

Husband and Wife--Divorce--Right to Alimony upon Annulment of Marriage (Sleicher v. Sleicher, 251 N.Y. 366 (1929))

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has received should in conscience be returned.⁶ It necessarily follows that the creditors have no greater right than the husband.

E. J. D.

HUSBAND AND WIFE—DIVORCE—RIGHT TO ALIMONY UPON ANNULMENT OF MARRIAGE.—In a decree of divorce, the defendant herein was directed to pay alimony to the plaintiff so long as she remained unmarried. Thereafter plaintiff contracted a second marriage which was annulled on the ground of fraud. This action was brought to recover the instalments of alimony falling due since her remarriage. On appeal, *held*, plaintiff is entitled to alimony from the time the second marriage was adjudged null and void but not for the period during which the second marriage was in force. *Sleicher v. Sleicher*, 251 N. Y. 366, 167 N. E. 501 (1929).

The basis of the decree of annulment was the fraudulent concealment from plaintiff of insanity prior to and including the time of marriage.¹ Plaintiff urges that the right to alimony revived when the second marriage was annulled for fraud avoiding it from the beginning.² The purpose of an award of alimony is support for a divorced wife not otherwise supported. Though a decree of annulment of a voidable marriage relates back to the time of the ceremony, support cannot be had from two spouses at the same time.³ During the continuation of the voidable marriage the husband is chargeable with a duty of suitable support and it is presumed that that duty is fulfilled.⁴ The annulment of a marriage is not retroactive to the extent of making the divorced husband liable for alimony during the time the voidable marriage is in force.⁵

J. M. C.

⁶ *Schank v. Schuchman*, 212 N. Y. 352, 358, 106 N. E. 127 (1914); 3 *Williston, Contracts*, Sec. 1530.

¹ *Smith v. Smith*, 112 Misc. 371, 184 N. Y. Supp. 134 (1920); *Svenson v. Svenson*, 178 N. Y. 54, 70 N. E. 120 (1904); *Lapides v. Lapides*, 224 App. Div. 257, 229 N. Y. Supp. 745 (1928).

² *Matter of Moncrief*, 235 N. Y. 390, 139 N. E. 550 (1923); *American Surety Co. v. Conner*, 251 N. Y. 1, 166 N. E. 783 (1929).

³ *Sistare v. Sistare*, 218 U. S. 1, 22, 30 Sup. Ct. Rep. 682, 54 L. ed. 905 (1909); *Krauss v. Krauss*, 127 App. Div. 740, 111 N. Y. Supp. 788 (1908).

⁴ *Cohen v. Cohen*, 150 Cal. 99, 88 Pac. 267 (1906); *Phy v. Phy*, 116 Or. 31, 236 Pac. 751 (1925); *Nelson v. Nelson*, 282 Mo. 412, 221 S. W. 1066 (1920).

⁵ *Jones v. Brinsmade*, 183 N. Y. 258, 76 N. E. 22 (1905); *Matter of Moncrief*, *supra*.