

ACCRUED ALIMONY—NOT A VESTED RIGHT

In recent opinions of the Court of Chancery it is declared that accrued alimony is vested property.¹ If this view is correct it is of great significance, for it prevents the court from relieving the husband however equitable it may be to do so. If accrued alimony is vested property, it is a debt, protected by constitutional guarantees which preclude the remission of the debt upon mere equitable grounds.

Some decisions apply the same description to sums allowed for the support of children and to alimony *pendente lite*.²

That such allowances should have much of the protection

1. In *Poeter v. Poeter*, 15 N.J.Misc. 691, 194 Atl. 792 (Ch. 1937), Advisory Master Van Winkle said: "I, myself, have never doubted that there was a vested right in sums past due under an order for alimony or an order for the maintenance of a child, which order happened to be included in a decree of divorce, or which was made after a decree of divorce, in time; nor have I had any doubt that a subsequent order of modification cannot operate retroactively to disturb such vested right. . ."

In *Flavell v. Flavell*, 15 N.J.Misc. 167-176, 189 Atl. 639 (Ch. 1937), Advisory Master Grosman declared: . . . "Alimony *in futuro* is a personal right which may not be assigned, encumbered, or bargained away. First, because it is not in being, and, secondly, because under our cases it is subject to modification or suspension. But once it accrues, such an award assumes an altogether different character. It then comes 'into esse.' The recipient is protected in its enjoyment by federal and state constitutional provisions. Upon the wife's bankruptcy, it passes to the trustee up to the filing of the petition. Subsequent thereto it goes to the wife. It may be reached by creditors in proceedings supplementary to execution. *Bolton v. Bolton*, 86 N.J.L. 69, 89 Atl. 1014, *aff'd* in 86 N.J.L. 622, 92 Atl. 389, Ann. Cas. 1916E, 938. It does not follow that, merely because money comes into a woman's possession by way of alimony, it is exempted from the payment of just debts. True, the court will exercise great circumspection in seeing that one so situated shall not be victimized, but we cannot give sanction to the proposition that such an allowance, when it accrues, is sacrosanct; and enjoyable only by the recipient, and beyond the reach of her creditors generally, and her solicitor particularly. . ."

In *Hatch v. Hatch*, 15 N.J.Misc. 461, 192 Atl. 241, 245 (Ch. 1937), the court refers to the vested character of permanent alimony and declares that it may not modify retroactively a provision for permanent alimony.

See also *Williams v. Williams*, 12 N.J.Misc. 641-644, 174 Atl. 423 (Ch. 1934).

2. See *Poeter v. Poeter*, *supra*, and *Hatch v. Hatch*, *supra*.

which vested property enjoys is so plain as not to require discussion. But it is not necessary to endow them with the "vested" nature in order to give them attributes of such property sufficient for all purposes. It is not necessary for the court to deny itself the fullest right to control or regulate a matter so replete with equitable considerations and inevitable changes of status brought by the years.

The most final and definite of these several allowances is permanent alimony. But there is nothing in the statute,³ the source of such an allowance,⁴ which requires installments to be treated as vested as they accrue. The act does not declare them to be "property" or "vested". On the contrary, it provides:

". . . orders so made may be revised and altered by the court from time to time as circumstances may require; . . ."

The presence of such a generic power to revise and alter negatives the notion that the *single* obligation which is to be revised is vested property as to accrued installments but unvested as to future payments.

Because accrued permanent alimony bears some resemblance to a debt it has been referred to as such. It may be recovered in an action at law.⁵ Is it not then a debt of record? A characteristic of such a debt is that the original obligation becomes merged in the new record obligation. Thus a duty resting in simple contract, once a judgment is recovered, becomes merged in the record debt.⁶ The original duty of support would, by the

3. R.S. 2:50:37.

4. *Hervey v. Hervey*, 56 N.J.Eq. 424, 39 Atl. 762 (E. & A. 1898); *Hatch v. Hatch*, *supra*.

5. *Bullock v. Bullock*, 57 N.J.L. 508, 31 Atl. 1024 (Sup. Ct. 1894).

6. *Coles v. McKenna*, 80 N.J.L. 48, 76 Atl. 344 (Sup. Ct. 1910); *Gray v. Richmond Bicycle Co.*, 167 N.Y. 348, 60 N.E. 663 (Ct. of App. 1901); *Frost v.*

same principle, become merged in a decree for alimony. But in *Poeter v. Poeter*,⁷ it is emphatically pointed out that the original obligation to support survives and does not become lost in the decree. It may be enforced and is declared to be a continuing obligation. Moreover, what species of debt is this for which the "debtor" can be imprisoned despite our constitutional prohibition against imprisonment for debt?⁸ The idea of debt has simply been a convenient descriptive device employed for want of a better means of expressing the true nature of accrued alimony, which is obviously something less than a debt of record.

There is no species of judgment debt of which it can be said that the court in which judgment is entered may refuse to enforce it upon mere equitable grounds unaccompanied by fraud. Even the Court of Chancery would not, for example, deny enforcement to a decree for a deficiency against an assuming grantee of mortgaged property, simply because he was out

Thompson, 219 Mass. 360, 106 N.E. 1009 (Sup. Jud. Ct. 1914); *Murray v. Weigle*, 118 Pa. 159, 11 Atl. 781 (Sup. Ct. 1888).

This is also the view of equity courts. *Sarson v. Maccia*, 90 N.J.Eq. 433, 108 Atl. 109 (Ch. 1919); *Wooster v. Cooper*, 59 N.J.Eq. 204, 45 Atl. 381 (Ch. 1900); *Fitzgerald v. Heady*, 225 Mass. 75, 113 N.E. 844 (Sup. Jud. Ct. 1916); *Wayman v. Cochrane*, 35 Ill. 152 (Sup. Ct. 1864).

7. *Supra* note 1. The court declared: "All orders for alimony, whether made *pending* the suit for divorce or *after* the decree of divorce, and they can be made at no other times, are based on the same concept, that is to say, the enforcement of the continuing duty of the husband to support his wife, of which duty he is not permitted to absolve himself by his own conduct, although that conduct results in a dissolution of the marriage."

See also *Apfelbaum v. Apfelbaum*, 111 N.J.Eq. 529, 162 Atl. 543 (E. & A. 1929) where the court pointed out that the jurisdiction of the Court of Chancery over the matter of alimony "not only exists while that relation persists, but by the express language of the Divorce Act, sec. 25, 2 COMP. STAT. 1910, p. 2035, continues after decree of divorce; and it necessarily includes the power, in cases where the wife is entitled to alimony, to regulate the amount of such alimony from time to time, to supervise agreements between the parties in that regard, to enforce them if deemed just, and to decline to recognize them otherwise. *Calame v. Calame*, 25 N.J.Eq. 548. . ."

See also *Phillips v. Phillips*, 119 N.J.Eq. 462, 183 Atl. 220 (E. & A. 1935).

8. NEW JERSEY CONSTITUTION, art. I, sec. 17.

of work. Yet it is competent for that court to refuse to enforce the payment of arrears of alimony because the defendant has been ill, or without employment, and has no funds.⁹ In fact, if the wife remarries, the Court is prohibited from enforcing, *by any way process*, the payment of accrued alimony. The Divorce Act provides:

“ . . . it shall be unlawful for the Court of Chancery to make any order or decree touching the alimony of the wife should she have married subsequent to the decree of divorce; . . . ”

This language has been construed to mean that the Court cannot make any order even as to arrears.¹⁰ An obligation which the Court has no authority to enforce, simply because the “creditor” acquires a new source of income and support, is certainly not a debt.

To treat accrued alimony as something which it is not deprives the Court of supervisory authority over a matter which may require delicate adjustment to changes over a long period of years. For this reason the Court of Errors and Appeals has repeatedly held that specific performance of a contract to pay permanent alimony will not be decreed, even as to arrears, because the subject is inseparably bound up in the *continuous* duty of the husband to support his wife.¹¹ That duty survives

9. In recent years particularly this has been the practice. In *Williams v. Williams*, 12 N.J.Misc. 641, 174 Atl. 423 (Ch. 1934), Advisory Master Campbell declared: “. . . the power of contempt is presently used sparingly and the doctrine of ‘unclean hands’ is tempered with the exigencies of today’s financial situation.”

10. See *Rothenberg v. Rothenberg*, Docket 78, p. 621.

In the New Revised Statutes what was Section 25 of the Divorce Act has been divided into two parts with a resultant change in the language of the provision quoted in the text, without any change however in the substance or meaning. See R.S. 2:50:37 and 2:50:38.

11. See *Phillips v. Phillips*, 119 N.J.Eq. 462, 183 Atl. 220 (E. & A. 1935);

divorce.¹² There is no new duty to support arising for the first time after a decree of divorce, but simply a continuance of the same one which arose upon marriage.¹³ Upon that identical duty the decree for permanent alimony is rested. That duty is still one of a husband to support his wife, who has been freed of her obligations to him. It is not a penalty but a duty to maintain her as before. Why then should it now lose its former character and be no longer subject to his fortunes and station in life? If he becomes ill, or loses his business, why is it his duty to pay her although he cannot? He would not have been bound to do the impossible while the marital relationship existed, and he should not be asked to do after divorce any more than he would have had to do before.

Permanent alimony is simply the enforcement of a continuous duty. The consequences of this fact *must* be accepted. Equitable principles must be permitted to exert their force as in any other exercise of jurisdiction over the marital status. The Court does not become a mere cold, mechanical enforcement agency as soon as alimony becomes due. It did not award

Apfelbaum v. Apfelbaum, 111 N.J.Eq. 529, 162 Atl. 543 (E. & A. 1929); Calame v. Calame, 25 N.J.Eq. 548 (E. & A. 1874). Compare also Second National Bank v. Curie, 116 N.J.Eq. 101, 172 Atl. 560 (E & A. 1934); and Aiosa v. Aiosa, 119 N.J.Eq. 385, 183 Atl. 219 (E. & A. 1936).

12. See Noel v. Noel, 15 N.J.Misc. 576, 193 Atl. 558 (Ch. 1937); Sutphen v. Sutphen, 103 N.J.Eq. 203, 142 Atl. 817 (Ch. 1927); Swallow v. Swallow, 84 N.J.Eq. 109, 92 Atl. 872 (Ch. 1914); McKensy v. McKensy, 65 N.J.Eq. 633, 55 Atl. 1073 (Ch. 1903).

13. In Dietrich v. Dietrich, 88 N.J.Eq. 560, 103 Atl. 242 (E. & A. 1918), this is pointed out, the Court saying: "An examination of our Divorce Act (COMP. STAT., p. 2035, sec. 25) shows clearly that permanent alimony is allowed as a means of enforcing the continuing duty of support which the husband owes to the wife, and of which he is not permitted to absolve himself by his own misconduct, although that misconduct results in a dissolution of the marriage. It follows, of course, that the wife, with or after a decree of divorce in her favor, is entitled to such an allowance of alimony as the circumstances of the parties and the nature of the case renders fit, reasonable and just."

See also Greenberg v. Greenberg, 99 N.J.Eq. 461, 133 Atl. 768 (Ch. 1926).

the alimony to enrich the wife,¹⁴ or as damages,¹⁵ or as punishment.¹⁶ The decree for alimony does not purport to scan the

14. In *Lydne v. Lydne*, 64 N.J.Eq. 736, 52 Atl. 694 (E. & A. 1902), it is said: "An examination into the history of the allowance of alimony, and the nature and uses of alimony, will demonstrate that a claim for such an allowance is far different from a right of property. It is not a right to recover damages or compensation for injury to property or person or for deprivation of property. Nor is it a claim for a property interest in a share of the husband's estate.

"Alimony, in its origin, was the method by which the spiritual courts of England enforced the duty of support owed by the husband to the wife, during such time as they were legally separated pending the marriage relation. The courts of law could not adequately enforce this duty, but made a clumsy and circuitous attempt to do so, under some circumstances, by employing the fiction that a wife, living apart from her husband by reason of his fault, was his agent for the purpose of binding him to pay third parties for necessaries furnished to her.

* * * * *

"An examination of the statute shows clearly that alimony is imposed as a personal duty upon the husband for the personal benefit and support of the wife, or of the wife and children, in case there be children. The amount of the allowance, the method of its enforcement, the method of its application, and the security to be exacted of the husband for its payment, are all confided to the discretion of the chancellor; and he is left at liberty to increase or decrease the amount of the alimony, from time to time, according to the circumstances of the case. It will be observed that the statutory scheme is modeled closely after the practice of the ecclesiastical courts of England with reference to alimony. The purpose is to require the husband to pay to the wife periodically such sum as, in view of his circumstances and the necessities of the wife, will be a reasonable fulfillment of his continuing duty to support her. The purpose is not to enrich the wife.

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"It follows, as a necessary consequence of what has been said, that a wife's claim for an allowance of alimony is a purely personal right, and not, in any sense, a property right. It is, in its nature, not susceptible of assignment by the wife to another, nor capable of enjoyment by her in anticipation. And this result is fully sustained by the authorities."

See also *Snover v. Blair*, 25 N.J.L. 94 (Sup. Ct. 1855).

Our statutory alimony bears a close analogy to alimony allowed by the ecclesiastical courts which exercised an authority to revise alimony awards from time to time. See 2 BISHOP, MARRIAGE, DIVORCE AND SEPARATION, sec. 828, *et seq.*

15. See the authorities cited in note 14.

16. This conclusion is implicit in the purposes which alimony is designed to serve. In *Calame v. Calame*, 25 N.J.Eq. 548 (E. & A. 1874), it is said: ". . . Now, the terms alimony and maintenance, are emphatically technical words, having

future and with some sort of prescience, declare for all time an exact, measured obligation of just so many dollars. Hence we have the authority to alter and revise it to meet future conditions. This authority exists because there is present a variable factor, which obviously is not the *definite* decree, but the *continuing* duty. The power is inherent in the very nature and purpose of alimony. With this power preceding it, a decree for alimony is born with a congenital infirmity—the authority of the court to alter it so that true equity may be done. The court must be free to say that payment of arrears, because of changed conditions, will exceed the duty of the husband as measured by the wife's needs and his ability to pay. The basic factor is *duty*. What is an unpaid installment of alimony but one week's *duty to support*? It does not differ, in point of duty, from next week's installment which has not come due. The authority of the court to revise and alter is necessarily attached to the obligation to support and not merely to an expression of that duty for the time being in terms of dollars. Hence the court is free to relieve the husband upon equitable grounds both as to arrears and future payments. And it has done so.

The Court of Chancery may refuse to enforce by contempt arrears in excess of one year's alimony.¹⁷ The reasoning which

for ages borne a fixed and established meaning. . . ."

This technical meaning is stated as follows by Mr. Bishop (1 MARRIAGE, DIVORCE AND SEPARATION, sec. 1386): "Alimony, as the word is used in this department of our unwritten law, is the allowance which a husband pays, by order of court, to his wife while living separate from him, for her maintenance,—the separate living being commonly understood to be such as takes place under judicial supervision or authority. . . ."

See also *Lynde v. Lynde*, 64 N.J.Eq. 736, 52 Atl. 694 (E. & A. 1902).

The word alimony is derived from the Latin *alimentum*, which, under the civil law, was a provision for food, clothing and habitation or the necessary support of the wife after divorce. See *Romaine v. Chauncey*, 129 N.Y. 566, 29 N.E. 826; *Muir v. Muir*, 28 Ky. 1355, 92 S.W. 314; *Grimm v. Grimm*, 24 Pa. Dist. 90, *Snider v. Snider*, 179 Ind. 583, 102 N.E. 32.

17. See *Warren v. Warren*, 92 N.J.Eq. 334 (Ch. 1921); *Freund v. Freund*,

underlies this rule is that such delay, in the absence of satisfactory excuse, amounts to acquiescence and permits the inference that the wife has waived the particular installments.¹⁸ While she may still sue at law it is evident that the arrears are not vested property, for the Court which decreed the obligation has refused to enforce it for a purely equitable reason.

Another and more conclusive example is found in the attitude of the Court in dealing with arrears of alimony which fall due after remarriage of the wife. The Divorce Act declares:

“ . . . that the Court of Chancery upon application of the former husband, on notice and upon proof of the marriage of the former wife after the decree of divorce, must modify any order or decree touching the alimony of the former wife by vacating and annulling any and

71 N.J.Eq. 524, 63 Atl. 756 (Ch. 1906), *aff'd*, 72 N.J.Eq. 943, 73 Atl. 1117; DeBlaquiere v. DeBlaquiere, 3 Hag. Ec. 322 (1830); Lynde v. Lynde, 64 N.J.Eq. 736, 52 Atl. 694 (E. & A. 1902).

18. In *Warren v. Warren*, *supra*, note 17, the purport of the authorities is summed up by Vice Chancellor Backes in the following language: “The practice of the English ecclesiastical courts not to ordinarily enforce arrears of alimony extending beyond a year, as observed by Mr. Justice Pitney, in *Lynde v. Lynde*, 64 N.J.Eq. 736, 753 (E. & A. 1902), is not applicable in cases where the arrears are due to the willful defiance of the decree by the husband. In *DeBlaquiere v. DeBlaquiere*, 3 Hagg. Ec. 322, cited in the *Lynde* case, the husband petitioned to reduce the alimony and the wife countered to enforce arrears. The arrears arose from reduced payments on the installments. The court refused to interfere because of inconvenience, and the acquiescence on the part of the wife in the diminution of the alimony, from which Dr. Lushington said it was clear that she never intended to call for the arrears. And in *Wilson v. Wilson*, cited in the footnote to the *DeBlaquiere* case, the court refused to enforce for more than one year, holding that ‘If the wife is aggrieved she should make her application within a reasonable time, otherwise the court will infer she has made some more beneficial arrangement’—acquiescence. But it is clearly inferable from these authorities that if the default is due to the shortcomings of the husband, in which the wife has no share, the court will not hesitate to compel a compliance with the terms of the decree. In other words, relief will be granted if the wife shows sufficient cause for the delay in appealing to the court.”

See also *Kerr v. Kerr*, 2 Q.B. 439 (1897).

all provisions in any such order or decree, or both, directing the payment of money for the support of the former wife."¹⁹

It is quite common for the husband to learn of the remarriage a considerable time after that event takes place, either because the marriage is celebrated in a distant State or because of illness or absence of the former husband from the vicinity of his former wife's residence. Upon learning of the remarriage he is of course obliged to promptly apply for relief, but the question arises: If the husband is in arrears must he pay them despite the remarriage? We have seen that the statute declares it unlawful for the Court to make any order or decree touching the alimony of the wife should she have remarried, and the Court obviously cannot enforce the payment of arrears once remarriage takes place. But can it wipe out arrears which become due since the remarriage and before the former husband, without negligence, learned of the remarriage and applied to the Court for relief? Our statute was patterned after one in New York, in identical language. At the time the New Jersey act was adopted the New York statute had received the construction that the Court would *nunc pro tunc* eliminate the *pro* provision for alimony so that the obligation should cease as of the date of the remarriage and not merely as of the date of the application to the Court.²⁰ It must be taken that the construction applied to the New York statute was also intended by the Legislature to obtain in New Jersey.²¹ Upon remarriage the wife acquired, by her own voluntary choice, a new source of support. It would

19. R.S. 2:50-38.

20. See *Linton v. Hall*, 149 N.Y.S. 385 (1914); *Dumproff v. Dumproff*, 244 N.Y.S. 597 (1930).

21. See *In re Christie's Estate*, 87 N.J.Eq. 303, 101 Atl. 64 (Prerog. Ct. 1917); *Torrance v. Edwards*, 89 N.J.L. 507, 99 Atl. 136 (Sup. Ct. 1916); *Rutkowski v. Bozza*, 77 N.J.L. 724, 73 Atl. 502 (E. & A. 1909).

be very unjust that she should receive alimony from her former husband for a period during which she accepted the support which her new spouse was able to provide. The wife would be a mere conduit for the passing of money from her former husband to her newly acquired one. By contracting a secret marriage, or by marrying in a foreign country, a wife might be able to mulct her former husband of large sums of money over a period of many years, before he could with reasonable diligence learn of her remarriage. Why then should she be permitted to do the same thing by the collection of arrears?

It would seem that upon remarriage *co instante* the obligation to pay alimony ceases according to the true intent of the statute.²² The fact that a decree will be modified *nunc pro tunc* indicates that the right to the arrears is not vested, but on the contrary demonstrates that the Court may deal with them according to equitable principles so that true justice may be accomplished.²³ The Court obviously critically examines the exact status of the parties at the time the arrears became due, and finding that the wife was then remarried declares that the obligation should not continue beyond the date of remarriage and terminates it as of that date. This attitude, far from considering the alimony arrears to be vested properly, treats them

22. The statute does not set up a mere privilege for the husband, but states a public policy. The legislature obviously felt that it was abhorrent to observe a woman collecting alimony from a former husband and thereby either directly or indirectly aiding a new husband who has assumed the legal obligation to support her and who has all of the privileges of a husband. It is for this reason that the New York Courts have held that the remarriage statute has a politic purpose and calls for a *nunc pro tunc* modification of the alimony judgment.

23. In *Swallow v. Swallow*, 84 N.J.Eq. 109, 92 Atl. 872 (Ch. 1914), Vice Chancellor Backes pointed out that permanent alimony may be allowed *nunc pro tunc* to commence from the filing of the bill. If any vested rights existed it would seem that both husband and wife have them, and if *nunc pro tunc* orders cannot be made as to alimony then it must follow that the doctrine of *Swallow v. Swallow*, which has been accepted and followed for many years, must be discarded. However, its perfect soundness is evident when alimony is seen to be simply a device or method of enforcing the continuing duty.

merely as a formal expression of a duty to support, subject always to revision in the interest of equity.

It remains to consider the notion that alimony arrears must be vested because they are enforceable under the full faith and credit clause of the Federal Constitution. After a considerable period of dealing with the subject the United States Supreme Court held that arrears of permanent alimony, resulting from a final as distinguished from a preliminary judgment, were enforceable under the full faith and credit clause.²⁴ In arriving at that conclusion the Court was not obliged to determine whether such arrears were vested property, but simply whether the judgment was tentative, in the sense that preliminary orders for the payment of alimony *pendente lite* are provisional or final.²⁵

And when a New Jersey final decree is examined for this purpose it will be found that our courts have construed it to be subject to revision even as to arrears.²⁶

24. See *Sistare v. Sistare*, 218 U.S. 1, 54 L. Ed. 905, 30 Sup. Ct. 682 (U.S. Sup. Ct. 1909), for a discussion of the course of decision. The important implication of this decision which is likely to be overlooked, is that in applying the full faith and credit clause to a New Jersey decree for permanent alimony the Courts of other jurisdictions should and will accept the holdings of New Jersey Courts in determining whether or not the Court of Chancery has authority to modify such a decree with respect to arrears. In other words, the Courts of New Jersey are free to say that such authority exists and they are not bound to deny its existence because of the full faith and credit clause as interpreted by the Supreme Court.

25. See *Israel v. Israel*, 130 Fed. 237, 148 Fed. 576 (1904); *N. Y., Lake Erie & Western Railroad Co. v. McHenry*, 17 Fed. 414 (1883), appeal dismissed, 131 U.S. 440, 33 L. Ed. 224, 9 Sup. Ct. 800; *City of Boston v. McGovern*, 292 Fed. 705 (1923), certiorari denied, 265 U.S. 581, 68 L. Ed. 1190, 44 Sup. Ct. 456.

26. This conclusion necessarily follows from the true construction of our statute, adopted with the construction applied to it in New York, as an instrument of public policy, providing for the termination of the right to alimony upon remarriage of the wife. This statutory provision, coupled with the express prohibition imposed upon the Court of Chancery by which it is deprived of all authority to make any order touching the alimony of the wife after remarriage, seems to indicate clearly that the legislature has provided that the Court of Chancery is

The Court of Chancery has at all times been most jealous of its duty to apply the principles of equity to all phases of the marital relationship. In the matter of alimony, it has emphasized above all things that it is the enforcing of a continuing duty. It has not concentrated the whole of the husband's duty and frozen and solidified it into a decree, but has at all times maintained that the obligation is a continuous one, surviving divorce. The Legislature obviously committed the matter of alimony to the care of the Court of Chancery because it was deemed desirable to have no unique and variable a matter adjusted according to the principles of equity. To declare past due alimony to be a vested right, when the statute which gives rise to alimony does not so declare it, seems to be adopted to the legislative purpose and to the general attitude of our Court of Chancery. It is an unnecessary departure from reality, attended with restrictive confining results, for alimony is nothing more than a *method* of enforcing a continuing duty.

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possessed of authority to modify an alimony decree even with respect to arrears. Orders *nunc pro tunc* have been made in numerous instances under this statute. However, the question whether full faith and credit will be given to a decree for alimony is not to be regarded as the one requiring determination. The Court must determine whether alimony is to be regarded as vested property or not, whether it wants to deprive itself of supervision of this intimate matter or retain its accustomed regulatory control. The statute from which all of the rights of the wife spring does not seem to render alimony vested property, but on the contrary emphasizes the need for constant supervision by the Court of Chancery.