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Divorce: Corroboration of Testimony of Complainant

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tending to show guilt.[31] Most decisions, however, adopt the contrary and more logical position.[32] This issue does not arise at all in the principal case; the accused did not admit causing an abortion and then seek to justify such act. Instead, he merely admitted treating the patient after an abortion, and insisted that he did not perform any act causing it.

That many a wrongdoer will flee or seek concealment in order to avoid detection and punishment is to be expected; but it is equally apparent that not all who flee are necessarily wrongdoers. The principal case holds that mere absence, when fully explained, and when not supported by any evidence tending to establish the improper motive necessary to flight, does not of itself constitute flight and accordingly cannot be considered as evidence of guilt. This decision conforms to the principle generally followed in other jurisdictions.[33]

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DIVORCE: CORROBORATION OF TESTIMONY OF COMPLAINANT

Morgan v. Morgan, 40 So.2d 778 (Fla. 1949)

Complainant brought suit for divorce on the grounds of desertion and extreme cruelty. Although the answer denied the charges, and although there was no testimony in the record to support them, other than that of complainant, the chancellor found them to be sustained on final hearing and granted the divorce. Respondent appealed. HELD, the decree of divorce, based on the uncorroborated testimony of complainant, should not have been granted. Decree reversed.

Reliance entirely upon the uncorroborated testimony of a complainant in granting a divorce is not sanctioned by a majority of

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[31]Trapp v. Territory of New Mexico, 225 Fed. 968 (C. C. A. 8th 1915).

[32]*E.g.*, Rowan v. United States, 277 Fed. 777 (C. C. A. 7th 1921) (severely criticizing the *Trapp* decision, *supra* note 31); People v. Flannelly, 128 Cal. 83, 60 Pac. 670 (1900); State v. Rodriguez, 23 N. M. 156, 167 Pac. 427 (1917).

[33]See note 16 *supra*.

jurisdictions.[1] The courts are agreed that the rule is designed to prevent collusion between the parties.[2] Pennsylvania, however, takes the unique position that uncorroborated testimony is sufficient to support a decree if this testimony is not denied by respondent,[3] although corroboration is required in other situations.[4] There is little logic in this view, as it tends to encourage rather than discourage collusion. Most courts hold that the silence of the respondent does not in any way prejudice his case;[5] and even though he admits the allegations they must be further substantiated.[6] The Supreme Court of Connecticut has ruled that no corroboration is necessary in a contested suit, inasmuch as in such proceedings there is little likelihood of collusion.[7] Following this reasoning, but reaching a somewhat different result, other jurisdictions reduce the degree of corroboration in such a situation but do not dispense with it altogether.[8]

Corroboration may be supplied either by circumstances [9] or by the testimony of third persons.[10] It is generally held that even the

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[1]*E.g.*, Goodlett v. Goodlett, 206 Ark. 1048, 178 S. W.2d 666 (1944); Bess v. Bess, 58 Idaho 259, 72 P.2d 285 (1937); Mayerson v. Mayerson, 107 N. J. Eq. 63, 151 Atl. 855 (1930); Lesh v. Lesh, 138 Ohio St. 492, 37 N. E.2d. 383 (1941); *cf.* Callahan v. Callahan, 192 S. W.2d 48 (Mo. 1946); Mayen v. Mayen, 177 S. W.2d 240 (Tex. Civ. App. 1943).

[2]Davis v. Davis, 228 Iowa 764, 292 N. W. 804 (1940); Visneski v. Visneski, 219 Minn. 217, 17 N. W.2d 313 (1945); Whitcomb v. Whitcomb, 115 Vt. 331, 58 A.2d 814 (1948).

[3]Friess v. Friess, 156 Pa. Super. 38, 39 A.2d 151 (1944); Frantz v. Frantz, 134 Pa. Super. 481, 3 A.2d 987 (1939); Reinhardt v. Reinhardt, 111 Pa. Super. 191, 169 Atl. 408 (1933).

[4]Taylor v. Taylor, 142 Pa. Super. 441, 16 A.2d 651 (1940).

[5]Read v. Read, 158 Ark. 643, 240 S. W. 410 (1922); Failes v. Failes, 166 Minn. 137, 207 N. W. 200 (1926); Brinkerhoff v. Brinkerhoff, 106 N. J. Eq. 331, 150 Atl. 679 (1930).

[6]Goodlet v. Goodlet, 206 Ark. 1048, 178 S. W.2d 666 (1944); Hanover v. Hanover, 34 Ohio App. 483, 171 N. E. 350 (1929); *cf.* Stark v. Stark, 32 Ariz. 392, 259 Pac. 401 (1927)

[7]Babcock v. Babcock, 117 Conn. 310, 167 Atl. 815 (1933).

[8]Cairo v. Cairo, 87 Cal. App.2d 558, 197 P.2d 208 (1948); Olson v. Olson, 47 Idaho 374, 276 Pac. 34 (1929); Schriver v. Schriver, 185 Md. 227, 44 A.2d 479 (1945).

[9]Low v. Low, 232 Iowa 1114, 7 N. W.2d 367 (1943); Lesh v. Lesh, 138 Ohio St. 492, 37 N. E.2d 383 (1941); Visneski v. Visneski, 219 Minn. 217, 17 N. W.2d 313 (1945).

[10]Parnell v. Parnell, 211 Ark. 1028, 204 S. W.2d 469 (1947); Davis v. Davis, 228 Iowa 764, 292 N. W. 804 (1940).

children of the parties may testify.[11] In this event their testimony may constitute sufficient corroboration,[12] but the chancellor must carefully weigh such evidence, taking into consideration the age, maturity, and possible prejudices of the child.[13]

Jurisdictions vary, however, as to the amount of supporting evidence required to establish the allegations of the complainant. Several states have passed statutes dealing specifically with this problem.[14] Of these, only one expressly permits the issuance of a decree of divorce without some corroboration;[15] the remainder deny relief upon the testimony of complainant alone. These statutes, however, are silent with regard to the extent of corroboration necessary to support the complainant's allegations, with the result that the courts are still faced with the necessity of determining sufficiency. The courts of two states require that the allegations be supported as to every element essential to the suit.[16] The majority of jurisdictions, however, are not so strict; the complainant prevails if a considerable number, though not all, of the material allegations are corroborated.[17] A few jurisdictions, recognizing the difficulties inherent in the problem, have expressly declared that formulation of a specific general rule is not practicable, and that the amount of substantiation required must be decided by the chancellor in the light of the facts and circumstances as these arise in the individual case.[18]

Florida, although consistently adhering to the doctrine that a decree of divorce cannot be granted solely upon the uncorroborated

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[11]Bole v. Bole, 76 Cal. App.2d 344, 172 P.2d 936 (1946); Ames v. Ames, 231 Mich. 347, 204 N. W. 117 (1925); Powell v. Powell, 198 Miss. 301, 22 So.2d 160 (1945).

[12]Crum v. Crum, 57 Cal. App. 539, 207 Pac. 506 (1922); Campbell v. Campbell, 194 Iowa 828, 190 N. W. 369 (1922); Burt v. Burt, 48 Wyo. 19, 41 P.2d 524 (1935); *cf.* Ritter v. Ritter, 103 Cal. App. 583, 284 Pac. 950 (1930).

[13]McCleary v. McCleary, 140 Md. 659, 118 Atl. 133 (1922); Buck v. Buck, 320 Mich. 624, 31 N. W.2d 829 (1948).

[14]*E.g.*, ARIZ. CODE ANN. §27-804 (1939); IDAHO CODE ANN. §32-703 (1947); KAN. GEN. STAT. ANN. §60-1509 (1935).

[15]IDAHO CODE ANN. §32-703 (1947).

[16]Walton v. Walton, 166 Kan. 391, 202 P.2d 197 (1949); Tucker v. Tucker, 142 N. J. Eq. 687, 61 A.2d 303 (1948).

[17]Hansen v. Hansen, 86 Cal. App. 744, 261 Pac. 503 (1927); Louden v. Louden, 221 Minn. 338, 22 N. W.2d 164 (1946); Chamberlain v. Chamberlain, 121 N. J. Eq. 234, 189 Atl. 50 (1937).

[18]Stephens v. Stephens, 53 Idaho 427, 24 P.2d 52 (1933); Sell v. Sell, 148 Neb. 859, 29 N. W.2d 877 (1947).

testimony of the complainant,[19] has not attempted to lay down a specific rule applicable to all sets of circumstances. Our Supreme Court has held that admissions of the parties in divorce suits by way of decree pro confesso amount to but little, and that proof of the allegations must still be made,[20] even as to the fulfillment of the statutory residence requirements.[21] Admittedly, in an early divorce case, the Court specifically held that allegations denied by the respondent under oath must be supported by the testimony of two witnesses, or by the testimony of one witness supported by strongly corroborating circumstances.[22] That decision was based on an old rule of equity pleading that was for all practical purposes, though not expressly, abolished in Florida[23] by the Chancery Act of 1931.[24] Today, however, a rule to be applied is not at hand. For example, in a suit for divorce based on habitual indulgence in violent and ungovernable temper and extreme cruelty, in which the respondent-husband appeared but entered no defense, the mere existence of corroborative testimony of a third party as to the effect of the husband's conduct was deemed insufficient.[25] Yet in another case, in which the appellant-respondent argued that all material allegations had to be supported by corroborative testimony or evidence, the Court asserted that ". . . if the evidence as a whole supports the bill, it is sufficient."[26] It is apparent that in Florida, despite the lack of a definite statement to such effect, the degree of corroboration depends upon the facts and circumstances of the individual case. Some corroboration is essential, but complainant's testimony need not be supported in every particular.[27] As regards the

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[19]Justice v. Justice, 148 Fla. 5, 3 So.2d 508 (1941); Phillips v. Phillips, 146 Fla. 311, 1 So.2d 186 (1941); Homan v. Homan, 144 Fla. 371, 198 So. 20 (1940).

[20]Crisostomo v. Crisostomo, 95 Fla. 70, 115 So. 838 (1928); Wade v. Wade, 93 Fla. 1004, 113 So. 374 (1927); *see* Minick v. Minick, 111 Fla. 469, 486, 149 So. 483, 490 (1933).

[21]Kutner v. Kutner, 159 Fla. 870, 33 So.2d 42 (1947); Phillips v. Phillips, 146 Fla. 311, 1 So.2d 186 (1941).

[22]Ford v. Ford, 63 Fla. 422, 58 So. 131 (1912).

[23]Whittaker v. Eddy, 109 Fla. 535, 147 So. 868 (1933); *cf.* KOOMAN, FLORIDA CHANCERY PLEADING AND PRACTICE §97 (1939).

[24]FLA. STAT. c. 63 (1949).

[25]Dean v. Dean, 87 Fla. 242, 99 So. 816 (1924).

[26]Diem v. Diem, 141 Fla. 260, 264, 193 So. 65, 67 (1940).

[27]Chisholm v. Chisholm, 98 Fla. 196, 125 So. 694 (1929).

precise amount of corroboration required, there is no rule at all, accurately speaking.

Although some substantiation of a complainant's testimony is doctrinally required before a divorce will be granted, trial judges requiring very little support of such testimony have been sustained in other jurisdictions in instances in which the possibility of collusion was shown to be slight[28] or the proof of essential facts difficult.[29] The attitude of the Supreme Court of Florida on this particular point has not been definitely expressed; its readiness to reverse decrees of divorce is usually predicated on insufficiency of the evidence offered by complainant.[30] The appellate policy just mentioned as regards certain other jurisdictions serves in most instances to reduce the burden on complainant. Still more important, it recognizes that, when the subject-matter is of such a nature that creation of a precise rule is impossible in a given field at a given time, the discretion of a chancellor produces results at least satisfactory as those effected on a cold record by an appellate court that by its own showing is as yet unable to lay down a rule. Appellate courts generally are not prone to question the exercise of discretion by the chancellor unless there is a lack of any substantial corroboration. This, however, was the situation in the principal case; and on this there is a rule. Some corroboration is necessary.

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NEGOTIABLE INSTRUMENTS: THE IMPOSTOR RULE

United States v. Continental-American Bank and Trust Co. et al., 175 F.2d 271 (C. A. 5th 1949)

Bertha Smith, pretending to be and using the name of Beulah Gibbs, widow of a deceased soldier, presented by mail an application and affidavits requesting six checks from the Veterans Administration. She thereby secured these checks, which were made to the order of Beulah Gibbs; endorsed the checks by signing the name of Beulah

[28]Cairo v. Cairo, 197 P.2d 208 (Cal. 1949); Olson v. Olson, 47 Idaho 374, 276 Pac. 34 (1929); Locksted v. Locksted, 208 Minn. 551, 295 N. W. 402 (1941).

[29]Gobler v. Gobler, 209 Ark. 459, 190 S. W.2d 975 (1946).

[30]*E.g.*, Garland v. Garland, 158 Fla. 643, 29 So.2d 693 (1947); Chisholm v. Chisholm, 98 Fla. 1196, 125 So. 694 (1929).