

7/11/59

Date of Meeting: November 27-28, 1959

Date of Memo: November 6, 1959

Memorandum No. 3

Subject: Right of Wife to Sue for Support After Ex Parte Divorce

Attached are copies of an exchange of correspondence between your Executive Secretary and Professor Harold W. Horowitz, our consultant on Study No. 51 -- Right of Wife to Sue for Support After Ex Parte Divorce.

The Commission earlier decided to defer consideration of this study until the Supreme Court rendered its decision in the Hudson case. This decision has now been rendered and is reported in 52 A.C. 761 (October 5, 1959).

It is suggested that the Commission determine at the November meeting what disposition should be made of this topic.

Respectfully submitted,

John H. DeMouilly
Executive Secretary

(#51)

October 27, 1959

Professor Harold W. Horowitz
School of Law
University of Southern California
3518 University Avenue
Los Angeles 7, California

Dear Professor Horowitz:

The Supreme Court has now rendered its decision in the Hudson case (52 A.C. 761, October 5, 1959). As you probably know, the court has affirmed the Hudson case and expressly overruled the Dimon case.

The Commission would like to dispose of the study it has undertaken concerning the right to support after an ex parte divorce. It seems to me that there are two possible recommendations we could make: (1) that no change in our law is necessary in view of the Hudson decision, or (2) that a statute to implement the Hudson decision and to provide the mechanics for obtaining permanent alimony or support after an ex parte divorce should be prepared and recommended to the Legislature by the Commission.

Would you please examine your study and the opinion in the Hudson decision and give the Commission your recommendation as to what disposition it should make of this study. It seems to me that this study is one that we can complete prior to the 1961 session.

Yours very truly,

John H. DeMouilly
Executive Secretary

JHD:lmh

UNIVERSITY OF SOUTHERN CALIFORNIA

University Park Los Angeles 7, California

November 3, 1959

Mr. John H. DeMouilly
Executive Secretary
California Law Revision Commission
School of Law
Stanford, California

Dear Mr. DeMouilly:

I should like to extend my congratulations to you on your taking over your position with the Commission. I hope that we can meet personally soon.

It seems to me that with the Hudson decision now before us there is no need to make any statutory changes in the law nor to make any implementations of Hudson. As I read Hudson all five of the recommendations I made in my study are present:

1) The basic principle of permanent alimony after ex parte divorce has been established.

2) Though in Hudson the husband was the divorce plaintiff, the court overruled Dimon, where the wife was the divorce plaintiff. Hence it appears that there will be no distinction drawn based upon which spouse was the divorce plaintiff.

3) Cardinale is overruled in Hudson, so that the prior separate maintenance decree will survive an ex parte divorce.

4) Hudson permits temporary alimony in the wife's suit for permanent alimony after an ex parte divorce.

5) Apparently the law stands as to other requisites for an alimony award, even though the proceeding for temporary and permanent alimony is not prosecuted under the existing statutes as such.

In light of this it seems to me no legislation is called for. I shall cite this entire history to students as an example of a court changing an undesirable court-made rule when the legislature begins to show interest in what the court has been doing.

Sincerely,

/s/ Harold Horowitz

Harold Horowitz