

A NOTE UPON MIGRATORY DIVORCE OF SOUTH CAROLINIANS

H. C. BREARLEY*

In the study of migratory divorce South Carolina is an excellent "case in point," since she is now the only state that does not permit divorce for any cause. All of her 4,085 divorcees recorded by the census of 1930 are, consequently, in a broad sense, migratory. Many of these have left the state expressly for the purpose of being freed from matrimony, and others have moved into the state after having had their bonds severed elsewhere.

In South Carolina's entire history—whether as colony or state—there has been strong disapproval of the legal dissolution of the family relationship. In 1704, it is true, one George Frost did obtain permission of the legislative Commons to bring in a bill for securing a divorce, his wife to appear to defend herself, but no further record of the suit has been found. Possibly death or reconciliation ended the controversy.¹ For many years after there seems to have been not even an attempt at divorce, and South Carolinians were so strongly opposed to the practice that in the case of *McCarty v. McCarty*, first tried in 1847, Judge O'Neal felt justified in holding that by "a sort of common law of our own . . . the marriage contract in this state is regarded as indissoluble by human means."²

During Reconstruction, however, the "carpetbaggers' constitution," adopted in 1868, provided in section 5 of Article XIV that "divorces from the bonds of matrimony shall not be allowed but by the judgment of a Court, as shall be prescribed by law." In accordance with this provision the legislature in 1872 passed an act permitting divorce on the grounds of adultery or of wilful desertion for two years, caused by extreme cruelty or non-support. Only a few decrees were granted under this act before it was repealed in 1878 after the "Red Shirts" under General Wade Hampton had obtained control of the state government.³

Any doubt as to the legal status of divorce was ended by the constitutional convention of 1895, which placed in the fundamental law of the state a clause directing

* A.B., 1916, A.M., 1917, University of South Carolina; Ph.D., 1928, University of North Carolina. Professor of sociology and psychology in Clemson Agricultural College since 1924. Author of *Homicide in the United States* and contributor to sociological journals.

¹ I WALLACE, *HISTORY OF SOUTH CAROLINA* (1935), 416.

² 2 Strob. L., 6, 10 (S. C. 1847).

³ 2 SNOWDEN, *HISTORY OF SOUTH CAROLINA* (1920), 1038.

that "Divorces from the bonds of matrimony shall not be allowed in this state." This prohibition was enacted only over the strong protests of the chairman of the convention, Governor John Gary Evans, who relinquished his chair to take the floor in favor of divorce for certain causes, and of Senator Benjamin R. Tillman, the leading spirit of the convention, whose fervid appeal in behalf of aggrieved women was only temporarily successful in preventing the adoption of the provision.⁴

This prohibition of divorce has been so vigorously supported by public opinion that the courts have generally been quite stern in demanding that divorces granted in other states should fulfil all legal requirements before they would receive recognition in South Carolina in accordance with the "full faith and credit" clause of section 1, Article IV, of the Constitution of the United States. In particular, persons getting married in South Carolina cannot secure a valid migratory divorce unless the state granting the dissolution of the bonds is the plaintiff's domicil and has legally obtained jurisdiction over the person of the defendant spouse.⁵ The difficulties of thus obtaining jurisdiction over an unwilling defendant spouse are so great that it is evident that many migratory divorces cannot withstand a contest. Besides, such divorces often violate the principle that if a person leaves the state of his domicil for a divorce with no intention of remaining in his new residence longer than necessary for filing his case, he does not actually change his domicil and consequently does not obtain a valid dissolution of his bonds of matrimony.⁶ These considerations are, perhaps, of small import in states where judicial practice and the spirit of the people consider them mere technicalities, but in South Carolina they are rigorously insisted upon whenever they come within the purview of the courts. The threat of criminal proceedings in such cases is not an empty one.⁷ This situation results in the fact that laymen quite generally believe it impossible for persons married in South Carolina to obtain by any procedure whatever a divorce that will be held valid by the courts of the state.⁸

The principal value, then, of a migratory divorce to a South Carolinian is that it provides him with a formal-looking document to reduce public disapproval. This desire for a "paper," however invalid, to increase respectability is certainly one of the motives prompting the seeking of out-of-state dissolutions of marriage.

Public opinion in South Carolina is not, however, always easy to satisfy. Recently the mayor of a small city in this state obtained a divorce in Richmond County, Georgia, while still carrying on the duties of his office. But, shortly after the facts were known, irate citizens compelled his resignation as mayor. This case is of especial interest because of the fact that the mayor did not apply for a divorce in North

⁴ *Ibid.*; 3 WALLACE, *op. cit. supra* note 1, at 374.

⁵ *Cf. McCreey v. Davis*, 44 S. C. 195, 22 S. E. 178 (1895).

⁶ See RESTATEMENT, CONFLICT OF LAWS (1934) §§18, 111.

⁷ *State v. Westmoreland*, 76 S. C. 145, 56 S. E. 673 (1905); *State v. Duncan*, 110 S. C. 253, 96 S. E. 294 (1918).

⁸ For a full discussion of the legal status of these migratory divorces, see Frierson, *Divorce in South Carolina* (1930) 9 N. C. L. REV., 265, 269 *et seq.*

Carolina, where he is employed a part of each year and where he might have established domicile with less taint of illegality. Instead, he filed his case in Georgia, where a deposition of residence is normally accepted without demand for supporting evidence.⁹

Yet in spite of adverse court decisions and a critical public the number of divorced persons living in South Carolina has markedly increased in recent years, as the following table, prepared from census data, will demonstrate:

Year	Population of the state 15 years and over	Number of divorced persons living in the state	Ratio of the divorcees to population of 15 or more years
1900.....	768,039	1,079	1:712
1910.....	885,755	1,233	1:718
1920.....	996,276	1,922	1:518
1930.....	1,070,131	4,085	1:262

This table shows that the ratio of divorced persons to the number of persons of marriageable age has practically doubled during the last ten year period. Since there has been no important increase in migration into the state during the last decennium, this change in ratio clearly indicates a true increase in migratory divorce, although a small proportion of the increment may be the result of a less censorious attitude by the public that formerly may have caused more divorces to be concealed under the classification of widow or widower.

This conclusion that migratory divorce has shown a great increase in South Carolina should be contrasted with Cahen's analysis, based upon the census study of 1922. Data collected at that time apparently justified him in observing, "It is obvious that people married in South Carolina, who later move away, divorce only half as frequently in other states as their numbers allow. South Carolinians just do not divorce, at home or abroad. . . . Migratory divorce as a problem is infinitesimal for South Carolinians, and there is no proof in figures showing evasion of the state prohibition."¹⁰

Cahen's conclusion is most interesting from two points of view. First, in 1922, the *mores* were so strongly against divorce that even when South Carolinians left the state they were likely to follow the dictates of public opinion. By 1930, however, as the data presented above give evidence, the decrease in public opposition and the greater facilities for change of residence had operated almost to double the ratio of divorcees to the population of marriageable age.

In the United States as a whole during recent years the stability of the family has been gravely endangered, the ratio of divorcees to persons 15 or more years of age having increased from one to 142 in 1920 to one to 82 in 1930. The varied causes of this increase in domestic discord have not failed to operate in South Carolina, although, perhaps, with somewhat less telling effect. Barred from relief in the local

⁹ Interview with the deputy clerk of court of Richmond County, Augusta, Georgia, March 27, 1935.

¹⁰ CAHEN, STATISTICAL ANALYSIS OF AMERICAN DIVORCE (1932) 70-71.

courts, unhappily married South Carolinians have been forced to endure their miseries as best they could, to secure the easy but dishonorable deliverance of unceremonious desertion, or to resort to a change of residence in order to procure a divorce elsewhere.

Migratory divorces are, however, rather a domestic luxury, and South Carolina has a low per capita wealth. Consequently, she contributes relatively little to the putative three billion dollar commerce in marital difficulties.¹¹ Foreign divorces are usually too expensive to be considered, although Mexican divorces have actually been advertised in the newspapers of the state. The lower economic classes are, therefore, forced to resort to desertion, while the middle and upper classes often move to a neighboring state. The length of residence required in North Carolina has proven an effective barrier in that direction, at least until 1933 when the requirement was reduced to one year. In Georgia, however, as has already been pointed out, the enforcement of the twelve months residence demanded by statute has been exceedingly lenient. As a result, the tide of would-be divorcees flows in that direction. Newspaper articles describing such laxity as action upon 143 cases in a three hour session of court in one Georgia county provide excellent advertising.¹² Reports that residence requirements are enforced loosely or not at all present another powerful inducement. Perjury is everywhere so widespread that it is considered a small price to pay for riddance from a hated spouse.

Divorce by perjury is elsewhere primarily a matter of the grounds for the complaint, but in the case of South Carolinians it operates more often with regard to the establishment of domicil. Any excuse, however flimsy, is seized upon to justify an affidavit of residence. A physician, for example, sends his laundry to a Georgia city for a period of time and then secures a divorce upon his deposition that he is a legal resident of Georgia. Meanwhile he has continued to practice medicine in his South Carolina home. Two young men jointly rent a cot in a room above a garage in a nearby Georgia city. Occasionally they occupy this cot during week-end pleasure trips. After some months they swear that they are legal residents of Georgia and obtain divorces from their wives. Such subterfuges are apparently more common than plain perjury, but, according to rumor, depositions of twelve months residence are often made without even the semblance of an excuse.

These seekers of migratory divorces, as has been suggested, exhibit a marked preference for the state of Georgia, especially for the cities of Augusta, Savannah, and Atlanta. According to the special census of marriage and divorce for 1932, in Richmond County (Augusta) during that year only 152 marriages were performed, but 294 divorces were granted. This is a ratio of divorces to marriages of .52, one of the highest, if not the highest, ever reported. In the same year Chatham County (Savannah) had 644 marriages and 225 divorces, and Fulton County (Atlanta)

¹¹ International News Service, in the *Anderson, S. C., Independent*, March 29, 1935.

¹² Special dispatch to the *Columbia, S. C., State*, May 26, 1935.

reported 2,491 marriages and 610 divorces, while the entire state had 25,747 marriages and 2,153 divorces.

These high ratios of divorce in Richmond and Chatham counties are not solely the result of importations of divorcees from South Carolina. A large part of the ratio is a consequence of the departure of Georgia couples to partake of the benefits of the lax marriage laws on the eastern side of the Savannah River. South Carolina exports her divorces, but she does a thriving import trade in marriages. In 1932 she had the highest marriage rate east of the Mississippi River, one marriage ceremony for every 68 persons reported in the census of 1930. On a similar basis, North Carolina had one marriage for every 273 persons, while Georgia had one for every 113 inhabitants. Many of the South Carolina marriages were importations, performed for couples wishing to avoid the physical examination of the groom required in North Carolina or the filing of the intention to marry demanded in Georgia.

This interstate commerce in domestic relations is well illustrated by the records of Richmond County, Georgia, and contiguous Aiken County, South Carolina. In 1932 Richmond County, a favorite of South Carolinians seeking divorce, had 294 divorces and only 152 marriages for a census population of 72,990. On the other hand, Aiken County, a marriage "mill" for Georgians, had in the same year 1,032 marriages for 47,403 people. Similarly, York County, South Carolina, had in 1932 one marriage ceremony for every 20 persons reported in the census of 1930, but Gaston County, across the North Carolina line, had only one marriage for every 710 persons. Dillon and Jasper, two small South Carolina counties, showed even higher ratios of marriage to population, one to 15 and one to 18, respectively.

At present, it is obvious, South Carolina has a far greater import than export trade in domestic relations. To those who consider marriage a good and divorce an evil, this constitutes a very favorable balance of trade. There are signs, however, that this favorable balance is destined to diminish. In North Carolina an affidavit by the bridegroom can now be substituted for the physical examination, and in Georgia the three days notice of intention to marry is no longer necessary if the groom is at least twenty-one years of age and is accompanied by two witnesses. Besides, North Carolina has also made its divorce laws more lenient, and dissatisfied South Carolina couples may shortly be going there. These changes will tend to decrease the importations of marriages and increase the exportation of divorces.

How long South Carolinians will be content with only migratory divorces cannot be estimated. Some of her citizens are like the clergyman-teacher who exclaimed, "South Carolina is stricter about divorce than God Almighty Himself!" Others, as theologically minded as he, believe quite differently. In accord with the usual situation in the United States, the great majority of the South Carolina legislators are members of the bar, many of whom regret their inability to share the financial returns of the divorce business. The fallacious policy of "keep your money at home" may yet provide the excuse for an attempt to alter the present prohibition

of divorce. The time for this is not yet at hand, for constitutional amendments must be submitted to a vote of the people, and the people as a whole are strongly in favor of the outlawry of divorce.

It must be conceded, however, that public opinion is far less violently opposed to divorce than it was even ten or fifteen years ago. This may, perhaps, have had some effect upon two recent court decisions that have been somewhat less rigid than would be in accord with the dictum that marriages performed in South Carolina are indissoluble except as required by the Constitution of the United States.¹³ Perhaps in time the courts may yield to this change in public sentiment and recognize migratory divorces without any careful inquiry into their legality. When that change occurs, unless family life has meanwhile become much more stable, there will doubtless be a decided increase in migratory divorce of South Carolinians.

¹³ *Way v. Way*, 132 S. C. 288, 128 S. E. 705 (1925); *Goodyear v. Reynolds*, 124 S. C. 228, 117 S. E. 538 (1923).