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Municipal Corporations—Ordinances—Delegation of Legislative Powers

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tary separation. Whether the separation or the length of separation has been denied or not, it must be proved before the divorce will be granted. *Gibbons v. Gibbons*, 21 Ky. L. Rep. 1214, 54 S. W. 710. Furthermore the separation must be *mutually* voluntary. *Thompson v. Thompson*, 53 Wis. 153, 10 N. W. 166. But if the circumstances surrounding the original separation are such as to indicate mutual desire for the separation it will be presumed that the intention continued in the absence of proof to the contrary. *Phillips v. Phillips*, 22 Wis. 256. The separation, however, must be shown to have been voluntary in its inception (*Sanders v. Sanders*, 135 Wis. 613, 116 N. W. 176) and throughout the statutory period required (*Williams v. Williams*, 122 Wis. 27, 99 N. W. 431; *Sanders v. Sanders*, *supra*). In this latter case the court held that clippings to the effect that "woman kills self to avoid divorce suit" and letters of the same kind, were more liable to annoy than to effect a reconciliation and that consequently there was nothing to show a lack of mutual desire for separation. When the wife is forced to leave because of cruel treatment, although she left of her own accord, such a separation is not considered voluntary. *Jakubke v. Jakubke*, 125 Wis. 635, 104 N. W. 704. Likewise if one party has become insane and has been placed in an asylum there is no voluntary separation. *Ferguson v. Ferguson*, 8 Ky. L. Rep. 428; *Lee v. Lee*, 182 N. C. 61, 108 S. E. 352.

L. M.: S.. '26.

MUNICIPAL CORPORATIONS — ORDINANCES — DELEGATION OF LEGISLATIVE POWERS.—*Ex Parte Cavanaugh v. Gerk*, Chief of Police, City of St. Louis. Missouri Supreme Court, en banc, White, J. (about March 30, 1926). No. 26,936.

This case tested the validity of ordinances 32846 and 23926 of the Code of the City of St. Louis. The first ordinance established the Traffic Council; the second enumerated its powers and provided that its regulations should constitute emergency law for a certain period, the permanence of such regulations being dependent on ratification by the Board of Aldermen. The Traffic Council was given power to pass rules establishing one-way streets, erecting traffic signals, permitting angle parking, etc., but the ordinances did not provide the conditions under which these rules were to be passed. An extract of ordinance 23926, sec. (b) follows:

“The rules and regulations established by the traffic council— shall be published in the City Journal, and upon their publication therein they shall become effective and shall govern the regulation of traffic for a period of ninety days after date of publication, within which time there shall be introduced in the Board of Aldermen a bill embodying such rules and regulations, and such rules and regulations shall continue in full force and effect during such time as such bill shall be pending in the Board of Aldermen.”

The petitioner was arrested for disregarding two regulations passed by the council eighty-nine days prior to the violation. However, no bill had been introduced in or passed by the Board of Aldermen sanctioning these regulations.

The petitioner contended that the traffic council had no right to promulgate traffic rules, nor to determine territory to which they should apply, as such power was legislative, to be exercised by the Board of Aldermen, and not subject to be delegated to an administrative body like the traffic council.

Held: The City of St. Louis possesses legislative power, derived directly from its charter. (*Haeussler Inv. Co. v. Bates*, 267 S. W. 637.) A legislative body cannot delegate its authority, but alone must exercise its legislative functions. (12 C. J. 859; 6 R. C. L. 175.) However, it can empower a board to determine facts as to whether a rule should be applied, but in this case there is an attempt to do more, therefore, the ordinances are unconstitutional. (*Merchants Exchange of St. Louis v. Knott*, 212 Mo. 616; *Hayes v. Poplar Bluff*, 263 Mo. 516; *City of St. Louis v. Russell*, 116 Mo. 248.) The court said that these cases directly applied to the one in question. The Board of Aldermen gave the Traffic Council absolute power to determine the territory and the regulation to be applied regardless of any conditions; therefore, they attempted to delegate their legislative power.

“If the Board, in creating the council, had designated the territory in which the council might operate and enforce its regulations, by some general description as to population, or business occupation, or amount of traffic, and had left it to the council to determine the facts as to what particular territory came within the general provisions, the ordinances would have been constitutional.” (From Judge White’s opinion.)

Petitioner discharged.

C. L. W., '26.