

THE DIVORCE LAWS OF MEXICO

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It was only during the troubled and dynamic course of the revolutions that swept Mexico after the fall of President Diaz that absolute divorce was recognized by the laws of the Mexican states,¹ for prerevolutionary Mexico had been adamant in the preservation of the indissolubility of marriage,² permitting only separation from bed and board or what is equivalent to our limited divorce. Moreover, lest one or more of the twenty-eight states pass legislation not in conformity with this standpoint, the Federal Congress enacted a decree, in 1874, providing that only the death of one of the spouses could put an end to the matrimonial status of the couple.³ The binding effect of this decree on the several states, within whose prerogatives the regulation of marriage and divorce would normally fall, arose from the fact that it was enacted in pursuance of an amendment to the constitution of 1857 by whose terms matrimony was defined as a civil contract.⁴ However, by this same decree, the passage of laws by the states permitting legal separation for grave reasons, was authorized. As this permission was utilized⁵ it was not requisite, when the reforms of the revolution

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¹ HABERMAN, *THE DIVORCE LAWS OF MEXICO* (1930) 3.

² Salvador I. Reynoso writes: "En 1894, se presentó a la Cámara de Diputados una iniciativa para establecer el divorcio; fue vigorosamente combatida, suscitó una violenta oposición en todo la Cámara y produjo indecible alarma en la sociedad y en la opinión pública, a tal grado, que el General Porfirio Díaz, Presidente entonces de la República, ordenó se retirara la iniciativa y el matrimonio quedó incólume, como lo había sido hasta entonces." *Un cancer del hogar Mexicano—El divorcio* (1924) 2 *REVISTA JURIDICA DE LA ESCUELA LIBRE DE DERECHO*, 393, 399-400. Illustrative of the attitude even before 1894 is that, in 1883, Augustin Verdugo delivered a lecture to the Escuela Especial de Jurisprudencia, and asked his hearers never to allow the laws of Mexico to permit divorce. The termination of this lecture was greeted with "prolonged and thunderous applause." *Discurso del Señor D. Agustín Verdugo sobre el divorcio pronunciado en la Escuela especial de jurisprudencia*, Mexico, 1883.

³ Decree of Dec. 14, 1874, Art. 23, par. 9. 12 *DUBLAN Y LOZANO, LEGISLACIÓN MEXICANA*, p. 683.

⁴ The amendment referred to is the one of Dec. 25, 1873. 12 *DUBLAN Y LOZANO*, *op. cit. supra* note 3, at p. 502.

⁵ The Civil Code of 1884 of the Federal District and of the Territories in effect at the time of the revolution covered divorce in articles 226-256. The Federal District in Mexico corresponds to the District of Columbia in the United States and, as in the case of the District of Columbia, the Federal Congress legislates on its behalf as well as on behalf of the territories, namely Lower California and Quintana Roo. For this or other reasons the laws of the Federal District and of the Territories exert a great influence in Mexico, so much so that many of them are adopted *in toto* by the states and reenacted as their own legislation. The provisions as to divorce, which as we shall see form an exception today, formed no exception in the prerevolutionary period so that for all intents and purposes the above cited articles may be considered the then law of Mexico.

were introduced, to create overnight a system of law but merely necessary to adapt to the needs of divorce *a vinculo* the legislation evolved in contemplation of divorce *a mensa et thoro*.

The path to these new reforms was broken by a decree of December 29, 1914, enacted by Carranza, then First Chief of the Constitutionalist Armies, that modified the legislation of 1874 insofar as it prohibited the dissolution of marriage, provided that absolute divorce could be granted for valid cause or on the mutual consent of the parties (if the marriage had had three years duration), and authorized the governors of the states to modify the laws of their respective entities accordingly.⁶ Among the reasons for the promulgation of this edict, Carranza listed the tendency of the poorer classes to enter into illegitimate unions and to avoid marriages for fear of irreparable consequences, a situation that was apparently to be ameliorated by the introduction of absolute divorce. Exactly a month later, on January 29, 1915, Carranza followed his own precepts by reforming the Civil Code of the Federal District and of the Territories (Lower California and Quintana Roo) in accordance with the decree of December 29, 1914.⁷ Within a space of a little over two years this decree was absorbed and succeeded by the "Law of Domestic Relations" among whose most important provisions were those pertaining to divorce.⁸ In contemplation of subsequent trends in the divorce policies of some of the Mexican states it is of interest that it was expressly set forth among the "whereases" preceding the text of the law that, in order to prevent foreigners and residents of the Mexican states from taking advantage of this legislation, it was incumbent upon the parties seeking divorces to have resided one year within the territorial jurisdiction of the competent court.⁹ This law remained in effect in the Federal District and the Territories until the promulgation of a new civil code, on October 1, 1932, whose Title V, Chapter 10, constitutes the present substantive law of divorce applicable in these localities. While the legislation has assumed a new garb, it suffered few material changes in its transmutation, the pertinent provisions of the code being primarily reënactments of the corresponding sections of the "Law of Domestic Relations."¹⁰

Following the initiative of the federal authorities legislating on behalf of the Fed-

⁶ CODIFICACION DE LOS DECRETOS DEL C. VENUSTIANO CARRANZA, MEXICO, D. F. 1915, p. 147.

⁷ *Id.* p. 168. In 1916 Carranza realized that the persons who had obtained a legal separation under the old law were in an anomalous situation. Hence he provided that all those who had obtained a legal separation under the old law would thereafter be considered *ipso facto* as having been granted an absolute divorce. See 3 EL CONSTITUCIONALISTA, 3rd epoch, No. 174, May 31, 1916.

⁸ Enacted by Carranza on April 9, 1917. It is most readily available as a separate pamphlet. The divorce articles are 75-106. For a discussion of this law, see Gaither, *The Marriage and Divorce Laws of Mexico* (1923) 57 AM. L. REV. 404.

⁹ Article 106 was the article dealing with this jurisdictional requirement. For comment as to methods of proving one year's domicile, see Carlos C. Echeverría, *Proposición del Presidente del Tribunal Superior del Distrito Federal, para uniformar la Jurisprudencia sobre la aplicación del artículo 106 de la ley de Relaciones Familiares* (Dec. 1927-Jan. 1928) 5 REVISTA DE CIENCIAS SOCIALES, p. 657.

¹⁰ The sources of the articles of the new civil code are listed by Ignacio García Téllez in *MOTIVOS, COLABORACIÓN Y CONCORDANCIAS DEL NUEVO CODIGO CIVIL MEXICANO* (1932). They may also be found in the edition of this code by Francisco J. Santamaría.

eral District and of the Territories the states had, in the meantime, been reforming their own laws. In some of them the laws enacted in the revolutionary period are still in effect although in most divorce is controlled by legislation of more recent date. If the experience of the past is any criterion it is likely that many of the states will adopt as their own the provisions of the above mentioned civil code, including the chapter on divorce. Of course this prophecy does not apply to those that have embarked on the policy of permitting quick, easy and cheap divorces. The pioneer in this field was Yucatan for as early as 1918 it had adopted iconoclastic legislation designed to expedite divorce.¹¹ Among the novel and unusual features of this legislation was a provision that divorce could be obtained without the necessity of alleging or proving any grounds in justification of the decree. While it is not certain that the initial radical steps were taken for the avowed purpose of attracting foreigners in search of easy divorces, such was their ultimate effect. Other states noting the revenue-producing potentialities of this policy eventually followed suit. Campeche, bordering on Yucatan, Morelos, situated in the central part of Mexico, and Sonora, contiguous to the American frontier, were the first to imitate Yucatan. In most recent years Chihuahua and Tamaulipas, lying immediately south of the Rio Grande, have followed in the footsteps of their sister states.

In view of the extreme liberality of these laws, they have acted, as it was intended that they should act, as a magnet for thousands of Americans anxious to dissolve their marital ties. Among the more prominent residents of the United States who have taken advantage thereof a writer in *Scribners* lists Homer S. Cummings, Alda, Frank Woodward, Bruce Reynolds, William Slavens McNutt, Dolores del Rio and William McFee.¹² To facilitate their mission even further the travel agencies and the hotels have collaborated with the lawyers so as to make the divorce quest of these modern pilgrims as enjoyable as possible. To that end divorce tours, resembling "Cook's Tours," with all arrangements completed beforehand, have been offered to the unhappily wedded.¹³ The total has been further swelled by those who have availed themselves of the simple method of the mail order divorce. The exact number of American marriages from whose bonds surcease has been sought in Mexico is difficult to estimate with any accuracy but the probabilities are that this number would exceed ten thousand.¹⁴ It is even more difficult to determine how many of

¹¹ The earlier divorce laws of Yucatan are discussed by John T. Vance, Jr. in *The Divorce Laws of Yucatan* (1925) 13 GEO. L. J., 227, 232. See also Cartwright, *Yucatan Divorces* (1932) 18 A. B. A. J. 307, and HABERMAN, *THE DIVORCE LAWS OF MEXICO*, (1930) 16-17.

¹² Mason, *Mexico's Cash-and-Carry Divorce for Americans* (Oct. 1930) 88 SCRIBNERS, 360.

¹³ *Ibid.*

¹⁴ Writing in 1929 Lindell T. Bates stated that "Probably well over two thousand divorces have been pronounced between our citizens in the southern Republic since the War." *The Divorce of Americans in Mexico* (1929) 15 A. B. A. J. 709. This figure was apparently accepted as sufficiently accurate by Alfred Cahen in his *STATISTICAL ANALYSIS OF AMERICAN DIVORCE* (1932), because he cites Bates with approval on page 65. In an article in *Today*, entitled "Divorce by Mail—Ease and Cheapness of Mexican Decrees Attract Thousands," William Atherton Du Puy states: "The figures for divorces granted there, according to the Chamber of Commerce, show 5,260 in 1931, 3,985 in 1932, 2,437 in 1933." (June 9, 1934) 1 TODAY 8. Another indication of the large number of divorces granted is the statement that a judge in

these purported divorces received by Americans are actually valid under the laws of Mexico, how many, even though issued by a regularly constituted court, would not be recognized even in that country, and how many are totally spurious.

Under the latter category fall a group of "divorces" represented by fictitious papers foisted on Americans by a ring operating in Morelos. According to the *New York Times* "These fake documents were obtained by procuring certified statements of the validity of genuine divorces and then attaching these statements to the decrees filled in by the lawyers themselves."¹⁵ Needless to say these documents did not change by one particle the matrimonial status of the persons defrauded.

The problem as to when a divorce issued by a regularly constituted court is defective from the standpoint of Mexican jurisprudence is primarily a problem of constitutional law as it has been interpreted and expounded by the Supreme Court of Mexico in the decisions that it has rendered. It is true that one decision does not result in a binding precedent determinative of the law, for in order that this result be achieved it is necessary that the Supreme Court hand down five decisions on the same point. Because of the comparative novelty of the radical divorce legislation, five decisions on one point, are, on most questions unavailable.¹⁶ But as the pronouncements of this tribunal, even though they have not reached the status of binding precedent, are entitled to great respect, possibly as great as the *obiter dicta* of our own Supreme Court, they may be treated as the most authoritative exposition available of the true meaning of the constitution of the United Mexican States.

Above the laws of the states, the Supreme Court of Mexico has announced in unequivocal terms, stands the constitution of the Union.¹⁷ Thus it has been held that the Yucatan divorces, granted in the absence of mutual consent and without valid cause, infringe the guarantees of the due process clause of that constitution.¹⁸

Ciudad Juarez, Chihuahua, granted 2,800 divorces to Americans in nineteen months. See *New York Times*, April 29, 1934, p. 9, col. 2. Even allowing for exaggeration the above figures point to a very considerable number of divorces involving Americans.

¹⁵ *New York Times*, March 21, 1934, p. 13, col. 2. See also *id.*, March 5, 1934, p. 34, col. 4.

¹⁶ The editors of the *Semanario Judicial de la Federación, 5a Epoca* (the publication in which the decisions of the Supreme Court are reported) periodically compile an index of points on which precedent has been established. The latest index available, published in Vol. 33, pp. 3483 *et seq.* (1933) covers cases from June 1, 1917 to December 15, 1931. There is nothing under the word divorce.

¹⁷ A Mexican attorney, Belisario Becerra, in an article entitled "Divorcios, Legislación de los Estados," (Sept. 1934) 11 *LOS TRIBUNALES*, 427, writes: "En materia de leyes de divorcio, han sido fecundos los legisladores de los Estados y enérgica la actitud de la Supreme Corte, imponiendo sobre las leyes de los Estados, que han pretendido pasar sobre los mandatos del art. 14 de la Constitución, el respeto que las garantías consignadas en dicho precepto se establecen, . . ."

¹⁸ Laura Rendón de Matence, 18 *Semanario Judicial de la Federación, 5a Epoca* (cited hereinafter as S. J. 5. E.) 631 (1927); Carmen Victoria Gómez González, 26 S. J. 5. E. 2399 (1930); Rafael A. Duarte Moreno, 27 S. J. 5. E. 1368 (1930-1931); Antonio Medina, 32 S. J. 5. E. 1556 (1933). Campeche had the same provision in its law and it also has apparently run afoul of the Supreme Court. The text of this decision is not available in the *Semanario Judicial*—which runs over a year behind time—but a report of the case in the *New York Times* indicates the scope of the decision. This report states: "The Supreme Court has rendered a decision which is regarded as a blow to the divorce industry of several Mexican states. On the grounds that the court granting the decree, in the State of Campeche, had not heard both parties to the suit, the Supreme Court has annulled a divorce granted in 1927 to General Federico R.

Even more drastic has been the action of the Supreme Court in holding unconstitutional the divorce law of Morelos of August 15, 1927 for the reason that it was expedited by the Provisional Governor without having been submitted to the legislature of that state, this official thus arrogating to himself powers that properly belonged to the legislative organ.¹⁹ The situation was apparently remedied by the adoption of a state constitution, on November 20, 1930, ratifying the acts of the Provisional Governor but as this ratification could not be given a retroactive effect it did not affect purported divorces obtained prior to that time under the law of August 15, 1927.

Important as the above decisions are, the holdings of the Supreme Court that a divorce is invalid if service is not made on a non-resident in accordance with the laws of the latter's domicil, are of even greater significance. In the case of Federico Cervantes, a decision that merits special notice, the plaintiff sued the defendant, apparently in the Federal District, for provisional maintenance (*alimentos provisionales*) whereupon the latter interposed as a defence a divorce decree he had obtained in the courts of Morelos.²⁰ However as the defendant in the divorce action, who was the plaintiff in the suit for provisional maintenance, had not been served in conformity with the laws of the Federal District where she resided, the courts thereof refused to give full faith and credit to the divorce decree, a refusal that was thereafter sustained as proper by the Supreme Court. The point that the requirements as to service exacted by the laws of Morelos had been complied with, was considered immaterial because Morelos could not give its laws extraterritorial effect.²¹ The fundamental importance of this and similar decisions can easily be realized as they place a serious impediment in the path of the divorce seeker by forcing him to serve the defendant according to the laws of the matrimonial domicil and not according to the easy requirements of the *lex fori*.

There is still another series of decisions of the Supreme Court that needs careful scrutiny, namely the group that bears on the proper jurisdiction, or rather venue, for the trial of divorce actions. The concept of marriage as a *res* is foreign to Mexican

Berlanga, chief of military operations in the State. The general remarried after obtaining the divorce." *New York Times*, Dec. 1, 1933, p. 5, col. 5.

¹⁹ Julieta Chánfreau de Bixler, 29 S. J. 5. E. 532 (1931-1932); Nicolás E. Tejada, 30 S. J. 5. E. 921 (1932); Micaela Sánchez de Leuze, 32 S. J. 5. E. 862 (1933).

²⁰ 33 S. J. 5. E. 977 (1933).

²¹ While this decision speaks primarily of residence rather than domicil it appears from another decision of the Supreme Court that domicil is the correct criterion. See the case of Enriqueta Muñoz de Rodríguez, 29 S. J. 5. E. 1266 (1931-1932). See also María Luisa Gómez de Varela, 31 S. J. 5. E. 1347 (1932), and Esther Delgado de Zárraga, 28 S. J. 5. E. 928 (1931). The headnote to the Varela case summarizes the principle of law involved in the following language: "Si se comprueba que la persona demandada en juicio de divorcio, en el Estado de Morelos, tiene su domicilio fuera de dicha Entidad Federativa, aun cuando el emplazamiento haya sido hecho por medio de una publicación en el Diario Oficial de dicho Estado, debe considerarse que no ha sido debidamente emplazada y por tanto, que es procedente el amparo contra la sentencia relativa, ya que se la ha privado de defensa, por falta de emplazamiento." A more recent case, apparently on the same point, was referred to in the *New York Times*, Sept. 5, 1934, p. 11, col. 1.

law so that if a court has jurisdiction over both parties to a divorce suit it has jurisdiction to try the suit, barring local statutes such as the one in the Federal District which require one year's residence prior to the commencement of suit.²² However the Supreme Court has held that if suit were brought in a jurisdiction other than that of the matrimonial domicil the defendant could institute proceedings to have the divorce action litigated in the courts of the domiciliary state, district, or territory. And, although, according to the Civil Code of the Federal District and of the Territories of 1884 and the corresponding sections of most, if not all, of the civil codes of the states, the domicil of the wife followed that of the husband, the matrimonial domicil was not to be changed by the mere transfer of residence on the part of the husband.²³

Following the adoption of the new Civil Code of 1932, married women acquired, according to this code, the privilege of acquiring a domicil in their own right.²⁴ Hence, a more recent ruling, more than likely influenced by this new reform, has held that in order for the matrimonial domicil to be changed it was necessary for both spouses to agree to such change. Failing this agreement the conjugal domicil remained where it was, and it is at its situs that a divorce suit should be prosecuted.²⁵

It will be observed that, strictly speaking, these decisions do not deal with the validity or invalidity of divorce decrees under the Mexican constitution. If the defendant in such a case has been properly served and fails to take advantage of his or her privilege of instituting proceedings to have the divorce litigated in the forum of the matrimonial domicil the divorce is valid even though decreed by the courts of another jurisdiction. The problem that remains undetermined is as to the effect, under Mexican law, of a decree rendered by a Mexican court when the matrimonial domicil is situated abroad, and the defendant has not submitted to the jurisdiction of that court. In such an instance the defendant would not possess the opportunity of instituting the proceedings mentioned above. Lacking such opportunity it is obvious that he or she has suffered a very real prejudice, and it is not inconceivable

²² See the case of Rafael Pérez Taylor, 24 S. J. 5. E. 543 (1929), where it was held that a Morelos court had jurisdiction even though the couple were domiciled in the Federal District, as the wife submitted to the court's jurisdiction by entering an appeal.

²³ In the case of Luis G. Iberri, 25 S. J. 5. E. 936 (1929-1930), the Supreme Court stated at p. 943: "No es, pues, el hecho de que el marido vaya a trabajar a tal o cual lugar, dejando a su mujer en el domicilio que tenían, el que puede determinar, para los efectos de la ley, la existencia del nuevo domicilio; es el ánimo de cambiarlo por parte de aquél, unido al requerimiento de ésta para que siga a su marido y ni una ni otra cosa ha sido probada por el Señor Iberri, que es al que le incumbía la prueba y debe presumirse por lo mismo, que no ha existido cambio de domicilio y que éste sigue existiendo en la ciudad de México, y determina la competencia de sus jueces para conocer del juicio de divorcio de que se trata."

²⁴ Article 29. In the annotated edition to this code by Francisco J. Santamaría, the annotator says of this amendment: "Fundamentalmente modificada la teoría del domicilio. El art. 32 del Código Civil de 1884, que daba a la mujer casada el domicilio del marido, se suprimió, para dar a aquella domicilio propio, en virtud de haberse equiparado la capacidad jurídica del hombre y la mujer."

²⁵ Case of Dr. Loyo. Not as yet available in the *Semanario Judicial*. However a summary of the decision and extracts therefrom were printed in the newspaper *El Nacional* of Mexico City, March 19, 1935.

that the Supreme Court of Mexico would take this factor into consideration and might hold that a divorce obtained in those circumstances is defective.

At this point the query must be raised as to whether divorces granted in contravention of constitutional precepts are subject to collateral, as well as to direct attack, on the ground that they are defective *ab initio* and therefore not entitled to full faith and credit under the Mexican constitution. For lack of authoritative pronouncements on the subject, the question, unfortunately, cannot be answered dogmatically. If the defect lies in faulty service beyond the confines of the territorial jurisdiction of the forum, it would appear, from the Cervantes case, that the divorce is not entitled to full faith and credit. According to Anglo-Saxon theories of conflicts of laws the Cervantes decision is easily explainable on the basis that it involved the question of jurisdiction over the person of the defendant, a point that may always be raised by collateral attack. However the opinion of the Supreme Court is not based on this reasoning so that it is not altogether unlikely that all divorces improperly decreed in the light of the Mexican constitution, might be considered as subject to such attack. And if these divorces are not to be given full faith and credit within the country of their origin it would be anomalous indeed to regard them as unimpeachable beyond the borders of Mexico.²⁶

It is regrettable that no decision of the Supreme Court has been found dealing with the so-called mail order divorces. However a hint as to the attitude of responsible officials of the Mexican Government with regard to these divorces may be gathered from a circular sent in 1933 by the Mexican Foreign Office to all Mexican consuls instructing them to disregard the solicitations of a Mexican attorney who wished to enlist the aid of these consuls in the procurement of divorce cases. The pertinent part of this circular states that "From the point of view of private international law, divorces obtained by correspondence in accordance with the local law of the State of Chihuahua are legally null, for which reason propaganda by our consuls in favor of these divorces would only redound in the long run to the prejudice of Mexico. . . ."²⁷ Whether the Foreign Office still maintains this policy and whether the Supreme Court would view these divorces from the same angle is, of course impossible to determine.

From the foregoing paragraphs it will be seen that there are many moot points as yet unadjudicated. Nevertheless it seems safe to conclude that the only divorce that would unquestionably be upheld as valid by the Supreme Court is one where both parties have actually submitted to the jurisdiction of the tribunal granting the

²⁶ See however Gregory Mason's comments on the decision of the Supreme Court in one of the earlier cases involving Yucatan divorces. He says: "We should remember that the whole theory of Mexican jurisprudence and government is different from ours in fundamental respects. Believing in a complete separation of judicial and legislative functions, Mexicans view with repugnance such power as the Supreme Court of our United States wields. Under their theory the decision of their court in the case above mentioned did not make nugatory the Yucatan law *except in the particular case upon which appeal was taken to the court*. That decision in itself did not invalidate previous or subsequent divorces granted under the Yucatan law whether to natives or to foreigners." Mason, *supra* note 12.

²⁷ Circular No. III-85-114, 61 Boletín Oficial de la Secretaría de Relaciones Exteriores, Oct. 1933, p. 102

decree. Moreover, in the light of the opinion of the Foreign Office, it is not certain if submission by mail would be considered sufficient.

Up to this point a discussion of the substantive and adjective features of the divorce laws of the various states has been avoided in order to permit the development of this analysis against the background of the decisions of the Supreme Court. Inasmuch as there are twenty-nine jurisdictions in Mexico, each with its respective laws, it is obviously impossible to dissect all of these laws within the scope of this article, even though many of them are similar and, in some cases, identical. Instead the laws of the Federal District and of the Territories,²⁸ whose provisions are likely to be imitated widely, and the laws of the State of Chihuahua,²⁹ a state that is one of the newest havens for American divorce migrants, will be chosen as representative of the conservative and radical legislations respectively.³⁰

According to the Civil Code of the Federal District and of the Territories divorce may be obtained on seventeen grounds. These grounds are (1) the adultery of either spouse; (2) the fact that the wife gives birth to a child conceived before marriage and declared to be illegitimate; (3) the proposal of the husband to prostitute the wife; (4) the incitement to crime of one spouse by the other; (5) the corruption of the children, including step-children; (6) incurable impotency, syphilis, tuberculosis, or other chronic and incurable disease, that, in addition, is contagious and hereditary; (7) incurable insanity provided it has lasted two years; (8) unjustified absence from the home for more than six months; (9) absence from the home for more than one year if the original departure was motivated by a cause justifying divorce; (10) disappearance or presumption of death legally declared³¹; (11) cruelty, threats, or serious insults; (12) non-support, if the remedies provided by law are unavailing; (13) the making of a slanderous accusation to the effect that the spouse slandered is guilty of a crime punishable by at least two years' imprisonment; (14) the commission of an infamous, as contrasted with a political, crime, punishable by two years' imprisonment; (15) inveterate gambling, drunkenness or drug addiction, when

²⁸ Articles 266-291 of the Civil Code and Articles 156, 674-682 of the Code of Civil Procedure. For an English summary of this legislation, see 2 MARTINDALE-HUBBELL, LAW DIRECTORY, 1935, Law Digests, Mexico.

²⁹ See note 33, *infra*.

³⁰ It is of course axiomatic that non-Mexicans seeking divorces in Mexico must conduct their suit in accordance with the adjective law of the jurisdiction in which they sue. However, a Mexican court went further and held that foreigners could not obtain a divorce unless they could establish that they would be entitled to a divorce pursuant to the laws of the country of their nationality. A critic of this decision terms it erroneous, and, in the light of the common practice of the Mexican courts of applying Mexican law to foreign divorce litigants, this criticism seems justified. See Trinidad Garcia, *El divorcio de extranjeros en México* (Jan.-March, 1932) 3 REVISTA GENERAL DE DERECHO Y JURISPRUDENCIA, 164. The text of the decision criticized precedes the comment.

³¹ Articles 648 *et seq.* of the Civil Code of 1932 contain elaborate provisions for the safeguarding of the interests of a person who has disappeared, including the naming of a representative for the absentee. Two years after such nomination a formal declaration of absence is made. The declaration of the presumption of death to which this paragraph refers occurs two years after a person has disappeared in a war, shipwreck, explosion, conflagration, earthquake or similar disaster. See Article 705 of the above code.

the ruin of the family is threatened or when these vices constitute a continual cause of marital discord; (16) the commission of an act by one spouse against the person or property of the other, which, if it were committed by a third party would be punishable by at least one year's imprisonment; (17) mutual consent, provided that a year has passed since the celebration of the marriage.

It needs no extended comment to show that the grounds enumerated are many and varied.^{31a} However the divorce can only be asked for within six months after the grounds forming the basis of the suit come to the attention of the plaintiff and divorce may not be had if there has been tacit or express condonation. Presumably these limitations would not apply to a continuing ground such as insanity, although the code is silent on this point.

The procedural requirements differ according to circumstances. When both spouses mutually consent to the termination of the marriage, are of age, have no children and are of accord as to the liquidation of the community property, they may present themselves before the clerk of the civil register of their domicile and manifest their intention of procuring a divorce. In fifteen days they return and if they still desire to dissolve their marriage the clerk will declare them divorced.³²

In the event that the parties are not eligible to follow this simple procedure but nevertheless mutually consent to the divorce they must resort to the courts, presenting an agreement embodying provisions with regard to maintenance during the proceedings, the care and custody of the children both before and after the divorce, and the administration of the community property pending the termination of the marital status and the liquidation of this property thereafter. After the petition is entered the judge calls the parties to two conferences, about fifteen days apart, during whose course he attempts to effect a reconciliation, but if his efforts are fruitless he will grant the divorce. At the same time the court hears a representative of the state who passes on the adequacy of the agreement presented by the parties, particularly with the view of determining whether the interests of the children are properly safeguarded, for it is necessary that the rights of the latter be protected before the divorce can be decreed. Divorce by mail is out of the question as the parties must appear personally at the conferences.

If divorce is not by mutual consent it is naturally incumbent on the plaintiff to allege and prove his suit. During the course of the proceedings the judge dictates provisional measures for the protection of the children, with regard to maintenance and so forth. The decree, when it is rendered, determines the custody of the children according to the rules laid down in the code. After the marriage is at an end the innocent wife is entitled to alimony so long as she live honestly and does not remarry.

^{31a} Cf. the grounds for divorce in Nevada, enumerated in Ingram and Ballard, *The Business of Migratory Divorce in Nevada, supra*, at p. 304, n. 4.

³² A discussion of mutual consent divorces and this procedure from the more conservative Mexican viewpoint may be found in GUILLERMO HUMBERTO VIRAMONTES Y PLASENCIA, *DEL DIVORCIO* (Mexico, Jan. 1933), 41 *et seq.* This procedure is an innovation brought with the new civil code.

The innocent husband is, however, entitled to alimony only if he is indigent and is incapable of supporting himself. An interesting provision is that the guilty party is responsible in damages to the innocent party for the losses and prejudices suffered as the result of the divorce.

While the procurement of a divorce under these articles of the code is not difficult, there does not seem to have been any effort made to cater deliberately to the foreign divorce trade, even though Americans have taken advantage thereof, especially in Lower California. Rather the law expresses the new ideas of resurgent Mexico, among them that the preservation of an unhappy marriage is of benefit neither to society nor to the individuals concerned. The same cannot be said of the laws of Chihuahua, a state that became a divorce center with the passage of the law of January 15, 1932, said to have been sponsored by Governor Roberto Fierro, who, prior to his assumption of the gubernatorial office, had gained prominence by making a non-stop flight from Washington to Mexico City.³³ For one reason or another this enactment did not long survive but was replaced by the law of August 1, 1933.³⁴

The grounds for divorce enumerated in this latter law parallel in most instances the ones specified in the Civil Code of the Federal District and of the Territories. However, even a cursory examination will reveal that in the Chihuahua statute they appear in a far more liberal form. As a typical example abandonment of the home for three, instead of six, months is sufficient to justify divorce. Moreover, incompatibility of character is made an additional basis for the dissolution of the marriage, an addition that is of primary importance as it is upon this ground that most of the purported divorces of Americans are obtained.³⁵

According to the Chihuahua law the court of the situs of the residence of the plaintiff has jurisdiction to try the case, this jurisdictional fact being established by proof of registration in the municipal register of the locality wherein the plaintiff alleges he has his abode. Inasmuch as this registration apparently can be made on the day of arrival it is obvious that no insuperable bar is presented to the migratory divorce seeker. Moreover, purported jurisdiction is acquired by the express or tacit consent of the parties, the statute going so far as to say that there is tacit submission when a defendant who has been properly served does not raise the issue of jurisdiction.

In enacting the requirements as to service of process the drafters of the statute were obviously confronted with the Cervantes decision. Accordingly they stipulated that if the defendant reside abroad service should be made in conformity with the laws of his or her country. Whether any summons to appear in a Mexican court

³³ *New York Times*, Dec. 1, 1933, p. 5, col. 5. For an English translation of this law with some prefatory comments, see SALVADOR FRANCO URIAS, FUNDAMENTALS OF THE MEXICAN DIVORCE LAWS—NEW DIVORCE LAW OF THE STATE OF CHIHUAHUA, n. d.

³⁴ Available in pamphlet form, LEY DEL DIVORCIO—EN VIGOR DESDE EL DIA 1 DE AGOSTA DE 1933, Chihuahua, Imprenta de la Escuela de Artes y Oficios, n. d.

³⁵ William Atherton Du Puy, *supra* note 14, states "This is ground for divorce in 90 per cent of the cases. It is a rather hard ground to refute. Its mere assertion is quite enough before a sympathetic court."

could ever be served in any of the states of the United States in conformity with the respective laws, is a question that the Chihuahua lawyers overlooked, intentional or otherwise. In case the residence of the defendant is unknown, service may be had by publication, but if it develops during the proceedings that the plaintiff was not ignorant thereof, the trial will be declared a void trial.³⁶

If an answer is filed or if the term for answering has elapsed without the defendant having interposed a defence, an action, or rather inaction, that is considered equivalent to a denial, the court opens the case for the submission of proof for a period not exceeding ten days. On the termination of this period hearings are held within the next twenty-four hours. Within another twenty-four hours of their conclusion the decision must be rendered. All told, the elapsed time, from the beginning to the end of the suit, including time for service, together with the interval allowed for the defendant to answer (this may be as low as three days), will probably be in the neighborhood of three weeks. In the case of divorce by mutual consent, there is, of course, no necessity for service or hearings. Hence, according to the Chihuahua law the divorce may be granted immediately.

The courts of Chihuahua have, pursuant to the statute, the power to grant alimony on the petition of the plaintiff. Actually, at least insofar as foreigners are concerned, this power is seldom if ever exercised. With regard to the custody of children of foreign divorce seekers the problem is sidestepped through the medium of declaring that the situation of children resident abroad shall remain unaltered. Neither do the courts attempt to rule on the property rights of the parties.

While divorce by mail is not permitted in specific language the provisions permitting appearance by attorney achieve this end. It has been estimated that the price of such a divorce ranges between one hundred to two hundred dollars.³⁷

Juxtaposing the provisions of the law of Chihuahua against the opinions of the Supreme Court of Mexico, it will be seen that these provisions are in apparent conformity with the standards established by that court. However, it is possible that this conformity is more apparent than real. Let us suppose the case of a husband resident in New York, who, not being able to obtain a divorce according to the law of that state, procures a divorce on the basis of incompatibility of character, in Chihuahua. So far the case is typical, but let us further suppose that the wife, instead of doing nothing or seeking her remedies in the courts of New York, decides to contest the case in Mexico. If she so decides there are at least three arguments she might adduce against the validity of the decree. To begin with she could argue that incompatibility of character, as the term is construed in that state, is so vague as to be tantamount to no ground at all, and, hence, the Supreme Court's reasoning in holding defective Yucatan divorces obtained without cause is applicable. Secondly she could

³⁶ It is of interest to note in this connection that the choice of service of process is apparently left to some attorneys, specializing in Chihuahua divorces for Americans, to the option of the plaintiff. See Bergeson, *The Divorce Mill Advertises, infra*, at p. 000, n. 000.

³⁷ See Du Puy, *supra* note 14. And see Bergeson, *The Divorce Mill Advertises, infra*, at p. 000.

argue that even if service were made according to the method prescribed in the Civil Practice Act for the service of a summons in a divorce action, service was not made in accordance with the laws of New York as its provisions as to service apply only if the divorce suit is to be litigated in the New York Supreme Court. Thus in the contemplation of the laws of New York there has not been any service and under the Cervantes case Chihuahua laws would be inapplicable beyond her borders. Finally she could argue that suit should have been brought at the place of the matrimonial domicile. Not having the recourse open to residents of Mexico of instituting proceedings to have the proper court take cognizance of the suit, her rights have been materially prejudiced in contravention of the Mexican constitution. It is, naturally, not known how the Supreme Court would receive these arguments and it is possible that it would consider them all specious and without merit. But until the court so decides they should offer food for thought to the prospective divorce seeker.

To prophesy the future trend of Mexican divorces would require the powers of divination of a Delphic oracle. If the courts of the United States recognize some of the decrees, if the depression continues, making the comparatively cheap Mexican divorce particularly attractive, and if the Supreme Court of Mexico does not render any more decisions unfavorable to the radical divorce laws, the Mexican divorce business may flourish. On the other hand one or more factors may contribute to its possible decrease. Thus the standing of Mexican divorce decrees would certainly not be helped by adverse rulings either from the Supreme Court of Mexico or from the courts of the American states. The competition of Cuba may make itself felt. The action of the Association of the Bar of the City of New York in combatting advertising of divorce lawyers may have effect, at least in New York. Finally it should be mentioned that a bill has been introduced in Congress to bar Mexican divorces from the mails. If it should pass, it would have a deterrent influence on that type of divorce at least.

Probably the next few years will tell.