# DOMESTIC RELATIONS

*By* MANLEY F. BROWN*

*Well married a man is winged:*
*ill-matched, he is shackled.*
*H. W. Beecher*

Few indeed are the feet which tread upon this earth unwashed and unaffected by the waters of the mythical "Sea of Domestic Tranquility." A sounding of this "Sea," however, indicates that its tranquil portion is spread thin, like oil, upon the surface and that the depths of this body of water are, as usual, permeated with legal tempests. This observation seems justified after a consideration of the materials furnished by the MERCER LAW REVIEW to form the basis for this survey article. Some cases bearing only slight relevance to the field of domestic relations have been excluded on the ground that the respective opinions contained no discussion, or at least insufficient articulation, of applicable substantive principles. The cases included sometimes discuss old and settled principles of Georgia law, but in the hope that some young lawyer or law student, as green as the instant writer, will read this article, they have been included. As nearly as possible noteworthy points have been categorized and included under an appropriate heading.

## ALIMONY

The liveliest area of legal dispute between ex-marriage partners continues to be alimony. As the stage is set we find the ex-husband facing attachment for contempt due to arrearage and the Shylock-minded wife demanding her "pound and flesh."

In *Branch v. Branch*,[1] the citation for contempt was set down for a jury trial after the defendant admitted that he had not made his permanent alimony payments and alleged that he was justified since the plaintiff was now the common-law wife of another. On motion of the plaintiff, however, the trial court dispensed with the jury trial, and the matter was heard before the court alone. The Supreme Court affirmed, stating that since the respondent in a contempt proceeding is entitled to a jury trial only where there is an express statutory provision to that effect and since no such provision existed in this case, the defendant was not entitled to a jury. The court further held that because the evidence was conflicting as to the defense set forth by

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1. 219 Ga. 601, 135 S.E.2d 269 (1964).

the defendant, the trial judge did not abuse his discretion in holding the defendant in contempt. The opinion indicates that if the defendant's allegation that the plaintiff was the common-law wife of another had been properly supported by the evidence, a change of conditions justifying the failure to pay alimony would have been made out.

The case of *Posner v. Posner*[2] teaches that there is more to an alimony decree than the plain English used therein. The defendant in this rule for contempt had conveyed, pursuant to a decree based on a jury verdict, certain realty to the plaintiff, his former wife, subject to a first mortgage of $13,861.21. The decree also ordered him to pay the plaintiff $94.95 per month until she "shall remarry or the first mortgage . . . shall have been satisfied." The plaintiff later sold the property to a third party who refinanced the amount due on the mortgage and had it cancelled of record. The defendant took the position that since the mortgage had been satisfied, the above language of the decree freed him from making any further monthly payments. His position was further buttressed by the portion of the decree which required the plaintiff to apply the monthly payments to a reduction of the mortgage. The Supreme Court, speaking through Mr. Justice Grice, found no merit in the defendant's argument. They construed the decree as granting a fixed sum to be paid in installments. This construction by the court seemingly does violence to the plain language of the decree and is not satisfactorily supported by the reasoning found in the opinion. The court did state that, since the property was conveyed to the wife "subject to" the mortgage, this was evidence that a fixed sum was awarded. Generally such terminology is used to prevent the grantee of realty from becoming personally liable on any outstanding mortgages. The significance of such wording to the issue in the noted case is difficult to grasp.

The Supreme Court made it clear in *Vickers v. Vickers*[3] that a delinquent defendant in a contempt proceeding cannot ask for a reduction of the amount of alimony which he is obligated to pay. Until he brings a proper suit for modification as provided for in GA. CODE ANN. sections 30-220 to 30-225 (Supp. 1963), the original decree is res judicata. No matter how bad the defendant's plight is shown to be, "the trial judge on a contempt proceeding has no discretion to modify the terms of a decree for divorce and alimony."[4]

Generally a party laboring under an alimony incubus can look forward to some amelioration whenever his estranged wife remarries. However, this eagerly awaited date does not always bring relief. In *Davis v. Welch*,[5] the land of the defendant was levied upon to pay an amount due under the

2. 219 Ga. 814, 136 S.E.2d 340 (1964).
3. 220 Ga. 258, 138 S.E.2d 308 (1964).
4. *Id.* at 259, 138 S.E.2d at 309.
5. 220 Ga. 515, 140 S.E.2d 199 (1965).

judgment of the court entered pursuant to a jury verdict awarding plaintiff "$5,000 to be paid in three annual installments." Defendant contended in his affidavit of illegality that since the plaintiff had remarried the remainder of the obligation was cancelled. Not so, said the court! The amount of $5,000 was held to be a lump-sum award. "The direction that it be paid in three equal, annual installments did no more than fix the method of payment and did not in any way affect the finality of the award. . . . "[6] Furthermore, the court stated that the facts indicated that the award was unconditional. The wife had prayed for one half of the estate which she had helped the defendant accumulate over some twenty-three years. With this consideration before it, the jury had failed to affix to the award any condition respecting remarriage. The judgment of the trial court permitting the execution to proceed was accordingly affirmed.

In *Hicks v. Walton*,[7] the Court of Appeals reversed the trial court's award forfeiting a ne exeat bond given in an alimony proceeding. The court held that the general demurrer interposed should have been sustained since the petition did not contain an essential allegation, *i.e.*, "that the principal . . . [had] absented himself from the jurisdiction of the court. . . . "[8]

The defendant in *Roberts v. Roberts*[9] was granted relief by the Supreme Court from the trial court's judgment of contempt. At the time the proceeding was insituted the defendant resided in Oklahoma and was apprised of the proceeding only by receipt of the petition and rule nisi by registered mail. He was not *personally* served. The Supreme Court reiterated the hornbook principle that citizens of other states cannot be subjected to an in personam judgment by a Georgia court where there has been no personal service or consent on the part of the party asserting lack of jurisdiction. In the instant case there was no evidence of waiver, consent, or presence of the defendant in the jurisdiction.

An important facet of Georgia family law is the area of temporary alimony. A number of rather clear cut principles were posited by the Supreme Court in *Walton v. Walton*.[10] The legal setting for the court's discussion was the defendant's appeal from the trial court's award of temporary alimony including attorney's fees. The trial court's disposition was affirmed in accordance with, *inter alia*, the following legal principles: (1) The trial court's award of temporary alimony will be affirmed except where there is a flagrant abuse of his discretion. The fact that the evidence was in conflict calls for affirmance. (2) No misconduct within the purview of GA. CODE ANN. section 30-205 (1952 Rev.) was shown. (3) GA. CODE ANN. section 30-202 (1952 Rev.) contemplates the exercise of the trial judge's discretion, and section

6. *Id.* at 517, 140 S.E.2d at 201.
7. 109 Ga. App. 883, 137 S.E.2d 576 (1964).
8. *Id.* at 883, 137 S.E.2d at 576.
9. 219 Ga. 741, 135 S.E.2d 880 (1964).
10. 219 Ga. 729, 135 S.E.2d 886 (1964).

30-203 (1952 Rev.) directs the judge to consider the peculiar necessities of the wife and the status of her separate estate in making his award. (4) Consideration must also be given to the husband's estate although the corpus of that estate may be entrenched upon if necessary. (5) The social standing and comforts which the wife would have enjoyed if there had been no separation must be considered. The court in *Walton* sums up by saying that "in short, the necessities of the wife and the husband's ability to pay are the controlling factors in making an allowance for [temporary?] alimony."[11]

In the final case[12] dealing with alimony, suit was brought on two notes given the plaintiff-attorneys for services. The Court of Appeals held that even though the contract involved gave the attorneys a lien on any amount recovered in the divorce action, it was not void as an assignment of alimony contrary to public policy. The notes were held to have created an obligation independent of any award in the suit and the lien was treated as merely security for this obligation.

## CHILD SUPPORT AND CUSTODY

It is elementary that the trial judge has a wide latitude in fixing the legal relationships between parties when a minor child is involved. *Barrett v. Manus*[13] illustrates that this broad discretion of the trial judge continues throughout the term of court in which a particular suit is brought and enables him even to reverse or modify his own judgment during that term. In *Barrett* the trial judge had originally ordered custody of the minor child to be placed in the mother in accordance with an agreement of the parties which was incorporated into the judgment. During the same term the father moved to modify the judgment on the ground that newly gained information showed the mother to be unfit. The Supreme Court affirmed the trial court's overruling of the mother's demurrers, stating that the trial court was possessed of an inherent power "to revise, correct, revoke, modify, or vacate such judgment, even upon his own motion, for the purpose of promoting justice and in the exercise of a sound legal discretion."[14] It is only necessary that the proper proceeding be started during the term at which the judgment is rendered. As was pointed up in *Mullins v. Mullins*,[15] this power of the trial judge does not continue once the term has expired. "An attempt to retain jurisdiction of a judgment rendered on a jury verdict by the use of such language as 'until further order of the court' is a nullity."[16]

In 1962 GA. CODE ANN. sections 30-127 and 74-107 were amended to permit a child who has reached age fourteen to choose the parent with whom

11. *Id.* at 732, 135 S.E.2d at 889.
12. Dickey v. Mingledorff, 110 Ga. App. 454, 138 S.E.2d 735 (1964).
13. 219 Ga. 693, 135 S.E.2d 430 (1964).
14. *Id.* at 693-94, 135 S.E.2d at 431.
15. 219 Ga. 816, 136 S.E.2d 379 (1964).
16. *Id.* at 818, 136 S.E.2d at 380.

he will live "unless the parent so selected is determined not to be a fit and proper person to have the custody of said child." The Supreme Court ruled in *Adams v. Adams*[17] that this act was not unconstitutional as applied to a change of custody suit seeking the modification of custody awarded in a 1957 judgment. Against the retroactivity attack, the court stated that the 1957 judgment did not grant a *vested* right of custody defeating subsequent court action. While the act in question did relate to antecedent facts, it did not destroy or impair any vested rights. This same code section was dealt with in *Pritchett v. Pritchett,*[18] where the trial court refused to honor the expressed desire of a fifteen year-old daughter to live with her father. The court held that under the wording of the section the trial judge was not bound to grant the wishes of the fifteen year old, but must determine under all the facts which parent or guardian should have custody of the child. In the instant case the court felt that the trial court must necessarily have found the father not to be a fit and proper person. This result is contemplated under the specific wording of the statute and the court's construction is beyond criticism.

One of the most noteworthy cases included in this survey period was *Rider v. Rider.*[19] In that case suit was brought by two minor children against their alleged father seeking reasonable support payments. The defendant's request that the plaintiffs and their mother, who was not a party to the suit, be ordered to submit to a blood test to determine paternity was granted by the court in an appropriate order. The defendant submitted a sample of his blood but the plaintiffs refused to comply. The court thereupon dismissed the plaintiffs' suit due to their non-compliance. The appeal was heard by the full complement of judges on the Court of Appeals and was affirmed—one judge dissenting. The court held that, under GA. CODE ANN. sections 38-2110 and 38-2111 (Supp. 1963), the trial judge was authorized to order a "physical examination in any case in which the mental or physical condition of a party is in controversy. . . ."[20] The court further held that since the terms "mental or physical condition of a party" included blood type the failure of the plaintiffs to comply subjected them to the penalties set out in GA. CODE ANN. section 38-2111 (b) (2) (Supp. 1963), one of which is the complete dismissal of the recalcitrant party's action. In reaching the conclusion that the section included blood type the court cited and followed a decision of the United States Court of Appeals for the District of Columbia,[21] which had so construed Rule 35 (a), the analogous provision in the FEDERAL RULES OF CIVIL PROCEDURE. The decision is laudable and clearly within the spirit of the discovery provisions of the Code.[22] Chief Judge Felton, however, felt that the

17. 219 Ga. 651, 135 S.E.2d 428 (1964).
18. 219 Ga. 635, 135 S.E.2d 417 (1964).
19. 110 Ga. App. 382, 138 S.E.2d 621 (1964).
20. *Id.* at 383, 138 S.E.2d at 622.
21. Beach v. Beach, 114 F.2d 479 (D.C. Cir. 1940).
22. See 16 MERCER L. REV. 306 (1964) and 461 (1965).

majority of the court committed grievous error, stating, "It is inconceivable to me that the blood type of a person could be said to involve his mental or physical condition."[23] The majority also intimated that a difficult question would have been presented if the trial court's power to order the mother, who was not a party to the action, to submit to the test had been properly called into issue. The court did not reach that question on the record before it, indulging in the assumption that the defendant would have been able to produce a sample of the mother's blood.

Two cases[24] involving suits to modify alimony and child support judgments turned on the same question of law and may be handled together. The plaintiffs in both cases failed to state a cause of action because their allegations were incomplete. The cases make clear the requirement that the plaintiff must show a substantial change in his income *or* financial status as per GA. CODE ANN. sections 30-220 through 30-225 (Supp. 1963). The failure to allege a decrease in income or to set out facts enabling the court to compare the plaintiff's financial status as of the time of the original judgment with his status at the time of the suit for modification is fatal.

A settled principle of Georgia law was reaffirmed by the Supreme Court in *Mallette v. Mallette*.[25] The legal context was a petition for writ of habeas corpus brought by the mother of a minor child against the father who she alleged was holding the child contrary to a prior court decree. On the hearing the mother offered evidence of misconduct prior to the original divorce and custody decree. This evidence was excluded by the court and the plaintiff-mother excepted. Justice Mobley stated for the court that "the conduct of the parties before the divorce is not now material since it relates to their past conduct which has already been considered in the former adjudication. . . ."[26] The ruling of the trial court excluding the evidence was accordingly affirmed.

The Supreme Court executed some fancy "legal footwork" in *Perkins v. Coursen*[27] in order to avoid expressly overruling the full bench decision of *Bond v. Norwood*[28] and its progeny. The petition for writ of habeas corpus was brought by a minor child's father against the maternal grandparents, the child's mother having died. The trial court awarded custody to the grandparents and the father appealed the award. The legal question presented to the court was clear cut and had to be met head on. The contention of the plaintiff was that if he had not lost parental control by one of the modes set out by GA. CODE ANN. sections 74-108, 74-109, or 74-110 (1963 Rev.), he

23. 110 Ga. at 384-85, 138 S.E.2d at 623.
24. Hooks v. Avret, 219 Ga. 743, 135 S.E.2d 899 (1964); Perry v. Williamson, 219 Ga. 701, 135 S.E.2d 412 (1964).
25. 220 Ga. 401, 139 S.E.2d 322 (1964).
26. *Id.* at 402-03, 139 S.E.2d at 324.
27. 219 Ga. 611, 135 S.E.2d 388 (1964).
28. 195 Ga. 383, 24 S.E.2d 289 (1943).

was entitled to custody of the child as a matter of law. He contended that this followed since the custody of a child is, as a matter of right, vested in the surviving parent when the parent having custody under a divorce decree dies. He contended further that since custody had not been lost through one of the methods specified in the code, his fitness vel non was irrelevant and could not be taken into account by the trial judge. The court held that GA. CODE sections 50-121 (1933), authorizing the court in a habeas corpus suit to award custody of a child to a third person, and 74-106 (1933), authorizing the court to deal with a child in his discretion on habeas corpus where the parents are separated, one is dead and the survivor has remarried, empowered the trial court to make the award which he did. After much discussion of numerous Georgia cases the conclusion, was reached that the law of this state permitted a

> challenge by third persons of [the] legal right to custody on the ground of unfitness, and in such cases [authorized] . . . the discretion of *Code* §50-121 even though the parent . . . [had] not lost his legal right by any of the modes of *Code* §§74-108, 74-109 or 74-110.[29]

This conclusion necessitated some distinction or overruling of *Bond v. Norwood*[30] and several cases which were apparently based thereupon. The court was not in a position to expressly overrule this misleading case (the fact of Chief Justice Duckworth's dissenting opinion "might" have influenced the court) so they disemboweled it in the following manner: "Although we agree with the *result* in *Bond v. Norwood* . . . we cannot agree with the basis for that result."[31] The dissenting justice was aghast at the majority opinion and while there is some legal basis for his position under Georgia law, both the *result* reached by the majority and the *basis* for it seem fitting in this area of the law.

*Northcutt v. Northcutt*[32] was an appeal from judgment in a case where, for the third time, the issue of child custody had been litigated between the parties. The Supreme Court held that a finding by the trial court that the mother was fit to have custody at stated times was not a finding that she was completely fit for full time custody, and "on the contrary, it . . . [was] necessarily a holding that she was not."[33] The fact that one child, who was fourteen years old, chose to live with the mother was not controlling since the mother was found unfit for custody.[34] It was further held by the court that the father was properly relieved of his support payments to the mother

29. 219 Ga. at 623, 135 S.E.2d at 396.
30. *Supra* n. 28.
31. 219 Ga. at 615, 135 S.E.2d at 391. (Italicized in original).
32. 220 Ga. 245, 138 S.E.2d 377 (1964).
33. *Id.* at 247, 138 S.E.2d at 379.
34. See discussion of this principle *supra* pp. 94-95.

for benefit of the children since he now had custody of and was supporting them.

While the subsequent marriage of the divorced wife may bring some financial relief to the alimony and support burdened husband, the remarriage of the husband himself is of little help in the matter. This was emphasized by the court in *Strickland v. Strickland,*[35] where the father had incurred the obligations of a second family. The trial judge's abolition of the child support payments was reversed on the ground that remarriage with its attendant burdens did not authorize such an order especially where the father's income had risen substantially since the original decree.

In *Cohen v. Barris,*[36] a suit for accounting and injunction was brought by the father of minor children against the estranged wife who had custody of the children. The trial judge sustained a motion to dismiss and the Supreme Court affirmed. The court held that the mere allegation that the mother had deposited support payments to her own account was insufficient to show any "misuse" on her part. This was true notwithstanding the fact that the mother, as a matter of law, stood in the capacity of trustee or guardian to the children and was bound to use the support funds only for their benefit.

*Kelton v. John,*[37] the final case in this category, was an appeal by the father from the award of temporary custody to the maternal grandfather. The writ of error was dismissed by the Supreme Court because the temporary custody period had expired and the issue had become moot pending appeal.

## Interspousal Tort Liability

Only one case dealt squarely with tort liability between husband and wife. In *Taylor v. Vezzani,*[38] the defendant moved for summary judgment on the ground that he had intermarried with the plaintiff subsequent to the filing of the suit in question. The motion was granted by the trial court and affirmed by the Court of Appeals. The settled Georgia law principles were concisely stated and reaffirmed by the court. No cause of action existed at common law because in the eyes of the law the husband and wife were one and the same. This legal fiction still prevails in Georgia except where it has been expressly changed by statute or by necessary implication. There has been no change respecting personal torts between husband and wife and the rule is still in line with the common law.

> Marriage extenguishes antenuptial rights of action between the husband and wife, and after marriage the wife cannot maintain an

35. 220 Ga. 65, 137 S.E.2d 31 (1964).
36. 220 Ga. 131, 137 S.E.2d 469 (1964).
37. 220 Ga. 272, 138 S.E.2d 316 (1964).
38. 109 Ga. App. 167, 135 S.E.2d 522 (1964).

action against her husband based on a tortious injury to her person, though committed prior to coverture.[39]

### WIFE AS SURETY FOR HUSBAND

It is layman's law in Georgia that a wife cannot bind her separate property as surety for her husband's obligations. This principle was strengthened as the Supreme Court and the Court of Appeals each struck down schemes designed to circumvent the mandate of GA. CODE ANN. section 53-502 (1961 Rev.). In *Reid v. Peoples Bank*,[40] the scheme was so elaborate that this already lengthy article cannot bear the weight of a detailed discussion of the facts. The clear implication of the opinion is, however, that notwithstanding the smoke screen of transactions thrown up, if the real object is to bind the wife's estate, it will not be permitted. The Court of Appeals similarly disapproved a scheme in *Atlas Subsidiaries, Inc. v. Davis*,[41] the effect of which was to bind the wife's estate for improvements made to the husband's property.

## MINOR CHILDREN

### CHILD ABANDONMENT—PUNISHMENT

*Balkcom v. Defore*[42] is more properly classified as a criminal law case but is interesting enough to risk mention of it in both the criminal law and the domestic relations articles. The petitioner was imprisoned under GA. CODE ANN. section 74-9902 (1964 Rev.) for abandonment of children. He had pleaded guilty to five counts—one for each of his five chldren. The trial court granted the writ of habeas corpus and was affirmed on appeal. The warden's argument that there was a separate offense for each of the children was rejected. The Supreme Court held that there could be only one offense for each act of abandonment regardless of how many children were involved. This decision should be well received by the more prolific fathers in Georgia who are also afflicted with a yearning to wander.

### GUARDIAN AND WARD

In *Kimsey v. Caudell*,[43] the Court of Appeals held that when a guardian is sued in his representative capacity the requirements of the Georgia Constitution that a defendant sued in a civil suit must be tried in the county of his residence, are applicable unless he fits the constitutional exceptions set out in GA. CODE ANN. sections 2-4901 through 2-4905 (1947 Rev.). The

39. *Id.* at 168, 135 S.E.2d at 523.
40. 220 Ga. 368, 138 S.E.2d 876 (1964).
41. 110 Ga. App. 765, 140 S.E.2d 62 (1964).
42. 219 Ga. 641, 135 S.E.2d 425 (1964).
43. 109 Ga. App. 271, 135 S.E.2d 903 (1964).

guardian in that suit had been sued in Habersham County when in fact he was a resident of Jackson County. Since none of the constitutional exceptions were applicable, the guardian-defendant's plea to the jurisdiction was held to be good.

An important ruling respecting the status of a minor when he is a party to a civil suit was contained in *Roebuck v. Payne*.[44] The Court of Appeals stated that a judgment against a minor who had not had a guardian ad litem during the litigation was not fatally defective since an estoppel in pais can be urged *if*:

> (1) the fact of infancy is unknown to the court or the opposing parties, (2) no facts are shown which would reasonably cause them to question the defendant's age . . . , (3) the defendant, with knowledge of his rights and of the ignorance of the court and the parties to the case, appears, pleads and actively participates in the trial (4) as the leading witness for the defense, [and] (5) [is] at all times represented by counsel.[45] (Numeration added.)

The numeration placed in the above quote emphasizes that several "ifs" are incorporated in the court's statement. The court did not say, however, if the estoppel in pais was assertable only where *all* the "ifs" are present in a single case or just how many would be required. If a concurrence of all these conditions is required, application of the rule will obviously be difficult. The potential problem reminds one of the current furor raging in the state and federal courts as to the proper interpretation of *Escobedo v. Illinois*,[46] the holding of which was stated in the same fashion as that of *Roebuck*. Such a problem will undoubtedly, *ex necessitate*, admit only of an *ad hoc* solution.

Several rules of law concerning one in the status of a ward were laid down in *Fuller v. Dillon*.[47] (1) The ward is incompetent and therefore has the right to appear by next friend. (2) The court of ordinary is possessed of general jurisdiction when administering the estate of a ward and its judgments may be attacked either directly or collaterally when a lack of jurisdiction appears on the face of the record. (3) Such a lack of jurisdiction is present when it appears that the citation and notice requirements of GA. CODE ANN. sections 49-204 (Supp. 1963) and 49-205 (1935) have not been complied with prior to sale, exchange, or encumbrance of the ward's estate.

### JUVENILE COURT

One case[48] contained a basic principle respecting the jurisdiction of juvenile courts in Georgia. The court reasserted that under the provisions of

44. 109 Ga. App. 525, 136 S.E.2d 399 (1964).
45. *Id.* at 525, 136 S.E.2d at 400.
46. 378 U.S. 478 (1964).
47. 220 Ga. 36, 136 S.E.2d 733 (1964).
48. Smith v. Smith, 219 Ga. 739, 135 S.E.2d 866 (1964).

the Juvenile Court Act, GA. CODE ANN. section 24-2409 (2) (1959 Rev.), there must be a transfer from the superior court before a juvenile court has jurisdiction of the subject matter of a habeas corpus case.

### NOTEWORTHY CASES EXCLUDED

Three cases contained important rulings which were more appropriate for the survey article on torts. They are cited here for reference purposes only.[49]

### STATUTES

Relevant statutes enacted during the survey period are noted below but no attempt to minutely analyze or construe them is made.

Ga. Laws, 1965, p. 197 amended Code section 74-9902 which now provides that the willful and voluntary abandonment of a child shall be a misdemeanor. If the abandonment is coupled with departure from the state it is a felony. The defined offense is continuing and former acquittal or conviction is not a bar to further prosecution if the child involved was in a dependent condition for thirty days prior thereto. The third conviction is a nonreducible felony. The statute provides that a good defense is made out if the defendant shows that he is not the parent of the child. If he is acquitted on this ground he may not later be subjected to liability, criminal or civil, respecting the same child.

Ga. Laws, 1965, p. 234 provides that an eighteen year old who is married *or* emancipated may execute conditional sales contracts for the purchase of personalty including furniture, automobile, and home appliances. The contracts are held to be as valid as if the minor had reached his majority.

Ga. Laws, 1965, p. 263 provides a procedure whereby a wife can get a permanent alimony judgment against her husband when he has previously obtained a divorce in another jurisdiction without personally serving the wife and without there having been any waiver on her part. If the husband is a resident of Georgia when the authorized suit is brought, he must be sued in the county of his residence. Service on the husband must be made in the same manner as in an ordinary permanent alimony case. The procedure authorized by the statute cannot be used to obtain support payments for a child whose custody and support were adjudicated in the foreign decree. The one exception to this restriction is where the wife has subsequently been awarded custody by a court having jurisdiction of the parties.

A major overhaul of the law regarding the issuance of marriage licenses was effected by Ga. Laws, 1965, p. 335. (1) Code section 53-102 was amended to allow marriage of underage persons when the girl is pregnant only upon

49. Armstrong Furniture Co. v. Nickle, 110 Ga. App. 686, 140 S.E.2d 72 (1964); Cohen v. Sapp, 110 Ga. App. 413, 138 S.E.2d 749 (1964); Hightower v. Landrum, 109 Ga. App. 510, 136 S.E.2d 425 (1964).

proof of pregnancy in the form of a certificate from a licensed physician. Also required is the parental consent in respect to underage parties. (2) Code section 53-201 now prohibits licenses from issuing between 6 p.m. Saturday and 8 a.m. the following Monday. If the female is a resident of Georgia, the license must issue in the county of her residence. If a non-resident, it must issue in the county where the ceremony is to be performed. (3) Code section 53-202 now prescribes a three day waiting period unless the girl is pregnant or unless both parties are twenty-one years old. (4) Code section 53-204 now provides that all persons not having passed their nineteenth birthday must have parental consent. (5) Penalties for violating the provisions of the new law are also set out.

Ga. Laws, 1965, p. 500 amends Code section 53-102 by removing "impotency" as one of the disabilities preventing a valid marriage contract.