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## Long v. Long

Roger J. Traynor

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the deceased's cabin. Shortly thereafter Williams disappeared. His clothes were found on the bank of the Colorado River near Crossroads, and his body was recovered from the river in an identifiable condition. At the trial the testimony given by him at the preliminary hearing was read into the record.

The foregoing facts constitute evidence which, even though circumstantial, is substantial enough to have established the guilt of the two defendants in the minds of the jury.

[2] Defendants contend that the district attorney was guilty of prejudicial misconduct at the trial in questioning Reed as to whether or not he had been previously convicted of a felony. On cross-examination Reed was asked whether or not he had been convicted of stealing government property and sentenced under that conviction. The court permitted the question over objection by counsel for the defendants, and Reed answered "no". At the conclusion of the testimony in the case the district attorney stated that when he had asked the question regarding a prior conviction, he had asked it in good faith, expecting to be able to prove the conviction by documentary evidence, but that such evidence was not available, and he therefore requested that the matter be expunged from the record and the jury instructed to disregard the question. The court complied with the request. In view of this subsequent statement by the district attorney, the expunging of the matter from the record by the court in compliance with the district attorney's request, and the absence of any evidence of bad faith on the part of the district attorney, there is no prejudicial misconduct requiring a reversal. (*People v. Braun*, 14 Cal. (2d) 1 [92 Pac. (2d) 402].)

The judgment and order of the trial court are affirmed.

[S. F. No. 15969. Department Two.—February 19, 1941.]

LOUIS A. LONG, Respondent, v. MARGARET C. LONG, Appellant.

[1] Divorce and Separation—Permanent Alimony—Modification of Allowance—Effect of Absence of Alimony Provision in Decree.—A court which has provided for alimony payments for a definite term without reserving the right to change or modify the term is without power to make further allowance for the wife's support after such alimony has been paid and the final decree has been entered.

APPEAL from an order of the Superior Court of Santa Clara County, setting aside an order modifying an interlocutory decree of divorce. William F. James, Judge. Affirmed.

David M. Burnett and John M. Burnett for Appellant.

Henry E. Monroe and Henriette W. Steinegger for Respondent.

TRAYNOR, J.—On January 7, 1930, the Superior Court of Santa Clara County awarded appellant Margaret C. Long an interlocutory decree of divorce against respondent Louis A. Long directing him to pay appellant \$50 a month alimony for the six months from February 5, 1930, to and including July 5, 1930. This alimony was duly paid. The final decree of divorce, entered on March 30, 1931, neither awarded alimony to appellant nor reserved to the court jurisdiction thereafter to make an allowance for appellant's support. On November 10, 1931, on application of appellant supported by an affidavit averring that because of injury she was no longer able to support herself, the court after a hearing made an order modifying the interlocutory decree of divorce by requiring respondent to pay \$50 a month alimony thenceforth until further order of the court. On December 20,

1. Power to reopen decree of divorce which is silent as to or expressly provides against alimony so as to permit modification in that regard, note, 83 A. L. R. 1248. See, also, 1 Cal. Jur. 1035; 17 Am. Jur. 494.

McK. Dig. References: 1. Divorce and Separation, § 216 (2).

1935, the court entered an order granting respondent's motion to set aside the order of November 10, 1931, upon the ground that the attempt to modify the interlocutory decree of January 7, 1930, was without jurisdiction and void. The present appeal is taken from this order.

Section 139 of the Civil Code provides: "Where a divorce is granted for an offense of the husband, the Court may compel him to provide for the maintenance of the children of the marriage, and to make such suitable allowance to the wife for her support, during her life or for a shorter period as the Court may deem just, having regard to the circumstances of the parties respectively; and the Court may from time to time modify its order in these respects." [1] Appellant, relying on *Smith v. Superior Court*, 89 Cal. App. 177 [264 Pac. 573], and *Bechtel v. Bechtel*, 124 Cal. App. 617 [12 Pac. (2d) 970], contends that the above section confers on the court an express power to modify an alimony decree even though the alimony was awarded for a limited time, which has expired, and the decree did not contain a reservation of jurisdiction.

This contention is answered adversely and the authorities relied on are distinguished in *Tolle v. Superior Court*, 10 Cal. (2d) 95 [73 Pac. (2d) 607], which holds that if the court provides for alimony payments for a definite term without reserving the right to change or modify the term, the court has no power to make further allowance for the wife's support after such alimony has been paid and the final decree has been entered.

The order is affirmed.

Curtis, J., and Houser, J., concurred.

[L. A. No. 17668. In Bank.—February 19, 1941.]

THE S. A. GERRARD COMPANY (a Corporation) et al.,  
Petitioners, v. INDUSTRIAL ACCIDENT COMMISSION,  
MACERIO VALDEZ et al., Respondents.

- [1] **Independent Contractors—Introductory—Definitions.**—An independent contractor is one who renders service in the course of an independent employment or occupation, following his employer's desires only in the result of the work, and not the means whereby it is to be accomplished.
- [2] **Id.—Existence of Relationship—Supervision of Work by Owner and Factor.**—The relationship of the employer and employee exists whenever the employer obtains the right to direct how the work shall be done as well as the results to be accomplished, that is to say, when he retains the right to exercise complete or authoritative control, rather than the right to make mere suggestions as to detail. It is the right to control, rather than the amount of control exercised, that is the determinative factor.
- [3] **Workmen's Compensation—Certiorari—Findings on Conflicting Evidence—Relationship of Employer and Employee.**—If there is a substantial conflict in the evidence regarding the status as employee of the person claiming compensation, the finding of the Industrial Accident Commission will not be disturbed.
- [4] **Id.—Persons Entitled to Compensation—Employees—Persons Embraced by Terms—In General—Cropper.**—Where one leased land for the purpose of growing melons and under a contract with the lessor was to plant and pick the crop in accordance with the latter's direction, and where the latter's right of control of operations extended to all the persons who worked in picking and raising the crops, the lessee, though in form an independent contractor, was in effect an employee.

PROCEEDING to review an order of the Industrial Accident Commission awarding compensation for personal injuries. Award affirmed.

1. Circumstances under which existence of relationship of employer and independent contract is predicable, note, 19 A. L. R. 1168. See, also, 27 Cal. Jur. 283; 28 R. C. L. 762.

McK. Dig. References: 1. Independent Contractors, § 1; 2. Independent Contractors, § 6; 3. Workmen's Compensation, § 273 (3); 4. Workmen's Compensation, § 41 (1).