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Alimony: Power of Court to Award Alimony Subsequent to Divorce

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Comment

ALIMONY: POWER OF COURT TO AWARD ALIMONY SUBSEQUENT TO DIVORCE

The granting of alimony subsequent to a divorce decree is generally refused on one or both of two grounds: (1) that the marital status on which the power to award alimony depends no longer exists[1] and (2) the prior divorce judgment is *res judicata* in respect to any question of granting alimony.[2]

In *Calhoun v. Calhoun*[3] the parties, husband and wife, lived during their marriage in California. Three years after separation Mr.

[1] Howell v. Howell (1894) 104 Cal. 45, 37 Pac. 770; Hall v. Hall (1914) 141 Ga. 361, 80 S.E. 992; Watson v. Watson (1929) 168 Ga. 530, 148 S.E. 386; Spain v. Spain (1916) 177 Iowa 249, 158 N.W. 529; McCoy v. McCoy (1921) 191 Iowa 973, 183 N.W. 377, Hughes v. Hughes (1925) 211 Ky. 799, 278 S.W. 121; Moross v. Moross (1901) 129 Mich. 27, 87 N.W. 1035; Johnson v. Johnson (1883) 12 Daly (N.Y.) 232; McFarlane v. McFarlane (1903) 43 Ore. 477, 73 Pac. 203.

[2] McCoy v. McCoy, *supra* note 1; Alderson v. Alderson's Guardian (1902) 113 Ky. 830, 69 S.W. 700; Hughes v. Hughes, *supra* note 1; Kamp v. Kamp (1874) 59 N.Y. 212; Erkenbrach v. Erkenbrach (1884) 96 N.Y. 456; Weidman v. Weidman (1897) 57 Ohio St. 101, 48 N.E. 506; Cameron v. Cameron (1913) 31 S.D. 335, 140 N.W. 700.

[3] (July 19, 1945) 70 A.C.A. 304, *hearing den.* Sept. 13, 1945, Carter J., and Traynor, J., voting for a hearing.

Calhoun brought an action for divorce in a California court alleging willful desertion by Mrs. Calhoun. The wife successfully contested the divorce, and the trial court found that it was the husband who had deserted without cause and against his wife's consent. A year and a half later Mr. Calhoun went to Nevada, established his home there and obtained a divorce under a statute permitting a decree of divorce where the husband and wife have lived separately and apart for three consecutive years without cohabitation. Mrs. Calhoun was personally served in California but did not appear in the Nevada action. The Nevada court gave judgment for the plaintiff. The wife without challenging the validity of the Nevada divorce decree then sought alimony in a California court. The court denied alimony on the ground that the husband and wife relationship no longer existed, the court saying "the power to award support grows out of the marital relation,"[4] thus making clear that alimony to be payable after dissolution of the husband and wife relationship must be granted at the time of such dissolution or not at all.

Two problems are implicit in the court's opinion: (1) whether the marital status must then be an actual existing one to give the court jurisdiction to decree alimony; also (2) conceding that this is not the case, whether a previous divorce judgment in which the question of alimony was not presented to the court makes the issue of alimony *res judicata.*

In order to answer these questions on both principle and precedent it might be well first to examine the nature of alimony. Just what is alimony?

I. HISTORY AND NATURE OF ALIMONY

Alimony, as defined in the strict sense of the word, is that which under court order is paid by the husband to his wife for her support, that is, payments made while the marriage is still in existence although the parties are living in a state of separation.[5] The term alimony, however, has come to be used loosely to cover also allowances which the court orders to be made for the support of one who, as a result of divorce, looses the status of spouse. In this paper "alimony" has been used broadly, thus including payments made to a former spouse, the more exact alimony being termed "alimony proper."[6]

The practice of granting alimony to be payable after complete destruction of the marital status is relatively new in the history of

[4] *Ibid.* at 308.

[5] *Ex parte* Spencer (1890) 83 Cal. 460, 23 Pac. 395.

[6] It should be noted that California Civil Code section 139 uses the term "allowance" rather than "alimony", thereby avoiding this distinction between the strict and loose meanings of "alimony".

marital relations. In England, prior to 1857, when a right to divorce by judicial decree was first established, the ecclesiastical courts had exercised jurisdiction over the marriage relationship and consequently over alimony also. Divorce, so called, under canon law was merely a judicial separation which did not dissolve the marital status of the parties.[7] Since upon marriage the husband acquired a legal duty to support his wife and since the marriage was not dissolved and the separation was due to his fault, his duty still remained and served as the basis of an alimony award.[8] Then with the general statutory provision for real divorce, as distinguished from legal separation, a fundamental innovation was made. Alimony was granted even though the marriage was to be totally dissolved, that is, alimony was granted which was to be paid after the relationship giving rise to the duty to support was terminated.[9]

Bishop, in his book on Marriage and Divorce in commenting upon the 1857 English divorce statute, justifies the granting of alimony on divorce by saying, "If a man before the divorce act, treated his wife with cruelty and was also guilty of adultery, she could only obtain a divorce *a mensa et thoro;* . . . . Since the divorce act, the same conduct on the part of the husband entitles the wife to a dissolution of her marriage, but it is hard to say that she was intended by the legislature to purchase that remedy by a surrender to any extent of the provision she would otherwise have been entitled. The needs of the wife and the wrong of the husband are the same in both cases . . . . Obliged in both cases to withdraw from his home, she is, without any fault of her own, deprived of her fair and reasonable share of such necessaries and comforts as lay at his command. Why should not the husband's purse be called upon to meet both cases alike?"[11]

Meanwhile, in America, the right to complete divorce by judicial decree, i.e., divorce *a vinculo* had been granted by statute in many states. In fact such right had existed in the Colonial period. Since there were no ecclesiastical courts in the United States, the power to grant divorces, whether *a vinculo* or *a mensa et thoro* (i.e. legal sep-

[7] However, the dissolution of a valid marriage was possible prior to this by a private Act of Parliament—often called "the privilege of the aristocracy". Such divorces were uncommon.

[8] Vernier and Hurlbut, *The Historical Background of Alimony Law and Its Present Statutory Structure* (1939) 6 LAW AND CONTEMPORARY PROB. 197, 198.

Alimony moreover was granted the innocent wife as a matter of social necessity, for at this time the wife held no separate property nor was she in much of a position to support herself by any economic endeavor.

[9] *Ibid.* at 211. See also Harwood, *Alimony After a Decree of Divorce Rendered on Constructive Service* (1936) 24 KY. L. J. 241; BISHOP, MARRIAGE AND DIVORCE (1873) §477a; MADDEN, PERSONS AND DOMESTIC RELATIONS (1931) §§ 97, 98.

[10] MADDEN, *ibid.* at §322.

[11] BISHOP, *op. cit., supra* note 9, § 477a.

aration), fell quite naturally to the courts of equity and the statutes providing for divorce usually so provided in explicit terms. These statutes, universally, also provided for the granting of alimony. Since, as stated before, the power to dissolve completely the marital status, i.e. grant a divorce *a vinculo matrimonii,* was established in this country much earlier than in England, the American courts have had to devise their own procedure to a great extent in providing for such divorce and for alimony to be paid thereafter.[12] It may be added that both the legislatures in drawing up the rules governing the granting of divorces and the courts in exercising their statutory power have been largely governed by the rules of the English ecclesiastical courts.

California follows the theory that the Civil Code provisions do not provide the only authority for the courts to award alimony proper (i.e., support for a separated wife), but that a court has the inherent power to provide such alimony whenever the right to support is established and the general powers of a court of equity are essential to safeguard this right.[13] It is the theory of our supreme court that our courts of equity will furnish procedure to implement any right for which no adequate enforcement process is provided. Thus, in the absence of specific procedural direction, it was held that the court would grant an equitable order against a recalcitrant father to enforce his obligation to support his adult blind son.[14] Similarly, since a wife who has adequate separate estate is specifically held responsible for the support of her incapacitated needy husband,[15] our court will draw on its general equitable jurisdiction to grant him a support order against his wife.[16]

II. POWER TO GRANT ALIMONY AFTER A PRIOR DIVORCE DECREE [ON PRINCIPLE]

However, since the tradition of the common law did not include absolute[17] divorce by judicial decree, the power of courts to decree alimony to be paid when the husband-wife relationship no longer existed, had to be found in express authority conferred by statute.[18]

The definitions of alimony which are used by the various American courts fall into two classes,[19] but whichever one is followed, sound

[12] MADDEN, *op. cit., supra* note 9, §§319-322.

[13] Galland v. Galland (1869) 38 Cal. 265.

[14] Paxton v. Paxton (1907) 150 Cal. 667, 89 Pac. 1083.

[15] CAL. CIV. CODE §176.

[16] Livingston v. Superior Court (1897) 117 Cal. 633, 49 Pac. 836.

[17] It is still in doubt whether California has *only* absolute divorce and not also limited divorce.

[18] MADDEN, *op. cit. supra* note 9, §322.

[19] (1) "Alimony is a settlement of the property rights of the parties and a distribution of the assets of the quasi-partnership hitherto existing" and (2) "alimony is a right of the same character as the right of support lost by the dissolution of the marriage".

analysis seems to show that alimony, to be payable after divorce, is rooted in the facts that (1) the two parties had been in the marital relationship and thus brought into existence the support obligation, and (2) the circumstances which brought about dissolution of the marital status called for the continuation of the right of support flowing out of that relationship. Thus, such statements as "the power to award support grows out of the marital relation"[20] and "to justify alimony, marriage must be admitted or proven"[21] mean no more than that the existence at some time of a husband-wife relationship is the foundation of the source of the alimony right.

Section 139 of the Civil Code reads: "Where a divorce is granted for an offense of the husband, the court may compel him to provide for the maintenance of the children of the marriage, and to make such suitable allowance to the wife for her support, during her life or for a shorter period as the court may deem just, having regard to the circumstances of the parties respectively; and the court may from time to time modify its orders in these respects."

The problem, therefore, is a question of statutory construction. What is the interpretation to be given to the first clause? Does "when" mean "at the time when," or does it mean that in situations where the husband has caused the wife to divorce him a court may provide alimony for her? It should be noted that in this section, the legislature has used phraseology which can be given either meaning, while in other sections on divorce which deal with property division and govern temporary or permanent alimony during separation, there is no doubt as to the meaning intended by the legislature. Thus section 136 says: "though judgment of divorce is denied, the court may, in *an action for divorce . . .*" (Italics added). Section 137 reads: *"When an action for divorce is pending, the court may . . ."* (Italics added). Section 147 declares: "The court, *in rendering a decree of divorce . . .*" (Italics added). Prior to the code, the California statute on alimony for a divorced wife, left no question as to the legislature's intention. It provided that "in any action for a divorce the Court may, during the pendency of the action, or at the final hearing, *or afterwards,* (italics added) make such order for the support of the wife, and maintenance and education of the children of the marriage, as may be just, and may at any time thereafter annul, vary or modify such order, as the interest and welfare of the children require."[22]

See also (1916) 16 COL. L. REV. 217. KEEZER, MARRIAGE AND DIVORCE (1923, 2d ed.) §660. 2 SCHOULER, MARRIAGE, DIVORCE, SEPARATION AND DOMESTIC RELATIONS (1921, 6th ed.) §1769; 14 CYC. 742, 743.

[20] Calhoun v. Calhoun, *supra* note 3 at 308.

[21] Hite v. Hite (1899) 124 Cal. 389, 57 Pac. 227.

[22] Cal. Stats. (1851) ch. 20, §7.

III. STATUTES OF OTHER STATES UNDER WHICH A LATER SUIT FOR ALIMONY WAS PERMITTED

States such as Massachusetts and New Jersey have avoided the problem found in the *Calhoun* case by express statutory authorization for a subsequent award of alimony.[23] However, in a substantial group of states which have no express statutory provision, the courts under specified circumstances have permitted an independent suit for alimony subsequent to the divorce proceedings. The pertinent statutes in these states are quite similar to the present California code provision. These cases include two kinds of factual situations: the first where the divorce in question had been obtained by the husband while his wife was out of the jurisdiction; and the second, when the divorce had been obtained by the wife from a deserting husband who had to be served constructively. The decisions of six states illustrate cases in which after the husband had obtained a divorce from an absent wife, the latter was permitted to claim alimony in a later suit. In Alabama, under a statute reading that "Upon granting a divorce, [chancellor] must decree . . . the wife an allowance . . .",[24] the court permitted a suit for alimony to be brought after the divorce had been granted.[25] In Colorado, under a statute reading that "At all times after filing a complaint in an action for divorce, the court in term time . . . . and when a divorce has been granted the court may grant alimony to the wife . . .;"[26] alimony was subsequently allowed.[27] The provision of Minnesota by which alimony was subsequently allowed,[28] declared that "Upon a divorce . . . the court may further order and decree to her such part of the personal and real estate of the husband . . . as it deems just and reasonable . . . ."[29] A comparable construction[30] was given a Mississippi statute which provided that "When a divorce shall be decreed . . ., the court may, . . . make all orders . . . touching the maintenance and alimony of the wife."[31] Ohio, under a statute exactly like California's, providing "That where a divorce is granted . . . [the wife] shall be allowed such alimony . . . as the court shall think reasonable,"[32] alimony was granted the wife in a suit brought

[23] MASS. GEN. STAT. (1921) c. 208, §34; Laws of New Jersey (1915) c. 209, §1 [1924 Supp. §62-35], N. J. REV. STAT. (1937) 2:50-36.

[24] CODE OF ALA. (1852) §1971.

[25] Turner v. Turner (1870) 44 Ala. 437.

[26] Colo. Sess. Laws (1917) c. 65, §7.

[27] Davis v. Davis (1921) 70 Colo. 37, 197 Pac. 241.

[28] Thurston v. Thurston (1894) 58 Minn. 279, 59 N.W. 1017; Searles v. Searles (1918) 140 Minn. 385, 168 N.W. 133.

[29] GEN. STAT. OF MINN. (1913) §7128.

[30] Crawford v. Crawford (1930) 158 Miss. 382, 130 So. 688.

[31] MISS. CODE ANN. (1942) §2743.

[32] Ohio Laws, Act of March 11, 1853; OHIO R.S. (Curwen, 1853) ch. 1252. §7 [OHIO ANN. CODE (Throckmorton, 1940) §11990].

after a prior divorce decree.[33] And similar action was taken by the Tennessee court[34] under the provision that "Whether the marriage be dissolved absolutely or perpetual or temporary separation be decreed, the court may make for the suitable maintenance of the complainant and her children . . . ."[35]

The decisions of four states (two of which are already listed in the group just discussed) represent the second factual situation i.e., where the wife obtained the prior divorce from an absent guilty husband and was subsequently permitted to bring an action for alimony. Under the authority of a previously mentioned statute declaring that "When a divorce shall be decreed . . . the court shall and may make . . . such order . . . touching the maintenance and alimony of the wife,"[36] the Mississippi court permitted the wife who had gotten a divorce on constructive summons to bring a later suit for alimony[37] just as it granted this privilege to a wife whose husband had divorced her during her absence. In Ohio, a subsequent suit was permitted[38] under a statute also previously mentioned in the first group of cases, which declared "That where a divorce is granted . . . [the wife] shall be allowed such alimony . . . as the court shall think reasonable."[39] In Utah, the authority granted was that "In all such actions the court and judge thereof shall have all the power relative to the payment of alimony . . ."[40] And finally, under a statute of Washington providing that "In granting a divorce, the court shall . . . make such disposition of the property of the parties as shall appear just and equitable . . .,[41] a subsequent suit for alimony was allowed.[42]

Without question, the courts represented by the decisions just discussed, believed that it was sound policy to permit a divorced woman, who had had no opportunity at the time of the divorce to have her plea for alimony heard to bring a suit for such alimony at a later date.[43] This seems a logical attitude. If by leaving the state, the husband can require the wife either to follow him and litigate the question wherever he wishes or else to sue him at home and lose her chance to get alimony for lack of jurisdiction on the part of the court to issue a personal order against him, a socially undesirable situation exists.

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[33] Cox v. Cox (1869) 19 Ohio St. 502.

[34] Toncray v. Toncray (1910) 123 Tenn. 476, 131 S.W. 977.

[35] CODE OF TENN. (Thompson's ed. of 1917) §4221 [Tenn. Stats. 1835, p. 122].

[36] Laws of Miss. (1840) 331 §17.

[37] Shotwell v. Shotwell (1843) Sm. and M. Ch. R. 51.

[38] Woods v. Waddle (1886) 44 Ohio St. 449, N.E. 297.

[39] *Supra* note 32.

[40] UTAH CODE ANN. (1943) 40-3-1. Hutton v. Doge (1921) 58 Utah 228, 198 Pac. 165.

[41] Wash. Laws 1860, 543, §8, WASH. REV. STAT. (Remm., 1932) §898.

[42] Adams v. Abbot (1899, Wash.) 56 Pac. 931.

Our courts have declared over and over again that the state has an interest in the matter of alimony, since it is a provision for a party's support who might otherwise become dependent upon state aid.[44] By restricting the wife's right to request alimony to the time when her "marital status" is being litigated, the court prevents itself from even considering the merits of the wife's claim to support in all cases where a divorce is granted without personal service or appearance of the defendant—be it husband or wife.[45] Since this restriction is not required by the language of the code, it would seem contrary to the public interest so to construe it.

IV. CALIFORNIA CASES

Turning to the California cases, it must be conceded at once that there is no doubt as to the *attitude* of the courts as evidenced by general statements in various cases. It has been repeatedly declared that the marital status must be in existence at the time of awarding alimony, and that alimony must be granted at the time of the interlocutory or not at all.[46] Examination of the cases indicates that almost all such statements are either purely *obiter dicta* or else are made in cases where there was personal service of the defendant husband in the divorce suit and the wife should be barred from later suit on *res judicata* principles.

A. RES JUDICATA

The doctrine of *res judicata* rests upon two grounds: (1) public policy and necessity that there should be an end to the litigation and (2) the individual party to the suit should not be vexed twice for the same cause.[47] The theory of this doctrine is that the party to be affected, or some other with whom he is in privity has litigated or had the opportunity to litigate the same matter in a former action in a court of competent jurisdiction.[48] Clearly, when the husband obtains a divorce suit in the absence of his wife, resting upon constructive summons, it cannot be said that the matter of her right to alimony should be foreclosed on *res judicata* principles. It would seem equally clear

[43] Either because she was not in the divorcing state, at the time of the suit, or because her husband was out of the jurisdiction and therefore protected from the possibility of an alimony order which is a personal order requiring personal service.

[44] Miller v. Superior Court (1937) 9 Cal. (2d) 733, 72 P. (2d) 868.

[45] The husband leaves the state and sues the wife for divorce in a foreign court or the wife sues the deserting husband.

[46] McClure v. McClure (1935) 4 Cal. (2d) 356, 49 P. (2d) 584 and cases cited therein.

[47] 34 C. J. 743.

[48] 2 FREEMAN, JUDGMENTS (1925, 5th ed.) 1463; Postal Tel. Cable v. Newport (1918) 247 U.S. 464.

that the deserted wife who obtains her divorce on a constructive service basis, without some fiction of "waiver"[49] cannot be held to have litigated an issue over which the court has no jurisdiction.

B. CASES INVOLVING CONSTRUCTIVE SERVICE

There are three California cases in which the question of the time at which the alimony must be granted is involved, which clearly cannot rest upon the *res judicata* principles as there was constructive summons in these cases. Examination of these decisions indicates that all three of them can be distinguished from the *Calhoun* case.

The earliest of these, *Howell v. Howell*,[50] the wife obtained a divorce by publication upon an absent husband who did not contest the suit. Fourteen months after the divorce decree which had made no statement as to alimony, (and indeed could not have done so as the husband had not been personally served) the wife attempted to *reopen* the divorce suit by filing a petition in the divorce suit requesting that the court modify the divorce to provide alimony. The court held for the defendant husband, saying that "A judgment in a divorce suit settling the property rights of the parties, after the time for appealing therefrom has expired, is as final as any other kind of a judgment, except so far as the power to modify it is given by statutory provision . . . . In the case at bar the judgment became final without any award of alimony; and, of course, the court could not afterwards 'modify' that which never existed."[51] In actual decision, the *Howell* case dealt with only the *procedural* aspect of the problem and held nothing more than that the wife could not reopen the divorce suit and modify the decree by the addition of an alimony order. The question of whether a separate action might be brought was not at issue. It did, to be sure, by strong dictum, in broad language, state that "after the judgment granting the divorce the plaintiff was no longer the wife of the defendant; and he owed her no longer any marital duty. From that time she could enforce against him no obligation not imposed by the court at the time of the judgment."[52] But the *Howell* case, as to the decision proper, is clearly distinguishable from the *Calhoun* case in which the wife directly requested alimony in an indepedent suit.

In *London G. & A. Co. v. Industrial Accident Com.*,[53] a wife who had obtained an interlocutory decree of divorce, based upon constructive summons, was seeking to have the court award to her a share of her husband's workmen's compensation insurance after his death. The

[49] *Op. cit. supra* note 8 at 247.
[50] *Supra* note 1.
[51] *Ibid.* at 47, 48; 37 Pac. at 771.
[52] *Ibid.* at 47, 37 Pac. at 771.
[53] (1919) 181 Cal. 460, 184 Pac. 864.

court held against the wife saying that the husband was not responsible for her support since there had been no alimony provision in the interlocutory decree.

This case may be distinguished from the *Calhoun* case on one, or both, of two grounds. First, as the court held, the wife herself had brought the divorce suit, and therefore, she could be charged with having thereby waived her right of support.[54] In the *Calhoun* case there certainly can be no grounds for the implication of a waiver since the wife was not the party seeking the divorce nor did she ever even submit to the divorcing court's jurisdiction. Second, the wife by her action in this *Industrial Accident* case, was actually seeking to have the court declare that she had an absolute right to alimony, for only if she had the right to support could the Accident Board have awarded her compensation for her husband's death. The courts of our state, however, are unanimously in agreement that there is no absolute right to alimony, that the award of support is dependent upon the wife's innocence, her need, the husband's ability, etc., and the Commission is not a court empowered to decide such discretionary problems. Whether the wife is to receive alimony, that is, whether the husband's obligation to support her is to continue, is a matter to be considered by the proper court sitting in equity and is not within the jurisdiction conferred upon this administrative body.

The wife's suit in this *Industrial Accident* case amounts to a collateral attack upon the question, and while embracing a strong dictum[55] that only in the divorce decree may alimony be ordered (or reserved), it does not amount to a holding that the wife could not adjudicate her claim to alimony in the proper court in post-divorce proceedings.

In the third case, *Cardinale v. Cardinale*,[56] which was cited by the *Calhoun* case as controlling the latter case's decision, the husband sued for a divorce in a Nevada court upon *two* grounds: (1) extreme cruelty, and (2) separation for more than five consecutive years. He took this action while a permanent maintenance order against him, which had been issued by a California court, was still

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[54] "This was", to quote the court, "in effect, a waiver by her, for the purposes of the action, or her right to support from him, at least until such time as she should apply therein for some order to enforce such obligation." *Ibid.* at 465, 184 Pac. at 866.

[55] ". . . the interlocutory judgment, although not final, was conclusive between the parties for the purposes of that action during the period elapsing before the final judgment should be entered, unless by some proceeding or agreement it became in some manner modified." *Ibid.* at 466, 184 Pac. at 867.

[56] (1937) 8 Cal. (2d) 762, 68 P. (2d) 351.

effective. On being cited for contempt, the husband set up the Nevada divorce decree in bar.[57] The California court found his defense good.

The *Cardinale* case is clearly distinguishable from the *Calhoun* case. In the *Cardinale* case as our court said, the wife made no showing that she continued to be an innocent wife and in view of her "failure to offer any proof of her continuous status as innocent party,"[58] it held that her husband had been released from obligations to her. But in the *Calhoun* case, divorce was predicated on mere separation for three years and there was therefore no determination of either spouse's guilt.[59] Therefore in contrast to the *Cardinale* case, the wife in the *Calhoun* case could not be deemed precluded from alimony on the ground that in the divorce suit it had been established that it was she who was the guilty party.

In summary then, it is maintainable that we have had no square decision prior to the *Calhoun* case that necessarily rests upon the principle that alimony can *never* be awarded subsequent to a divorce decree.[60] We do have many dicta to this effect. Since, however, the statements are merely dicta and since the supreme court did not actually hear the *Calhoun* case, the question would seem to be still open. Would it not then be sound practice to permit the awarding of alimony after a divorce decree in such cases as the *Calhoun* case, i.e., when the husband leaves his wife in California and gets the divorce elsewhere? Should not an independent later suit be allowed also to the wife who brings an action for divorce from a deserting husband who can not be ordered to pay alimony at that time, since he is beyond the

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[57] Sustaining its conclusion on the grounds that (1) his Nevada residence was proper, (2) it was quite possible that his wife, even in the face of the maintenance order could have been guilty of cruelty and (3) the decree of the Nevada court therefore terminated his obligation of support.

[58] *Supra* note 56, 768, 769; 68 P. (2d) 354.

[59] *Supra* note 3, 307.

[60] Some cases of other jurisdictions which are often cited as authority for the proposition that alimony cannot be given after dissolution of the marital status: Downey v. Downey (1893) 98 Ala. 373, 13 So. 412 (Husband obtained the divorce by constructive service). Joyner v. Joyner (1908) 131 Ga. 217, 62 S.E. 182 (Husband obtained the divorce from the wife by constructive service). Hall v. Hall (1914) 141 Ga. 361, 80 S.E. 992 (Wife obtained the divorce from the husband by constructive service). Watson v. Watson (1929) 168 Ga. 530, 148 S.E. 386. Shaw v. Shaw (1894) 92 Iowa 722, 61 N.W. 368. Spain v. Spain (1916) 177 Iowa 249, 158 N.W. 529 (Held that the divorce was a completed adjudication of the question of alimony. But in this case the divorce court had had it within its jurisdiction to award alimony). Hughes v. Hughes (1925) 211 Ky. 799, 278 S.W. 121 (Husband obtained the divorce from the wife by constructive service). McFarlane v. McFarlane (1903) 43 Ore. 477, 73 Pac. 203 (Wife obtained the divorce by constructive service of the husband. Alimony denied in a later suit on the ground that the wife had waived her rigbt thereto by bringing suit on an absent husband). Darby v. Darby (1925) 152 Tenn. 287, 277 S.W. 894 (Wife obtained divorce and the court implied a waiver by the wife thereby to the alimony).