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The Amending of Alimony and Divorce Cases in Maryland - Brooks v. Brooks Ritz v. Ritz

THE AMENDING OF ALIMONY AND DIVORCE CASES IN MARYLAND

***Brooks v. Brooks*[1]**
***Ritz v. Ritz*[2]**

The primary object of this case note is to consider the impact of later Maryland decisions, namely, the *Brooks* and *Ritz* cases, on existing Maryland amendment law as developed in an earlier case noted entitled, *"Proper Venue of Suit for Alimony Without Divorce—Ouster of Jurisdiction —Amendment—Woodcock v. Woodcock."*[3] The amendment problem in the cases being noted was brought before the courts by unsuccessful contentions that the "Thirty Day Rules" of the Supreme Bench of Baltimore City and of Anne Arundel County providing, "No decree in a suit for divorce shall be passed in less than thirty days from the filing of the bill, or on the cross-bill within thirty days from the filing of a cross-bill . . .,"[4] were violated.

The right to amend will be considered in the following situations:

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[1] 184 Md. 419, 41 A. (2d) 367 (1945).
[2] 52 A. (2d) 729 (Md. 1947).
[3] (1936) 1 Md. L. Rev. 81; 169 Md. 40, 179 A. 826 (1935).
[4] Rules of the Circuit Court for Anne Arundel County (1936), Rule 26. Rules of the Supreme Bench of Baltimore City, Rule 670.

(a) amending either a partial or an absolute divorce bill to a bill for alimony alone; (b) amending a bill for alimony alone to one for partial divorce; (c) amending a bill for alimony alone to one for absolute divorce; (d), amending a bill for absolute divorce to one for partial divorce; (e) amending a bill for partial divorce to one for absolute divorce.

As will be pointed out later, the addition of a prayer for "further relief" to an alimony bill is of considerable significance.

Concerning (e) above, it will be necessary to examine the two *Schwab*[5] cases and differentiate between the two general methods of altering a bill in equity, either by amendment or by the filing of a supplemental bill.

Before taking up the questions involved, it would be well to review the facts and results relevant to the subject matter of this writing in the *Woodcock*, *Brooks* and *Ritz* cases.

In the *Woodcock* case, plaintiff—wife—appellee, filed a bill for alimony without divorce containing a prayer for further relief in Baltimore City, her residence, against defendant—husband—appellant, who lived in Wicomico County. Defendant, before appearing specially in Baltimore City to plead to the jurisdiction (over the person), filed a bill for divorce *a mensa et thoro* in Wicomico County, claiming abandonment and desertion. The trial court in Baltimore City concluded that a motion to quash the service should be granted because the suit was not brought in the defendant's jurisdiction, pursuant to the principle that an alimony suit, being *in personam,* must be brought in the county where the husband resides. Subsequently, however, the court allowed plaintiff to amend her original bill by an additional prayer for an *a mensa divorce.* Upon appeal, the court ruled that the suit was improperly brought in Baltimore City and the filing of the husband's bill for an *a mensa divorce* in Wicomico County effectuated an ouster of jurisdiction as against Baltimore City.[6]

In *Brooks v. Brooks,* the plaintiff—wife—appellant, filed her bill for alimony without divorce on September 22nd, 1943 in Anne Arundel County where both resided, alleging technical desertion by virtue of his refusal to cohabitate.

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[5] Schwab v. Schwab, 93 Md. 382, 49 A. 331 (1901); Schwab v. Schwab, 96 Md. 592, 54 A. 653 (1903).

[6] For cases on this point, see Brooks v. Delaplaine, 1 Md. Ch. 351 (1848); Withers et al. v. Denmead, 22 Md. 135 (1864); Wright v. Williams, 93 Md. 66, 48 A. 397 (1901); Preston v. Poe, 116 Md. 1, 81 A. 178 (1911).

Defendant—husband—appellee, denied the allegations and filed a cross-bill on grounds of abandonment, praying an absolute divorce. On March 2nd, 1944, plaintiff amended her bill to divorce *a vinculo* and obtained a decree. The property settlement was filed in the case, but was not incorporated in the decree. Later, plaintiff brought two actions to set aside the divorce decree and the property settlement respectively, alleging, among other things, a violation of Equity Rule No. 26 of the Circuit Court for Anne Arundel County.[7] The Court of Appeals decided that "the amendment made in the case now before us on the day the decree was filed was not necessary to enable appellant to get an absolute divorce, as she had a right to one under her original bill",[8] and since the original bill was filed more than thirty days before the date of the decree, the aforementioned equity rule had no application.

Defendant—wife—appellee, in the *Ritz* case on July 16th, 1946, filed a bill for alimony alone (containing no prayer for further relief) in the Circuit Court of Baltimore City for desertion. Plaintiff—husband—appellant, filed a cross-bill for an *a mensa* divorce. After the hearing in the case, the Chancellor suggested that the wife amend her bill to a divorce *a mensa,* which she did on October 25th, 1946. The decree granting the appellee her partial divorce was signed on November 1st, 1946. The husband's appeal, asserting as one of its grounds the violation of the thirty day rule, was denied.

The first problem was considered in the case of *Stewart v. Stewart.*[9] There the court refused the wife's bill for partial divorce for adultery, since adultery was not one of the enumerated grounds for this type of relief, but remanded with leave to plaintiff to amend her bill to alimony alone without divorce, to which relief she was entitled under her allegations. The *Wald*[10] case, which allowed the wife to modify an *a vinculo* divorce decree, granted on her cross-bill for alimony alone and further relief, to alimony alone, states:

> "Since an early date, the wife, although entitled to a divorce, may, in this jurisdiction, elect to proceed against the husband for alimony only, and thus she has the choice between a suit for divorce with alimony or for alimony without divorce. She may make this

[7] *Supra,* n. 4.
[8] 184 Md. 419, 424, 41 A. (2d) 369 (1945).
[9] 105 Md. 297, 66 A. 16 (1907).
[10] Wald v. Wald, 161 Md. 493, 159 A. 97 (1932).

> choice either when she begins her suit, or during the course of the litigation, or, under proper circumstances, after an adjudication and remand on appeal."[11]

The rule, therefore, based on the above decisions, is that a bill for either type of divorce on the misconduct grounds, may be amended either by the "amendment" method in the Stewart case or the "choice" method permitted by the *Wald* case.

The second problem, that of amending a bill for alimony alone to partial divorce, is apparently well settled in Maryland at present. However, as a result of the holding of the *Woodcock* case, and its jurisdictional ramifications, this problem requires not only an analysis of the amendment rule but a further treatment of the jurisdictional question as well. In the *Ritz* case, which allowed amendment from alimony alone to an *a mensa* divorce, the husband appealed contending that the amendment so suggested and permitted by the Chancellor violated the thirty day rule and prejudiced his rights because the decree was signed within thirty days of the amendment. In the opinion, the court said, "As the original prayer was for alimony alone, and as alimony will not be awarded except on grounds which would be sufficient to grant a divorce *a mensa et thoro,* the appellant should not have been surprised, nor were his rights prejudiced."[12] The court went on to say that since no substantial right of the parties was prejudiced by the amendment, the amendment should not be considered as a new bill and, therefore, the thirty day rule was not violated. It should be noted, moreover, that the permitted amendment was necessary in this case in order for the sought relief to be granted, and furthermore, that the original bill of complaint failed to contain the usual prayer for further relief.[13]

A cursory glance at the facts and results in the *Woodcock* case, which refused to allow an amendment from alimony alone and further relief to a partial divorce, would lead one to conclude that it was overruled by the *Ritz* case, which did permit this type of amendment. However, such a conclusion would be entirely specious, for it would fail to take into account the fact that the husband in the *Woodcock* case had accomplished an ouster of jurisdiction by filing his bill for *a mensa* divorce in the county

[11] *Ibid.*, 502.

[12] 52 A. (2d) 729, 733 (1947).

[13] General Equity Rule 7 states that all bills ". . . shall also contain the prayer for general relief." See also Md. Code (1939) Art. 16, Sec. 176.

of his residence. As a consequence, then, the rule seems to be that if the suit is brought in the proper jurisdiction, an amendment from alimony alone to *a mensa* will be permitted. Since the grounds for the granting of alimony alone and *a mensa* overlap, the prayer for further relief is of no significance. The granting of the desired amendment in the *Woodcock* case, it is submitted, would have been affirmed on appeal in the absence of an ouster of jurisdiction, as there would then have been no reason for the disallowance of such amendment.

Our third question, whether or not an amendment from alimony alone and further relief to *a vinculo* divorce will be permitted, has been thoroughly answered in the *Brooks* case. Here, although the court permitted the amendment, it asserted that the amendment was not necessary as the inclusion of a prayer for general relief in the original bill automatically entitled the plaintiff—wife—to the maximum amount of relief warranted by the allegations. This assertion is in accord with the general equity rule on the type of relief to be granted under a prayer for general relief, as expressed in *Hill v. Pinder*.[14] It is evident that in this type of amendment situation, the inclusion of a prayer for further relief is of the utmost importance, for if such a prayer is not included, an amendment will contravene the rule against making a new bill by amendment.

> "Under the privilege of amending, a party is not permitted to make a new bill; he cannot abandon the entire case made by the bill and make a new and different case by way of amendment. If the amendment proposed changes the character of the suit as originally instituted, and is inconsistent with and repugnant to the title set up and the relief sought by the bill, making in substance a new bill, it cannot be allowed."[15]

As to the fourth problem, the amendment of a bill for absolute divorce to one for partial divorce, the Maryland Code, Article 16, Section 41, eliminates all uncertainties. The Code provides that if, in a bill for an *a vinculo* divorce, the court should find *a mensa* grounds, a partial divorce may be allowed. The basis for the above rule is that every bill for an *a vinculo* divorce automatically includes one for

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[14] 150 Md. 397, 133 A. 134 (1926).

[15] MILLER, EQUITY PROCEDURE, Sec. 186; see also General Equity Rule 17 and Md. Code (1939) Art. 16, Sec. 18, as amended.

an *a mensa* divorce, and the need for an amendment is thereby obviated.

The final problem to be considered, and perhaps the one most conducive to speculation, is that of amending a bill for a partial divorce to one for an absolute divorce, or the employment of the supplemental bill device to accomplish the same result.

Miller draws the following distinction between a supplemental bill and an amendment:

> "The general rule is that matters which have occurred previous to the filing of the original bill may be introduced by amendment; but that nothing which has occurred since the filing of a bill can be added to it by amendment, but must be brought in by supplemental bill."[16]

It behooves the reader to note that this problem can only arise in a desertion situation, the only overlapping point of the grounds for partial and absolute divorce.

The first *Schwab*[17] case refused a supplemental bill praying an *a vinculo* divorce on adultery grounds occurring after the filing of the original bill for partial divorce. Basing its reasoning on the nature of a supplemental bill, the court held in effect that the supplemental bill was not acceptable because the allegations not only failed to supplement those in the original bill but framed an entirely new cause of action. The court in the second *Schwab*[18] case, for the same reason, refused to allow plaintiff to file a supplemental bill for an absolute divorce as a result of adulteries with parties other than the original *particeps criminis* occurring after the original filing. There seem to be no Maryland cases which unequivocally state that an amendment can or cannot be made in this situation. The first *Schwab* case reveals only that one cannot change an original bill for an *a mensa* to one for an *a vinculo* divorce by filing a supplemental bill. As pointed out in the *Woodcock* casenote,[19] the rule seemed to be that one could not amend from *a mensa* to *a vinculo*. However, the *Brooks* case which permitted an amendment from alimony and further relief to divorce *a vinculo* (although it pointed out that this amendment was not necessary as plaintiff was entitled to an absolute divorce under her original

[16] *Ibid.*, Sec. 187.
[17] *Supra*, n. 5.
[18] *Ibid.*
[19] *Supra*, n. 3.

allegations, i. e. alimony and further relief) may well have removed some of the uncertainty concerning this question, and perhaps can be cited to support the view that an amendment is permissible under such circumstances. The foundation for the view permitting the amendment is that all *a mensa* grounds also entitle one to alimony alone, and since the *Brooks* case allows an amendment from alimony alone and further relief to absolute divorce, it would follow that an amendment from a partial to an absolute divorce is permissible. The above problem can be distinguished from the case of *Miller v. Miller*,[20] which held that plaintiff may elect an *a mensa* divorce if there is over eighteen months desertion; but if he does so, he cannot later obtain an *a vinculo* divorce for the same ground.

Finally, it must be concluded that the *Brooks* and *Ritz* cases do not fundamentally change local amendment doctrine, when contrasted with previous cases and statutes on the subject. On the other hand, these cases do clarify Maryland amendment law to the extent that a suit brought in the proper jurisdiction may be amended or supplemented, as the case may be, provided a new bill is not effectuated in the process, but a suit improperly filed in the first instance may not be amended in the event of an ouster of jurisdiction by the adversary.

[20] 153 Md. 213, 138 A. 22 (1927).