

# LAW AND CONTEMPORARY PROBLEMS

---

VOLUME II

JUNE, 1935

NUMBER 3

---

## FOREWORD

Periodically the people of the United States become perturbed by the prevalence of migratory divorce. An undercurrent of annoyance at the systematic evasion of the divorce laws of the stricter states surges up from time to time in the demand that something be done about it. Such a demand arose as early as the placid administration of Chester A. Arthur when the indefatigable Reverend Samuel W. Dyke and his New England Divorce Reform League began to agitate for a federal investigation of the divorce problem, a cry that was heeded by Congress in 1887. Again, in 1905, at Dr. Dyke's urging, President Theodore Roosevelt sent a special message to Congress requesting that a second investigation be made, with a view to securing "coöperation amongst the several states . . . to the end that there may be enacted upon the subject of marriage and divorce uniform laws, containing all possible safeguards for the security of the family." Congress responded, and more facts were found. Concurrently, the Governor of Pennsylvania issued a call "to the Governors of the several states of the Union, requesting them to coöperate in the assembling of a Congress of Delegates . . . with a view to the adoption of a draft of a general law . . . with the object of securing as nearly as possible, Uniform statutes upon the matter of Divorce throughout the Nation." Forty-two states and territories were represented at the Congress which convened in Washington in the succeeding year in response to this invitation. Resolutions were adopted, the results of the assemblage were termed "extremely gratifying and satisfactory," but only three states, Delaware, New Jersey, and Wisconsin, enacted the law proposed.

As the ardor of the advocates of uniform state legislation diminished in the face of disappointment, proponents of federal legislation, to be authorized by amendment to the Federal Constitution, came to the fore, reviving a campaign which in the year 1884 had led to the introduction in Congress of resolutions directed to this end. In 1911 the California legislature advocated by resolution the adoption of such an amendment. Resolutions were introduced in Congress in 1915, 1917, and in 1919. An active campaign sponsored by the *Pictorial Review*, the General Federation of Women's Clubs and other women's organizations, enlisted the support of Senator Capper who introduced still another proposal for amendment in 1923, a bill which has been reintroduced perennially since that date.<sup>1</sup>

With the nation's attention absorbed since 1929 by the stress of economic depres-

<sup>1</sup> For a more comprehensive treatment of the movements for uniform state or federal divorce legislation, see LICHTENBERGER, DIVORCE (1931) c. VIII.

sion and the measures designed to combat it, the pronounced increase in the volume of migratory divorce for which the facilitating legislation in Nevada, Arkansas, Idaho, and lately, Florida, stands responsible, has aroused no organized protest. Even the Mexican "mail order" divorce business has until recently stimulated no efforts at restriction. But straws in the wind—bigamy prosecutions, bar association inquiries, and the like—indicate that there impends a period of renewed activity in some form by those who regard migratory divorce as a serious social evil.

The purpose of this issue is not, however, the reëxamination of the arguments for and against uniform state or federal legislation in the field of divorce. The lack of success which consistently attended the efforts to extirpate migratory divorce by means of such legislation at a time when a more censorious public attitude toward divorce in general rendered the prospects of success far more favorable than they are today, leaves little ground for the belief that the migratory divorce is to be eliminated through such legislation.

Nor is one justified in placing much faith in the control of the migratory divorce traffic through the enunciation by the United States Supreme Court of jurisdictional rules to determine the recognition to be accorded divorce decrees outside the states of their rendition. In 1906, in the celebrated case of *Haddock v. Haddock*,<sup>2</sup> that Court, in an opinion rendered by Mr. Justice White but a few months after the unproductive Congress of Delegates referred to above, dealt with the problem of recognition in a manner which, it is evident, the learned Justice regarded as definitive. This decision did serve to deepen the shadow of judicial disapproval over the decrees of our principal divorce mills, but it did not curb migration to them.

Moreover, the ambiguities inhering in the *Haddock* opinion have exercised such a fascination upon American legal scholars interested in this problem that their energies have since been bent chiefly to the task of its interpretation. This issue does not seek to augment the commentary upon that case.<sup>3</sup> On the assumption that migratory divorce is a malady to be exorcised neither by legislation national in its scope nor by constitutional inhibitions, the symposium is directed first to an examination of the operation of typical divorce mills and then to an exploration of some of the means whereby the injuries inflicted by migratory divorce are being—or may be—diminished.

The introductory article, *Migratory Divorcés*, by Professor Ernest R. Groves, presents the appraisal of migratory divorce by a sociologist who has long been a student of American marriage problems. He finds it operating as a safety valve, reducing the pressure which would otherwise be brought to bear upon the divorce laws of the stricter states. The somewhat fortuitous discovery in Nevada of the potentialities for large-scale exploitation of this escape mechanism and their sub-

<sup>2</sup> 201 U. S. 562 (1906).

<sup>3</sup> For a discussion of the operation of jurisdictional rules generally and a statement of the problem of divorce jurisdiction and its constitutional implications, see Harper, *The Myth of the Void Divorce*, *infra*, pp. 335-338. The leading discussions of the doctrine of the Haddock case are cited in Jacobs, *The Utility of Injunctions and Declaratory Judgments in Migratory Divorce*, *infra*, p. 371, n. 7.

sequent sedulous cultivation are described in *The Business of Migratory Divorce in Nevada* by Messrs. Frank W. Ingram and G. A. Ballard, of the Nevada Bar. In the succeeding article, *The Divorce Laws of Mexico*, Mr. Lionel M. Summers contrasts the two types of divorce legislation prevailing today in Mexico, the one apparently representative of the revaluation of marriage relationships incident to a far-reaching social revolution, the other openly designed to attract the custom of the unhappily married *Yanqui*. In depicting the reception which the Mexican Supreme Court has accorded decrees based on laws of the latter type, Mr. Summers has revealed a situation of uncertainty comparable to that created in this country by the *Haddock* decision. The rise and fall of the French divorce in popularity among American divorce seekers is traced in Mr. Lindell T. Bates' article, *The Divorce of Americans in France*, in which he outlines the French divorce law and procedure that for a time was subverted to alien uses, a practice which has withered under the blighting influences of unfavorable publicity, economic pressure, and the disciplinary action of the French courts.

South Carolina, the only state in the nation which denies divorce to its residents, furnishes a laboratory for the study of the relation of rigorous domestic laws to migration for divorce. In *A Note Upon Migratory Divorce of South Carolinians*, Professor H. C. Brearley produces evidence to indicate that the citizens of that state are availing themselves of laxer laws elsewhere to a degree which suggests that South Carolina's adherence to the doctrine of the indissolubility of marriage is in process of disintegration.

Migratory divorce as a means of evading restrictive divorce legislation is castigated by those who favor rigorous limitations upon grounds for divorce and at the same time is tolerated or approved by many who urge greater liberality with respect thereto. But both parties unite in condemning the uncertainties of status created by the dubious legal validity of migratory divorce decrees. Strict fidelity by the courts of the parties' domicils to the logical consequences of the doctrines of divorce jurisdiction which they pronounce might long ago have created a situation so intolerable as to have compelled corrective action. How those courts instead have mitigated the harshness of their own rules by restricting the right of attack on defective decrees is depicted in *The Myth of the Void Divorce* by Professor Fowler V. Harper who sees in this lawyerly tactic of maintaining the semblance of strictness while elaborating a rationale of evasion a significant factor in undermining popular respect, not only for divorce laws, but for law in general.

One by-product of this judicial palliative has been to give color of validity to the claims of those interested—pecuniarily—in promoting migration for divorce. The technique of promotion whereby the services of the divorce mills are brought to the attention of the public is examined in *The Divorce Mill Advertises* by Mr. Rollo Bergeson, who evaluates the possibilities of curbing the advertising lawyer by bar association action and by legislation. His article also describes the procedure followed by legal aid agencies on behalf of families deserted by divorce seekers.

No more promising effort has been undertaken in this latter direction than that initiated by the Circuit Court of Wayne County, Michigan, with the coöperation of the International Migration Service and the Detroit Legal Aid Society. Their work is discussed by Mr. David W. Wainhouse in *Protecting the Absent Spouse in International Divorce: The Detroit Experiment*. Immigrant workers, separated from their wives in Europe, often through the operation of the Immigration Act, were resorting to the Detroit courts for divorces. Decrees were rendered *ex parte*, under circumstances which gave reason to believe that the interests of the absent wives were not fairly considered. The procedure devised to insure to these wives a fair hearing suggests a means whereby the hardships of interstate divorce might be considerably mitigated—not perhaps in cases of migration to the divorce mills (for the adoption of this procedure there could scarcely be anticipated) but in the numerically far more significant class of cases<sup>4</sup> where divorce is rendered at the domicile of one party after the empty gesture of constructive service by publication has purported to apprise the absent spouse of the initiation of the proceedings.

Even where the spouse deserted by the divorce migrant has knowledge of the pending action and means to command competent legal counsel, the alternatives of appearing in a distant hostile forum to contest the action, of instituting proceedings at home for divorce or separation, or of waiting until, at some indeterminable future time, an issue arises in which the validity of the default decree may be attacked, are distinctly unsatisfactory. As means of preventing migration for divorce or of clarifying the legal uncertainties it produces, suits for injunctions and for declaratory judgments are being resorted to with increasing frequency. These remedies are appraised and the legal problems which their employment poses analyzed in Professor Albert C. Jacobs' article, *The Utility of Injunctions and Declaratory Judgments in Migratory Divorce*.

The measures described in these last four articles are doubtless susceptible, if their employment is discriminatingly extended, of ameliorating the mischiefs which our crazy-quilt of divorce laws has produced. Yet they offer no prospect of cure. For this one must look, not to legislatures, courts, and their allied agencies, but to a growing social understanding of the problems of modern marital relationships, out of which alone can come a lasting solution to our current legal maladjustments.

D. F. C.

<sup>4</sup> Strictly speaking, migratory divorce is limited to those cases where the divorce seeker goes to another state for the purpose of securing a decree in evasion of the laws of the matrimonial domicile. Such cases have been estimated at three per cent of the total divorces granted, CAHEN, *STATISTICAL ANALYSIS OF AMERICAN DIVORCE* (1932) 78, an estimate which, even in view of more recent developments, would probably not be increased by more than one-third. However, following the disorganization of a family, migration to another jurisdiction by one of the spouses is of very common occurrence. If that spouse later seeks a divorce there, many of the evils which attend migratory divorce may be encountered. It is significant that in the most comprehensive study ever undertaken of divorce litigation, 11 per cent of the defendants in Ohio divorce actions were resident outside the state and the whereabouts of an additional 15.6 per cent were alleged to be unknown. The percentages for Maryland were 29.4 and 1.3 per cent respectively. See MARSHALL AND MAY, *THE DIVORCE COURT—OHIO* (1933) 67-73.