

THE DIVORCE MILL ADVERTISES

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In spite of the forbidding jurisdictional pronouncements of the United State Supreme Court in the *Haddock* case¹ nearly thirty years ago, traffic in migrator divorces seems to flourish. Our divorce mills grind on, concerned not at all by the numerous subsequent decisions of state courts branding their product as spurious:

If it were but the natural outgrowth of the diversity in state standards of divorce the institution of migratory divorce would certainly warrant the concern of society. As if this were not enough, we have allowed to develop a notorious "divorce racket" whose foster-fathers are short-sighted legislatures, avaricious chambers of commerce resort promoters, and commercially-minded lawyers.

Any doubt as to the moving forces behind legislation of this kind should be quieted by the examples of Nevada, Arkansas, Idaho, and Florida. In 1927 Nevada adopted a three-months residence requirement. On February 26, 1931, with great fanfare from press and bar, Arkansas stepped into the field by reducing its period from one year to three months. Idaho followed on March 3, 1931, by enacting, over the governor's veto, a "ninety day law." Two weeks later Nevada proved that it did not intend to give up its advantage by the passage of a statute under which its courts will give a "final decree of divorce" on six weeks residence within state.

The refreshing frankness with which the Florida legislature put that state into the wholesale divorce business is illustrated by the debates on its "ninety day law" when it was up for consideration early in May of this year.² Representative Frost of Jacksonville introduced the measure, explaining its purposes, and declaring that he believed that it would be a good move to encourage people who wish divorces to come to Florida. When asked by Judge W. E. Williams if the purpose of the measure was to put Florida in competition with Nevada and Arkansas, Mr. Frost replied "It is in competition to all the United States; it is to get people to come to Florida." Mr. Frost also said that he was glad that one of his colleagues had asked if the bill

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¹ *Haddock v. Haddock*, 201 U. S. 562 (1906). A detailed discussion of the legal worth of the typical mill divorce is not in place here. Suffice it to say that the law is uniform that mere residence of one spouse in a state will not give its courts jurisdiction over divorce and that a decree rendered by a court lacking jurisdiction is void. For a discussion of divorce jurisdiction and of the doctrines developed to protect such "void" decrees from attack by a defendant spouse who consented to the decree or thereafter remarried, see Harper, *The Myth of the "Void" Divorce*, *supra*, pp. 335-338.

² References to the debate may be found in the *Florida Times-Union*, Jacksonville, May 1, 5, 7, 1935.

had anything to do with the invitation to the film industry to come to Florida. He added: "If this bill would bring the movie industry to Florida, then I say 'For God's sake let's pass it!'"

The dialectic of the gentleman from West Palm Beach demonstrated that because the bill effected no changes in the grounds for divorce, no moral issue was involved. After one senator asserted that the passage of the bill would make Florida the dumping ground for every divorce in the country and argued that "We ought not to put this state on a parity with Reno, Nevada," the Senator from Key West urged its passage because people of wealth who now go to Reno, Paris, and Mexico would come to Florida. "This measure will place us in line with Reno and Arkansas and other places where the residence requirement is limited."³

While these sovereign states vie with each other for the divorce business, a gullible public smiles—and pays. The social cost of this industry is hardly measurable. Cases actually litigated only indicate what disposition would be made of the far greater number of cases in which legal complications are only potential. Dangers of criminal prosecution menace those who rely on invalid decrees in contracting new marriages or neglecting the responsibilities of the old.⁴ The incidental uncertainties of status and property rights affect innocent spouses and children as well as the parties who have purchased the invalid decrees. These hazards are great enough to one whose means assure to him whatever legal remedies or practical safeguards there may be respecting his situation. They are even more perilous to the indigent and the ignorant.

It is commonly supposed that runaway divorce is a pastime of the rich. Highly-publicized Reno, Paris, Hot Springs, and Mexican divorces probably give rise to the supposition. Information furnished by the legal aid societies in the large cities indicates that a great many whose interests are affected by these divorces are unable to pay for legal advice. It is obvious that only a few who fall in that class have access to the free legal aid agencies; the others must fare as best they can on haphazard relief.

On those who proceed in obtaining foreign divorces with the benefit of advice of highly paid counsel and in full knowledge of the risks involved, society need not lavish sympathy. To the larger class, unable economically to secure proper legal counsel or to invoke the legal remedies to which they may be entitled, society and

³To the credit of the Florida legislature it may be said that many voices were raised against the bill, one representative declaring that he was beginning "to wonder to what extent Florida is willing to prostitute herself for revenues." The final vote in the house was 45 to 42; in the senate, 18 to 14. *Florida Times-Union*, Jacksonville, May 5, 7, 1935.

⁴The most recent case in which a court of a state of marriage domicile has refused to allow its divorce policy to be frustrated arose in Los Angeles. A Los Angeles man who had obtained marital freedom through the convenient medium of a Mexican divorce, remarried and lived in the California city. He was convicted of bigamy in a sensational case. *People v. Harlow*, Los Angeles Super. Ct., *San Francisco Examiner*, May 29, 1935. The district attorney prosecuting the case said that the decision "should have a wholesome effect on the marriage status in California." His community should prove a fruitful field for additional work of this kind, if his activity is not checked by political complications resulting from the social and cinematic prominence of some of the system's beneficiaries.

the bar owe some sort of organized protection. This problem may be better understood in the light of a study of the methods employed in the promotion of migratory divorce business, the measures adopted by state legislatures and bar associations to curb these tactics, and the work done by legal aid agencies in limiting the damage wrought.

THE TECHNIQUE OF PROMOTION

The divorce mill goes after its prospects on a business-like basis. Usually, the work of advertising is left to the Chambers of Commerce, the press agents of celebrated customers, and the ballyhoo men who call the sheep to the green pastures—for a share of the wool, of course. Should a dissatisfied spouse send a faltering inquiry to the chamber of commerce of one of these ambitious western cities, a prompt response will set forth the residence requirements of the particular state and the probable cost of the services of an attorney. Usually there will be enclosed a list of those attorneys of the city who are affiliated with the chamber. Reno and Hot Springs will send mimeographed copies of the Nevada and Arkansas divorce statutes. Whatever advantage Reno may have in its 48-day difference in residence requirement Hot Springs seeks to offset by extolling its beauties and comfort. If you should direct a single query to the Hot Springs Chamber of Commerce, you would shortly be flooded with offers of services which would take care of you from the moment you leave your own doorstep until, decked out with a new divorce, you reach whatever destination you have in mind, extras included.⁴

The divorce profiteers in the United States have cause for consternation in the entrance of Cuba and the Mexican states in the divorce business. Cuban lawyers will cooperate with the Havana Chamber of Commerce in telling you—by air mail—that they can get you a valid divorce in thirty to ninety days for \$300. Sometimes they operate through correspondents in this country. The real threat lies beyond the Rio Grande. Many Mexican states have discarded the traditional Latin philosophy of divorce and will now immediately grant a decree to any couple when both parties seek it. When only one spouse seeks divorce, it will be granted in thirty days after certain forms of notice to the absent spouse have been observed. In the latter case the grounds for divorce are so liberal that there is little chance for success in a contest of the proceedings. These states have disregarded the settled principles of jurisdiction over divorce to the extent that they require neither domicile nor residence within their borders. The result is the "mail order" divorce.⁵

Because there are no "incidentals" on which promoters may profit in connection with the "mail order" divorce, the work of bringing in the clients falls upon the lawyers themselves. Some of these are members of the Texas Bar. More are licensed to practice before the courts of Mexico and carry on their work in the United States through agents, "attorneys-in-fact," and the newspapers.

⁴ A similar experience is reported in Note (1933) 17 MINN. L. REV. 638.

⁵ For a discussion of the Mexican divorce mills, see Summers, *The Divorce Laws of Mexico*, *supra*, p. 310.

In the New York *Daily Mirror* for March 15, 1935, the following classified advertisements appeared:

MEXICAN LAW OFFICE—free consultation
American Attorney advising
.....address.....

MEXICAN CUBAN LAWYERS R.....
M....., with New York Attorney,
.....address.....

An interested party might answer these advertisements requesting information as to divorce in Cuba or Mexico, and as to the validity thereof in this country. A reply would be quickly forthcoming, recommending the Mexican divorce because "It is impossible to get a Cuban divorce without actual residence in Havana for a period of thirty days." The advantages and financial terms of Mexican divorces are enumerated and a questionnaire is enclosed, which, when filled out, will include "all the information necessary to commence your proceeding."⁶ One of these attorneys appears on his letterhead as "Attorney at Law" and states that the case was referred to him by the one who advertised. The latter's name is on the letterhead as director of the "Latin-American Department." Another represents himself as "Counsellor at Mexican Laws," with his lieutenant as "Attorney in Fact." The fee charged by the New York offices is \$225.00, the final instalment payable "upon the tendering of the certified copy of the final decree of divorce duly translated into English." If the inquirer does not return the questionnaire, filled-out and notarized, in a week's time, he will be likely to receive a follow-up letter asking if any help can be given in making a decision whether or not anything further is to be done. The follow-up carefully states that the previous letter was pursuant to request.

It is not surprising that this industry has taken advantage of the "factory-to-you" system of merchandizing. In a single issue of a national farm weekly two classified advertisements appeared offering free information as to Mexican divorces and their validity. The advertisers' postoffice addresses were in El Paso, Texas. The free information reveals that there is no need to consult with local counsel, that the business can be handled with dispatch and efficiency by mail for \$125. Your correspondents would be glad to reduce even this low rate but for the high court costs across the river, over which they have no control. But if you should seem by your

*The "necessary" information solicited by the questionnaire falls under four heads: "Information Concerning the Husband," listing questions as to his name, age, nationality, occupation, address, whether previously married, where and when; "Information Concerning the Wife," listing the same questions; "General Information," covering date and place of marriage, number, names and ages of children; whether parties are living together, and, if not, who supports and cares for the children; if there has been an agreement or court order of separation and its terms; who will be plaintiff in this action; whether the other party will agree to the divorce; and "Special Remarks."

A questionnaire used by a Texas office, which posed fewer questions, closed with the following item: "Form of citation. (Personal) (Publication). Scratch out the undesired." Apparently the plaintiff spouse, if desirous of extending the privacy of the proceedings to the exclusion of the defendant, may exercise this option to forget his or her whereabouts.

silence to be content to keep your \$125 and your present spouse, you will receive a special offer of \$100, a reduction made possible, it is stated, because of the large number of cases being handled.

The literature of these El Paso firms is so outrageous that it warrants attention. Their circulars are so similar in content that the consideration of one will suffice. This firm's stationery indicates that it handles Mexican legal matters exclusively and that it has "associate attorneys in the U. S. A." On one sheet are printed, presumably accurately, the divorce provisions of the law of Chihuahua, Mexico. In summary the following advantages of Mexican divorces are enumerated: "Less cost; no appearance before courts; no witnesses must be presented. NO UNFAVORABLE PUBLICITY." A "professional services agreement" to be signed by the client and returned with the initial payment stipulates that any information previously furnished by the "law office" is "under no circumstances to be construed as legal advice," but only "as an opinion derived from a logical conclusion of facts." It also contains a provision that if no divorce is obtained all money paid on account will be refunded. Enclosed also is a pamphlet addressed "to whom it may concern," the title of which is "Legal Status of Mexican Divorces Established by Decisions of United States Courts." Its author introduces this essay in the conflict of laws by saying that while the divorce legislation of Mexico is very advanced, it is "based on strict morality, justice, and principles of International Law." He refers to the diversity of state law in the United States and concludes therefrom that there can be no general criterion of the legality of divorces, that each case must be separately treated. The prospect is warned away from the advice of "judicial functionaries" with the following exhortation:

"It generally happens that judicial functionaries upon presentation of a divorce obtained in Mexico, make the statement that it is not legal, but these mere opinions absolutely lack validity, as the functionaries in themselves do not constitute a court, nor do they have the right or authority to decide upon the validity or legality of a decision rendered in a foreign country.

"Let us call your attention to this fact: the private opinion of any individual or public functionary has absolutely no weight in law; no more than the mere guess of the humblest citizen. It is only the final conclusions of the Supreme Court that count as law.

"Beware of irresponsible and prejudiced private opinions."

In demonstration of his hypothesis that Mexican divorces are entitled to recognition as a matter of international law he cites case after case not at all in point.⁷ His

⁷ Many cases are cited for propositions which appear in those cases only as dicta. Others are cited without limitations which, if stated, would show that the cases do not apply to the type of divorce which the pamphleteer seeks to sell. For example, one paragraph reads: "Several of the States of the Union such as New York, California, etc., have already recognized by decisions in each individual case, Mexican divorces obtained through mutual consent of parties, and those in which both parties have accepted the jurisdiction of the Mexican Courts. (*Weber v. Weber*, 238 N. Y. S. 333) (*Stone v. Stone*—Mr. Justice Field, April 1, 1929.) (Mexican divorce valid C. C. P. 1915) (*Bancroft v. Bancroft*, 178 Cal. 359) (*Elliott v. Wohlfrom* (55 Cal. 384) (*Sorenson v. Sorenson*, 220 N. Y. S. 244) (*Machransky v. Machransky* 166 N. E. 423 (Ohio) in the celebrated case in New York State a French divorce was upheld. (*Gould v. Gould*, 138 N. E. 490-225 [235] N. Y. 214 [14].)" Of the reported cases only the *Weber* case involved

bald statement that "mutual consent divorces are recognized in every State of the Union, notwithstanding that no court decisions have been rendered for or against same" is clearly false and misleading. Contrary to the settled law of this country he would have it that "jurisdiction of the subject-matter of the suit for divorce may be acquired, irrespective of domicile, by any civil court of the first instance, upon express or implied consent of any of the parties in the action." New York and California, he states, by statute and decision recognize the validity of such foreign divorces. As "logical conclusions of fact" he sets forth that the following virtues of an *ex parte* divorce proceeding:

"1st—It makes possible remarriage.

"2nd—It precludes a prosecution for bigamy, especially in the State of New York, providing the second marriage took place in another State of the Union, or in Mexico, or in other foreign country. This is a general rule in the majority of the states of the Union.

"3rd—By such a decree the plaintiff constituted (*sic*) the foreign suit is estopped from attacking its validity and the defendant is likewise estopped where appears in the action."

Mexican divorce, but, like the Bancroft and Elliott cases, and the Gould case (wherein the court also relied on the parties' long continued residence in France), that was a case in which a party was not allowed to question the jurisdiction of the court when he had invoked it. This writer was unable to find a report of the Stone case. The California Code of Civil Procedure section referred to makes no explicit reference to divorce, but merely states the conflicts rule that a valid foreign judgment will be entitled to recognition in California. The Machransky case upheld as a valid divorce a rabbinical "get" in Russia which divorced a couple married, and domiciled there at the time of the divorce. The Sorenson case, although it contains unnecessarily broad and doubtful language as to the limits of collateral attack on divorce decrees, merely upholds the validity of a divorce granted a husband domiciled in Denmark (also the marital domicile) from a wife who had left him and was in New York at the time of the decree.

In support of the proposition that Mexican divorces are "valid and binding" in this country "on principles of comity" he cites the following cases (not always correctly): Barber v. Barber, 62 U. S. 21 (1859); Hilton v. Guyot, 159 U. S. 113 (1895); Crimm v. Crimm, 211 Ala. 13, 99 So. 301 (1924); Gildersleeve v. Gildersleeve, 88 Conn. 689, 92 Atl. 684 (1914); Warren v. Warren, 73 Fla. 764, 75 So. 35 (1917); Stevens v. Allen, 139 La. 658, 71 So. 936 (1916); Banchor v. Mansel, 47 Me. 58 (1859); Walker v. Walker, 125 Md. 649, 94 Atl. 346 (1915); Robins v. Robins, 103 N. J. Eq. 26, 142 Atl. 168 (1928); Gray v. Gray, 143 N. Y. 354, 38 N. E. 301 (1894); Johnson v. Compagnie Générale Transatlantique, 242 N. Y. 381, 152 N. E. 121 (1926); People v. Mosher, 2 Park. Crim. 195 (N. Y. 1855); Powell v. Powell, 211 App. Div. 750, 208 N. Y. Supp. 153 (1925); Kenner v. Kenner, 139 Tenn. 211, 201 S. W. 779 (1918); Gaffey v. Criteser, 195 S. W. 1166 (Tex. Civ. App. 1917); State v. Nichols, 51 Wash. 619, 99 Pac. 876 (1909). A Mexican divorce was involved in the Robins case only, the New Jersey court refusing to declare the divorce invalid because the fraud in obtaining the Mexican divorce was upon the state of the matrimonial domicile (New York) and not cognizable before the courts of New Jersey. Hilton v. Guyot contains a dictum at p. 167 that "A judgment affecting the status of persons, such as a decree confirming or dissolving a marriage, is recognized as valid in every country, unless contrary to the policy of its own (law)." The dictum appears in a discussion of jurisdiction and of course does not mean that such a judgment entered by a court without jurisdiction is entitled to recognition. The other cases involve comity, but in each case, with the exceptions noted below, in which the validity of a divorce was in issue the divorce was granted at the unquestioned domicile of the party who obtained it. In the Gildersleeve case, and in Galloway v. Galloway, 116 Cal. App. 478, — Pac. — (19—), cited elsewhere in the pamphlet, foreign divorces were allowed to stand for want of a showing that the libellants had merely simulated domicile in the foreign jurisdiction for the purpose of evading the law of the matrimonial domicile. The holdings in these cases are explicitly prefaced by dicta that had such a showing been made the foreign decrees would not be entitled to credit.

From a comparison with a like pamphlet from another El Paso firm, it would seem that most of the "law" was hastily borrowed. At the conclusion of the leaflet is the statement "This needs no further comment nor more enlightenment." It is submitted that the remark better applies to the above analysis.

To be sure, the purchasers of Mexican divorces can remarry. The second conclusion concedes inferentially the potential criminal consequences of such marriages in the states where they are contracted: they are punishable as bigamous, unless the marriage takes place in the state granting the decree. And in some states, North Carolina for example, a statutory punishment for bigamous cohabitation threatens one who follows the advice of contracting the subsequent marriage outside the state but who later cohabits with the newly-acquired spouse within the state.⁸ The principle of estoppel referred to in the third conclusion is definitely limited to an attack on the jurisdiction of the foreign court by a party who has invoked that jurisdiction. The "estoppel" does not affect the interest of the state or any other party not represented in the foreign suit.

How many have been duped by this type of information is indicated by the report that literally hundreds of divorces are granted to American couples every week by Mexican divorce mills. Even if allowance is made for exaggeration common to such "statistics" the traffic is of a magnitude sufficient to justify the employment of such preventive measures as are now available.

MEASURES DESIGNED TO CURB SOLICITATION

In sixteen states it is a penal offense to advertise an offer to aid in the procurement of a divorce.⁹ This includes the circulation within the state of an advertisement originating outside the state. Except for interstate complications, direct steps might be taken under these code provisions to curb the practice. Another seventeen states have statutes making champerty and maintenance or barratry crimes.¹⁰ Barratry is probably a common law crime in other states. Eleven states have laws making it criminal to advertise goods or services by false or misleading statements.¹¹ It is not inconceivable that an astute district attorney or bar association might achieve some results with the aid of this criminal law. Maryland, by statute, has made it a crime to advertise for legal business,¹² while the State of Washington has adopted as a part

⁸ N. C. CODE (Michie, 1931) §4342.

⁹ ARIZ. REV. CODE (Struckmeyer, 1928) §4567; CAL. PENAL CODE (Deering, 1931) §1592; ILL. REV. STAT. (Smith-Hurd, 1933) c. 40, §22; IND. STAT. (Baldwin, 1934) §2898; MASS. ANN. LAWS (Michie, 1933) c. 208, §§42, 43; MINN. STAT. (Mason, 1927) §10461; MO. REV. STAT. (1919) §3517; MONT. REV. CODES (Choate, 1921) §11564; NEV. COMP. LAWS (Hillyer, 1929) §10145; N. Y. CONS. LAWS (Cahill, 1930) c. 41, §120; OHIO GEN. CODE (Page, 1926) §13412; ORE. CODE (Bobbs-Merrill, 1930) §§14-483; R. I. GEN. LAWS (1923) §6181; VA. CODE (Michie, 1930) §5116; WASH. REV. STAT. (Remington, 1932) §2463; W. VA. CODE (Michie, 1932) §4730.

¹⁰ ALA. CODE (Michie, 1928) §§3308, 3309, 3318; ARK. STAT. (Crawford & Moses, 1921) §2764; GA. CODE (1933) §§9-9901; IOWA CODE (1931) §13308; KAN. REV. STAT. (1923) §§21-745; LA. GEN. STAT. (Dart, 1932) §461; MD. ANN. CODE (Bagby, 1924) art. 27, §18; MISS. CODE (1930) §§3711, 3712; NEB. COMP. STAT. (1929) §§28-1235, 28-1236; N. M. STAT. (1929) §§35-3001, 35-3002; OKLA. COMP. STAT. (Bunn, 1921) §1682; S. D. COMP. LAWS (1929) §3782; TENN. CODE (Williams, Shannon, Harsh, 1932) §11109; TEX. PENAL CODE (1928) art. 430; VT. GEN. LAWS (1917) §7060; WIS. STAT. (1933) §348.325.

¹¹ KAN. REV. STAT. (1923) §§21-1104, 21-1112; KY. STAT. (Baldwin, 1930) §1376 f; LA. CODE CRIM. PROC. (Dart, 1932) §§966, 967; MD. ANN. CODE (Bagby, 1924) art. 27, §183; NEB. COMP. STAT. (1929) §§28-1235, 28-1236; N. H. PUB. LAWS (1926) c. 387, §10; N. D. COMP. LAWS (1913) §9989; PA. STAT. (1920) §7671; S. D. COMP. LAWS (1929) §4257; TEX. PENAL CODE (1928) §1554; UTAH REV. STAT. (1933) §103-4-1.

¹² MD. ANN. CODE (Bagby, 1924) art. 27, §19.

of its statutory law the Code of Ethics of the American Bar Association,¹³ Canon 27 of which condemns advertising for business. In most states, therefore, criminal penalties are available for use against the lawyer advertising migratory divorces.¹⁴ These criminal sanctions may be used either in prosecutions by the state, or as standards of conduct in disbarment proceedings.

Where solicitation is carried on by attorneys the disciplinary powers of the bar associations have been used as a check on the practice. The number of cases shows that some bar associations in the affected areas have been active in prosecuting lawyers subject to their discipline. The State Bar of California has been successful in stopping solicitation by attorneys of that state.¹⁵ On the other hand the city bar associations of Chicago and Philadelphia report that no such cases have come to their notice. A New York attorney who advertised that "matrimonial actions" were his specialty was suspended from practice for one year, because his advertisement violated the spirit of the penal code provision against advertising for divorce business, and because such advertising was unethical.¹⁶ A Colorado court, without the aid of such a statute, found that a newspaper advertisement reading "Divorces legally obtained very quietly, good everywhere. Box . . . Denver," "is against good morals, is a false representation, and a libel on the courts of justice . . . for which the Supreme Court is empowered by statute to strike his name from the roll of attorneys." The court suspended the defendant for six months because he professed willingness to refrain from such advertising in the future, and because he did not know that his conduct was wrong.¹⁷ In a later case the same court disbarred an attorney for a similar offense.¹⁸

In 1875 a Chicago attorney, a pioneer born half a century too soon, was disbarred for soliciting divorce business. His method was to insert advertisements in divers newspapers in and out of the state of Illinois a sample of which is the following:

"Divorces legally obtained for incompatibility, etc.
Residence unnecessary. Address P. O. Box 1037, Chicago, Ill."

Sometimes he used the phrases "without publicity" and "scandal avoided." Incompatibility was not a ground for divorce in Illinois, but the defendant proposed to get the divorces under the liberal law of Utah. His bargain paralleled that of our El Paso friends even as to its financial terms. The fee was \$125, to be refunded if no divorce was obtained. After roundly denouncing the attorney for his schemes, the court said, "This court, having power, by express law, to grant a license to practice law, has an inherent right to see that the license is not abused, or perverted to a use

¹³ WASH. REV. STAT. (Remington, 1932) §139-15.

¹⁴ The writer has been unable to find any applicable statutes in Alaska, District of Columbia, Colorado, Connecticut, Delaware, Florida, Idaho, Maine, Michigan, New Jersey, South Carolina and Wyoming.

¹⁵ Letter to the author from the secretary of the State Bar of California.

¹⁶ Matter of Neuman, 169 App. Div. 638, 155 N. Y. Supp. 428 (1915).

¹⁷ People v. McCabe, 18 Colo. 186, 32 Pac. 280 (1893).

¹⁸ People v. Taylor, 32 Colo. 250, 75 Pac. 914 (1904).

not contemplated in the grant."¹⁹ In at least one case which is precisely comparable to this the Texas Bar seems to be unwilling to act.

South Dakota has suspended an attorney for advertising himself as a divorce lawyer. The defendant published a booklet in which were contained clippings purporting to have been taken from many newspapers referring to him as an international expert on marriage and divorce. The case is interesting in that no express statute prohibited advertising for divorce business. The court rested its decision on the ground that advertising as a divorce lawyer was unprofessional conduct.²⁰

In California a lawyer and his wife formed a corporation the purpose of which was to publish a book concerning Mexican and Nevada divorces. No such book was in fact published but an extensive advertising campaign was carried on, exhorting the public to read his treatise on Mexican and Nevada divorces. The court found that the whole scheme was one to advertise for divorce business, was unprofessional conduct, and suspended the lawyer for one year.²¹ When he persisted in his scheme, he was later disbarred.²²

Unfortunately most of those who practice this solicitation are not subject to the regulations of the bar associations in the affected communities. Many are lawyers in the "mill districts" who send their literature through the mails. It is not confidently to be expected that the bar associations of the districts which profit by the divorce traffic will be overly zealous in censoring the activity and practice of their members. Another perplexing obstacle in the way of progress of bar associations in this work is the fact that reputable lawyers cooperate with the system of migratory divorce. Very often such a lawyer will forward business to a Reno or Hot Springs correspondent, and will manipulate legal devices to make the decrees as effective as possible. So that lawyers in the stricter states may not be in the dark in the selection of a correspondent to handle business in the divorce mills of Mexico, divorce lawyers on both sides of the Rio Grande circularize the bar widely, furnishing references and the forms to be used in commencing divorce actions.²³ It should be urged that for a lawyer to aid in the procurement of such a divorce is a fraud on the public policy of the state by whose grace he practices law.

The states find great difficulty in enforcing their penal provisions against advertising for divorce business against extra-state advertisers. Even within the states the force of such statutes is limited by the fact that specialists in "Mexican and Cuban

¹⁹ *People v. Goodrich*, 79 Ill. 148 (1875).

²⁰ *In re Donovan*, 43 S. D. 98, 178 N. W. 143 (1920).

²¹ *Mayer v. State Bar of Calif.* 26 P. (2d) 9 (Cal. 1933).

²² *Mayer v. State Bar of Calif.*, 39 P. (2d) 206 (Cal. 1934).

²³ The name of one El Paso "Attorney and Counselor at Law," handling "Mexican Matters Exclusively," does not appear in the most comprehensive American legal directory. In a letter sent to New York lawyers he solicits the privilege of handling their Mexican cases for them. His terms are set forth in this manner: "I quote you a special price \$80. EIGHTY DOLLARS for each case, PAYABLE AT THE DELIVERY of the decree, which condition is the best guarantee for the Lawyer who sends the case. This sum covers EVERYTHING." (It will be noted that this figure is \$45 cheaper than the regular retail rate and 20 per cent below the lowest bargain rate to the individual.)

Law" seemingly can advertise with impunity, in spite of the obvious fact that the principal interest of United States residents in such law relates to the divorce provisions. No less than five such advertisements were carried in the eminently respectable *New York Herald Tribune* on Sunday, June 9, 1935.

A subcommittee of the Executive Committee of the American Bar Association has been appointed "to consider and suggest such proceeding by Federal officials as may be now available to prevent the use of the mails in such illegitimate and fraudulent purposes and to recommend such appropriate legislation by Congress as may be necessary to lessen the evils resulting therefrom." The Committee on Unlawful Practice of the Law of the Association of the Bar of the City of New York has been specially commissioned to do work toward the same end. The chairman of that committee sees as the only effective curb for the evil the promotion of Federal legislation making it a criminal offense to use the mails for the purpose.²⁴ He states that the New York body has been unable to get any help from the bar associations of the states from which the solicitations emanate.

It would take no great stretch of imagination to see an application of the present postal prohibition against using the mails to defraud to the practice of soliciting divorce business through that medium. Amendatory legislation could greatly expedite the barring of advertising matter by eliminating the necessity for the always difficult proof of fraud. Careful draftsmanship would be requisite to effect a prohibition upon offers to procure divorces sent in response to inquiries if interference with legitimate legal business is to be avoided. It must be recognized, moreover, that the present momentum of the cheap divorce industry should sustain it for some time even without further advertising. Perhaps the most potent weapon that the bar can utilize is the press. A March 20, 1934, press release by the Department of State calls attention to the fact that a great many decrees of divorce purporting to have emanated from State of Morelos in Mexico were counterfeit, and the seals and signatures upon them were forgeries. Mention is also made to the fact that genuine decrees of divorce obtained by American citizens in Mexico are of questionable validity in the United States. The force of the warning is considerably lessened by the fact that the release is couched with the indirection and delicacy characteristic of diplomatic communications. It would seem reasonable that a few highly-publicized bigamy prosecutions would apprise the people that the invalidity of this type of divorce is something more than the idle and gratuitous opinion of "certain judicial functionaries."

THE RÔLE OF THE LEGAL AID SOCIETIES

Up to this point the discussion has had reference to the problem of the prevention of solicitation of migratory divorces. While these means of prevention are still in development there exists the serious problem of the protection of the public from

²⁴ Letter to the author from Mr. Livingston Platt, chairman, who remarked, however, that the committee had just begun its work on this problem.

unnecessary hardship. In the large cities the legal aid societies have undertaken to protect the interests of indigents whose interests are involved in divorce questions.²⁵ These societies are usually concerned with obtaining support for children and deserted wives. In New York there are also frequent inquiries as to the right of either spouse to remarry. Where the interests of children are involved the legal aid agencies are anxious to insure the benefit of the law of the domicile to the children. The special principle of estoppel in this phase of divorce law often confronts a wife who once joined in the proceedings for the foreign divorce but who later seeks to assert her marital rights at the domicile.

Reno and Mexican divorces appear fairly frequently in these charity cases. The legal method employed in protecting the interests of the defendant spouse in Reno or Mexican divorce suits is calculated to disappoint many of those who have relied blindly on the sanguine claims of agents for the divorce mills. No appearance is entered in the foreign proceedings. However, in a race against the entry of a default decree, suit is promptly brought in a court of the domicile for a decree of separate support or divorce.

Still more common are the cases in which the husband's purpose in leaving home is connected with his employment. Relishing the freedom of new surroundings, or seeking to clear the way for new alliances, these migrants apply to the courts of their new homes for divorce. Usually notice is served on the wife by mail. When such a wife comes to a legal aid society for advice or service, cooperation is solicited from an allied agency or voluntary counsel in the locality of the suit in the contest of the case. In this situation also, a suit for divorce or separate maintenance is brought at the marriage domicile or the wife's domicile in attempt to obtain a decree before the husband's suit is concluded. But after the legal rights are determined, the wife has her greatest problem in their enforcement. It is no small matter to catch up to a transient husband and affect him with legal process.

The Boston Legal Aid Society has found a useful ally in the Navy Department. Many sailors leave their wives in Boston and seek divorce in some far-off jurisdiction. When the wife obtains a court order for support the Navy Department requires the husband to allot a monthly amount for the support of the wife and minor children. Because an order for support will not be enforced by foreign courts except as to payments which have accrued,²⁶ the procedure for strictly legal enforcement of the wife's rights is clumsy at best. Courts of some of the western states seem reluctant to deny the effectiveness of divorces granted within those states against the claims of spouses residing elsewhere. Often the chances of practical enforcement of legal rights against property at the marital domicile are diminished by the fact that the husband is represented there by counsel more interested in tactical advantage than

²⁵ Acknowledgment is hereby made to The Boston Legal Aid Society, The Legal Aid Bureau of Chicago, The New York Legal Aid Society, The Legal Aid Bureau of the District of Columbia, and The Southern California Legal Aid Clinic for their cooperation in furnishing information as to their work in this field.

²⁶ RESTATEMENT, CONFLICT OF LAWS (1934) §§462, 464.

in social justice. A state is loath to institute rendition proceedings against a wayward husband for fear of having him as well as the wife on their relief rolls. The operation of this factor is to relieve the husband of the fear of criminal prosecution for his neglect.

To render the work of such agencies as the legal aid societies of maximum effectiveness clearly the active coöperation of the courts to which migrant divorce seekers apply is requisite.²⁷ And at present the prospect for such assistance—at least from the divorce-mill states—seems very remote.

²⁷ For a discussion of an arrangement for effective coöperation of this sort, see Wainhouse, *Protecting the Absent Spouse in International Divorce: The Detroit Experiment*, *infra*, p. 360.