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NOTE

MAY A PLENARY PARDON SET ASIDE A DIVORCE GRANTED ON THE GROUND OF THE CONVICTION OF A FELONY?

The States of Arizona¹ and Texas² both provide that a divorce libel cannot be filed on the ground of the conviction of a felony until one year after final judgment of conviction. However, the Arizona statute then proceeds to answer the perplexing question constituting the title of this article in the negative while the Texas statute answers it affirmatively. Nine other States by statute answer the question as does Arizona. Massachusetts³ requires that the felon be sentenced to at least five years imprisonment. Michigan,⁴ Nebraska,⁵ and Wisconsin⁶ provide that the felon be sentenced to at least three years imprisonment. Michigan further provides that if the felon is sentenced to life imprisonment the bonds of matrimony are severed without the necessity of a divorce. Mississippi⁷ limits her answer to a pardon granted after the felon is sent to the penitentiary. West Virginia⁸ goes furthest of all by stipulating that even if a divorce libel is filed before the pardon but not yet issued nevertheless the pardon may not be set up in defense. Minnesota,⁹ Virginia,¹⁰ and Wyoming¹¹ are the remaining States.

There has been a judicial answer to the question only twice, by Georgia directly and by Louisiana in the form of *obiter dicta*, both courts reaching the same conclusion existing in the ten States by statute in opposition to the Texas statute. In 1906 Mr. Presiding Justice Cobb of the Supreme Court of Georgia in *Holloway v Holloway*¹² stated that: "The pardon restores the convict, so far as the public is concerned, to the position he occupied before the conviction. He is no longer infamous. He may vote, hold office, and perform other public functions. Rights which have accrued to individuals as a result of the conviction are not affected by the pardon." However, in

¹ Arizona Code Ann. 1939, vol. 2, chap. 27, sec. 802.

² Vernon's Tex. Civ. Stat. Ann., vol. 13, tit. 75, chap. 4, art. 4629.

³ Mass. Ann. Laws, vol. 6, chap. 208, sec. 2.

⁴ Mich. Stat. Ann., vol. 18, tit. 25, chap. 245, sec. 25.85.

⁵ Neb. Rev. Stat. 1943, vol. 3, chap. 42, sec. 301.

⁶ Wis. Stat. 1947, vol. 2, chap. 247, sec. 7.

⁷ Miss. Code Ann. 1942, vol. 2, chap. 2, sec. 2735.

⁸ West Va. Code 1943 Ann., sec. 4704.

⁹ Minn. Stat. Ann., vol. 31, part 2, chap. 518, sec. 6.

¹⁰ Va. Code Ann. 1942 Ann., tit. 45, chap. 205, sec. 5103.

¹¹ Wyoming Comp. Stat. Ann. 1945 Ann., vol. 1, art. 59, sec. 3-5905.

¹² 126 Ga. 459, 461, 55 S.E. 191 (1906).

criticism of this opinion the obvious might well be pointed out in that part of the position the convict occupied before the conviction so far as the public is concerned was the status of a married man. Mr. Presiding Justice Cobb instead of grounding his decision in the vested rights theory might have reasoned that the right of the wife to a divorce upon her husband's being sentenced for the commission of an offense involving moral turpitude was inchoate, initiate, or conditional upon her husband's not being pardoned either before or after a divorce. The whole purpose of a plenary pardon is to work a complete restoration of all personal, civil, and political rights.

The following year, in 1907, Mr. Justice Monroe of the Supreme Court of Louisiana in *Abshire v Hanks*¹³ made the following significant remark, "we will not undertake to say that condemnation to an infamous punishment may not continue to be a cause for divorce, even after a plenary pardon has been granted."

The Holloway decision and the *Abshire dicta* constitute implied law in those twenty-seven States in which the conviction of a felony is made by statute a ground for divorce without mention of the effect of a plenary pardon and in which the matter has not received judicial cognizance, namely, Alabama, Arkansas, California, Colorado, Connecticut, Delaware, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Missouri, Montana, Nevada, New Hampshire, New Mexico, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, South Dakota, Tennessee, Utah, Vermont, and Washington.

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¹³ 119 La. 425, 44 So. 186, 187 (1907).

