NOTES

ALIMONY AGREEMENTS AS LIMITATIONS ON THE COURT'S POWER TO MODIFY DECREES

The divorced husband in reduced financial circumstances is a frequent applicant in court for the reduction of his alimony payments. His faultless wife is usually seeking an increase in the allowance. Both are often met with the contention that the amount fixed by the decree was the result of their own agreement, and that a modification by the court would violate the contract solemnly entered into and deprive the parties of their rights in a summary proceeding. Thus is raised the problem with which this note will deal.

I.

To effectively investigate the problem, the fundamental basis for alimony must be considered. In its origin, alimony was the method by which the spiritual courts of England enforced the duty of maintenance owed by the husband to the wife during such time as they were legally separated,[1] and it was frequently granted by these courts.[2] However such decrees related solely to divorces granted *a mensa et thoro,* which in common parlance is separate maintenance.[3] In such divorces the marital status is only incidentally affected by the legalized separation. The parties continue as husband and wife and their legal unity is not wholly destroyed, but continues to exist.[4] The power to modify the decree in respect to alimony to meet changed or changing conditions likewise continues to endure.[5] In modern jurisprudence

1. Anderson v. Norvell-Shapleigh Hardware Co., 134 Mo. App. 188, 113 S. W. 733 (1908); Rogers v. Vines, 28 N. C. 293 (1846); Manby v. Scott, 2 Sm. Lead Cas. 502 (1852); Herrick v. Herrick, 219 Ill. 146, 149 N. E. 820 (1925); 2 Vernier, *American Family Laws* (1932) sec. 104, p. 259; sec. 106, p. 275. Some cases base the duty on contract: Nelson v. Nelson, 282 Mo. 412, 221 S. W. 1066 (1920); Schooley v. Schooley, 184 Iowa 835, 169 N. W. 56 (1918).

2. DeBlaquiere v. DeBlaquiere, 3 Hagg. Eccl. Rep. 322, 162 Eng. Rep. 1173 (1830); Sammis v. Medbury, 14 R. I. 214 (1883). See Alexander v. Alexander, 13 D. C. App. 334 (1898).

3. Ruge v. Ruge, 97 Wash. 51, 165 Pac. 1063, L. R. A. 1917F 721 (1917). See also cases cited infra, note 11. Missouri has a form of separate maintenance which is not a limited divorce. R. S. Mo. 1929, sec. 2989.

4. Allen v. Allen, 100 Mass. 373 (1868).

5. Francis v. Francis, 192 Mo. App. 710, 179 S. W. 975 (1915); Ruge v. Ruge, 97 Wash. 51, 165 Pac. 1063 (1917); Sammis v. Medbury, 14 R. I. 214 (1883); Gloth v. Gloth, 154 Va. 511, 153 S. E. 879 (1932); Contra, Erken-

alimony also is that allowance which is made to a woman on a decree of divorce for her support out of the income or estate of her husband,[6] and is incidental to divorces *a vinculo matrimonii*, or absolute divorces, which were never granted by the ecclesiastical court.[7] And while logically the matter of granting a divorce involves the judicial process, historically and fundamentally the power to grant such divorces is purely legislative. Consequently there is no inherent jurisdiction in the common law courts to grant divorces absolutely severing the marital bonds.[8] In other words, under the common law, prior to modern statutes, alimony and marriage could not be separated, and alimony could not be awarded in a decree which absolutely dissolved a marriage.[9]

Recognizing this, every American jurisdiction has a statute allowing alimony to the innocent wife in divorce cases, except South Carolina (which grants no divorces) and Delaware, North Carolina and Texas where other provisions are made.[10] Furthermore since it was the prevailing opinion that the courts could not alter their decrees, in the absence of fraud or mistake, unless the power was reserved therein,[11] some thirty-one American jur-

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bach v. Erkenbach, 96 N. Y. 456 (1884). For a collection of cases on the point see 71 A. L. R. 723.

6. Anderson v. Norvell-Shapleigh Hardware Co., 134 Mo. App. 188, 113 S. W. 733 (1908); In re LeClair, 124 Fed. 654 (D. C. N. D. Iowa, 1920); Sheafe v. Sheafe, 24 N. H. 564 (1852).

7. Sammis v. Medbury, 14 R. I. 214 (1883). Originally the ecclesiastical courts had jurisdiction over matrimonial proceedings. In the United States, in the absence of these courts, it was necessary to enact statutes covering matters of divorce. Gilsey v. Gilsey, 198 Mo. App. 505, 201 S. W. 588 (1918).

8. Ruge v. Ruge, 97 Wash. 51, 165 Pac. 1063, L. R. A. 1917F 721 (1917); Bowman v. Worthington, 24 Ark. 522 (1867).

9. 2 Vernier, *American Family Laws* (1932) sec. 104, p. 259.

10. R. S. Mo. 1929, sec. 1355; Ark. Crawf. & Moses, Dig. 1921, sec. 3508; Ill. Cahill's R. S. 1927, ch. 40, sec. 19, 20; Kans. R. S. 1923, sec. 60; Okla. Comp. Stat. 1921, sec. 508. Statutes in other states are collected in 2 Vernier, *American Family Laws* (1932) p. 268 et seq.

11. Sampson v. Sampson, 16 R. I. 456, 16 Atl. 711 (1889); Mayer v. Mayer, 154 Mich. 386, 117 N. W. 890 (1908); Ruge v. Ruge, 97 Wash. 51, 165 Pac. 1063, L. R. A. 1917F 721 (1917); Madden, *Domestic Relations* (1931) 328. The basis usually given is that the jurisdiction of the court ceased with the severance of the marital tie. Ruge v. Ruge, supra; Mitchell v. Mitchell, 20 Kan. 665 (1878); Contra, Olney v. Watts, 43 Ohio St. 499, 3 N. E. 354 (1885). Other courts have based their refusal to modify on the ground that absolute divorces are statutory creations and therefore legislation providing for alimony in connection therewith should be strictly construed. Noonan v. Noonan, 127 Kans. 287, 273 Pac. 409 (1929). Of course, a decree for alimony like other decrees, is subject to modification for fraud or mistake. Gray v. Gray, 83 Mo. 106 (1884); Senter v. Senter, 70 Cal. 619, 11 Pac. 782 (1886).

isdictions have authorized revision by statute.[12] Thus with the power to award and the power to modify both given by statute, the fundamental problem is whether the court can be ousted of its jurisdiction by a private contract of the parties, made in anticipation of the decree and embodied in it. Until recently, as far as Missouri was concerned, the answer was not in doubt.[13] Indeed in a leading case on the subject,[14] after pointing out that such contractual agreements are merely advisory, the Court said:

> "Whilst an agreement between the parties for alimony and a division of their property will, in the absence of fraud or imposition, generally be adopted by the court, yet the embodying in the decree for divorce such provisions for alimony is just as much the judicial finding and judgment of the courts as the granting of the divorce, and, under our statutes and adjudicated cases, any order which provides for monthly alimony is subject to review, and from time to time on proper motion filed in the original action, the court has full jurisdiction to make such alterations as to the allowance of such alimony and maintenance as the then circumstances and conditions in judgment warrant."

The Court reaffirmed this position[15] as late as 1934 and in so doing expressed the prevailing opinion in the great majority of jurisdictions.[16] In the *Brown* case[17] the decree awarded the de-

12. R. S. Mo. 1929, secs. 1355, 1361; Ark. Crawf. & Moses, Dig. 1921, sec. 3510; Ill. Cahill's R. S. 1927, ch. 40, sec. 19. The statutes in other states are collected in 2 Vernier, *American Family Laws* (1932) p. 277 et seq. The statutes generally provide that the court may award such alimony as shall "from time to time seem just and reasonable." See also in this connection, Epps v. Epps, 218 Ala. 667, 120 So. 150 (1927); Emerson v. Emerson, 120 Md. 584, 87 Atl. 1033 (1913).

13. Hayes v. Hayes 75 S. W. (2d) 614 (Mo. App., 1934); Kinsella v. Kinsella, 60 S. W. (2d) 747 (Mo. App., 1933); Brown v. Brown, 209 Mo. App. 416, 239 S. W. 1093 (1922); Meyers v. Meyers, 91 Mo. App. 151 (1901).

14. Brown v. Brown, 209 Mo. App. 416, 239 S. W. 1093 (1922).

15. Hayes v. Hayes, 75 S. W. (2d) 614 (Mo. App., 1934).

16. Worthington v. Worthington, 224 Ala. 237, 139 So. 334 (1932); Epps v. Epps, 218 Ala. 667, 120 So. 150 (1929); Morgan v. Morgan, 211 Ala. 7, 99 So. 185 (1924); Holmes v. Holmes, 186 Ark. 251, 53 S. W. (2d) 226 (1932); Wilson v. Wilson, 186 Ark. 415, 53 S. W. (2d) 990 (1932); Pryor v. Pryor, 88 Ark. 302, 114 S. W. 700, 129 Am. St. Rep. 102 (1908); Ross v. Ross, 1 Cal. (2d) 381, 35 P. (2d) 316 (1934); Armstrong v. Armstrong, 132 Cal. App. 609, 23 P. (2d) 50 (1933); Canary v. Canary, 89 Colo. 483, 3 P. (2d) 802 (1931); Hobbs v. Hobbs, 72 Colo. 190, 210 Pac. 398 (1922); De La Cour v. De La Cour, 363 Ill. 545, 2 N. E. (2d) 896 (1936); Maginnis v. Maginnis, 323 Ill. 113, 153 N. E. 654 (1926); Herrick v. Herrick, 319 Ill. 146, 149 N. E. 820 (1925); Karr v. Lee Rust, 217 Ill. App. 555 (1921); Langrall v. Langrall, 145 Md. 340, 37 A. L. R. 437 (1924); Wilson v. Caswell, 272 Mass. 297, 172 N. E. 251 (1930); Eddy v. Eddy, 264 Mich. 328,

fendant seventy-five dollars per month while she remained single and unmarried, pursuant to a contract to that effect. In the *Hayes* case,[18] pursuant to an agreement between the parties, the decree awarded the plaintiff, among other things, the sum of three hundred dollars per month until such time as she should die or remarry. Modification of the decree was allowed in both cases. When the question was presented to the Supreme Court of Missouri in a recent case[19] it expressly overruled the *Brown*[20] and *Hayes*[21] cases saying that:

> ". . . the Court could not have made the award which it did make . . . but for the contract between the parties. Therefore, the decree in those cases[22] was an approval of the contractual obligation of the husband and wife, and not an award of alimony, in the sense in which the word "alimony" is used in the statute . . . the Court of Appeals erred in holding that the decree in those cases was subject to modification."

The Court further held that any award which might extend beyond the death of the husband is not an award of "alimony" but necessarily must be the approval of a contractual obligation which can only be modified by consent.[23] The basis of the court's decision was that the marital duty of a husband to support his wife is upon him only during his lifetime. Therefore, the court cannot compel him to make provision for its continuance after his death. As to the wisdom of such a holding it is enough to say that the great majority of jurisdictions let no rights turn on such distinctions.[24] Necessarily, therefore, the problem must be examined further.

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249 N. W. 868 (1933); Randall v. Randall, 181 Minn. 18, 231 N. W. 413 (1930); Connet v. Connet, 81 Neb. 777, 116 N. W. 658 (1908); LeBeau v. LeBeau, 80 N. H. 139, 114 Atl. 28 (1921); Lewis v. Lewis, 53 Nev. 398, 2 P. (2d) 131 (1931); Reynolds v. Reynolds, 53 R. I. 326, 166 Atl. 686 (1933); Blake v. Blake, 75 Wis. 339, 43 N. W. 144 (1889). For a collection of earlier cases and a statement that this is the majority holding see 58 A. L. R. 630.

17. Brown v. Brown, 209 Mo. App. 416, 239 S. W. 1093 (1922).

18. Hayes v. Hayes, 75 S. W. (2d) 614 (Mo. App., 1934).

19. North v. North, 100 S. W. (2d) 582 (Mo., 1936); Comment, 22 WASHINGTON U. LAW QUARTERLY 263 (1937).

20. Supra, note 17.

21. Supra, note 18.

22. Brown v. Brown, supra, note 17; Hayes v. Hayes, supra, note 18.

23. North v. North, supra, note 19.

24. Armstrong v. Armstrong, 132 Cal. App. 609, 23 P. (2d) 50 (1933); Eddy v. Eddy, 264 Mich. 328, 249 N. W. 868 (1933); Marks v. Marks, 265 Mich. 221, 251 N. W. 394 (1933); Randall v. Randall, 181 Minn. 18, 231

Permanent alimony can be awarded only where the wife divorces the husband.[25] Such an award is subject to modification[26] and comes to an end when the husband dies.[27] Likewise postnuptial contracts are valid[28] and cannot be modified or changed without violation of constitutional principles[29] and such contracts survive the death of the husband.[30] These propositions are too well settled to require any further discussion. However the difficulties are apparent when the contract and the court decree are interwoven in the same divorce litigation. In what light will the appellate court view such a situation? Will it look to see whether or not an award of alimony has been made; will it consider whether or not the husband has entered into a legal contractual obligation, or will it simply say that the whole matter is merely advisory? Needless to say the authorities are in conflict.

The Missouri Supreme Court recently passed on the question[31] and in so doing overruled the St. Louis Court of Appeals and followed the Maryland Court of Appeals[32] in holding that

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N. W. 413 (1930); Warren v. Warren, 116 Minn. 458, 133 N. W. 1009 (1912); Reynolds v. Reynolds, 53 R. I. 326, 166 Atl. 686 (1933). See also cases supra, note 16.

25. In the Ecclesiastical Courts, and in this country, a husband is not entitled to alimony, in the absence of statutory provision. Laweing v. Laweing, 21 S. W. (2d) 2 (Mo. App., 1929); Wilde v. Wilde, 177 Minn. 189, 224 N. W. 852 (1929); Bartunek v. Bartunek, 109 Neb. 437, 191 N. W. 671 (1922).

26. Nelson v. Nelson, 282 Mo. 412, 221 S. W. 1066 (1920); Remmers v. Wolf's Estate, 206 Mo. App. 159, 226 S. W. 290 (1920); Hauck v. Hauck, 198 Mo. App. 381, 200 S. W. 679 (1918); Francis v. Francis, 192 Mo. App. 710, 179 S. W. 975 (1915); Meyers v. Meyers, 91 Mo. App. 151 (1901).

27. Ex parte Spencer, 83 Cal. 460, 23 Pac. 395 (1890); Barclay v. Barclay, 184 Ill. 375, 56 N. E. 636, 51 L. R. A. 351 (1900). In the Barclay case it was said: "The liability to pay alimony is not founded upon a contract but is a penalty imposed for failure to perform a duty." A tort action is personal, ending with the death of the offending party. The personal claim of the wife is based on a "matrimonial tort" compelling her to terminate the relation by which she was supported.

28. Crenshaw v. Crenshaw, 276 Mo. 471, 208 S. W. 249 (1918); McBreen v. McBreen, 154 Mo. 323, 55 S. W. 463 (1900); Gilsey v. Gilsey, 195 Mo. App. 407, 193 S. W. 858 (1917); Bowers v. Hutchinson, 67 Ark. 15, 53 S. W. 399 (1899); Walker v. Walker, 76 U. S. 743, 19 L. ed. 814 (1870); Randall v. Randall, 37 Mich. 563 (1877).

29. Phillips v. Phillips, 39 R. I. 92, 97 Atl. 593 (1916); Hartigan v. Hartigan, 142 Minn. 274, 171 N. W. 925 (1919); Rice, Stix & Co. v. Sally, 176 Mo. 107, 75 S. W. 398 (1903); Phy v. Phy, 116 Ore. 36, 236 Pac. 751 (1925).

30. North v. North, 100 S. W. (2d) 582 (Mo., 1936); See Comment, 19 Cal. L. Rev. 532 (1931).

31. North v. North, supra, note 30.

32. Dickey v. Dickey, 154 Md. 675, 141 Atl. 387, 58 A. L. R. 634 (1928).

a decree, made in pursuance of an agreement, for the payment of alimony from month to month, so long as the wife remains single and unmarried, contemplated that payments should be made by the husband's estate after his death if he predeceased his wife, consequently the court had no power to impose such a requirement by virtue of its jurisdiction in divorce cases and the provision, therefore, is not one for alimony, but dependent for its force solely on the agreement of the parties and is not subject to modification by the Court. This result is reached in other jurisdictions on a variety of theories, some of which are: First, that when the court employs the agreement of the parties in the decree it ratifies a prior contract, and on ordinary contract principles the decree cannot be modified without the consent of the parties.[33] This result, while seemingly more consistent with contract theory, results in binding the parties strictly to the terms of a contract which may later prove inequitable, and where such contracts prove to be insufficient and unconscionable they may be modified.[34] Second, that the parties being *sui juris*, and the obligations being in substance contractual, the contract is subject to revision only by consent.[35] It seems, however, that while such stipulations are usually adopted, the court is not bound by them.[36] The rights arise from the decree itself, embodying a decision of judicial questions as to which the agreement is but evidence.[37] Therefore it would follow that the court has the same power to modify a decree embodying the terms of a contract as it has to alter one made without such an agreement.[38] Third, that a judgment by consent, and this is usually the case, cannot be modified in the absence of fraud.[39] This is the rule, however, when the agreement does not require judicial sanction to give it validity. There can be no decree for alimony by agreement without the intervention of the court.[40] And even in the jurisdiction that lays down the rule it is subject to the excep-

33. Dickey v. Dickey, 154 Md. 675, 141 Atl. 387, 58 A. L. R. 634 (1928); Moore v. Crutchfield, 136 Va. 20, 116 S. E. 482 (1923); Connolly v. Connolly, 16 Ohio App. 92 (1922); Henderson v. Henderson, 37 Ore. 141, 60 Pac. 597, 48 L. R. A. 766 (1900); Law v. Law, 64 Ohio St. 369, 60 N. E. 560 (1901).

34. Hamlin v. Hamlin, 230 N. Y. Supp. 151 (1928).

35. See Pryor v. Pryor, 88 Ark. 302, 114 S. W. 700 (1908); Henderson v. Henderson, 37 Ore. 141, 60 Pac. 597, 48 L. R. A. 766 (1900); But cf. Phy v. Phy, 116 Ore. 31, 236 Pac. 751 (1925).

36. Warren v. Warren, 116 Minn. 458, 133 N. W. 1009 (1912).

37. See Wallace v. Wallace, 74 N. H. 256, 67 Atl. 580 (1907).

38. See Note, 26 Harv. L. Rev. 441 (1912).

39. Hargis v. Hargis, 252 Ky. 198, 66 S. W. (2d) 59 (1934).

40. Shoop v. Shoop, 237 N. W. 904 (S. D., 1934).

tions that where the agreement provides for modification,[41] or the court retains control of the action, the court has the power to modify.[42] Fourth, that it prevents the husband from securing a reduction of alimony in addition to the surrender of dower. But since in readjusting alimony the majority view considers the value of the dower the wife would have otherwise received, this difficulty is obviated.[43] Fifth, that the modification would violate the constitutional provision against impairment of the obligations of contracts.[44] This assumes that alimony agreements are a matter of uncontrolled private contract between the parties. Yet it is a matter of legal tradition that the state, as a third party, is interested in the husband's common law duty to support his wife and children. Since this public interest is thought to survive the marital dissolution, alimony is regarded as a statutory substitute for the common law obligation.[45] If this policy argument is sound, it follows that since the decree and not the private agreement obligated the parties, then a subsequent modification of the decree will not impair any contractual obligation between the parties.[46]

The problem has been approached pragmatically in the better reasoned cases and although modification has been permitted, no uniformity of reasoning has been employed. One theory has been that when the Court awards alimony to an innocent wife,[47] it is not bound by the terms of the contract between the parties either as to its amount or its duration. The power to make and modify the award is statutory, and inherent in the court, unhampered by the terms of any agreement between the parties.[48] Another

41. Fisher v. Fisher, 237 Ky. 823, 36 S. W. (2d) 635 (1931).

42. Parsons v. Parsons, 26 Ky. Law. Rep. 256, 80 S. W. 1187 (1904).

43. Walton v. Walton, 57 Neb. 102, 77 N. W. 392 (1898); Wesley v. Wesley, 181 Ky. 135, 204 S. W. 164 (1918); See comment, 28 Ill. L. Rev. 715 (1934).

44. Eddy v. Eddy, 264 Mich. 328, 249 N. W. 868 (1933).

45. 2 Schouler, *Marriage, Divorce, Separation and Domestic Relations* (6th ed. 1921) secs. 1796, 1797.

46. See comment, 32 Mich. L. Rev. 701 (1933).

47. Only seven jurisdictions seem to have gone so far as to allow alimony to a guilty wife. It is submitted that such an allowance should always be possible, for, whatever may be the legal theory, the practical fact is that it is just as easy for a guilty wife to starve or to be a charge upon the state as for an innocent one. The needs of the wife and the ability of the husband to pay should be the chief considerations rather than the so-called fault of either party. See 2 Vernier, *American Family Laws* (1932) sec. 105.

48. Ross v. Ross, 1 Cal. (2d) 381, 35 P. (2d) 316 (1934); Armstrong v. Armstrong, 132 Cal. App. 609, 23 P. (2d) 50 (1933); Johnson v. Johnson, 104 Cal. App. 283, 285 Pac. 902 (1930); Wilson v. Caswell, 272 Mass. 297,

theory has been that such an agreement becomes merged in the decree and thereby loses its contractual nature at least to the extent that the Court has the power to modify when changed circumstances so justify.[49] Other decisions have been based on the propositions that the agreement cannot in the face of the statute hinder the Court in altering its own allowance,[50] or that it is not sufficiently contractual to preclude modification[51] because when the decree is entered the rights of the parties rest upon it and not upon the agreements.[52] And finally a few jurisdictions simply hold that the husband's financial reverses are sufficient to warrant modification.[53] Under this view it seems to be immaterial whether the contract is incorporated in the decree by the consent of the parties or by a determination of the Court,[54] or that the Court does not reserve to itself the power to modify.[55] And this is so even where the decree settles property rights.[56]

II.

What then is the proper answer to the problem? Certainly alimony is an efficient means of fulfilling the husband's obligation to support. But if the decree is to carry out its purpose, public policy demands that it be flexible, and not forever fixed. The husband's obligation is not to pay a stated sum, but only according to his means. This can admit of little doubt since the

172 N. E. 251 (1930). A court is not divested of its power to modify a decree for alimony even though the parties contract that the amount should not be changed or agree to waive the right under the statute to petition for a change. Southworth v. Treadwell, 168 Mass. 511, 47 N. E. 93 (1897); Blake v. Blake, 75 Wis. 339, 43 N. W. 144 (1889); Soule v. Soule, 4 Cal. App. 97, 87 Pac. 205 (1906).

48. Worthington v. Worthington, 224 Ala. 237, 139 So. 334 (1932).

50. Holmes v. Holmes, 186 Ark. 251, 53 S. W. (2d) 226 (1932); Wilson v. Wilson, 186 Ark. 415, 53 S. W. (2d) 990 (1932); Randall v. Randall, 181 Minn. 18, 231 N. W. 413 (1930); Warren v. Warren, 116 Minn. 458, 133 N. W. 1009 (1912); Sessions v. Sessions, 178 Minn. 75, 226 N. W. 211 (1929).

51. Lewis v. Lewis, 53 Nev. 398, 2 P. (2d) 131 (1931); Warren v. Warren, 116 Minn. 458, 133 N. W. 1009 (1912).

52. Herrick v. Herrick, 319 Ill. 146, 149 N. E. 820 (1925).

53. Canary v. Canary, 89 Colo. 483, 3 P. (2d) 802 (1931); Marks v. Marks, 265 Mich. 221, 251 N. W. 394 (1933); Eddy v. Eddy, 264 Mich. 328, 249 N. W. 868 (1933); Reynolds v. Reynolds, 53 R. I. 326, 166 Atl. 686 (1933).

54. Eddy v. Eddy, 264 Mich. 328, 249 N. W. 868 (1933).

55. Worthington v. Worthington, 224 Ala. 237, 139 So. 334 (1932); Epps v. Epps, 218 Ala. 667, 120 So. 150 (1929).

56. Belding v. Huttonlocher, 177 Iowa 440 (1916); Skinner v. Skinner, 205 Mich. 243, 171 N. W. 383 (1919); Lally v. Lally, 152 Wis. 56, 138 N. W. 651 (1912); Goldfish v. Goldfish, 184 N. Y. Supp. 512 (1920); Aff'd. 230 N. Y. 606, 130 N. E. 912 (1921).

statute[57] provides that ". . . the Court, on the application of either party, may make such alteration, from time to time, as to the allowance of alimony and maintenance, as may be proper. . . ." Can this statute be nullified by a private agreement between the parties?

In answer to the question it has been suggested that the situation is analogous to separate maintenance agreements which are subject to modification due to the continuing existence of the marital status.[58] The analogy is that when the marital bond is dissolved, the divorce statute[59] comes into play and by the alimony decree continues the same obligation to support which is created by the marriage and ended with the divorce. Thus in effect the alimony decree is but a statutory substitute for the common law obligation, and to effectively carry out its purpose it must be flexible, and should not be permitted to become an uncontrolled matter of contract between the parties.[60] This common law obligation of the husband to support his wife is the foundation upon which alimony rests. It is based upon the duty of the husband to support a wife whom he has in legal effect abandoned. Alimony defines that duty in terms of money or property, and the State itself has a financial and social interest in the performance of that duty.[61] Where the alimony becomes her absolute property, as a specific part of the estate, or a specific sum of money, it passes out of the control of the court making the award.[62] But where the alimony is from the income of the husband at stated periods, it ought to be subject to modification.[63] Reason supports this position because if it were not so a designing woman could have any number of men contractually liable for her support. Such a situation would offend public policy and good morals. It is so illogical and unreasonable that a court of equity should not tolerate it. Well has it been characterized as legally and socially unseemly.[64] Furthermore the statute[65] itself

57. R. S. Mo. 1929, sec. 1355.
58. See cases supra, note 5.
59. R. S. Mo. 1929, secs. 1355, 1356.
60. See Note, 6 N. Y. U. L. Rev. 295 (1929).
61. Wright v. Wright, 93 Conn. 296, 105 Atl. 684 (1919).
62. 2 Nelson, *Marriage, Separation and Divorce* (1895) sec. 933.
63. Supra, note 62.
64. Cary v. Cary, 112 Conn. 256, 152 Atl. 302 (1930). There are, however, three views on the problem as to whether or not a subsequent marriage suspends the payment of alimony. Some jurisdictions say that a subsequent marriage has no effect whatever. Miller v. Clark, 23 Ind. 370 (1864). In other jurisdictions the marriage *per se*, precludes further payment. Baker v. Baker, 4 Ohio App. 170 (1915). The majority, however, puts the burden

was enacted from considerations of public concern in order to subserve the general welfare and such a law cannot be abrogated by mere private agreement.[66] It is more in accord with the public interest to permit regulation of the continuing substituted obligation.

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CHILD LABOR AMENDMENT OR ALTERNATIVE LEGISLATION?

It is now thirteen years since the Child Labor Amendment[1] was submitted to the states for ratification. Seven states are still needed to obtain the necessary three-fourth ratification.[2] Determined efforts are being put forth to secure ratification in seven more states. However, the resistance is still formidable enough to make any prediction as to the adoption of the Amendment highly speculative.

Furthermore, there is an impressive group of authorities which regards the Amendment as already rejected and possible ratification at this date as unconstitutional. This contention is supported on two grounds, namely, (1) the comparatively long lapse of time since the submission of the amendment to the states in 1924, and (2) rejections which preceded subsequent ratifications in many of the states. This argument presents an additional and significant obstacle to the successful operation of the provisions of the Amendment.

As an alternative, a new type of legislation for the regulation of child labor has been proposed. The suggested legislation fol-

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on the wife to show the support afforded by the second husband is inadequate, in order to have the alimony continued. Cohen v. Cohen, 150 Cal. 99, 88 Pac. 267 (1906); Cole v. Cole, 142 Ill. 19, 13 N. E. 109 (1892).

65. R. S. Mo. 1929, sec. 1355.

66. Walter v. Walter, 189 Ill. App. 345 (1919); Recht v. Kelly, 82 Ill. 147, 25 Am. St. Rep. 301 (1876).

1. "Section 1—The Congress shall have power to limit, regulate, and prohibit the labor of persons under eighteen years of age.

"Sec. 2—The power of the several states is unimpaired by this article except that the operation of State laws shall be suspended to the extent necessary to give effect to legislation enacted by the Congress." Joint Resolution, 43 Stat. 670 (1924).

2. Up to Jan. 1, 1937, twenty-four states had ratified. Since the first of the year, five more states have ratified. North Carolina, Texas and South Dakota recently rejected the Amendment. The following state legislatures have not as yet ratified and will convene in regular session this year: Connecticut, Delaware, Florida, Georgia, Kansas, Maryland, Massachusetts, Missouri, Nebraska, New Mexico, New York, Rhode Island, South Carolina, Tennessee, and Vermont.