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NINTH GROUND FOR DIVORCE: ADDENDUM

W. KENDALL LIPSCOMB, JR.

Since the writing of "Ninth Ground For Divorce",¹ section 20-91, Code of Virginia, relating to grounds for divorce from the bond of matrimony, has been amended. The article was written and prepared for publication in January and February, 1962, and the amendment was not approved until March 30, 1962.²

Subsection (9) of § 20-91, as amended in 1962, reads as follows:

On application of either party if and when the husband and wife have lived separate and apart without any cohabitation and without interruption for three years. A plea of res adjudicata or of recrimination with respect to any other provision of this section shall not be a bar to either party obtaining a divorce on this ground.

The 1962 amendment changed subsection (9) by deleting the latter part of the first sentence which read "and at the time of separation were each resident and domiciled in Virginia." It also substituted the present second sentence for the prior second sentence, which read: "Divorce on this ground shall not be granted where service of process is by publication."

The amendment made the following changes relative to the grounds for divorce for statutory separation: (1) It is no longer necessary for the parties to have been each resident and domiciled in this state at the time of their separation; (2) Res Adjudicata with respect to any of the other eight grounds in this section, is not a bar as to either party; (3) Recrimination, with respect to any of the other eight grounds, is not a bar to either party; and (4) Such a divorce may now be granted on service of process by publication, if such service is otherwise proper. All four of these changes make it easier to obtain a divorce by a continuous separation for three years.

¹ Note, *Ninth Ground for Divorce: Statutory Separation for Three Years*, 3 William and Mary L. Rev., 311 (1962).

² Acts of Assembly, 1962, c. 288, pp. 413, 414.

Although the amendment substantially liberalized the statute, it did not materially affect the subject matter of the previous article, which dealt primarily with the purpose of such statutes and the nature of the separation required under such statute. Only the change in the amendment relative to the defense of recrimination was dealt with in the previous article, and in that regard it concluded, "Virginia should not consider fault of the applicant in reaching its decision. The majority of the jurisdictions do not, and of those which do many are forced to do so because of the wording of their statutes. * * * Virginia's statute has no such expressed restrictions."³ Now Virginia's statute expressly states the law in accord with this recommended interpretation of the former statute and says that there is to be no consideration of the fault of either party in obtaining a divorce under this ground.

As yet, there are no Virginia cases interpreting either the original statute of 1960 or its 1962 amendment. There is only one case which even mentions this ground for divorce.⁴ The Supreme Court of Appeals of Virginia, upon remanding a case which had been brought on the grounds of cruelty and desertion stated that the litigants should be allowed to amend their pleadings in view of the creation of a grounds for statutory separation in 1960.

³ *Supra*, note 1, at p. 315.

⁴ *Todd v. Todd*, 202 Va. 133, 141, 115 S.E.2d 905.