37 P. 385, an attorney was penalized as for a contempt for what was in effect a false statement of law, rather than of fact, in presenting an affidavit for change of venue on the ground of partiality of the judge, where the statute did not authorize a change of venue on that ground. F. W. F., '27.

DOMESTIC RELATIONS—DIVORCE — VOLUNTARY SEPARATION.—Stitterson v. Stitterson, 131 S. E. 641, March 3, 1926.

This case arose in North Carolina under a statute providing for the allowance of absolute divorce by either party upon showing of (1) a separation lasting over a period of five years and (2) residence by the plaintiff within the state during that period. Mrs. Stitterson asked for a divorce under this statute, her husband having been sentenced to the penitentiary for twenty years and having been in prison for more than five years preceding the bringing of the action. North Carolina does not allow divorce for a felony committed by the other party so that Mrs. Stitterson's right to divorce depended entirely upon the statute. All these facts as stated and the plaintiff's required residence were proved. The court held that the statute was not intended to cover cases of "involuntary" separation; that, while the husband's commission of the crime was certainly voluntary, yet the sentencing of the husband was involuntary "and since this was the direct cause of the separation, the separation must be deemed involuntary; that therefore Mrs. Stitterson was not entitled to a divorce under and by virtue of the statute.

Several other states (Kentucky, Wisconsin, Rhode Island, and Louisiana) have statutes of a like nature. One of the statutes states that the separation must be voluntary. In the other states it has been decided by judicial decision that the separation must be voluntary whether it is so provided by the statute or not. Ferguson v. Ferguson, 8 Ky. L. Rep. 428; Thompson v. Thompson, 53 Wis. 153. In Rhode Island there has been no decision, to my knowledge, under the statute.

All of the courts have been very strict in construing these statutes, prehaps because all divorce statutes are in derogation of the common law. McDougal v. McDougal, 5 Wash. 802; Olson v. Olson, 28 Pa. Super. Ct. 128. Whatever the cause, the result has been that all courts have decided that the separation must be voluntary and that whenever possible the courts have decided disputed facts to indicate an involun-

tary separation. Whether the separation or the length of separation has been denied or not, it must be proved before the divorce will be granted. Gibbons v. Gibbons, 21 Ky. L. Rep. 1214, 54 S. W. 710. Furthermore the separation must be *mutually* voluntary. Thompson v. Thompson, 53 Wis. 153, 10 N. W. 166. But if the circumstances surrounding the original separation are such as to indicate mutual desire for the separation it will be presumed that the intention continued in the absence of proof to the contrary. Phillips v. Phillips, 22 Wis. 256. The separation, however, must be shown to have been voluntary in its inception (Sanders v. Sanders, 135 Wis. 613, 116 N. W. 176) and throughout the statutory period required (Williams v. Williams, 122 Wis. 27, 99 N. W. 431; Sanders v. Sanders, supra). In this latter case the court held that clippings to the effect that "woman kills self to avoid divorce suit" and letters of the same kind, were more liable to annoy than to effect a reconciliation and that consequently there was nothing to show a lack of mutual desire for separation. When the wife is forced to leave because of cruel treatment, although she left of her own accord, such a separation is not considered voluntary. Jakubke v. Jakubke, 125 Wis. 635, 104 N. W. 704. Likewise if one party has become insane and has been placed in an asylum there is no voluntary separation. Ferguson v. Ferguson, 8 Ky. L. Rep. 428; Lee v. Lee, 182 N. C. 61, 108 S. E. 352. L. M. S.. '26.

MUNICIPAL CORPORATIONS — ORDINANCES — DELEGATION OF LEGISLATIVE POWERS.—Ex Parte Cavanaugh v. Gerk, Chief of Police, City of St. Louis. Missouri Supreme Court, en banc, White, J. (about March 30, 1926). No. 26,936.

This case tested the validity of ordinances 32846 and 23926 of the Code of the City of St. Louis. The first ordinance established the Traffic Council; the second enumerated its powers and provided that its regulations should constitute emergency law for a certain period, the permanence of such regulations being dependent on ratification by the Board of Aldermen. The Traffic Council was given power to pass rules establishing one-way streets, erecting traffic signals, permitting angle parking, etc., but the ordinances did not provide the conditions under which these rules were to be passed. An extract of ordinance 23926, sec. (b) follows: