GERTRUDE I. R. DEAN, Petitioner, *v.* SAMUEL G. DEAN and E. HIMIE SHANNON, Assigned Judge of the Circuit Court of the First Judicial Circuit, Montserrado County, Respondents.

CERTIORARI TO THE CIRCUIT COURT OF THE FIRST JUDICIAL CIRCUIT, MONTSERRADO COUNTY.

Argued December 19, 20, 1939. Decided December 29, 1939.

1. Alimony *pendente lite* is an allowance made by the court to be paid by the husband for the maintenance of the wife during the pendency of a matrimonial action either by or against her.
2. Where the matrimonial action is instituted by the husband he must support his wife during the litigation, and a plea of poverty is of no avail to relieve him of such obligation.
3. After a final decree is rendered or the suit is dismissed, no alimony *pendente lite* may be allowed by the court because the suit no longer is pending and the court no longer has jurisdiction of the parties.
4. Statutes should receive such sensible construction as will effectuate the legislative intention and, if possible, as will avoid unjust or absurd conclusions. *Qui haeret in litera, haeret in cortice.*

At the commencement of a suit for divorce brought in the circuit court, petitioner applied for alimony *pendente lite.* The trial judge ruled that he should first hear evidence in the divorce action before deciding whether petitioner's application should or should not be granted. Petition was made to the Supreme Court for a writ of certiorari to the circuit court for review of that court's ruling adverse to petitioner. Mr. Justice Tubman, sitting in chambers, issued the writ. On certiorari in this Court, *issuance of writ sustained and ruling reversed.*

A. Benjamin Ricks for petitioner. *S. David Coleman* for respondents.

MR. JUSTICE RUSSELL delivered the opinion of the Court.

This case comes before this Court for final determination from the chambers of Mr. Justice Tubman who, after a hearing on petitioner's petition for a writ of certiorari, ordered said writ to be issued to the circuit court.

On November 25, 1938, Gertrude I. R. Dean, through her counsel, petitioned this Court for a writ of certiorari to be issued to the circuit court requesting that court to send up to the Supreme Court the records of a proceeding, involving petitioner's application for temporary alimony during the pendency of a matrimonial action, for review of the trial judge's ruling adverse to petitioner and for correction of errors which, in petitioner's opinion, were apparent in said ruling.

When notice to show cause why the petition should not be granted was issued, respondents appeared and filed their answer.

On the day set for return, the parties appeared before Mr. Justice Tubman, sitting in chambers. After several days given over to hearing arguments by both parties on the petition, Mr. Justice Tubman handed down his ruling and an opinion, an excerpt from which we quote as follows:

> "In virtue of the legal premises above developed, it is our opinion that the answer of the defendant does not show sufficient cause to justify the denial of the petition for the writ-of-certiorari. The petition for the writ aforesaid is therefore granted, and the Clerk of this Court is hereby ordered to issue same to His Honour E. Himie Shannon, assigned Judge, presiding over the November term of the Circuit Court for the first judicial circuit, commanding him to have a full and complete copy of the record in the said cause sent forward to the Supreme Court of the Republic of Liberia, April term A.D. 1939, with a certificate under seal of the Clerk of the said Court to the effect that the same is a true copy within twenty

(20) days after service of said writ-of-certiorari served on respondents-in-certiorari."

From this order the respondents appealed to this Court sitting *en banc*.

At the call of this case in this Court, the counsel for petitioner and respondents represented their respective sides of the case with such remarkable zeal and vigor as, in our opinion, to throw all possible light on the case, enabling us to arrive at a just conclusion of the issue presented.

After a careful study of the arguments adduced, as well as of the opinion handed down by Mr. Justice Tubman, we cannot do otherwise than to support Mr. Justice Tubman's ruling and opinion because it seems to us equitable and just.

For, in *Ruling Case Law* we have the following:

"Temporary alimony or alimony pendente lite, sometimes designated ad interim alimony, is an allowance made by the court to be paid by the husband for the maintenance of the wife during the pendency of a matrimonial action either by or against her. Inasmuch as it is intended for the maintenance of a separated wife, it is absolutely essential that the parties be living apart to justify an allowance thereof. The fact that they continue to live under the same roof has been held to afford presumptive evidence that the offense has been condoned and marital relations resumed. Where the suit for divorce is instituted by the husband, he must support his wife during the litigation, and a plea of poverty is of no avail to avoid such obligation. Where the wife is the complainant, power to award alimony arises from the fact that the wife should not be placed, by her coverture, in a position where she has a right without the power to enforce and secure a remedy for its violation. In both instances, temporary alimony is allowed irrespective of whether the wife was actually compelled to leave her

husband's household or not, for the reason that it would be improper for the parties to cohabit during pendency of a suit based on such grounds. Owing to this, and to the legal presumption that such a separation takes place by the procurement or with the assent of the husband, the fact that the wife voluntarily leaves the abode of her husband under such circumstances is no defense to her claim for an allowance during the pendency of the suit, as it does not constitute wilful desertion." 1 R.C.L. *Alimony* § 32, at 890–91 (1914).

"There is in general no limitation or restriction in regard to the time at which an application for alimony may be entertained, except that it must be during the pendency of the action. After final decree or after dismissal of the suit no alimony pendente lite will be granted, for then the suit is no longer pending and jurisdiction of the parties no longer exists. The rendition of a decree nisi for the dissolution of the marriage, however, does not bar an application for temporary alimony made subsequent thereto, but before the entry of the final decree, as, until the making of the latter, the court retains jurisdiction. Even after the entry of final judgment, the trial court may allow alimony pending an appeal. This is not an exception, however, to the rule that the allowance must be made during the pendency of the suit, as an allowance thus made is merely for the period actually occupied by the appeal, and does not include an allowance for the period prior to the entry of the judgment appeal." *Id.* § 34, at 891–92.

The citation just read, in our opinion, fortifies those citations quoted by our learned colleague in the very able opinion he handed down as Justice presiding in chambers, which opinion exposes the incorrectness of the respondents' contention that the grant of alimony should be postponed until after trial of the case of divorce. Similarly, it is our opinion that the trial judge erred in

his interlocutory ruling that he should proceed to hear evidence in the divorce suit before deciding whether the application for alimony should or should not be granted. Even the preamble to the statute on alimony, upon which the judge rendered said interlocutory ruling, has to be so construed as not to make the statute appear absurd, ridiculous or oppressive. It is quite conceivable that a husband suing his wife for divorce may file with his pleading in opposition to the wife's application for temporary alimony such affidavits as may rebut a presumption of guilt and warrant a ruling of the trial judge denying the application. But no such affidavit was filed in the suit under review, and, even had there been, there would have been a necessity for the trial judge to exercise sound discretion, remembering that in an affidavit the affiant has made an *ex parte* statement upon which he has not been cross-examined. Among the rules for construing statutes we have the following from Bouvier:

> "Statutes should receive a sensible construction, such as will effectuate the legislative intention, and, if possible, so as to avoid an unjust or absurd conclusion. . . .
>
> "Such a construction ought to be put upon a statute as will best answer the intention which the makers had in view, for *qui haeret in litera, haeret in cortice*. . . . [I]n Smith's Commentaries, 814, many cases were mentioned where it was held that matters embraced in the general words of the statutes, nevertheless were not within the statutes, because it could not have been the intention of the lawmakers that they should be included. They were taken out of the statutes by an equitable construction. . . .
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> "All laws should receive a sensible construction. General terms should be so limited in their application as not to lead to injustice, oppression or an absurd consequence. It will always, therefore, be presumed that the legislature intended exceptions to its lan-

guage, which would avoid results of this character. The reason of the law in such cases should prevail over its letter. . . ." 2 Bouvier, Law Dictionary *Interpretation* 1659–60 (Rawle's 3d rev. 1914).

In view of the citations above quoted and of those contained in the opinion of the Justice presiding in chambers, we feel that we have no alternative but to sustain the opinion of Mr. Justice Tubman, reverse the judgment of the trial judge, order the case of alimony finally disposed of before the case of divorce may be heard, and order respondent to pay the costs of these proceedings. It is hereby so ordered.

Ruling reversed.