have failed to provide a statutory basis for the allowance of alimony *incident* to an absolute divorce. Most of the courts in this overwhelming majority of jurisdictions have explained the purpose of this legislation on the basis that it would be contrary to public policy and against justice and equity to permit the guilty husband whose wilful misconduct had brought about the dissolution of the marriage to cast off the duty of support arising out of the marital status.[57]

[51] Generally ". . . a judgment by consent may be entered at the time specified in the stipulation or agreement. . . ." 49 C. J. S., *Judgments* § 176 at 313 (1947); Osborn et. al. v. Rogers, 112 N. Y. 573, 20 N. E. 365 (1889).

[52] "Second: 'Can alimony against the husband be awarded when there is no allegation, evidence or finding that he was the party at fault?' In an adversary proceeding . . . 'No,' but where, as here, the parties acted in agreement and the judgment was entered by consent, the answer is 'yes.' . . ." "Fourth: 'Can the consent judgment in this case be enforced against plaintiff by attachment for contempt?' Yes, it may be." Edmundson v. Edmundson, 222 N. C. 181, 186, 187, 22 S. E. 2d 576, 580, 581 (1942).

[53] ALA. CODE tit. 34 § 31 (1940); ARIZ. CODE ANN. § 27-810 (1939); ARK. STAT. ANN. § 34-1211 (Supp. 1951); CAL. CIV. CODE § 139 (1949); COLO. STAT. ANN. c. 56, § 8 (1935); CONN. GEN. STAT. § 7335 (1949); DEL. REV. CODE c. 86, §§ 3511, 3512 (1935), Brown v. Brown, 3 Terry 157, 29 A. 2d 149 (Del. 1942); FLA. STAT. ANN. § 65.08 (Supp. 1952); GA. CODE ANN. § 30-209 (1952); IDAHO CODE ANN. § 32.706 (1948); ILL. ANN. STAT. c. 40, § 19 (Supp. 1952); IND. ANN. STAT. § 3-1217 (Burns 1933); IOWA CODE ANN. c. 598, § 14 (1950); KAN. GEN. STAT. § 60-1511 (1949); KY. REV. STAT. § 403.060 (1948); LA. REV. STAT. ANN. § 9:302 (1950), Russo v. Russo, 210 La. 853, 28 So. 2d 455 (1947); ME. REV. STAT. c. 153, § 62 (1944); MD. ANN. CODE GEN. LAWS art. 16, § 15 (1951); MASS. ANN. LAWS c. 208, § 34 (1933); MICH. STAT. ANN. § 25.103 (Supp. 1951); MINN. STAT. ANN. § 518.22 (West 1947); MISS. CODE ANN. § 2743 (1942); MO. ANN. STAT. §452.070 (Vernon 1952); MONT. REV. CODES ANN. § 21-139 (1947); NEB. REV. STAT. § 42-318 (Supp. 1951); NEV. COMP. LAWS § 9463 (Supp. 1949); N. H. REV. LAWS c. 339 § 16 (1942); N. J. STAT. ANN. § 2:50-37 (Supp. 1951); N. M. STAT. ANN. § 25-706 (Supp. 1951); N. Y. CIV. PRAC. ACT. § 1155 (Clevinger 1951); N. D. REV. CODE § 14-0524 (1943); OHIO GEN. CODE ANN. §8003.17 (Supp. 1952); OKLA. STAT. ANN. tit. 12, § 1278 (1937); ORE. COMP. LAWS ANN. § 9-914 (1940); R. I. GEN. LAWS c. 416, § 5 (1938); S. C. CODE §20-113 (1952); S. D. CODE § 14.0726 (1939); TENN. CODE ANN. § 8446 (Williams 1934); TEX. REV. CIV. STAT. ANN. art. 4638 (1925), Keton v. Clark, 67 S. W. 2d 437 (Tex. 1933); UTAH CODE ANN. § 30-3-5 (1953); VT. REV. STAT. § 3244 (1947); VA. CODE § 20-107 (1950); WASH. REV. CODE § 26.08.110 (1951); W. VA. CODE ANN. § 4715 (1949); WIS. STAT. § 247.26 (1951); WYO. COMP. STAT. ANN. § 3-5916 (1945).

[54] D. C. CODE ANN. § 16-411 (1951).

[55] HALS. STAT. ENG. Vol. II, c. 190 (2d ed. 1949); Bennett v. Bennett, 2 K. B. 572 (1951).

[56] Hooks v. Hooks, 123 Pa. Super 507, 187 Atl. 245 (1936). (Except alimony provision for the insane husband or wife).

[57] Alexander v. Alexander, 13 App. D. C. 334 (1898); Bialy v. Bialy, 167

Thus in the light of historical background and legislation elsewhere, it seems that the North Carolina legislation on the matter is inadequate and stands almost alone. Our courts cannot deal fully with the problems of marital relations until the law permits the adjudication of both the economic and personal relations of the parties; for neither the wife nor society is served when she seeks her legal right to divorce at the expense of being left destitute.[58]

Furthermore, there obviously is no legislative policy against allowing alimony to continue after absolute divorce; for G. S. 50-11 does preserve to the wife alimony acquired previous to the absolute divorce decree. But this law compels her to pursue roundabout procedure, and also results in technical pitfalls such as the one involved in the *Feldman* case. It may also induce her to settle her economic future by consent or contract without the impartial supervision of the court.

Therefore, as the court has intimated that the solution to this complexity lies within the ambit of legislation rather than judicial decision,[59] it is submitted that our statute should be revised so as to provide the courts with the discretionary power[60] to award alimony *incident* to absolute divorce.

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Mich. 559, 133 N. W. 496 (1911); Swanson v. Swanson 223 Minn. 354, 46 N. W. 2d 878 (1951); Parmly v. Parmly, 125 N. J. Eq. 545, 5 A. 2d 789 (1939) cited in 27 C. J. S., *Divorce* § 229 (1941) and cases there cited; Hill v. Hill, 197 Okla. 697, 174 P. 2d 232 (1946); Warren v. Warren, 36 R. I. 167, 89 Atl. 651 (1914); Brown v. Brown, 156 Tenn. 619, 4 S. W. 2d 345 (1928); Stearns v. Stearns, 66 Vt. 187, 28 Atl. 875 (1894).

[58] Darsie v. Darsie, 118 P. 2d 898, 900 (Cal. 1941) ("In its sovereign capacity the state is interested not only in maintaining the marriage unless good cause for its dissolution exists, but that there shall be a proper division of the community property of the parties and provision for reasonable future support of the spouse not at fault, so that the burden therefor shall rest on the husband, where it belongs, and not on the state.").

[59] "Whether further remedies are to be provided so that a man may be required to support his life after the marriage has been dissolved is for the General Assembly to decide." Feldman v. Feldman, 236 N. C. 731, 734, 73 S. E. 2d 865, 868 (1952). See also Deaton v. Deaton, 237 N. C. 487, 489, 490, — S. E. 2d — (1953), where the court in applying G. S. 50-11 ruled that an absolute divorce obtained by *either* party on two years' separation did not destroy an alimony decree rendered prior to the commencement of the divorce proceeding and said: "Whether a statute produces a just or an unjust result is a matter for legislators and not for judges. We are nevertheless constrained to observe that justice does not necessarily require that a faithless husband shall be relieved of all responsibility for the support of an innocent wife who has spent her youth in his service merely because the wife sees fit to put an end in law to a marriage long since ended in fact by his broken vows."

[60] See 27 C. J. S., *Divorce* § 232 (1941) and cases there cited; See also Bialy v. Bialy, 167 Mich. 559, 566, 133 N. W. 496, 499 (1911), where in discussing the discretion to be exercised, the court stated, "The Court should take into consideration the past relations and conduct of both parties, the health and age of each, whether or not either is responsible for the support of others, the amount and source of the husband's property, their station in life and manner of living, and especially, in view of all the testimony in the case, what sum will leave the financial condition of the wife during her life not inferior to what it would be if the husband's conduct had been correct and the marriage undissolved."