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Domestic Relations

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doer had no right to be credited with the payments made by the employer under such circumstances, saying: "Anything earned prior to the injuries certainly cannot be related by any sound reasoning process to the loss of wages or salary during the period of incapacity following the injuries."[12] It should be kept in mind that the court was not considering the case in which an employer without legal or contractual obligation, but gratuitously, continues the wage or salary payment.

EDGAR I. KING

DOMESTIC RELATIONS

1956 was a banner year for the student of family law. There were sixty-five reported cases in the area, of which twenty-five are worth noting.

Interstate Divorce

The concept of "divisible divorce" was established by the *Estin*[1] and *Kreiger*[2] cases, in which the United States Supreme Court held that a Nevada *ex parte* divorce was ineffectual to cancel a prior New York alimony decree, although the divorce did terminate the marital status. It has been argued that New York would be bound to give full faith and credit to the denial of alimony in Nevada, (1) if Nevada were the state of matrimonial domicile,[3] or (2) if the wife did not already have a valid New York alimony decree. Both of these issues were presented to the Supreme Court last year in *Armstrong v. Armstrong*,[4] a case coming up for review from Ohio.

In the *Armstrong* case, the husband obtained a divorce in Florida, which was the state of matrimonial domicile. Mrs. Armstrong did not appear. The Florida court determined that it had personal jurisdiction over her because she was domiciled in Florida, heard the evidence on need for alimony, and decreed that no award of alimony be made to her.

Subsequently, Mrs. Armstrong sued her husband in Ohio for divorce and alimony. The Ohio court held that: (1) the wife could not get a divorce in Ohio, as Ohio must give full faith and credit to the Florida decree terminating the marriage; (2) the finding of the Florida court as to the domicile of the wife was incorrect and was subject to collateral attack in Ohio; (3) the in personam right of the wife to alimony was not cut off by the Florida decree, and could be asserted for the first time in an alimony action *subsequent* to the divorce (unlike *Kreiger* and *Estin*, where the alimony decree preceded the divorce), and (4) the fact that

[12] *Id.* at 112, 131 N.E.2d at 417.

Florida was the state of matrimonial domicile did not give Florida in personam jurisdiction over the parties to the marriage.

The majority in the United States Supreme Court affirmed the Ohio decree on the ground that the Florida court had neither denied nor granted alimony, and therefore no question of full faith and credit was involved. There are limits beyond which a court should not go in an attempt to avoid a constitutional issue, and in my opinion the court clearly exceeded these limits. Four members of the Court, in a concurring opinion, refused to duck the issues and upheld the Ohio decision on all points, in spite of early cases which held that the state of matrimonial domicile had personal jurisdiction over both spouses.

What is the result of this litigation? On the two constitutional issues of effect of matrimonial domicile and the power of Ohio to grant alimony in spite of the lack of a prior alimony decree, we have the unanimous opinion of the Ohio Supreme Court and the opinion of four judges of the United States Supreme Court upholding the right of an ex-wife to sue for alimony. In spite of the lack of a clear cut decision by the majority of the Court, it seems reasonably certain that the concept of matrimonial domicile is no longer valid. The principal importance of the case to the Ohio lawyer lies in the decision of the Ohio Supreme Court, which held as a matter of substantive law that in an alimony only action, the plaintiff and defendant need not be husband and wife at the time the action is begun. It is enough if the plaintiff is an ex-spouse whose right of support has not yet been determined in a binding proceeding. This decision is contrary to the substantive law of two states (New York and Pennsylvania) which have passed on the issue, and have denied the ex-wife alimony, not because the foreign *ex parte* decree denying alimony is entitled to full faith and credit, but because that part of the foreign decree which terminates the marriage is so entitled, and as a matter of local law the plaintiff as an ex-spouse is not entitled to bring an alimony action.

Divorce

1. *Procedure*[5]

It is generally held in Ohio, as elsewhere, that a divorce action may

[1] Estin v. Estin, 334 U.S. 541 (1948).

[2] Kreiger v. Kreiger, 334 U.S. 555 (1948)

[3] Two cases, decided before the *Estin* and *Kreiger* cases, held that the state of matrimonial domicile had in personam jurisdiction over the defendant in a divorce case, even though she did not appear, and that a decree denying alimony was entitled to full faith and credit. Thompson v. Thompson, 226 U.S. 551 (1913); Atherton v. Atherton, 181 U.S. 155 (1901).

[4] 350 U.S. 568 (1956), *affirming*, 162 Ohio St. 406, 123 N.E.2d 267 (1955), *affirming*, 99 Ohio App. 7, 130 N.E.2d 710 (1954)

[5] Three cases involving procedure in divorce actions are discussed in detail in the

be maintained against a mentally incompetent defendant. In *Shenk v. Shenk*[6] a court of appeals was faced with the question of the capacity of an insane person to bring an action as plaintiff. The court held that the decision to seek a divorce was personal, and therefore the guardian of an insane ward could not sue for divorce.

The common practice of pleading a ground for divorce in the bare language of the statute, without any supporting facts, has been the subject of dispute in the courts of appeals. This controversy was settled in *Dansby v. Dansby,*[7] in which the Supreme Court held that such a pleading was not subject to demurrer, but was subject to a motion to make definite and certain. The court pointed out that good pleading requires sufficient allegations of fact, and a trial court which refuses to grant a motion to make certain has abused its discretion.[8]

In *Lampe v. Lampe,*[9] a case of first impression in Ohio, a common pleas court held that the defendant in an annulment action can cross-petition for a divorce, even though he is a nonresident of Ohio. The one year residence requirement is not a prerequisite to an annulment action, and under the rationale of this case, a plaintiff could establish residence in Ohio today, sue for annulment tomorrow, and the nonresident defendant could cross-petition for a divorce, thus completely avoiding the one year residence statute. The court was careful to point out that the decision did not go this far, because in this case the plaintiff had been an Ohio resident for a year.

2. *Alimony — Power of Court to Grant*

In *Beach v. Beach*[10] the trial court in a divorce action made an award

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CIVIL PROCEDURE section, *supra.* These are: Plater v. Jefferson, 136 N.E.2d 111 (Ohio App. 1956) (collateral attack on divorce judgment); Perry v. Perry, 100 Ohio App. 15, 135 N.E.2d 427 (1955) (trial judge must hear entire divorce case); Poe v. Poe, 99 Ohio App. 542, 135 N.E.2d 484 (1954) (condonation is an affirmative defense which cannot be raised by a motion to dismiss).

[6] 135 N.E.2d 436 (Ohio App. 1954)

[7] 165 Ohio St. 112, 133 N.E.2d 358 (1956) This case is also discussed in the CIVIL PROCEDURE section, *supra.*

[8] Both the code and good practice require the pleading of facts and not law. Of course, in every case, a pleader should avoid pleading facts he cannot prove. This rule is especially important in divorce cases. In the average non-divorce case, neither the attorney nor the party is liable for a defamatory pleading, as judicial proceedings are privileged. However, the privilege does not apply where the untrue allegation is used, not as the basis for a tort action, but as the basis for a divorce or alimony action. Libel and slander are not grounds for divorce, but they have been held to constitute "extreme cruelty." In the *Armstrong* case, the ground for the Ohio alimony action was that the husband was guilty of cruelty in that he made allegations about his wife, which he knew to be untrue, in the Florida divorce action, both in the pleadings and in testimony.

[9] 136 N.E. 2d 470 (Ohio C.P 1954)

[10] 134 N.E.2d 162 (Ohio App. 1955)

of temporary alimony to the wife by requiring the husband to pay the wife's attorney's fee directly to her attorney. The husband refused to comply and was convicted of civil contempt. The husband appealed and the wife filed a motion with the court of appeals asking for temporary alimony pending the appeal. The statute provides that in a divorce or alimony action, the trial court may grant temporary alimony, and on appeal, the court of appeals may grant like alimony pending appeal.[11] Literally construed, the statute appears to authorize alimony by the appellate court only in a direct appeal of the alimony or divorce decree, and not in an appeal of a contempt case. However, the court held that a contempt proceeding grows out of the divorce action and is sufficiently related to the divorce decree so as to fall within the appeal statute. However, the court held that the provision in the appeal statute authorizing the court of appeals to fix temporary alimony was unconstitutional. The Ohio Constitution gives the court of appeals original jurisdiction in certain specified cases and appellate jurisdiction in other cases.[12] The court held that a grant of temporary alimony is an exercise of original jurisdiction, as issues of fact are involved. Since the grant of alimony is neither an appellate proceeding nor one of the specified types of original jurisdiction, the statute is an invalid attempt to confer jurisdiction on an appellate court beyond the constitutional grant of jurisdiction, which has been held to be exclusive. The court concluded by denying any inherent non-statutory power in an appellate court to grant alimony pending an appeal and dismissed the motion. The reasoning of the court applies not only to an appeal of a contempt case, but also to an appeal of a divorce or alimony decree. Although numerous courts of appeal have granted alimony in the past, the instant case is the first one in which the constitutional issue was raised.

In a separate opinion, the court passed on the merits of the contempt conviction and set it aside on the ground that attorney's fees must be payable to the wife and not to the attorney.[13]

In *Dennison v. Dennison*[14] the Supreme Court finally settled a question which has been the subject of conflict in the courts of appeals. The court held that a wife has no absolute right to alimony where she is awarded a divorce for misconduct of the husband. The decision of whether or not to grant any alimony is left to the discretion of the trial court. Although alimony is not mandatory, its denial may constitute an

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[11] OHIO REV. CODE § 3105.14.

[12] OHIO CONST. art. IV, § 6.

[13] Beach v. Beach, 130 N.E.2d 164 (Ohio App. 1955).

[14] 165 Ohio St. 146, 134 N.E.2d 574 (1956).

abuse of discretion. The case was remanded to determine whether such an abuse existed.

Prior to 1951, a divorce court could do two things, and only two things, with respect to alimony and property. It could award alimony to the party granted the divorce or alimony only decree, either in a lump sum or as a continuing obligation, or it could award the guilty party in a divorce case a share of the property owned by the other spouse as a final division of property. In numerous cases the trial courts exceeded these limits by awarding continuing alimony to the guilty party, or dividing property in an alimony only action, or making a property order which was strictly speaking neither a property division nor alimony, such as a partition order, or an equity decree ordering one party to convey property to the other because the property had been purchased with such other party's funds. These decisions of the trial courts were uniformly reversed, resulting in major restrictions on the power of the divorce court to arrive at a just financial settlement, and in serious title complications where realty was involved.

Today, the situation is completely changed. In 1951 the legislature adopted two amendments to the divorce chapter. The new provisions permit the court to award alimony or a property division to either party, regardless of fault, and provides that in a divorce case the court retains full equity powers.[15] These statutes, coupled with the *Dennison* decision discussed above, would appear to leave the court completely free to adjust the financial relations of the parties as it deems proper.

The above comments are occasioned by three recent cases decided by the Ohio Supreme Court. The cases are not connected except by the fact that they all involve alimony and were decided on the same day. One of the cases was decided under the old statute and holds that where the divorce court did have power to transfer title to realty to one of the parties, the judgment could not be attacked in a later partition action.[16] The other two cases simply hold that when the legislature amended the statute in 1951, it meant what it said. Thus, fault of the parties is no longer a controlling factor in determining alimony,[17] and the divorce court is now authorized to exercise general equity powers, including a complete division of property rights.[18]

3. *Alimony — Modification and Enforcement*

Two important cases on modification of alimony decrees are commented upon in the next section of this article, as the decisions involved

[15] OHIO REV. CODE §§ 3105.18, 3105.20.
[16] Arbogost v. Arbogost, 165 Ohio St. 459, 136 N.E.2d 54 (1956)
[17] Gage v. Gage, 165 Ohio St. 462, 136 N.E.2d 56 (1956)
[18] Clark v. Clark, 165 Ohio St. 457, 136, N.E.2d 52 (1956)

modification of child support orders. However, the reasoning of the *Van Dwort* and *Roach* cases clearly applies to alimony.

Outstanding for the number and complexity of the issues raised is the *Block* case. While divorce proceedings were pending, the husband conveyed substantially all of his property, amounting to about $1,000,000, to an Ohio trustee, under an irrevocable trust, with income reserved to him for life and the corpus to a family foundation. The wife sued for divorce in Illinois and was granted a divorce and alimony in a lump sum of $110,000. Shortly after the divorce, the husband sued successfully in an Ohio court to set aside the trust on the ground of undue influence on the part of his father. The wife claimed that the whole transaction was in bad faith and entered into in order to present a temporary appearance of relative poverty to the Illinois divorce court. She commenced suit in the Illinois court which granted the divorce, but made the mistake of treating her action as a new proceeding with a new docket number. Service on the husband, a resident of Ohio, was had by publication and mail. The husband removed the case to the federal court on diversity of citizenship and then moved for dismissal on the ground of no personal jurisdiction. The motion was granted and this decision was upheld by the United States Court of Appeals.[19] In a two-to-one decision, the court held that an action to vacate a divorce decree for fraud was a new action and not part of the original divorce proceeding. Therefore it was properly removable to a federal court, and as an in personam action required personal service.

Mrs. Block tried again, this time in Ohio. She presented the facts to the common pleas court, set forth her unsuccessful attempt to persuade the Illinois court to vacate its judgment, and asked for a decree vacating the Illinois decree and fixing a proper financial settlement. The husband appeared, denied any fraud on the Illinois court, and set up the defenses of res judicata, and lack of tender back of the $110,000 which the wife had already received. The common pleas court held that the decree of the Illinois court was entitled to full faith and credit and could not be modified in Ohio. The decision was affirmed by the court of appeals without opinion. Appeal as of right was denied by the Ohio Supreme Court on the ground that no constitutional question was involved.[20] Mrs. Block appealed to the United States Supreme Court, which was unable to understand what the Ohio Supreme Court meant by the dismissal. The case was remanded to the Ohio Court for decision of whether dismissal rested on state or federal constitutional grounds.[21]

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[19] Block v. Block, 196 F.2d 930 (7th Cir. 1952).

[20] Block v. Block, 163 Ohio St. 230, 126 N.E.2d 331 (1955).

[21] Block v. Block, 350 U.S. 808 (1955).

In what is probably the last word on this specific case, the Ohio Supreme Court refused to decide the constitutional issue of full faith and credit, and affirmed the dismissal of plaintiff's petition on the ground of lack of tender.[22] The normal rule, of course, is that when a person attempts to rescind a contract or judgment procured by fraud, he must first offer to return any benefits he has received under it. The question before the Ohio court was whether or not this rule should be applied to an action to modify an alimony decree. The hardship inherent in requiring the wife to return alimony received before modification is apparent, particularly where she has spent it all for her support, and this consideration has led the courts of New York and California to dispense with the requirement of tender in this situation. The justification for these decisions was the concept that a divorced wife need not tender back because the alimony is in the nature of support which the husband is equitably bound to furnish after divorce. This reasoning was rejected by the Ohio court. The court did not discuss what circumstances would excuse tender, and I think most of us would agree that if the wife could prove that all her alimony had been spent for day-to-day living expenses, the requirement of tender should be dispensed with.

Although all of the issues present were not passed on, there are some lessons which can be learned from the *Block* case. To the lawyer who represents a wife attempting to modify an alimony decree for fraud, I offer the following suggestions:

(1) In your petition, offer to tender into court, or to some disinterested person whom the court might appoint, any benefits received under the original decree. If this cannot be done, as where the wife has spent it all, set forth in detail just why the wife cannot make a tender and why it would be inequitable to require it.

(2) Your best chance of modification lies in the court which granted the original decree. Denominate your pleading a motion in the original case, with the same docket number, rather than a petition in a new action. If personal service cannot be obtained over the defendant, use the "continuing jurisdiction" theory discussed in the *Van Divort* case, *infra*.[23]

(3) If number two is unsuccessful and you have to sue in another state, your difficulties are great but not insuperable. Although there is no clear cut United States Supreme Court decision on the subject, state courts have generally assumed that direct modification of a foreign decree is forbidden by the full faith and credit clause. However, in a number of

[22] Block v. Block, 165 Ohio St. 365, 135 N.E.2d 857 (1956).

[23] Van Divort v. Van Divort, 165 Ohio St. 141, 134 N.E. 2d 715 (1956)

cases, state courts have indirectly modified the foreign decree obtained by fraud by enjoining the defendant from using the decree and by relitigating the issues. Thus, in attempting to persuade an Ohio court to modify a foreign decree for fraud, you should set forth the fraud, show that the decree could be re-opened in the original state for fraud, set forth your efforts to re-open in the original state and explain why you failed (as, for example, lack of personal jurisdiction); and then ask the equity side of the court to enjoin the husband from taking advantage of the decree in Ohio, and ask the court to make a new alimony order.

4. *Child Support and Custody Incident to a Divorce*

To the attorney practicing in the domestic relations field, and faced with the difficult problem of enforcing alimony decrees against migratory husbands, the decision of the Supreme Court in *Van Dwort v. Van Dwort*[24] is easily the most important decision of the year. In this case the wife was given custody of the child in the original divorce action and was awarded a monthly sum for support. The husband appeared in the Ohio court. Six years later the wife filed a petition in the same court asking that the original decree be modified so as to increase the monthly support payment. The husband had moved to Connecticut after the divorce, and the motion was served on him by mail, pursuant to a rule of the common pleas court. The decision of the court modifying the decree was affirmed by the court of appeals, in spite of a contrary decision by another court of appeals. The Supreme Court heard the case because of the conflict and upheld the decision of the trial court. The court held that whenever a decree is subject to modification, the court keeps personal jurisdiction over the parties as long as the decree lasts. Thus the modification is not a new proceeding but ancillary to the original divorce action. The court also said that although the statutes provided no procedure in such a case, the statutes on notice and process are not exclusive, and the method and sufficiency of notice to the nonresident defendant is left to the discretion of the trial court.

There are several questions which were not settled by the decision, but which are fairly easy of solution:

(1) *The scope of the decision:* Although the *Van Dwort* case concerned an increase in child support payments, the theory of the case applies to modifications of alimony decrees, and even more important from a practical viewpoint, to the reduction of unpaid accruals to a lump sum.

(2) *The notice procedure:* The *Van Dwort* decision involved notice by mail which was actually received. It seems clear that actual re-

[24] *Ibid.*

ceipt is not necessary. The procedure is left to the discretion of the trial court, limited only by the concept of due process in quasi-in-rem actions, as set forth in *Mullane v. Central Hanover Bank*[25] and *Walker v. City of Hutchinson.*[26] Thus notice by publication alone would in most cases be insufficient, even though authorized by the court or by statute.

(3) *Recognition of the decree in other states:* This problem is of special importance where the *Van Dwort* procedure is used to reduce unpaid accruals to a lump sum, which is then sought to be enforced in another state. Although there is no express decision on the point, the case of *Griffin v. Griffin*[27] indicates that such a decree would be entitled to recognition under full faith and credit. The *Griffin* case involved a procedure essentially similar to the *Van Dwort* case. The United States Supreme Court held that the decree was not entitled to full faith and credit, not because there was no jurisdiction over the defendant, but because the notice was so defective as to violate due process.

The Ohio Supreme Court finally settled a problem which has been the subject of conflict in the lower courts. In *Roach v. Roach*[28] the court held that execution could not issue on individual installments of a child support decree. The apparent hardship of requiring installments to be reduced to a lump sum judgment, is of course, mitigated by the *Van Dwort* decision. As a policy matter, the decision appears to be correct, although it seems to be contrary to an early decision of the same court,[29] not mentioned in the opinion. One of the most important points about the *Roach* case is a reason for the decision which the court did not use. Some of the lower courts have held that execution could not issue because unpaid accruals are subject to retroactive modification. If this is true, the rule plays havoc with the enforcement of Ohio decrees in other states, as such a decree is not entitled to full faith and credit.[30] Fortunately, the court did not rely on this reasoning in its decision.

In the *Townsen* case,[31] the court of appeals held that where a child becomes emancipated and self-supporting, the court would permit the father, who paid for support pursuant to a divorce decree, to suspend payments. This decision was rendered in spite of the fact that neither the decree nor the underlying separation agreement permitted modification

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[25] 339 U.S. 306 (1950)
[26] 352 U.S. 112 (1956)
[27] 327 U.S. 220 (1946)
[28] 164 Ohio St. 587, 132 N.E.2d 742 (1956).
[29] Piatt v. Piatt, 9 Ohio 37 (1839).
[30] Sistare v. Sistare, 218 U.S. 1 (1910).
[31] Townsen v. Townsen, 137 N.E.2d 789 (Ohio App. 1954).

for other than specified causes. The decision seems clearly contrary to the rule established by the Supreme Court in *Tullis v. Tullis*.[32]

Adoption

1. *Procedure*

As a general rule, the consent of the parent is necessary for adoption. An exception exists where the parental rights have been judicially terminated for cause. In Ohio there are two methods by which parental rights can be cut off. One is found in the adoption statute which provides that if the parent is determined guilty of "wilful neglect," the consent to adoption is not required.[33] The other stems from the juvenile statute which provides that where the parent is guilty of "neglect" the juvenile court can vest permanent custody in a welfare agency, and the parent loses the right to object to adoption.[34] Does the term "neglect" in the juvenile statute refer to wilful neglect, as the adoption statute clearly does? In the case of *In re Masters*,[35] the Ohio Supreme Court answered in the affirmative, and held that non-wilful neglect by a parent confined to a mental hospital was not a ground for termination in the juvenile court of the parent's right to object to adoption.

In the *Ramsey* case,[36] the Supreme Court emphasized the necessity for strict compliance with the adoption statute. An adoption was successfully attacked by means of a habeas corpus proceeding where the juvenile court terminated the parent's rights for cause, but failed to vest permanent custody in a welfare agency, as required by the adoption statute.

2. *Effect of Adoption*

The Ohio statute dealing with the effect of adoption says that an adopted child is no longer the child of his natural parents for the purpose of intestate succession.[37] Three recent lower court decisions indicate that the statute means just what it says, and possibly something more.

In *Frantz v. Florence*[38] a common pleas court held that the statute not only precluded the adopted child from inheriting from his natural parents, but completely severed the blood line for all purposes. Thus the child could not inherit from his natural grandfather. In the *Millward* case,[39]

[32] 138 Ohio St. 187, 34 N.E.2d 212 (1941).
[33] OHIO REV. CODE § 3107.06 (B) (4)
[34] OHIO REV. CODE §§ 2151.03 and 2151.27.
[35] 165 Ohio St. 503, 137 N.E.2d 752 (1956).
[36] *In re* Ramsey, 164 Ohio St. 567, 132 N.E.2d 469 (1956).
[37] OHIO REV. CODE § 3107.13.
[38] 131 N.E.2d 630 (Ohio C.P. 1954).
[39] *In re* Estate of Millward, 136 N.E.2d 649 (Ohio App. 1956).

the court of appeals held that the adopted child could not inherit from his natural parent who died after the statute became effective, although the child was adopted prior to enactment of the statute. The case which adopts the broadest construction of the statute is *Campbell v. Musart Society.*[40] The mortmain statute states that if a testator is survived by a lineal descendant, a bequest to charity made within a year of death is void.[41] In this case the bequest was made within a year, and the testator was survived by a natural grandchild who had been adopted by the daughter-in-law of the testator and her second husband. The court construed the mortmain statute and the adoption statute together and held that the child was no longer a "lineal descendant" and therefore the bequest was valid.

Paternity Actions

In *Yum v. Hilton*[42] the defendant father was a resident of Ohio. The child was begotten, conceived and born in New York, and both mother and child had always been residents of New York. In an Ohio bastardy action the defendant sought to escape liability on the ground that a paternity action was essentially a tort action and therefore the court should apply the law of New York, which he contended relieved him of liability. He also argued that the only state with an interest in enforcing child support was New York, the state of domicile of the child. Both of these contentions have been accepted in other jurisdictions, but were rejected by the Ohio Supreme Court. The court held that the action was transitory in nature and that the father can be sued under Ohio law whenever he can be found in Ohio. The decision is certainly sound in that it tends to avoid having this state become a refuge for fathers of illegitimate children.

Historically, the paternity statutes were adopted to secure the maintenance of illegitimate children liable to become paupers in the state, and therefore was not applied to the children of nonresident mothers. For the same reason it is generally held that the statutory remedy is exclusive and that the child has no direct action against the father for support. In order to reach its decision, the Supreme Court said that a man has a moral duty to support his illegitimate child and that the paternity statute

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[40] 131 N.E.2d 279 (Ohio Prob. 1956) At the time this article went to press, newspaper reports indicate that the probate court decision was affirmed by the Cuyahoga County Court of Appeals in an unreported opinion in February 1957, and that the case is being appealed to the Supreme Court. The three cases discussed above are also considered in the WILLS AND DECEDENTS' ESTATES section, *infra.*

[41] OHIO REV. CODE § 2107.06.

[42] 165 Ohio St. 164, 134 N.E.2d 719 (1956)

imposes a legal obligation corresponding with the moral one. This dictum indicates that if the mother is unable or unwilling to bring a paternity action, there is a distinct possibility that the child could sue the father for support in an equity action, basing his right to support in Ohio on the "legal obligation" referred to in the *Yun* case.

A procedural problem of some interest was raised by the case of *State ex rel. Marshall v. Steinbaugh*.[43] The illegitimate child was born in May, 1938, and a decree for monthly support until age 18 was entered in 1939. The mother made no attempt to enforce payments until the child was over 18. In 1956, the mother sued to reduce the unpaid accruals extending over the 17 year period to a lump sum judgment. The court held that the action could be maintained and that the general ten year statute of limitations did not begin to run against any installment until the child became 18. The decision was based on the view that until the child becomes 18, the court has continuing jurisdiction to modify its decree. The decision would appear to apply to the enforcement of alimony payments. The Ohio rule on limitations or laches as barring collection of past alimony is not clear, and the rule applied in most jurisdictions is that a general statute of limitations begins to run against each installment as it becomes due.[44]

Husband and Wife

The Court of Appeals of Cuyahoga County decided an important case of first impression involving the Uniform Reciprocal Enforcement of Support Act.[45] The wife and child were abandoned in Louisiana in 1949, and jurisdiction over the husband was obtained under the Uniform Act in Ohio in 1955. The wife requested continuing future support for herself and the child and in addition requested a lump sum for reimbursement for funds spent by her for support of herself and the child from 1949 to 1955. The common pleas court refused to grant reimbursement and this decision was reversed by the court of appeals, which held that the Act should be liberally construed in favor of the abandoned spouse and that reimbursement was proper.[46]

In my opinion, the decision is correct but the reason is not. The court looked primarily to the provisions of the Uniform Act as the basis for decision. Specifically, the court relied on section 20 of the Act which provides:

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[43] 138 N.E.2d 252 (Ohio Juv. 1956).

[44] Royster v. Royster, 339 Ill. App. 250, 89 N.E.2d 279 (1949); Schumacher v. Schumacher, 26 Wash. 2d 23, 172 P.2d 841 (1946)

[45] OHIO REV. CODE c. 3115.

[46] Skinner v. Fasciano, 137 N.E.2d 613 (Ohio App. 1956).