was not final; moreover, no vested rights were created in the appellant since the decree was subject to future modification in the court's discretion.[16]

Respondent sought to have future alimony payments forfeited. "The misconduct for which the forfeiture of alimony was . . . imposed was misconduct after the date of the statute,[17] and the alimony payments forfeited were those which were to come due in the future. In no real sense can such a use of the statute be considered to be retrospective."[18]

The court had power to modify the alimony provisions;[19] the action was pending;[20] the legislature had determined grounds for the court's acting;[21] appellant was included under the legislative determination;[22] therefore, it is submitted that it was within the court's discretion to have considered the annulment of alimony under the divorce decree of 1928 as to those payments which were to come due after the 1938 statute[23] became effective.[24]

MILITARY SERVICE

REGISTRANT'S DUTY TO INFORM SELECTIVE SERVICE BOARD OF HIS MAILING ADDRESS

Petitioner, a Houston, Texas, registrant under the Selective Training and Service Act of 1940,[1] was classified 1-A by his local board, which advised him that he would be inducted in twenty or thirty days. With this knowledge, petitioner became a merchant seaman for a short trip to New York City, leaving word with the National Maritime Union's Houston office to forward his mail to its New York office. The local board was also advised of the registrant's shipping, and was requested to send his induction notice to the union's Houston office. This notice was mailed and forwarded to the New York City Office, but petitioner, who had meanwhile signed on for a foreign voyage from New York City, never received the notice although he was in New York harbor and had received assurances from the union's executive officer that he would be contacted when the notice arrived. Petitioner was convicted in a federal district court for a knowing failure to keep his draft board advised of the address where mail

16. See Judge Desmond, dissenting in the instant case at 12; also see note 9 supra.
17. March 26, 1938.
18. See Judge Desmond, dissenting in the instant case at 12, 13.
19. See note 14 supra.
20. Fox v. Fox, 263 N.Y. 68, 70, 188 N.E. 160, 161 (1933).
21. N.Y. Civil Practice Act §1172-c; see note 1 supra.
22. See notes 1 and 6 supra.
23. See note 21 supra.
24. See note 17 supra.

1. 54 Stat. 885 (1940); 50 U.S.C.A. §301 et seq. (Supp. 1943).

would reach him.[2] On appeal, judgment was affirmed.[3] Held, reversed. Petitioner had sufficiently complied with the pertinent regulation when he, in good faith, provided a chain of forwarding addresses so that mail sent to the address given the local board would be reasonably expected to be received in time for compliance. Bartchy v. United States, 319 U.S. 484 (1943). (Mr. Chief Justice Stone and Justice Roberts dissenting).

This decision is the first which construes the regulation in question.

To carry out the provisions of the 1940 act, to facilitate uniformity, and to advise local boards of procedures to be followed, the President was authorized[4] to promulgate rules and regulations. It was held under the Selective Draft Act of 1917[5] that the rules and regulations prescribed thereunder had the force and effect of law.[6] That this is, in effect, true under the 1940 act is borne out by the decision in Zuziak v. United States.[7]

Petitioner and all other registrants have notice of the act and regulations made pursuant to it;[8] obviously, actual knowledge is unnecessary. Such a regulation[9] is involved in the principal case. The majority opinion, however, qualified the regulation to the extent that the registrant, with knowledge of his duty, was not required at his peril to inquire at short intervals at the last address given the local board or at the forwarding address for mail from his local board.[10]

2. 32 C.F.R., 1941 Supp., §641.3 which states: "Communication by Mail. It shall be the duty of each registrant to keep his local board advised at all times of the address where mail will reach him. The mailing of any order, notice, or blank form by the local board to a registrant at the address last reported by him to the local board shall constitute notice to him of the contents of the communication, whether he actually receives it or not." Under a similar regulation made pursuant to the 1917 act, it was held that if the paper was not mailed to the address given the local board by the registrant, constructive notice would not be given. Allen v. Timm et al., 1 F. (2d) 155, 157 (C.C.A. 7th, 1924); Ex parte Goldstein, 268 Fed. 431, 432 (D. Mass. 1920).
3. Bartchy v. United States, 132 F. (2d) 348 (C.C.A. 5th, 1942).
4. 54 Stat. 885, 893 (1940), 50 U.S.C.A. §310(a) (Supp. 1943).
5. 40 Stat. 76 (1917), as amended, 40 Stat. 534 (1918), id. at 885, id. at 955, 50 U.S.C.A. §201 et seq. (Supp. 1943).
6. Selective Draft Law Cases, 245 U.S. 366 (1918); United States ex rel. Feld v. Bullard, 290 Fed. 704, 708 (C.C.A. 2nd, 1923); Angelus v. Sullivan et al., 246 Fed. 54, 60 (C.C.A. 2nd, 1917).
7. 119 F. (2d) 140 (C.C.A. 9th, 1941). The court also said that it would take judicial notice of the issuance of the rules and regulations. Moreover, the courts will give similar effect to subsequent regulations as they are published.
8. 32 C.F.R., 1941 Supp., §641.1 which recites: "Notice of Requirements of Selective Service Law. Every person shall be deemed to have notice of the requirements of the Selective Training and Service Act of 1940 and amendments thereto upon publication by the President of a proclamation or proclamations or other public notice fixing a time for any registration. This provision shall apply not only to registrants but to all other persons."
9. See note 2 supra.
10. Instant case at 489.

The Court relieved the petitioner from this onerous burden[11] on the ground that he had established a direct channel by which he would have received the induction notice had not the New York union official mistakenly decided that the ship, on which the petitioner was a seaman, had sailed. That the dissenting judges would impose a strict liability on the registrant seemed paramount from their opinion.[12]

Neither opinion questioned whether or not the New York union executive was or could have been the petitioner's agent to receive notice; had this been established the result might well have been different.

In United States v. Wheeler,[13] the court maintained that registrants were not required either under the 1917 act or regulations to remain in their permanent homes or actual places of residence until drafted; the location of the registrant other than his permanent home was contemplated, and his absence from home in no manner prejudiced his rights either under the act or the regulations.

As the petitioner was convicted for a knowing failure to act under the penalty provision of the 1940 act,[14] his "mens rea" became important. The fact that he in good faith established a continuous belt of addresses which would contact him if properly carried out should rebut a contention of a "knowing failure to act."[15]

The Supreme Court granted certiorari " . . . because the conviction involved an interpretation of an important regulation under the Selective Service Act."[16] It is submitted that the court arrived at a just and proper interpretation, one which takes little from the administrative boards yet adds much to the freedom of the registrants' actions.

---

11. The Selective Training and Service Act of 1940 states in part (b) of the declaration as its fundamental purpose that " . . . military . . . service should be shared generally in accordance with a fair and just system of selective compulsory military training and service." 54 Stat. 885 (1940), 50 U.S.C.A. §301(b) (Supp. 1943). In Rome v. Marsh, Commandant, etc., 272 Fed. 982, 985 (D. Mass. 1920), the court asserted that it was the duty of administrative boards, such as local boards, to protect the rights of individual citizens as well as the rights of the government. Statements as these are, at the outset, indicative that the duty implanted on the petitioner by the dissenting judges and the courts below is unjust, and that the qualified duty imposed by the majority opinion is much more desirable.
12. Instant case at 490.
13. United States v. Wheeler et al., 254 Fed. 611, 615 (D. Ariz. 1918), aff'd, 254 U.S. 281 (1920).
14. 54 Stat. 885, 894 (1940), 50 U.S.C.A. §311 (Supp. 1943), provides punishment with a maximum of five years imprisonment and/or a fine of not more than $10,000 to "any persons . . . who in any manner shall knowingly fail or neglect to perform any duty required of him under or in the execution of this Act, or rules or regulations made pursuant to this Act. . . . "
15. Judge Hutcheson, dissenting in the principal case below, gave considerable weight to the fact that Bartchy voluntarily offered to perform dangerous services in the merchant marine; this fact, the judge contended, demonstrated the petitioner's mental attitude and absolved him of a wilful evasion of duty. Bartchy v. United States, 132 F. (2d) 348, 352 (C.C.A. 5th, 1942).
16. Instant case at 485.