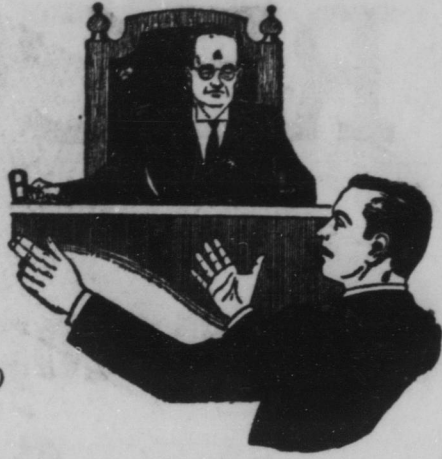


This is the Law

By Charles W. Daniel
(For N. C. Bar Association)



Divorce and Alimony

Did you know that if a husband or wife goes to another state from North Carolina for the purpose of getting a quick divorce, and does not establish permanent residence or "domicile" in the other state, the divorce is not valid in North Carolina? Such is our law. And if the person obtaining such divorce under the circumstances described, remarries and returns to live in this State, he or she, is subject to prosecution for bigamous cohabitation.

North Carolina has two kinds of divorce. One, "from bed and board," or partial divorce. Two, absolute divorce, after which the marriage status is completely dissolved as to the husband and wife and neither can later inherit property from the other except by will.

The first type of divorce is simply a "legal separation" entered upon the records of our Superior Court. Under it the husband is still charged with the responsibility of supporting his wife, as well as the other obligations imposed by the law upon a married man.

Grounds for Divorce

The North Carolina law lists several grounds for allowing each type of divorce, upon petition to the Superior Court by the offended party. They are:

For legal separation — 1. If either party abandons the other; 2. "Maliciously turns the other out of doors;" 3. By cruel treatment endangers the life of the other;

4. Offers "such indignities to the person" of the other as to "make life burdensome!" 5. Becomes an habitual drunkard.

For absolute divorce—1. Adultery; 2. Natural impotency, which must have existed at the time of marriage; 3. If at the time of marriage the wife is pregnant, but not by the husband, and such fact is unknown to him; 4. Two-year separation; 5. Crime against nature; 6. By special process after five years separation because of the insanity of the other party. Formerly the waiting period for divorce from an insane spouse was 10 years. The 1953 legislature reduced it to five years.

Void Without Divorce

North Carolina treats only two kinds of unions as absolutely void: "marriages" between white and Negro and certain Indians, and, bigamous unions. In the eyes of the law these "marriages" never took place and have no binding effect upon either participant. Thus, court action for divorce would not be necessary to "dissolve" such alliances. They were void from the start.

Our State will not permit alimony in a petition for absolute divorce. Alimony may be granted for proper cause, however, in an action for divorce from "bed and board." And, if a person receives a grant of alimony in a partial divorce suit, such alimony payments would not be automatically cut off upon a later petition for absolute divorce.

Of course, any private arrange-

ments made between separated or divorced couples and which are not made parts of the divorce court record, would not be affected by our laws relating to alimony.

What Price Alimony

The couple in allowing alimony may grant up to — but no more than — one-third of the annual income from the estate, occupation or labor of the person from whom the divorce is allowed. If the conditions of the parties, or either of them, later change, the court may order a change in the amount of alimony allotted, according to the circumstances then existing.

From the language of our statutes it seems that a man, as well as a woman, could ask for alimony. The writer knows of no case of record in North Carolina, however, in which the husband sought alimony from his wife. The practice is fairly common in some western states.

A married woman, upon affidavit and a finding by the Judge of Superior Court that her contentions are true, may be granted alimony pending her suit for EITHER TYPE of divorce. The legislature passed this law originally in 1871, apparently on the theory that a wife frequently might be unable financially to prosecute her suit and that, if she had a recognized cause for divorce, she ought not to be deprived of it for lack of necessary funds.

If there are children in a home being broken by divorce, the court must decide the custody question in handling the case.

No divorce case in our State can be tried without a jury.

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