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Need for Corroboration of Plaintiff in a Suit for Alimony Without Divorce. Roeder V. Roeder

NEED FOR CORROBORATION OF PLAINTIFF IN A SUIT FOR ALIMONY WITHOUT DIVORCE. *ROEDER V. ROEDER*[1]

Plaintiff-appellee-wife filed suit against defendant-appellant-husband, alleging abandonment and desertion, and asking for alimony without divorce. The trial court found the allegations proven and, by two separate decrees, awarded the wife alimony. The husband appealed from both decrees, basing his appeals on an alleged lack of corroboration of the plaintiff-wife's testimony. The Court of Appeals affirmed both decrees. *Held:* Where permanent alimony without divorce is sought the same requirements as to proof, including corroboration, are necessary as where either type of divorce is sought, but where there is no appearance of collusion, little corroborative evidence is required to satisfy the statute.

In Maryland a wife may be awarded alimony without divorce whenever she would be entitled either to a divorce *a mensa et thoro* or one *a vinculo matrimonii.*[2] Further it

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[1] 170 Md. 579, 185 Atl. 458 (1936).

[2] A statement in the principal case gives the impression that alimony without divorce may be obtained only for grounds for an *a mensa* divorce: "In this case the allegations of the bill, in order to support a demand for alimony or separate maintenance, there being no prayer for divorce, must be such as would entitle the plaintiff to a divorce *a mensa et thoro*, if such relief had been prayed. . . ." 170 Md. 579, 581, 185 Atl. 458, 459. This statement was so summarized in the syllabi by the reporters both for the Maryland Reports and Atlantic Reporter versions of the case as to give the impression that the case holds that separate maintenance may be obtained only for grounds for partial divorce. If this be a correct interpretation of the case then it is inconsistent with a long line of earlier cases either holding or stating that grounds for either type of divorce will suffice for alimony without divorce.

Stewart v. Stewart, 105 Md. 297, 66 Atl. 16, (1907), held that while adultery (there ruled to be a ground only for absolute divorce) could not be used as a ground for partial divorce, yet it could be a ground for alimony without divorce.

In Staub v. Staub, 170 Md. 202, 183 Atl. 605 (1936), separate maintenance was sought for impotency, which is a ground only for an *a vinculo* divorce. While the Court denied the relief sought on another point, yet it was taken for granted that impotency could be, in a proper case, a ground for separate maintenance. The Court expressly said that separate maintenance could be secured for any grounds sufficient for either type of divorce.

In Cohen v. Cohen, 170 Md. 630, 187 Atl. 104 (1936), the grounds alleged for alimony were grounds for partial divorce, yet the Court said that grounds for either type of divorce would suffice. While most of the other Maryland cases on separate maintenance have, so it happens, involved allegations of grounds for partial divorce, yet numerous statements in cases both before and after the Roeder case have indicated that alimony alone may also be obtained for grounds which are grounds only for absolute divorce. A similar careless statement limiting alimony to grounds

is provided by Article 35, Section 4 of the Code that no *divorce* shall be granted upon the testimony of the plaintiff alone, without corroboration. Thus the question arises whether, in a suit for alimony alone without divorce, relief may be granted upon the uncorroborated testimony of the plaintiff. Such a suit is not a suit for divorce in the strict sense and yet it must be based on a situation entitling the plaintiff-wife to a divorce, should she elect to sue for it. The question is whether the requirement of corroboration is a mere procedural matter, applying only to nominal divorce suits, or is a matter of substance, affecting the right to the divorce, with the result that it impliedly carries over into suits for alimony alone (separate maintenance). There is no express mention of the need for corroboration in the statute governing separate maintenance suits.

The Maryland cases prior to the *Roeder* case were at loggerheads on the instant point. In *Heinmuller v. Heinmuller*,[3] it is said: "when the whole case precludes . . . any possibility of collusion, the corroboration need be slight." In *Silverberg v. Silverberg*,[4] it is said: " . . . the wife must bear . . . the obligation imposed by the statute that her own testimony will not be sufficient without corroboration." In *Wiegand v. Wiegand*,[5] it is said: " . . . the rule prescribed by Art. 35, Sec. 4, Code, it not applicable to a proceeding for separate maintenance. . . ." In *Engelberth v. Engelberth*,[6] it is said: "If Code, Art. 35, Sec. 4, requiring corroboration of the husband's or wife's testimony is applicable to a proceeding by a wife for separate maintenance, the corroboration need be but slight, the nature of the proceeding being such as to exclude the idea of collusion."

Thus the *Roeder* case is seen to follow and mingle the pronouncements in the *Heinmuller* and *Silverberg* cases and, in fact, quotes from the latter case. The *Roeder* case differs entirely from the *Wiegand* case and slightly from the *Engelberth* case in that the *Engelberth* case assumes that collusion is impossible in any separate maintenance case whereas the *Roeder* case purports to find an absence of

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for partial divorce only appears in Wiegand v. Wiegand, 155 Md. 643, 648, 142 Atl. 188, 190 (1928) to the effect that ". . . the grounds for relief in such a proceeding are the same as those required for a divorce *a mensa et thoro*."

In general on the question, see Md. Code, Art. 16, Sec. 14; and Outlaw v. Outlaw, 118 Md. 498, 84 Atl. 743 (1912).

[3] 133 Md. 491, 494, 105 Atl. 745, 746 (1919).

[4] 148 Md. 682, 690, 130 Atl. 325, 328 (1925).

[5] 155 Md. 643, 648, 142 Atl. 188, 190 (1928).

[6] 159 Md. 700, 150 Atl. 271 (1930) (Memo. op.—quotation from syllabus in Maryland Reports).

collusion from a subjective examination of the evidence in the case. ("The evidence in this case shows that there was no appearance whatsoever of collusion."[7]) Thus it assumes that there might be, in a given case, a collusive suit for separate maintenance.

If the rationale of the rule of corroboration is solely the avoidance of collusive divorces then it would seem that the proper rule should be one which goes even farther than that of the *Engelberth* case and to the extreme of the *Wiegand* case, viz., to dispense entirely with the need for corroboration of the plaintiff in separate maintenance suits. For it is hard to conceive of there ever being a collusive suit for alimony alone without divorce. Collusion implies that both plaintiff and defendant want the relief sought. In absolute divorce cases collusion implies a desire for the right to remarry. But in a separate maintenance case the defendant is subjected to monetary liability without gaining the right to re-marry. Thus it would seem unfortunate to attempt to resolve the dilemma in terms of a subjective investigation of the evidence in each case to find out if collusion was present. Such a step is, of course, appropriate in suits for absolute divorce, as such, where the prospect of the defendant's remarrying affords him an incentive for collusion.

But the question next arises whether the sole or principal basis of the rule of corroboration is the avoidance of collusion. Our Court of Appeals has assumed this to be so both in divorce cases and in separate maintenance cases, including the *Roeder* case, where it is said:[8] " . . . the Act . . . was intended principally to prevent collusion. . . " But it can be argued that there is a parallel and equally important basis for the rule of corroboration in divorce cases which throws more light on the problem of the *Roeder* case than does the policy of avoiding collusion. This is the policy of avoiding perjured or "framed" suits for divorce and/or alimony where the defendant, far from colluding in the case, is being imposed on wrongfully and resists completely. The social problem of the collusive divorce is no more serious than that of the obtaining of divorces by perjury against the wishes of the defendants, where no grounds for divorce exist. On the alimony side there is the problem of the "gold digger" type of wife who wishes to be supported in ease without having to live with the husband who provides the support.

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[7] 170 Md. 579, 584, 185 Atl. 458, 461.
[8] Ibid.

It would seem that the rule of corroboration in divorce cases as well seeks to avoid the plaintiff's imposing a perjured case on the defendant as to avoid both parties imposing a collusive case on the court. If this be so, the rule of corroboration of divorce plaintiffs could be compared to the Statute of Frauds which, by another device—that of requiring a writing—seeks to avoid "framed" cases. As further indicating that the rule in divorce cases has this second policy we should consider that it is found in the Code in the same Article and Section, and even in the same sentence and clause, with two other rules of corroboration where the sole danger sought to be avoided is that of the perjured or "framed" case. The corroboration statute provides, in that order, that the plaintiff must be corroborated in cases of adultery, divorce, and breach of promise of marriage. Thus the divorce rule is sandwiched between two others where the sole danger is the trumped up case, viz., suits for criminal conversation and suits for breach of promise.[9]

The gravity of the danger of trumped up suits of the latter two types is well illustrated by the fact that a few American states have abolished such causes of action, because they have been so frequently used as devices of blackmail.[10] That the rule in divorce cases is found grouped along with these other two rules would seem to indicate that the Legislature intended the avoidance of "framed" divorce and alimony cases to be one of the objects of the Act.

It would seem that cases of alimony without divorce lend themselves readily to trumped up charges whereby unscrupulous wives may be enabled to secure comfortable support without performing any marital duties and without losing their rights in the husband's property. If one may believe the popular journals, alimony is tending to become a "racket" in America. If this be so, the strict application of the rule of corroboration would seem to be one way of avoiding this.

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[9] Then, too, the corroboration statute immediately adjoins in the Code another statutory rule of evidence, Md. Code, Art. 35, Sec. 3, which also seeks to avoid the danger of a trumped up case. This is the statute, sometimes called the "Dead Man Statute", which with certain exceptions excludes the testimony of interested survivors as to transactions with deceased persons or with persons incompetent to testify because of mental disability.

[10] A move toward the same end in the Maryland Legislature of 1935 failed of enactment.

If the rule of corroboration in divorce cases has these two alternative policies it would seem that the one to emphasize in the separate maintenance cases is the one involving the danger that is likely to be present, i. e., a trumped up charge, rather than the one involving a danger impossible of being involved, viz., collusion.

Thus it would seem that, rather than to grant relief to the wife on but slight corroboration, as the *Heinmuller, Engelberth* and *Roeder* cases permit, or to require no corroboration, as does the *Wiegand* case, the rule should be to give full and vigorous effect to the statement in the *Silverberg* case, standing alone, and to require corroboration to the utmost, in view of the fact that one of the two dangers sought to be avoided by the rule is present in separate maintenance cases as much as is ever likely. If the requirement of corroboration is generally sound it would seem appropriate to demand it to the utmost in separate maintenance cases where collusion is entirely unlikely but where motivated false accusations are very likely. It does not dispose of the problem to repeat the shibboleth, appropriate enough for divorce cases as such, that if the nature of the case precludes collusion the corroboration need be but slight. There is more to the problem than the danger of collusion.