



## Kentucky Law Journal

Volume 39 | Issue 3

Article 2

1951

# Quick Divorce--A Study

Basil Hubbard Pollitt

Follow this and additional works at: <https://uknowledge.uky.edu/klj>

 Part of the [Family Law Commons](#)

**Right click to open a feedback form in a new tab to let us know how this document benefits you.**

### Recommended Citation

Pollitt, Basil Hubbard (1951) "Quick Divorce--A Study," *Kentucky Law Journal*: Vol. 39 : Iss. 3 , Article 2.  
Available at: <https://uknowledge.uky.edu/klj/vol39/iss3/2>

This Article is brought to you for free and open access by the Law Journals at UKnowledge. It has been accepted for inclusion in Kentucky Law Journal by an authorized editor of UKnowledge. For more information, please contact [UKnowledge@lsv.uky.edu](mailto:UKnowledge@lsv.uky.edu).

# Quick Divorce—A Study

By BASIL HUBBARD POLLITT\*

## I

### *We Approach Our Problem*

Brave Sir Knight and Fair Mistress Lady wooed one another in an ivory tower and were wed in the Little Church On The Cape By The Sea. Showered with rice and trailed by old shoes and tin cans, they boarded the Good Sloop Domestic Felicity and set out to sail the sea of holy matrimony. For a period all was smooth sailing and they enjoyed connubial bliss to the full. Shortly, however, there came a great storm at sea and the waves of temper, jealousy, selfishness, cruelty, thoughtlessness and misunderstanding drove them on to the rocky coast, far away from mid-channel and their ultimate intended destination, Sailor's Snug Harbor. At times jagged streaks of lightning would pierce the clouds and illumine the Heavens above their ship and they would catch glimpses of Heavenly exaltation such as Jacob must have experienced when he saw Angels ascending and descending in his dream as he slept on the pillow of stone. At other times the huge waves would open up caverns in the water and they would see yawning beneath them black bottomless pits of Hell such as even Dante could not have conceived. At other times the waves would subside temporarily and they would try to steer the Domestic Felicity off the treacherous, rock-bound coast, but close into shore lurked a pirate ship, Sexual Novelty, manned by a strong-willed crew whose captain was Unbridled Desire. Our hero and heroine were compelled to skirt the coast and eventually the inevitable happened—they were wrecked in the dense, soupy Soho-like fog of indifference and the Good Ship Domestic Felicity foundered, split asunder, and went down with all on board.

By great good fortune the unlucky people were washed ashore still

---

\* A.B. University of Cincinnati; L.L.B. George Washington, S.J.D. Harvard. Formerly a practicing attorney in New York City and Newark, New Jersey. Sometime a law teacher in George Washington University and New Jersey Law School. Research Expert for the President's Committee on Federal Incorporation, 1933. Special Assistant to the Attorney General, 1934-1935. Author of "Special Agency" in 17 Minnesota Law Review 17, and other books and articles. Now a retired member of the Miami Bar.

alive though badly bruised and battered. Each blamed the other for the loss of the ship. They called one another odious names and even threw plates. They could endure each other no longer, and resolved to abandon the voyage to Sailor's Snug Harbor and to obtain a divorce. Mr. and Mrs. Sir Knight were in reality very decent people and they had grown up in a time and place when divorce was still considered somewhat of a stigma. They wanted a divorce without publicity or scandal. They also wanted a speedy divorce, and had a sufficiently large estate that financial cost was no problem. They got out their copy of Martindale's Legal Directory (for Sir Knight had eaten his dinners at one of the Inns of Court) and also their well worn copy of Rand McNally or Ask Mr. Foster or some other American Baedeker, and said to one another. "Who shall go?" and "Where?" Sir Knight prided himself on his chivalry and gallantry and answered, "You shall go, my darling wife." Then, thumbing through his directories, he added: "Florida, Arkansas, Idaho, Wyoming, Nevada, Virgin Islands, Cuba, Mexico, Paris, I'll pay the money and you go wherever you please, only hurry" And so we come to our problem—that of quick divorce, also known as migratory<sup>1</sup> divorce, exparte<sup>2</sup> divorce, and now rapidly becoming known, in the welter and confusion and hurly-burly of the various decisions being handed down by the Supreme Court of the United States, as divisible<sup>3</sup> divorce.

Before we attack the problem of quick divorce it is necessary to make some observations about divorce in general and to narrow our field by the gradual process of exclusion and inclusion. Of all the aspects of the justice problem none is more interesting, more important, more vital, more rotten, more tragic, more filled with uncertainty, more fraught with peril, than divorce.

Divorce is rotten<sup>4</sup> because it is compounded out of perjury<sup>5</sup> and the old bogey man, collusion.<sup>6</sup> Divorce is tragic<sup>7</sup> because it destroys the sacrosanct triumvirate of mother, home and heaven.<sup>8</sup> Mother was

<sup>1</sup> Walton, *International and Migratory Divorces*, 21 ILL. L. REV. 435, 2 LAW AND CONTEMP. PROB. 289-400 (Published by Duke University Law School), a symposium on Migratory Divorces.

<sup>2</sup> Peaslee, *Exparte Divorce*, 28 HARV. L. REV. 457.

<sup>3</sup> Paulsen, *Migratory Divorce*, 24 IND. L. JOUR. 25 at 46; 62 HARV. L. REV. 131.

<sup>4</sup> Waite, *Children of Divorce in Minnesota; Between the Millstones*, 32 MINN. L. REV. 766; See further an article by Reginald Heber Smith in the *Atlantic Monthly* for December, 1947.

<sup>5</sup> Hibschan, "You Do Solemnly Swear!" or That Perjury Problem, 24 J. CRIM. L. 901.

<sup>6</sup> An excellent note, *Collusive and Consensual Divorce and the New York Anomaly*, 36 COL. L. REV. 1121.

<sup>7</sup> *The National Tragedy of Divorce*, 30 J. AM. JUD. SOC. 180.

<sup>8</sup> Recall the old poem of our school days "There are three words that on the heart are graven, they are Mother, Home and Heaven."

pretty well debunked as "Mom" in Philip Wylie's *Generation of Vipers*, nevertheless her children desire to look on her as a symbol of perfection and it hurts them very much to think that she may have been at fault where Dad was concerned.

It requires no argument to prove that divorce breaks up the family home and, since marriages are proverbially made in Heaven, divorce knocks the props out from under that beneficent institution also. And yet, when the former Mrs. Sir Knight flings her wedding ring into Reno's flowing waters, or takes one last sun bath under the palms of Miami Beach, and reckons up the advantages and disadvantages of her new status as a divorcee, she realizes that the Court's decree is not a total loss. She may breathe a sigh of relief and look for new fields to conquer.

It is the fashion to say that divorce is perilous<sup>9</sup> and uncertain, but it is no more perilous and uncertain than the parties desire to make it. So long as husband and wife sue for divorce, in their mutual domicile and remain there, no uncertainty whatsoever exists concerning their rights. The human animal, however, is instinctively litigious and likes to beat the law and outwit the courts. Hence Sir Knight and wife will not stay in the mutual domicile and seek a divorce in a "quicke" jurisdiction. Then it is that trouble begins and multiplies.

Divorce is grounded in the roots of antiquity. It was well known among the ancient Jews and the other races of the Mediterranean.<sup>10</sup> Divorce is on the march in the Western World, it is on the wane in the East.<sup>11</sup>

Divorce is a virus that infects all ranks and grades of society but it only makes newspaper headlines when it strikes home to the great and the near-great, or at least the *Nouveaux riches*. Great historical personages have been divorced—Julius Caesar, Henry VIII, Napoleon Bonaparte. Famous writers are frequently divorced—Elbert Hubbard, Sinclair Lewis, John Steinbeck. Stars of the entertainment world frequently gain additional publicity by the airing of their marital failures in the divorce courts—Mary Pickford,<sup>12</sup> Rudolf Valentino (a Paris divorce), Gilda Grey, Joan Crawford, Rita Hayworth, Arlene Judge, De-Wolf Hopper, Artie Shaw. It goes without saying that the idle rich play the divorce game for sheer ennui and want of something better to do—Doris Duke, Barbara Hutton, Tommy Manville, the

<sup>9</sup> 17 GEO. WASH. L. REV. 380.

<sup>10</sup> Rodman, *A Brief History of Marriage and Divorce*, 23 ORE. L. REV. 249, an excellent and informative article.

<sup>11</sup> Berman, *Soviet Family Law in the Light of Russian History and Marxist Theory*, 56 YALE L. JOUR. 26 at 56. Compare a note in 29 MICH. L. REV. 256.

<sup>12</sup> See *State v. Moore*, 46 Nev. 65, 207 Pac. 75.

Dodge heirs. Walter Winchell's more or less notorious gossip column has given the language of our times a new word: Reno-vate.

When James A. Stillman sued his wife Fifi for divorce or "Weedie" Stokes sued his red haired Southern belle, or when Kip Rhmelander brought his annulment proceeding against his mulatto wife, these items received columns of publicity in that staidest of all American newspapers, the New York Times.

Our article is to be streamlined, therefore it will not discuss divorce in general<sup>13</sup> for that would require volumes; likewise, alimony problems,<sup>14</sup> including the Estin<sup>15</sup> and Krieger decisions handed down by the Supreme Court of the United States at the 1947 terms are to be excluded. Likewise problems involving the custody of children<sup>16</sup> are beyond our ken. It goes without saying that we are concerned only with divorce in the courts, hence legislative<sup>17</sup> divorce will not be touched upon. By the same token, Marriage<sup>18</sup> (that indispensable prerequisite to divorce), and the shadow boxing and fancy foot work that lie in the twilight zone between marriage and divorce<sup>19</sup> are also

<sup>13</sup> A symposium *In the Law of Divorce*, 28 IOWA L. REV. 179, 340. For the Law of the British Empire on recognition of foreign divorces, see Rodman, *Divorce Recognition in the British Empire*, 23 ORE. L. REV. 158. Note, *Legislative Tendencies in Modern Divorce*, 7 CORN. L. Q. 132.

<sup>14</sup> See a symposium on Alimony in 6 *Law and Contemporary Problems* 183, 320, 24 MICH. L. REV. 849; *Determination of Property Rights after Exparte, Divorce*, 27 MICH. L. REV. 949; *Effect of Foreign Exparte Divorce on Prior Decree for Separate Maintenance*, 39 YALE L. JOUR. 587; *Foreign Decree As Bar to Suit For Alimony*, 28 ILL. L. REV. 284, a Nevada decree involved. Excellent note, 53 HARV. L. REV. 1180, *Alimony After Foreign Decrees of Divorce*; Sparacio, *Alimony and the Bigamist; A Comment on Section 1140-A of the New York Civil Practice Act*, 21 ST. JOHNS L. REV. 1, 47 COL. L. REV. 158, and 279 (temporary alimony); 34 VA. L. REV. 218, A Nevada decree involved; 12 COL. L. REV. 638, *Is Alimony a Debt?*

<sup>15</sup> Commented on and discussed in 29 BOSTON U. L. REV. 284, 24 N. Y. U. L. REV. 223, 22 SO. CALIF. L. REV. 155, 24 NOTRE DAME LAWYER, 125, 34 CORNELL L. Q. 263, 16 U. CHI. L. REV. 151, 33 MINN. L. REV. 307, 61 HARV. L. REV. 1454. See also *Migratory Divorce*, 24 IND., L. JOUR. 25. As to problems of dower and curtesy following a foreign divorce see Wheeler, *The Effect of Foreign Divorce Upon Dower and Curtesy*, 25 MICH. L. REV. 487. Harper, *Effect of Foreign Divorce Upon Dower and Similar Property Interests*, 26 ILL. L. REV. 397.

<sup>16</sup> 41 HARV. L. REV. 647, *Jurisdiction to Determine the Custody of Children*. See a symposium, "Children of Divorced Parents," 10 LAW AND CONTEMPORARY PROBLEMS, 697-866; Waite, "Children of Divorce in Minnesota; Between the Millstones," 32 MINN. L. REV. 766.

<sup>17</sup> Simeon E. Baldwin, *Legislative Divorces and the Fourteenth Amendment*, 27 HARV. L. REV. 699. Judge Baldwin was one of the most distinguished Americans of his day, a Governor of Connecticut and a candidate for the Democratic nomination for the presidency in 1912.

<sup>18</sup> See *Till Death Do Us Part*, 17 VA. L. REV. 415, a very fine article by Herbert Barry, 34 VA. L. REV. 570, *Christian Marriage*. If marriage be excluded from this article, ergo problems of annulment are excluded. As to annulment, see Kaufman, *Family Relations and Persons, 1946-1947 Survey of the New York Law*, 22 N. Y. U. L. Q. REV. 866.

<sup>19</sup> The gentle reader of inquiring mind should by all means read Llewellyn, *Behind the Law of Divorce*, 32 COL. L. REV. 1281 and 33 COL. L. REV. 249. Pro-

to be excluded. From the foregoing exclusions, we see that we cannot discuss ground<sup>20</sup> for divorce or defenses<sup>21</sup> to such a suit. Let us then be on with our problem and first of all we come to

## II

### *The Law of the Quuckie States*

Sometimes reliable secondary sources as to the law of a particular jurisdiction are more revealing than the primary statutory sources. The writer of this article has therefore tried the experiment of obtaining law from the ever active and promotion-minded Chambers of Commerce in the principal cities in the quuckie States. Occasionally, in default of information from a Chamber of Commerce, it became necessary to obtain aid from a local member of the Bar of high standing and reputation, and in one case the aid of a law professor was utilized. When the writer conceived this idea of attack on the problem, he thought he was developing something new and novel. He forgot the old adage that "There is nothing new under the sun." Imagine the writer's surprise, when, upon dipping into the legal periodical material on divorce, he discovered that the always scholarly and enterprising Minnesota Law Review had already used the Chamber of Commerce method in this very field of *ex parte* divorce.<sup>22</sup> If imitation be the sincerest form of flattery then the Minnesota Law Review should feel flattered. And now in order from the Atlantic to the Pacific, let us consider the law of the various quuckie States.

### (A)

#### *Florida*

The cities of Miami and Miami Beach in Dade County on the so-called Gold Coast of Florida are the hub of the divorce industry in that State. Consequently attention will be focused on Dade County. At this point we are reminded of the minister's words, "While these retire, let others come"—that is to say Florida practitioners are invited to skip this part of the article, albeit they may pick up a few crumbs of knowledge by reading straight on. The following information is

---

fessor Llewellyn is one of the nation's leading law teachers and it is regrettable that he never concluded this thought-provoking article.

<sup>20</sup> As for example, insanity. See McCurdy, *Insanity as a Ground for Annulment or Divorce in English and American Law*, 29 VA. L. REV. 771.

<sup>21</sup> As for example, recrimination, see Bradway, *The Myth of the Innocent Spouse*, 11 TULANE L. REV. 377 — an excellent article.

<sup>22</sup> See 17 MINN. L. REV. 638, *Our Growing Divorce "Racket" and Its Legal, Social and Economic Consequences* — a very fine note.

the regular mailing piece sent out by the Miami Chamber of Commerce in answer to inquiries about divorces in Florida..

INFORMATION AND HOUSING DEPARTMENT  
MIAMI CHAMBER OF COMMERCE

FLORIDA DIVORCE INFORMATION

The divorce laws of Florida are not greatly different from those of many other States. The State has a high interest in the preservation of the marriage relation, and in any suit, the State is virtually a third party throughout, and even if there is no defense, the case must be proven by adequate competent testimony just as if it were hotly contested. Grounds for divorce are impotence, adultery, cruelty, indulgence in violent and ungovernable temper, habitual intemperance, desertion for one year or more, previous marriage not annulled, etc.<sup>23</sup> Any number of different grounds may be joined in the same bill of complaint, which must, of course, be proven by sworn competent testimony.

In order to obtain a divorce, the complainant must be a bona fide resident of the State of Florida and reside in the State for 90 days prior to filing of the bill of complaint. The divorce will not be granted where it is the intent of the party or parties to merely establish residence in order to comply with the law and plan to leave for their home upon the entering of the final decree.

There are certain notices, orders and passages of time that have to take place in any law suit, therefore, no solicitor can or will predict just when a case will finally be finished.

The Dade County Circuit Court has a rule prohibiting the entry of a final decree of divorce in less than fourteen days after the filing of the bill of complaint. In order to get around this rule and to avoid publicity "big-shots" such as a judge or a top-flight attorney obtain the "cooperation" of the defendant wife and take their own suits to more provincial counties, and thereby obtain one-day<sup>24</sup> divorces and escape all publicity or scandal by having the file sealed.

Just prior to the outbreak of World War II the divorce business was quite malodorous in Dade County. Conditions got so bad that the Bar Association under the courageous and inspiring leadership of its then president, Stanley Milledge, now himself a Circuit Judge, stepped in and compelled one judge who was too easy-going to be insulated and isolated from all divorce litigation. At the same time there sprang up on Miami Beach a most brazen and notorious divorce "mill" the publicizing of which resulted in the disbarment or suspen-

<sup>23</sup> "Et cetera" stands for relationship of the parties within the degrees prohibited by law and also the obtaining of a divorce by the defendant from the complainant in any other state or country, but this last ground was virtually knocked out by the decision of the Supreme Court of the United States in *Williams I* and subsequent Florida decisions.

<sup>24</sup> Compare, Levin, *Repeal of Statutes by Implication As Applied to the "Ten Day" Divorce in Indiana*, 11 IND. L. JOUR. 139.

sion of several attorneys. In this connection the joke is on the writer—one of the young lady lawyers suspended had been a student of the writer's in a large northern law school.

The Dade County Bar Association has set a minimum fee of \$250.00 for the plaintiff's lawyer in a divorce suit. Nevertheless, prospective litigants shop around or "chisel", as the saying goes, and sometimes a divorce can be obtained for considerably less, particularly from members of the Bar who are not in the lawyers "union". The filing fee for instituting a divorce suit in Dade County is \$12.50.

Prior to the advent of the University of Florida Law Review and the Miami Law Quarterly, relatively little was written on Florida divorce law other than by that industrious and talented gentleman, Mr. Herbert U. Feibelman of the Miami Bar. Since the advent of these two valuable and much needed periodicals, the writings on the subject of Florida divorces have improved both in quality and volume.<sup>25</sup>

## (B)

*Arkansas*

Information was received from both the Little Rock and the Hot Springs Chambers of Commerce. The latter sent along tourist pamphlets giving information relative to hotels, etc..

## SYNOPSIS OF ARKANSAS DIVORCE LAWS

## CAUSES OF DIVORCE:

A Chancery Court of the State of Arkansas shall have the power to dissolve and set aside a marriage contract not only from bed and board, but from the bonds of matrimony, for the following causes:

1st: Where either party to the contract was, and still is impotent.

---

<sup>25</sup> But see a most valuable and interesting article by Alfred A. Green, *Grounds, Procedure and Principle Problems in Divorce Cases*, 15 FLA. LAW JOUR. 44; also Malcolm McDermott, *Extraterritorial Effect of Divorce Decrees*, 15 FLA. L. JOUR. 53; Feibelman, *A Survey of the Administration of the Divorce Laws of Florida*, 20 FLA. L. JOUR. 326.

Note, *The Doctrine of Recrimination in Florida*, 1 FLA. L. REV. 62; Note, *Decrees and Judgments Awarding Custody of Children in Florida*, 1 FLA. L. REV. 360; Note, *Divorce: Vacation and Modification of Final Decrees in Florida*, 1 FLA. L. REV. 376; Note, *Divorce, Lump Sum Payment of Alimony*, 1 FLA. L. REV. 79; Leo M. and Louise A. Alpert, *Custody Incident to Divorce in Florida*, 2 MIAMI L. Q. 32; Note, *Divorce, Modification of Custody Decree*, 2 MIAMI L. Q. 184; Note, *Comparative Rectitude*, 2 FLA. L. REV. 140; Feibelman, *Does Florida Recognize a Foreign Decree of Divorce?* 9 FLA. L. JOUR. 469; See further on this point of full faith and credit given by Florida to the divorce decrees of a sister State, 25 ILL. L. REV. 942 and 19 GEORGETOWN L. JOUR. 209, commenting on *Passailaque v. Herron* (1930) 38 F (2d) 775 and the related case of *Herron v. Passailaque* (1926) 92 Fla. 818, 110 So. 539. The learned writer of the Illinois Law Review note finds it difficult either to approve or disapprove of the two decisions involved.



- 2nd: Where either party wilfully deserts and absents himself or herself from the other for the space of one year without reasonable cause.
- 3rd: Where he or she had a former wife or husband living at the time of the marriage sought to be set aside.
- 4th: Where either party shall have been convicted of a felony or other infamous crime.
- 5th: Where either party shall be addicted to habitual drunkenness for the space of one year, or shall be guilty of such cruel and barbarous treatment as to endanger the life of the other, or shall offer such indignities to the person of the other as shall render his or her condition intolerable.
- 6th: Where either party shall have committed adultery subsequent to such marriage.
- 7th: When the husband and wife have lived apart for three consecutive years without cohabiting, the court shall grant an absolute decree of divorce at the suit of either party.

The Supreme Court of the State of Arkansas has construed the 5th section above as follows: "The indignities to the person herein referred to need not consist of personal violence. They may consist of unmerited reproach, rudeness, contempt, studied neglect, open insult, and many other things, habitually and systematically pursued, which may, according to the habits of the parties, and their condition in life, be just as effectually within the statute as personal violence."

#### ALLEGATION AND PROOF

The Plaintiff, to obtain a divorce, must prove, but need not allege, in addition to the legal cause of divorce:

- 1st: A residence in the State of three months, next before the final judgment granting a divorce in the action, and a residence for two months next before the commencement of the action.
- 2nd: That the cause of divorce occurred in Arkansas, or if out of Arkansas, that it was a legal cause of divorce in Arkansas, the laws of Arkansas to govern exclusively and independently of the laws of any other state as to the cause of divorce.
- 3rd: That the cause of divorce occurred or existed within five years next before the commencement of the suit.

The following information comes from the Bar Association of Arkansas:

Dear Mr. Pollitt:

Receipt is acknowledged of your letter of March 10, 1949, relative to your article on divorces. It is assumed that your inquiry is directed exclusively toward divorce actions instituted by non-residents of the State.

Under recent court decisions a non-resident must establish a bona fide residence in the state of Arkansas for at least sixty days prior to the institution of his action. "Bona Fide" has been held by our court to mean a bona fide intention of making this state the permanent domicile of the applicant for divorce. The bona fides and the permanence must be clearly established by the proof. In most of the contested actions, the jurisdictional requirement of bona fide residence proves insurmountable.

The filing cost of a divorce action is \$7.70. The service of summons, if personal service is had on non-resident defendant, is

determined by the charges made by the Sheriff or process server. This varies, of course. If the applicant for divorce is the wife, an attorney ad litem is not appointed unless service is by publication. If the applicant is the husband, the court appoints an attorney ad litem to see that notice is given to the other spouse. The fee is \$5.00. If a warning order is published, the charge is \$8.75. All in all, the average court cost in an un-contested case filed by a non-resident amounts to \$20.00.

The fee charged by the attorneys in Arkansas to secure a divorce for a non-resident applicant varies. If the matter is un-contested it will run from \$75.00 to \$250.00, providing there is no substantial property settlement. In case of a contest, the fee is what the traffic will bear, depending upon all the factors which go into making up a fee charge.

Trusting that this information is adequate, I am

Yours very truly,

Gerland P. Patton  
Secretary.

There is a small amount of legal periodical material on Arkansas divorces.<sup>26</sup>

(C)

### *Wyoming*

The following information was received from a Cheyenne attorney:

The Cheyenne Chamber of Commerce has referred to me your letter of March 15, 1949, about Wyoming divorces. I note that you are an attorney.

Our statutes require sixty days residence before filing a case. There are a number of grounds for divorce, but the principal ground alleged is intolerable indignities, which includes the facts usually included in mental cruelty or perhaps even incompatibility. Our law requires that the testimony of the plaintiff be corroborated by the testimony of a witness, this usually may be accomplished by a special short form of statutory deposition.

In addition, our legislature recently has enacted a statute providing for the divorce where there has been non-cohabitation for more than two years. Our supreme court, for all practicable purposes, held that no corroboration is necessary with respect to this ground.

My minimum charge for a default divorce is \$250.00. The court costs would be less than \$15.00.

Yours very truly,

Byron Hurst

---

<sup>26</sup> See 65 U. S. L. REV. 243, 655, 17 MINN. L. REV. 664, commenting on *Squire v. Squire* (Ark. 1932), 54 S.W. (2d) 281, a case that no longer seems important Arkansas law, in the light of the letter from the Bar Association of Arkansas. The case does not seem to be such bad law under *William I. Lee v. Lee*, 3 S.W. (2d) 672, commented on in 1 ARK. L. REV. 192—divorce granted because of duress involved in "shot-gun wedding" (there is still plenty of action in those Ozark Hills). See also 1 VANDERBILT L. REV. 651, commenting on the case in 208 S.W. (2d) 22. This case held the decrees of a woman judge, Ruth F. Hale, void and thereby threatened the validity of many Arkansas divorces. The decision was quickly over-ruled in 210 S.W. (2d) 319—the dissent in which is a classic. 28 COL. L. REV.

Wyoming appears to be the quietest of all the quicke States. It has apparently not created a ripple in the stream of periodical literature.

(D)

*Idaho*

The following information comes from Professor W J. Brockelbank of the College of Law, University of Idaho, Moscow, Idaho:

Dear Sir:

In answer to your letter of March 10 I am going to try to put on this one page a summary of the divorce laws of Idaho.

*Causes:* Adultery, extreme cruelty, wilfull desertion, wilfull neglect, habitual intemperance, conviction of a felony, permanent insanity if the spouse has been confined to an insane asylum for at least 6 years next preceding the commencement of the action and it appears to the court that the insanity is permanent and incurable, living separate and apart for a period of 5 years without cohabitation.

*Defenses:* Collusion, condonation, recrimination or limitation and lapse of time. Limitations are as follows: adultery 2 years after the act of adultery or its discovery, commission of felony one year after pardon or termination of the period of sentence, all other causes on unreasonable lapse of time before the commencement of the action.

*Residence:* 6 full weeks. Residence means domicile and the presumption that the domicile of the wife is the domicile of the husband does not apply. Evidence of the residence requirements must be corroborated by the testimony of witnesses other than that of the defendant.

*Alimony,* suit money and custody of children all within the discretion of the court and the court may require security and may require a receiver to enforce payments. In enforcing payments of the above resort must first be had to the community property of the spouses and then to the separate property of the husband but where the wife has a sufficient separate estate and there is sufficient community property to give her alimony and proper support then the court must withhold any allowance from separate property. If the divorce is for adultery or extreme cruelty the community property may be assigned as to the court seems just. If the divorce is for any other cause the community property must be equally divided. If the homestead is selected from the community property it may be assigned as seems just, but if selected from the separate property of one of the spouses, it must go back to its former owner except for a limited period to the innocent party.

*Fees:* Uncontested suits minimum fees are for those whose residence is the minimum or close to it, \$150.00, and for those of long

---

505, commenting on *Clyburn v. Clyburn*, 299 S.W. 38. In this case, the court held that "A showing that the parties could not possibly live together after a long and honest effort to do so is the proper ground for an absolute divorce." The Review concludes that "a wise public policy, veering away from the notion of divorce as a private criminal remedy to a theory which recognizes the problem as essentially a sociological one, could do no better than to divorce persons so situated as those in the instant case."

residence \$100.00. Filing fee in the District Court \$12.50 and some other small fees for process serving, etc.

Very truly yours,  
W. J. Brockelbank

There have been a couple of articles on Idaho Divorce,<sup>27</sup> but this writer has had no opportunity to examine them.

(E)

*Nevada*

This letter was received from the Reno Chamber of Commerce:

Dear Mr. Pollitt:

We have your letter of February 23, and in compliance with your request, we are enclosing herewith a pamphlet STATUTES OF NEVADA, which is the only printed matter we have on the Nevada divorce laws.

Trusting that this pamphlet will be of some help to you, and if we can be of further service, do not hesitate to call on us.

Yours very truly,  
William Brussard,  
Manager

The following letter comes from the president of the Washoe County Bar Association

"Dear Mr. Pollitt:

Your letter of March 10, addressed to the President of the Reno Bar Association, has been delivered to me. I am the president of the Washoe County Bar Association, of which Reno is the County Seat.

On May 24, 1946, the Washoe County Bar Association adopted as a reasonable average minimum fee in default or uncontested divorce actions the sum of \$350.00. This is the recommended minimum fee for plaintiff's counsel. The recommended minimum fee for defendant's counsel was fixed at \$100.00.

It would be difficult, if not impossible, for me to state what the average fee is in divorce cases. Some lawyers charge fees below the minimum recommended fee fixed by the Washoe County Bar Association, and since there are approximately 150 lawyers in this county, you can appreciate that it would be impossible to tell you what the average fee is.

The filing fee for a complaint in a civil action is \$30.00; if publication of summons is necessary, the cost of publication for a period of once a week for 30 days is \$10.00. The court reporters fee in an uncontested action runs from \$7.50 to \$10.00 and the clerk's fee for an exemplified copy of a decree is from \$2.25 to \$2.50 and for a certified copy from \$1.25 to \$1.50, dependant in each instance upon the number of pages in the decree.

Faithfully yours,  
Oliver C. Custer

---

<sup>27</sup> See Boughton, 17 IDA. S. B. 105; also 17 IDA. S. B. 90.

There is a huge body of law concerning the validity of Nevada divorce decrees in other States, but these decisions and articles will be considered in other parts of this article. There is only a small amount of legal periodical literature on the internal divorce law of Nevada.<sup>28</sup>

(F)

### *Virgin Islands*

The newest haven for seekers of a quick divorce seems to be the Virgin Islands. The following information comes from the Chamber of Commerce at St. Thomas. There may be some significance in the fact that this literature comes printed rather than merely mimeographed like that enamating from Florida and Arkansas.

#### INFORMATION CONCERNING DIVORCE ACTIONS IN THE VIRGIN ISLANDS

1. The grounds for divorce are as follows:  
 "(1) Impotence existing at the time of the marriage and continuing to the commencement of the action; (2) Adultery (3) Conviction of felony (4) wilfull desertion for the period of one year; (5) cruel and inhuman treatment calculated to impair health or endanger life; (6) insanity of either spouse occurring after marriage; (7) habitual gross drunkenness contracted since marriage and continuing for one year prior to the commencement of the action; (8) incompatibility of temperament."
2. The residence requirement is as follows:  
 "The plaintiff therein must be an inhabitant of the district *at the commencement of the action and for six weeks prior thereto.*"
3. *After* the residence requirement of six weeks is completed the plaintiff may file his or her divorce action.
4. Jurisdiction of the defendant is *thereafter* necessary which may be obtained in either one of three ways: (1) by personal service, after which the defendant has twenty (20) days in which to answer if served in the jurisdiction or thirty (30) days if served outside; (2) by documentary appearance and waiver of the defendant obtained after the filing of the divorce proceeding or (3) by publication for six weeks in a local newspaper, the defendant having thirty (30) days thereafter to answer.
5. After the completion of the residence requirement, the filing, and the service, the matter is heard by the Court, at its *next session* of which there are six each year, to wit: January, March, May, July, September and November.

<sup>28</sup> 14 MINN. L. REV. 94 and 3 SO. CALIF. L. REV. 127, both commenting on Blankenship v. Blankenship, 276 Pac. 9. In this case the doctrine of comparative rectitude was rejected and the doctrine of recrimination applied. The case is no longer law in Nevada due to the statutory adoption of the doctrine of comparative rectitude. 44 HARV. L. REV. 996, commenting on Bates v. Bates, 292 Pac. 298. In this case the Nevada Supreme Court held that an English decree granting a wife a judicial separation barred a suit for divorce by the husband in Nevada for causes arising prior to the English decree. The Review does not look upon the case with favor and it would seem to have little strategic importance today in the battle between the sexes.

6. The District Court, although Federal, hears these cases by reason of its jurisdiction to try cases under the laws of the Virgin Islands. The divorce proceedings are in accordance with the laws of the Virgin Islands and the decrees have the same legal effect as decrees issued in State Courts.

## (G)

*Cuba, Mexico, Uruguay, France*

Many Americans go to Cuba and Mexico (particularly the latter) for a quick divorce and in the past a considerable number of them have gone to Paris and perhaps other parts of France. So far as known, no Americans go to Uruguay, but that country is mentioned because it is said to be the Reno of Argentina, where there is no divorce.<sup>29</sup>

*Cuba*

Cuban divorce law is well and adequately explained in the interesting article by Rolando Millas in 3 Miami Law Quarterly 269. The reader is referred to that periodical for further information on Cuban Law

*Mexico*

The Mexican Divorce is mostly of the "mail-order" variety, that is to say, neither party actually establishes any residence but each gives a power of attorney to his or her counsel in the Mexican Court. As will appear hereinafter in Part V of this article, such divorces are generally not recognized in American Courts. Most of the discussion of Mexican divorces from the point of view of residence requirement and procedure and grounds, has been written in the American Bar Association Journal.<sup>30</sup>

*France*

About twenty years ago it became the vogue for wealthy estranged couples living on the Atlantic Sea-board of the United States, to seek relief from the foundering of the Good Ship Domestic Felicity by going to Paris for a summer and casting off the chains of matrimony in the French courts. A scandalous situation developed, a great hue

<sup>29</sup> See a note in 55 HARV. L. REV. 1377, *Divorce in Matrimonial Domicile Held Entitled to Recognition in Argentina Where Divorces Not Granted*.

<sup>30</sup> See a note, entitled *Quick Divorce in Sonora, Mexico* in 12 A. B. A. JOUR. 379. The leading article appears to be by that recognized authority, Lindell T. Bates, *The Divorce of Americans in Mexico*, 15 A. B. A. JOUR. 709. Cartwright, *Yucatan Divorces*, 18 A. B. A. JOUR. 307. Summers, *The Divorce Laws of Mexico*, 2 LAW AND CONTEMPORARY PROBLEMS, 310 (1935). Walton, *International and Migratory Divorces*, 21 ILL. L. REV. 435, beginning at 450.

and cry arose,<sup>31</sup> and less was heard about French Divorces. There is a book on the subject<sup>32</sup> and several articles.<sup>33</sup> The most famous case of a Paris divorce in the American courts is that of *Gould v Gould* in the New York Court of Appeals, discussed in Walton<sup>34</sup> and in most of the articles and notes involving New York law cited in Part V of this article. Under the Petain government the divorce laws of France were radically altered along Nazi lines. Exactly what the law of France is at the moment remains (to the writer) a matter of conjecture.

## (H)

*Divorce Litigation in the Public Press*

A scientific experiment in statistics was attempted through the Florida newspapers. The aid of a clipping bureau was utilized and all the clippings concerning divorce in the Florida newspapers during the months of March and April, 1949 were collected. At the outset the proprietor of the Clipping Service discouraged this experiment by saying that not enough data would be assembled to establish any conclusions. Both the clipping service and the writer were agreeably surprised at the amount of data finally assembled. The experiment appears to have been worth while, although different minds may draw different inferences from the data collected.

The writer hesitates to be dogmatic in the drawing of inferences from the clippings. One fact however, stands out—cruelty in one form or other is the chief cause of divorce. Why is it that spouses deliberately hurt one another mentally or physically? We also perceive that liquor, gambling, other men or women, nagging, disputes over money, and sexual maladjustments are many times factors in wrecking the Ship Domestic Felicity. Beyond this point the writer declines to draw inferences.<sup>35</sup>

<sup>31</sup> See 6 N. Y. L. REV. 297. (Not read by the writer.)

<sup>32</sup> Bates, *The Divorce and Separation of Aliens in France* (1929), reviewed in 7 N. Y. U. L. REV. 777; 39 YALE L. JOUR. 1232; 25 ILL. L. REV. 348, 16 CORNELL L. Q. 141, 16 CORNELL L. Q. 444.

<sup>33</sup> Beach, *American Divorces in France and Their Validity in United States*, 11 A. B. A. JOUR. 26. See also letter from Mr. Beach, entitled *Some Further Observations on French Divorces*, 16 A. B. A. JOUR. 69.

See further Walton *supra*, Note 1, at page 448; also the articles on the law of France in the symposiums cited in Part I of this article.

<sup>34</sup> *Supra*, Note 1.

<sup>35</sup> See MARSHALL AND MAY, *THE DIVORCE COURT IN MARYLAND* (1932), *THE DIVORCE COURT IN OHIO* (1933). These books contain valuable court statistics. They were prepared under the auspices of the ill-fated and short-lived Johns Hopkins Institute of Law, the early demise of which was a blow to legal science.

## III

*Results Flowing From Quick Divorce*

These results flow from quick divorce:

The policy of society tends to favor divorce—society says if they cannot live together harmoniously and happily, why not let them have a divorce.

Society tends to recognize quick divorces as valid.

The policy of the law becomes one of not only encouraging marriage but also one of encouraging divorce. This legal policy is reflected in several ways—(1) in upholding bills of complaint which are actually insufficient under the law in the books; (2) in entering final decrees on evidence too weak to make out a *prima facie* case according to the law in the books; (3) in judicial opposition to alimony without divorce, some judges considering such a situation a form of blackmail by the wife.

Law lags behind public opinion.<sup>36</sup>

Domicile becomes a legal fiction. Witness the case of our late President's daughter who obtained a Nevada divorce and blandly assumed that she could vote in her former (and *true*) domicile, totally ignoring the fact that she had claimed Nevada as her domicile. Oh Innocence, how sweet are thy charms!

A conflict immediately ensues between the law in the books put out by the courts and the law in action as published by the legislature. The courts, ostrich-like, insist on *domicile*, while the legislators intend that domicile means *residence*.

The so-called social stigma of divorce vanishes into thin air. Thirty years ago when a distinguished and highly capable Governor of Ohio was a candidate for the Presidency some slight explanation of his

<sup>36</sup> 6 So. CALIF. L. REV. 229 at 233. Jacobs, *Attack on Decrees of Divorce*, 34 MICH. L. REV. 959 at 977 "the theory of divorce has "lagged" behind the practice of the times in an astounding fashion. Daily we have been becoming more and more divorce conscious, more willing to face the reality of the problem quite apart from ecclesiastical idealogy.

"Thus divorce, first to the non-participant almost a crime, moves through the stage of social outrage, of terrible misfortune, of regrettable necessity (and in the large, a menace) of a something better not alluded to, of a 'That's too bad'—till it becomes an event not too greatly different from another." (Quoted from Llewellyn, *BEHIND THE LAW OF DIVORCE*, 33 COL. L. REV. 249 at 294.)

"Divorce theory has not kept pace with the mores and prevalent social practices of today. Courts have recognized that the scheme of divorce machinery is totally inadequate to meet the needs of current society. Something had to be done; some protection had to be given the decrees condemned under ecclesiastical theory. Divorce deals with human relations of a complex character, in regard to them the law can exercise little deterrent force. Persons will divorce and will purport to create further family relationships founded on decrees which theory abhors."



divorce was vouchsafed to the electorate. Today all this is changed—witness the case of Franklin D. Roosevelt, Jr., not to mention Anna, James and Elliott. Also witness the cases of the Governor of Florida and Senator Cam.

Perjury and collusion<sup>37</sup> run rampant. These however are ugly words, so let us substitute for collusion, "co-operation," for perjury, "belief in a legal fiction."

Quick divorce favors the wealthy. It is centered in tourist or resort areas and is therefore accompanied by gambling and extra-marital relations.

The desire for a new mate is more of a cause of quick divorce, but is also a nearly inevitable result.

Costs become excessive in the form of attorneys and other fees. Occasionally the corroding influence of money enters the academic world and contaminates the very Inns of Court.

In some jurisdictions the "Special Master" racket flourishes like the green bay tree, despite the best efforts of a few judges and lawyers to cut it down.

The courts, in view of social and legal policy, make little attempt to reconcile the sparring partners.

At the same time the judges know in their hearts that the merits of the *ex parte* divorce before them are not as one-sided as the plaintiff's stories would make it appear.

Hypocrisy abounds.<sup>38</sup> The moment any defendant, who has not personally appeared, comes into the jurisdiction and directly attacks the *ex parte* decree by a Bill in the nature of a Bill of Review, a great shout of fraud on the court and on the sovereign state goes up, and in most of such rare instances the divorce is set aside. Compare the thousands of instances in which the courts have closed their eyes to such "fraud."

A demand springs up throughout the Nation for uniformity in divorce legislation<sup>39</sup> and for some better basis of jurisdiction than that of domicile.<sup>40</sup>

<sup>37</sup> See a note, 17 *CIN. L. REV.* 202.

<sup>38</sup> Compare, MAY, *SOCIAL CONTROL OF SEX EXPRESSION*, reviewed in 44 *HARV. L. REV.* 1015.

<sup>39</sup> Eaton, *Proposed Reforms in Marriage and Divorce Laws*, 4 *COL. L. REV.* 243. See a valuable note as of the time when it was written, *Divorce Legislation*, 20 *COL. L. REV.* 472. *Draft of a Uniform Divorce Law*, 14 *HARV. L. REV.* 525. *Confusion in the Field of Divorce Law*, 5 *NOTRE DAME LAWYER* 218. Smith, *The Divorce Evil*, 7 *NOTRE DAME LAWYER*, 515. *The Proposed Uniform Divorce Recognition Act*, 19 *MISS. L. JOUR.* 124 (1947) "public opinion increasingly recognizes the ills which spring from this unfortunate situation. The validity of subsequent marriages, the status of children, titles of property, rights of inheritance and many other vital incidents of life are rendered uncertain by the cloud of invalidity hanging over these 'tourist' decrees." See an excellent note, *Enforcement*

Divorce mills come into being. Witness Miami Beach about 1940, Chattanooga recently Alexandria, Virginia, some years ago.

Divorce becomes free and automatic in fact<sup>41</sup> though not in law. The era of divorce by mutual consent arrives.

#### IV

#### *Quick Divorce in the Supreme Court of the United States*

As every A or B senior in law school knows, Article IV of the Constitution of the United States provides as follows (Section 1) "Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State. And the Congress may by general laws prescribe the manner in which such Acts, Records, and Proceedings shall be proved, and the Effect thereof."

It is due to this clause that the Supreme Court of the United States is the final arbiter on the validity of *ex parte* divorces. The realm of interstate divorce has been governed by two Kings, the first of whom was known as Haddock.<sup>42</sup> We shall now chronicle some of the events that occurred in his reign.

#### (a)

#### *The Reign of King Haddock*

In 1906 Haddock came to the throne, succeeding King Atherton.<sup>43</sup> From the beginning of his reign Haddock met with vigorous opposi-

---

*by Estoppel of Divorces Without Domicile: Toward a Uniform Divorce Recognition Act*, 61 HARV. L. REV. 326—quoting Mr. Justice Jackson as follows: "Lawyers don't know what in the world to advise their clients. Clients don't know how to dispose of their property— or whether they are divorced or not divorced. People— simple people—have to live by these rules."

<sup>40</sup> The problem of domicile is discussed under Part IV of this article.

<sup>41</sup> Note, *Collusive and Consensual Divorce and the New York Anomaly*, 36 COL. L. REV. 1121 at 1132: "An outright adoption of the principle of divorce by mutual consent subject to the sound discretion of the court would not be a revolutionary step. Mutual consent divorce has been officially sanctioned elsewhere, and is today, through collusion, a fact in the United States and England."

Divorce by mutual consent is opposed in an article in 12 FLA. L. JOUR. 335, entitled *The Divorce Traffic: It's Cause and Cure*. In an article of the same title in 13 FLA. L. JOUR. 13, a different writer supports divorce by mutual consent.

Silving, *Divorce Without Fault*, 29 IOWA L. REV. 527 at 531. "A marriage originating in the free will of two individuals ought to be dissoluble by their consent, *commun dissensu*. Therein lies the real test of the applicability of the contract idea to the sphere of marriage. If the analogy to contract law be maintained, no other reasons of divorce need be alleged but such consent of the parties. If mutual consent constitutes a divorce ground the element of fault is inapplicable. The Swedish law of June 11, 1920 draws that logical conclusion: The spouses may obtain a divorce by mutual consent without imparting to the judge the reasons of their decision." Rodman, *A Brief History of Marriage and Divorce*, 23 OREGON L. REV. 249, Waite, *Children of Divorce in Minnesota: Between the Millstones*, 32 MINN. L. REV. 766 at 773. Jacobs, *Attack on Decrees of Divorce*, 34 MICH. L. REV. 749 and 959.

<sup>42</sup> 201 U. S. 562, 50 L. Ed. 867, 26 S. St. 525, 5 Ann. Cas. 1.

<sup>43</sup> 181 U. S. 155, discussed in 1 COL. L. REV. 396.

tion.<sup>44</sup> The most vociferous and certainly the most formidable opponent of King Haddock was a short, rotund, brownie-like man named "Joey" Beale, who dwelt among the elms at Cambridge, Massachusetts, and held his own in the lists against all comers in the famous intellectual tournament, known as Harvard Law School. When Beale opened fire on King Haddock he almost demolished Haddock's fort with his initial blast.<sup>45</sup> Haddock however was very tough and resilient and survived despite the deadly accuracy and intensity of Beale's withering fire.

Haddock had a flair for publicity and encouraged his supporters, apologists and detractors to argue about him. Many articles were written concerning the merits and effects of his accession to the throne.<sup>46</sup> In time Haddock became more popular and even Beale, his stoutest antagonist, was inclined to make peace with him on the theory

<sup>44</sup> See a note in 8 COL. L. REV. 449, entitled *Divorce Decrees Under the Full Faith and Credit Clause*, " This minority view has recently been adopted by the Supreme Court of the United States, four justices dissenting, in a case holding that, where a husband deserted his wife in New York, established a domicile in Connecticut, and secured a divorce a vinculo on notice by publication only, the wife not appearing in the suit, this decree was not entitled to full faith and credit in a suit by the wife in New York for a separation and alimony. *Haddock v. Haddock* (1906), 26 Sup. Ct. 525. The majority opinion, while not denying that a suit for divorce is a proceeding in rem, yet refuse to support the logical result of this theory on the ground that if state A where one party is domiciled has jurisdiction to grant a divorce, which will necessarily affect the status of the defendant domiciled in State B, the inherent right of the State B to determine the status of its citizens is impaired. But it would seem that as great an abridgment of the rights of both states occurs when neither is allowed to determine finally the status of a party domiciled within it, which is practically the result of the principal case

In conclusion it is submitted that the case refuses to carry to its logical conclusion the accepted theory of divorce, is opposed to the weight of authority in this country, and is inconsistent with *Atherton v. Atherton*. It is supportable, if at all, only on the ground that public policy demands that divorces shall be granted only where one party is domiciled in the state and the other is therein personally served with process or voluntarily appears or where the suit is at the matrimonial domicile. But these reasons would seem more appropriate for the consideration of the State legislatures than of the courts, whose regard for them must result in the abandonment of theory for a hopeless inconsistency in practice."

<sup>45</sup> Beale, *Constitutional Protection of Decrees for Divorce*, 19 HARV. L. REV. 586 at 597 " The decision then is opposed to reason, to authority, and to morality; but it will stand until the question is raised again. As Mr. Justice Holmes said in his dissenting opinion, civilization will not come to an end meanwhile."

<sup>46</sup> Some of these articles were good, some bad; some of them were original, others were merely repetitious; all purported to be learned.

See note, *Recognition of Foreign Divorce Decrees*, 13 IOWA L. REV. 320. Note 16 VA. L. REV. 706. Parks, *Some Problems in Jurisdiction to Divorce*, 13 MINN. L. REV. 525. Note, 17 MINN. L. REV. 513. Vreeland, *Mr. and Mrs. Haddock*, 20 A. B. A. JOUR. 568. Note, 6 SO. CALIF. L. REV. 229. Bingham, *The American Law Institute, vs. the Supreme Court—In the Matter of Haddock v. Haddock*, 21 CORNELL L. Q. 393—Professor Bingham attacks Professor Beale. JONES, *CONFLICT OF LAWS IN DIVORCE CASES*, 10 NOTRE DAME, 11. Note, 8 MISS. L. JOUR. 397. Note, 10 NOTRE DAME LAW 76. Note, 14 BOSTON U. L. REV. 826. Strahorn, *A Rationale of the Haddock Case*, 32 ILL. L. REV. 796. Strahorn, *The Supreme Court Revisits Haddock*, 33 ILL. L. REV. 412. Note, 2 CORNELL L. Q. 335.

that since he had to live with Haddock he might as well live harmoniously<sup>47</sup> Beale seemed to justify Haddock's rule on the theory of fault in the acquisition of a new domicile and other writers adopted this theory,<sup>48</sup> including the powerful gentlemen who constitute the American Law Institute and promulgate the Restatements.<sup>49</sup>

Eventually Haddock was overthrown by Williams I and the Supreme Court ordered the old man executed. Many a sentimental tear was shed over his death and his followers went into "hiding across the water" like those who supported Bonnie Prince Charlie many years ago. Suitable and appropriate funeral services were held for the late king.<sup>50</sup> The memory, the legend of Haddock still carries on. His bones have been exhumed and their repository has become a legal shrine.<sup>51</sup> The phrase, out-Haddocking Haddock, has become part of our professional terminology<sup>52</sup> Now, like the ghost of Hamlet's father on the castle wall at Elsinore, Haddock's ghost is beginning to haunt us.<sup>53</sup> Can nothing get us rid of the dead king? Or is he like the old man of the Sea? Surely there must be some way to terminate his eerie existence even if we have to kill him many times, as the grand Duke killed Rasputin, the Mad Monk of Russia, in the movie, Rasputin and the Empress.

(b)

*Under the Flag of Williams*

In 1942 Williams I succeeded Haddock on the Throne of *Exparte* Divorce. Upon what thoughts did the sorrel-topped Mr. Justice Douglas ruminate as he sat quietly on the Supreme Court Bench, awaiting his turn on Opinion Day to announce the execution of Had-

<sup>47</sup> Beale, *Haddock Revisited*, 39 HARV. L. REV. 417. Beale, *The Conflict of Laws*, 1886-1936. 50 HARV. L. REV. 887 at 891.

<sup>48</sup> McClintock, *Fault As An Element of Divorce Jurisdiction*, 37 YALE L. J. 564.

<sup>49</sup> See Leflar, *Jurisdiction to Grant Divorces*, 7 MISS. L. J. 445. Compare another article by Leflar, *More Faith and Credit for Divorce Decrees*, 4 MO. L. REV. 268. See a very fine note entitled *Uniformity and the Recognition of Exparte Divorces*, 44 YALE L. J. 488.

<sup>50</sup> Hirsch, *In Memoriam, Haddock v. Haddock*, 14 PENN. B. A. Q. 232.

<sup>51</sup> Holt, *The Bones of Haddock v. Haddock*, 41 MICH. L. REV. 1013 at 1036: "it would not be fitting to say in the language of the stage that Williams v. North Carolina has drawn the curtain on Haddock v. Haddock. Rather we will shift the metaphor, to say that the recent case from North Carolina has largely stripped the flesh from the earlier decision. Yet the bones of Haddock v. Haddock remain—unbleached and unpulverized. Just as persons with mechanical turn of mind may frame from blocks of wood puzzles of readjustment and resetting, so courts in states that do not favor free and easy termination of marriage may still find the osseous remains of the Haddock case material to fashion some puzzle for the Supreme Court of the United States to solve—puzzles upon which law students and their teachers in the meantime may speculate."

<sup>52</sup> Corwin, *Out-Haddocking Haddock*, 93 U. PA. L. REV. 341.

<sup>53</sup> See Paulsen, *Migratory Divorce*, 24 IND. L. J. 25 at 46.

dock and the accession of Williams to the Throne? Did he believe he was at long last vindicating another one of Holmes' dissenting opinions? Or did his thoughts go deeper and did he believe he was inaugurating a social and legal revolution? The announcement of the opinion did indeed create a sensation. No more excitement could have been caused by the tossing of the lighted squib into the market place in the old English case in which Sir William Blackstone was one of the judges. The scene rivalled in excitement the throwing of the bomb in Joseph Conrad's well known novel, *The Secret Agent*. Undoubtedly, as Mr. Justice Douglas delivered his opinion, he thought he was making the law of divorce more clear, simple and certain. His opinion however left a loophole, a hole in the dike as it were, and the waters soon entered under the guise of the opinion in Williams II, delivered some three years later. The net result of the two Williams decisions was to leave the law largely what it was under Haddock. True the watch-word under Haddock was "comity", whereas the watch-word under Williams is "full Faith and Credit", but the courts render only lip service to their noble Sovereign and Liege Lord, King Williams I. It is fashionable for legal writers to set out the facts in the two Williams decisions in much detail. The cases are so recent and received so much newspaper publicity that their facts will not be repeated here. The job has already been well done in several of the articles and notes referred to in the next footnote. Suffice it to say that under Williams I and II an *ex parte* divorce decree, rendered in a quickie State upon constructive service only and meeting the requirement of procedural due process, is *prima facie* entitled to full faith and credit in all other states, and the heavy burden of proof is cast upon the party who seeks to overthrow the decree, a burden which can only be satisfied by the production of evidence. Williams II made clear what Williams I had intimated—that *ex parte* decrees were only valid if based upon actual, *bona fide* domicile. Thus the flood-gates opened once more. There is a vast body of periodical literature on the Williams cases, the citations in the footnote being more selective than all-inclusive.<sup>54</sup>

---

<sup>54</sup> Note, 43 *COL. L. REV.* 116. Note, 41 *MICH. L. REV.* 754. Strahorn and Reiblich, *The Haddock Case Overruled—The Future of Interstate Divorce*, 7 *MD. L. REV.* 29, containing a discussion of the Maryland decisions—a fine article. Lorenzen (the old master), *Haddock v. Haddock Overruled*, 52 *YALE L. J.* 341—discussing three theories at page 350, which theories he labels as "New York," "In Personam" and "Residence." Kane, *The Williams Case*, 12 *FORDHAM L. REV.* 150. Holt, *The Bones of Haddock v. Haddock*, 41 *MICH. L. REV.* 1013. 29 *A. B. A. JOUR.* 78, *A Symposium of Lay Editorial Opinions*. Burns, *Two Nevada Divorces Get Full Faith and Credit*, 29 *A. B. A. JOUR.* 125. Eldridge, *Navada and North Carolina—A Symposium*, 29 *A. B. A. JOUR.* 268. 31 *GEORGETOWN L. J.* 210. Radin, *The Extraterritorial Decree of Divorce*, 18 *ST. JOHN'S L. REV.* 29, discussing New

(c)

*In The Province of Domicile*

Law must be forever on the march, forever dynamic. If it bivouacs, for more than over-night, it liquefies. If it goes into winter quarters, it crystallizes. If it retreats, even for strategic purposes, it ossifies. One good way for law to ossify is for the judges to become charmed by the repetition of a mellifluous word, such as domicile. To be sure, the failing is a very human one. There was a time in the Galsworthy era of Soames Forsyte as London's leading barrister, when every one was using the word "interesting." Disregarding such obviously bias and slanted words as "Communist" "Fascist" "Socialist", "Economic Royalist", "Muck-raker", "Robber Baron" and similar appeals to emotion, one word now commonly popular is "terrific." What can we do about the word "domicile",<sup>55</sup> in the field of Quick Divorce? At the moment the drift seems to be towards substituting Residence for Domicile.<sup>56</sup> Domicile is looked upon as a fiction.<sup>57</sup> In 1948 The Supreme Court handed down more learning and law on domicile. In *Sherrer v. Sherrer*<sup>58</sup> and in the companion case of *Coe v. Coe*<sup>59</sup> the

---

York Law. Lorenzen, *Extraterritorial Divorce—Williams v. North Carolina II*, 54 YALE L. J. 799. Rodman, *Bases of Divorce Jurisdiction*, 39 ILL. L. REV. 343. Bingham, *Song of Sixpence*, *Some Comments on Williams v. North Carolina*, 29 CORNELL L. Q. 1. Note, *Public Policy and the Recognition of Foreign Divorce Decrees*, 20 NOTRE DAME LAW, 436. Excellent note, 31 IOWA L. REV. 237, discussing the concept of domicile. Note, 32 CORNELL L. Q. 417, discussing New York Law. Lorenzen, *The Aftermath of Williams v. North Carolina*, 1 MIAMI L. Q. 1. Husserl, *Some Reflections on Williams v. North Carolina II*, 32 VA. L. REV. 555, 980. Corwin, *Out-Haddocking Haddock*, 93 U. PA. L. REV. 341. Powell, *And Repent At Leisure—An Inquiry Into the Unhappy Lot of Those Whom Nevada Hath Joined Together and North Carolina Hath Put Asunder*, 58 HARV. L. REV. 930-1017, a veritable book in itself. 17 TEMPLE L. Q. 466. Note, 17 TULANE L. REV. 500. The Citation of *Williams v. North Carolina I* is 317 U. S. 287, 63 Sup. Ct. 207, 87 L. Ed. 279, 143 A. L. R. 1273, 1294 (1942). The citation of *Williams II* is 325 U. S. 226, 65 Sup. Ct. 1092, 89 L. Ed. 1123, 157 A. L. R. 1366, 1399 (1945).

<sup>55</sup> Beale, *Proof of Domicile*, 74 U. PA. L. REV. 552, Coudert, *Some Considerations in the Law of Domicile*, 36 YALE L. J. 949.

<sup>56</sup> Note, 26 MICH. L. REV. 438. Excellent note, 13 CORNELL L. Q. 259. Leesman, Note, 21 ILL. L. REV. 279. 34 CORNELL L. Q. 263. 62 HARV. L. REV. 514, a very good note. 44 ILL. L. REV. 117.

<sup>57</sup> Holmes, Justice, dissenting in *Haddock v. Haddock*, quoted in Frankfurter, *The Constitutional Opinions of Justice Holmes*, 29 HARV. L. REV. 683. Compare the dissenting opinions of Justices Rutledge and Black, in *Williams II*, summarized in Lorenzen, *Extraterritorial Divorce—Williams v. North Carolina II*, 54 YALE L. J. 799 at 800. Holt, *Any More Light on Haddock v. Haddock? The Problem of Domicile in Divorce*, 39 MICH. L. REV. 689. The author of the foregoing article is indeed a prophet not without honor in his own country—he foresaw the overruling of *Haddock v. Haddock*.

<sup>58</sup> 334 U. S. 343, 68 S. Ct. 1087. Discussed in 34 VA. L. REV. 709; 23 ST. JOHN'S L. REV. 139; 34 CORNELL L. Q. 263; 33 MINN. L. REV. 317-22 So. CALIF. L. REV. 155; 24 IND. L. J. 25.

<sup>59</sup> 334 U. S. 378, 68 S. Ct. 1094. Discussed in 15 BROOKLYN L. REV. 165.

Court held that a defendant spouse who had appeared and participated in the litigation in the quicke State could not thereafter litigate the issue of domicile in another State, even though the issue of domicile had not been expressly litigated in the quicke State.

The man from Mars, if trained in realistic jurisprudence, might deduce the following conclusions from the victory of the Kingdom of Exparte Divorce in the battle of Sherrer and Coe:

(1) to the watchword of Full Faith and Credit is added a new watchword, Res Adjudicata or Estoppel.

(2) Feigned issues will be tried in the courts of the quicke States, marking a return to the great common law action of ejectment.

(3) We now have three kinds of domicile—the prima facie domicile created by Williams I, the domicile of litigation created by Sherrer and Coe, the old fashioned, actual, bona fide, true domicile which may still be called the matrimonial domicile. The first and second of these types of domicile fuse and merge into one.

(4) The tendency seems to be towards a more *in personam* theory in according Full Faith and Credit to exparte divorces.

(5) The armies of King Williams are on the march and will in time achieve further victories, assuming that the President (whoever he may be) does not pack the Court with conservative justices.

(6) The next victory that will come is a decision to the effect that the issue of domicile cannot be raised in another State after an appearance by the defendant spouse in a quicke State. This step is bound to come. All lawyers in the quicke State advise their divorce clients along these lines.

(7) If we combine the doctrines of Williams I and Sherrer, and look some years ahead into the future, we can see another development: a new rule to the effect that defendant spouses who have only been constructively served and who have not appeared, are barred from litigating the issue of domicile in another State, provided they received actual notice through the constructive service.

(8) After these victories the other States will be forced by the inexorable logic and course of events to let down their own bars against easy divorce and quick divorce will become nation-wide.

The latest decision of the Supreme Court adds nothing to the picture.<sup>60</sup> A word might be said in passing about the Estin and Krieger cases decided by the Supreme Court of the United States in 1948 on the same day as Sherrer and Coe. The Estin case deals with alimony and is therefore not within the confines of this article. It is not cer-

---

<sup>60</sup> See *Rice v. Rice*, 69 S. Ct. 751, discussed in 44 ILL. L. REV. 117 prior to the Supreme Court decision. As to Full Faith and Credit in general see 49 COL. L. REV. 153.

tain that the rule of the Estin and Krieger decisions (to the effect that a support order in the "home" state survives a quickie divorce) applies to temporary alimony. The logical argument is in favor of letting the quickie divorce kill temporary alimony.

We now come in the orderly development of our subject to

## V

### *The Decrees of the Quickie States in the Courts of Sister States*

In so far as the Supreme Court of the United States requires the decrees of the quickie States to be accorded Full Faith and Credit, all other States are bound and no issue arises when a quick divorce is attacked as invalid in another State. There is a large field in which Full Faith and Credit is not compulsory and in this field, in which the States have a free hand, they go merrily on their way, invalidating quickie decrees.<sup>61</sup> Most of the reported decisions discussed in the legal periodicals involve Nevada or Mexican decrees, but the principle is the same as to any quickie jurisdiction, except that Full Faith and Credit only applies within the United States whereas comity governs the validity of Cuban, Mexican and French divorces.

Nevada divorces have been held valid in New Jersey,<sup>62</sup> invalid in New York,<sup>63</sup> Pennsylvania,<sup>64</sup> Illinois,<sup>65</sup> Missouri,<sup>66</sup> valid and invalid in Virginia,<sup>67</sup> invalid in West Virginia,<sup>68</sup> Connecticut,<sup>69</sup> California,<sup>70</sup> Massachusetts,<sup>71</sup> Michigan.<sup>72</sup>

<sup>61</sup> See for example the numerous cases cited in Shepard's Citations under Williams I, in nearly all of which the quickie divorce was held invalid on the issue of domicile or fraud on the court.

<sup>62</sup> *Schneider v. Schneider* (N. J. Eq., 1928) 142 Atl. 417, discussed in 27 MICH. L. REV. 470. See Vreeland, *The Validity of Foreign Divorces*, 10 TULANE L. REV. 416 at 422. Compare note 12 N. Y. U. L. Q. REV. 135 commenting on *Di Brigida v. Di Brigida*, 116 N. J. Eq. 208, 172 Atl. 505 (1934).

<sup>63</sup> *Fischer v. Fischer*, 254 N. Y. 463, 173 N. E. 680 (1930), discussed in 8 N. Y. U. L. Q. REV. 502, also discussed in 30 MICH. L. REV. 285. But see note 86, *infra*, showing that the New York Courts have been quick to apply the doctrine of estoppel in order to uphold quickie divorces.

<sup>64</sup> *In re Vetter's Estate*, 162 Atl. 303 (Pa. 1932), discussed in 19 VA. L. REV. 278.

<sup>65</sup> *Janssen v. Janssen*, 269 Ill. App. 233 (1933), discussed in 28 ILL. L. REV. 284. *Jardine v. Jardine*, 9 N. E. (2d) 645 (Ill. 1937), discussed in 17 OREGON L. REV. 70. *Atkins v. Atkins*, 386 Ill. 345, 54 N. E. (2d) 488 (1944), discussed in 39 ILL. L. REV. 191.

<sup>66</sup> *Wagoner v. Wagoner*, 287 Mo. 567, 229 S.W. 1064 (1921), discussed in 30 MICH. L. REV. 285.

<sup>67</sup> See an excellent note in 22 VA. L. REV. 233-245. Also another note in 28 VA. L. REV. 563-568.

<sup>68</sup> *Ward v. Ward* (W. Va. 1934) discussed in 21 VA. L. REV. 237.

<sup>69</sup> *Mills v. Mills*, 119 Conn. 612, discussed in 16 BOSTON U. L. REV. 915.

<sup>70</sup> *Brill v. Brill*, 38 Cal. App. (2d) 741, 102 P. (2d) 534 (1940), discussed in 10 FORDHAM L. REV. 96.

<sup>71</sup> *Cohen v. Cohen*, — Mass. — 64 N. E. (2d) 689 (1946), discussed in 41 ILL. L. REV. 128. Also discussed in 30 MINN. L. REV. 399.

<sup>72</sup> *Gray v. Gray*, 320 Mich. 49, 30 N.W. 2d 426.



In considering the validity of Mexican divorces, care must be taken to distinguish between those based upon a semblance of residence on the part of the plaintiff and those of the pure, unadulterated, mail-order variety. Mexican divorces have been held invalid in Iowa,<sup>73</sup> New York,<sup>74</sup> New Jersey,<sup>75</sup> Massachusetts,<sup>76</sup> valid and invalid in California,<sup>77</sup> invalid in Ohio,<sup>78</sup> the District of Columbia.<sup>79</sup>

An Arkansas divorce was held invalid in Mississippi,<sup>80</sup> A Wyoming divorce was held bad in Massachusetts,<sup>81</sup> likewise an Idaho divorce.<sup>82</sup> Florida divorces were considered invalid in a leading New York case involving the use of an injunction,<sup>83</sup> valid in New Jersey.<sup>84</sup> The foregoing citations are of value only in the light of the dates of their decisions, that is their date with reference to *Haddock v Haddock*, *Williams v North Carolina*, and *Sherrer v Sherrer*.

<sup>73</sup> *Bonner v. Reandrew*, 203 Iowa 1355, 214 N.W. 536 (1927), discussed in 13 IOWA L. REV. 320.

<sup>74</sup> *Alzmann v. Maher*, 246 N. Y. Supp. 60 (Add. Div. 2nd Dept. 1930), discussed in 31 COL. L. REV. 892. *Baumann v. Baumann*, 250 N. Y. 382, 165 N.E. 819 (1929), modifying 222 App. Div. 460, 226 N. Y. Supp. 576 (1928), discussed in 43 HARV. L. REV. 477. See discussion of Mexican mail-order divorces in 18 N. Y. U. L. Q. 94 at 100. In the latest New York Court of Appeals decision it was held that Mexican mail-order divorces were absolutely void, so that the doctrine of estoppel could not save them under any circumstances, *Caldwell v. Caldwell*, — N. Y. — 81 N.E. (2d) 60 (1948), discussed in 47 MICH. L. REV. 574 and 62 HARV. L. REV. 131. Compare, *In re Fleischer's Estate*, 80 N. Y. S. (2d) 543, discussed in 49 COL. L. REV. 417, wherein the divorce was held good, the court feeling the influence of *Sherrer and Coe*. Query: Should an attorney be disbarred for getting himself mixed up in a Mexican mail-order divorce? See 49 COL. L. REV. 128, discussing *In re Anonymous, An Attorney*, 274 App. Div. 89, 80 N. Y. S. (2d) 75 (1st Dept., 1948).

<sup>75</sup> *Reik v. Reik*, 158 A. 519, 109 N. J. Eq. 615. Compare, "New Jersey doctrine of disinterest," enunciated in *Sherman v. Federal Security Agency, Social Security Board*, 70 F. Supp. 758 (N. J. 1947), discussed in 15 U. OF CHI. L. REV. 220, and also 33 VA. L. REV. 771.

<sup>76</sup> *Bergeron v. Bergeron*, Mass. Adv. Sh. (1934) 1805, discussed in 14 BOSTON U. L. REV. 826.

<sup>77</sup> See Ruiz, *The Effect of Section 1915 of the Code of Civil Procedure on Migratory Divorces Procured in Foreign Countries*, 13 So. CALIF. L. REV. 294. *Estate of Hengen*, 80 Adv. Cal. App. 88, 181 Pac. (2d) 69 (1947), discussed in 21 So. CALIF. L. REV. 201—mail-order divorce held void.

<sup>78</sup> *Bobala v. Bobala*, 68 Ohio App. 63, 33 N.E. (2d) 845 (1940), discussed in 16 CIN. L. REV. 257.

<sup>79</sup> *Garman v. Garman*, 102 Fed. (2d) 272, 122 A. L. R. 1317 (App. D. C. 1939), discussed in 13 So. CALIF. L. REV. 520.

<sup>80</sup> *Miller v. Miller*, — Miss. — 159 S. 112 (1935), discussed in 8 Miss. L. J. 397-408.

<sup>81</sup> *Langewald v. Langewald*, 234 Mass. 269, discussed in 14 BOSTON U. L. REV. 826 at 829.

<sup>82</sup> *Bowditch v. Bowditch*, 314 Mass. 410, 50 N.E. (2d) 65, discussed in 24 BOSTON U. L. REV. 50.

<sup>83</sup> *Goldstein v. Goldstein*, 283 N. Y. 146, 27 N.E. (2d) 969 (1940), discussed in *Wormser, Injunction Against Prosecution of Divorce Actions In Other States*, 9 FORDHAM L. REV. 376, also discussed in 15 ST. JOHNS L. REV. 109, and 8 U. OF CHI. L. REV. 141.

<sup>84</sup> *Hubschman v. Hubschman*, 53 A. (2d) 787, discussed in 2 RUTGERS L. REV. 160.

New York decisions on the validity of quickie divorces may outnumber those of the remainder of the States combined. This is due to three factors—the great population of New York State, the concentration of wealth among its inhabitants, the rigidity of its own divorce laws. A volume could be written on the New York law with respect to the recognition of foreign divorce decrees. The subject has been a favorite one with the writers in legal periodicals, particularly those published by law schools located in that state.<sup>85</sup> In a large number of cases the principle of estoppel has been applied by the courts of New York<sup>86</sup> and also those of other<sup>87</sup> States to uphold the validity of foreign decrees. With respect to the problem of enjoining foreign divorce suits, the New York Court of Appeals has gone in one direction while the lower New York Courts, relying on Williams I, have gone in a contrary direction.<sup>88</sup> A non-appearing spouse has been held

<sup>85</sup> Note, *Recognition of Foreign Divorces in New York*, 1 ST. JOHNS L. REV. 71. Greene, *The Enforcement of a Foreign Divorce Decree in New York*, 11 CORNELL L. Q. 141, with summary at 163. As to New York doctrine of *Renvoi*, see 35 YALE L. J. 372, and 39 HARV. L. REV. 640. 10 TULANE L. REV. 416-425, also considering the law of England and New Jersey. Howe, *The Recognition of Foreign Divorce Decrees in New York State*, 40 COL. L. REV. 373. Lenhoff, *Attacks on Vulnerable Foreign Divorces: Outposts of Resistance*, 21 N. Y. U. L. Q. REV. 457. Lenhoff, *The Rationals of the Recognition of Foreign Divorces in New York*, 16 FORDHAM L. REV. 231, perhaps the best article of all. Note, *Annulments for Fraud—New York's Answer to Reno?* 48 COLUM. L. REV. 900-920. Note, 23 COLUM. L. REV. 469.

<sup>86</sup> See Wheeler, *The Effect of Foreign Divorce Upon Dower and Curtsey*, 25 MICH. L. REV. 497 at 503. *Glaser v. Glaser* (N. Y. 1938), 12 N.E. (2d) 305, discussed in 22 MINN. L. REV. 880, also discussed in 7 FORDHAM L. REV. 80, discussing *Davis v. Davis*, 59 Sup. Ct. 3, 83 L. Ed. 52 (1938). Comment, *Recognition of Foreign Divorce Decrees in New York*, *Krause v. Krause*, 9 FORDHAM L. REV. 242, discussing *Krause v. Krause*, 282 N. Y. 355, 26 N.E. (2d) 290 (1940). Note, 13 NOTRE DAME LAW 295. Note, 27 VA. L. REV. 118 (the *Krause* case). Note, 54 HARV. L. REV. 1060, discussing *Frost v. Frost*, 23 N. Y. S. (2d) 753 (App. Div. 1st Dept. 1940). Compare, 8 U. OF CHI. L. REV. 343, discussing *Maloney v. Maloney*, 22 N. Y. S. (2d) 334 (S. Ct. 1940). Note, 20 BOSTON U. L. REV. 563 (the *Krause* case). Note, 10 BROOKLYN L. REV. 198 (the *Krause* case). Note, 41 MICH. L. REV. 1201, discussing *In re Bingham's Will*, 265 App. Div. 463, 39 N. Y. S. (2d) 756 (1943). Note, 44 COLUM. L. REV. 442, discussing the much cited case of *In re Holmes*, 291 N. Y. 261, 52 N.E. (2d) 424 (1943), which went more on *res judicata* than on estoppel. Note, 59 HARV. L. REV. 983, discussing *Shea v. Shea*, 60 N. Y. S. (2d) 823 (App. Div. 2d Dept. 1946). Note, 16 FORDHAM L. REV. 118, discussing *Holloway v. Holloway*, 187 Misc. 388, 63 N. Y. S. (2d) 915 (Sup. Ct. 1946). Note, *Estoppel in Matrimonial Actions—A Survey of the New York Policy*, 14 BROOKLYN L. REV. 254.

<sup>87</sup> Compare, *Brill v. Brill*, 38 Cal. App. (2d) 741, 102 P. (2d) 534 (1940), discussed in 10 FORDHAM L. REV. 96. Note, *Divorce Estoppel of Second Spouse to Attack Void Decree*, 27 IOWA L. REV. 309, discussing *Saul v. Saul*, 122 F. (2d) 64 (App. D. C. 1941). Note, 9 GEORGE WASHINGTON L. REV. 356, discussing *Goodloe v. Hawk*, 113 F. (2d) 753 (App. D. C. 1940). See excellent note, *Public Policy and the Recognition of Questionable Decrees*, 21 VA. L. REV. 797.

<sup>88</sup> Note, 11 MINN. L. REV. 467, commenting on *Greenberg v. Greenberg* (1926), 218 App. Div. 104, 218 N. Y. S. 87. *Wormser, Injunction Against Prosecution of Divorce Actions in Other States*, 9 FORDHAM L. REV. 376, commenting on *Goldstein v. Goldstein*, 283 N. Y. 146, 27 N.E. (2d) 969 (1940). Note, 18

barred by laches from attacking a void divorce decree.<sup>89</sup> The problem of the proper method of attack upon the foreign decree is a very difficult one and several excellent articles have been written on it.<sup>90</sup>

And now at long last we come to

## VI

### Conclusion

What is to be done about the sorry mess, the scandal,<sup>91</sup> the tragedy,<sup>92</sup> that is divorce? Changes<sup>93</sup> and reforms,<sup>94</sup> new procedures and attitudes<sup>95</sup> have been suggested. Our ideal should be one of family stability and solidarity,<sup>96</sup> yet the courts make relatively little effort at reconciliation<sup>97</sup> of the warring spouses. Undoubtedly a Friend of the Court<sup>98</sup> could help along these lines. There is a great and insistent demand for uniformity in divorce laws,<sup>99</sup> but the time is not yet ripe for this development. Diversity of State laws is still needed to serve as a crucible for testing out various theories, grounds, defenses and procedures. Such was the opinion of Mr. Justice Brandeis, and his view still holds good.

---

N. Y. U. L. Q. REV. 94, *New York Doctrine of Estoppel to Contest Invalid Foreign Divorce Decrees*, discussing the Goldstein case incidentally. Note, 11 FORDHAM L. REV. 95, discussing *Wiedlich v. Wiedlich*, 30 N. Y. S. (2d) 326 (1941) (a case of novel impression involving malicious prosecution), incidentally discussing the Goldstein case. Note, 40 COLUM. L. REV. 1255, discussing the Goldstein case at length. Note, 16 FORDHAM L. REV. 288, discussing *Pereira v. Pereira*, 70 N. Y. S. (2d) 763 (App. Div. 1st Dept. 1947). Compare, 22 ST. JOHNS L. REV. 152, discussing *Gaskell v. Gaskell*, 189 Misc. 504, 72 N. Y. S. (2d) 440 (Sup. Ct. 1947). Note, 47 COLUM. L. REV. 1236, *Injunction of Foreign Divorce Proceedings*, discussing the *Pereira* case. Excellent note, 13 BROOKLYN L. REV. 148, *Injunctions Against Foreign Suits—A Survey of the New York in the Inter-State Matrimonial Litigation*.

<sup>89</sup> 33 IOWA L. REV. 738, commenting on *Swift v. Swift*, 29 N.W. 2d 535 (Iowa 1947)—no problem of the interstate divorce involved.

<sup>90</sup> Note, 43 HARV. L. REV. 477, *Methods of Attacking Invalid Foreign Divorces*. Jacobs, *Attack on Decrees of Divorce*, 34 MICH. L. REV. 749, 959, the leading article. Lenhoff, *Attacks of Vulnerable Foreign Divorces: Outposts of Resistance*, 21 N. Y. U. L. Q. REV. 457.

<sup>91</sup> *Divorce Laws: Remedies for Abuses and Scandals Are Sought*, 34 A. B. A. JOUR. 195.

<sup>92</sup> *The National Tragedy of Divorce*, 30 J. AM. JUD. SOC. 180.

<sup>93</sup> Sayre, *Divorce by Judicial Process*, 18 IOWA L. REV. 493.

<sup>94</sup> 17 GEORGE WASHINGTON L. REV. 380.

<sup>95</sup> See an excellent article in 32 J. AM. JUD. SOC. 38.

<sup>96</sup> Ruiz, *The Instability of the Family: A Juridical Diagnosis*, 4 NOTRE DAME LAW 79.

<sup>97</sup> Compare Brunni, *Some Thoughts on the Great Problem of Divorce*, 2 MISS. L. JOUR. 271. When the Illinois Legislature set up reconciliation machinery in the 1947 Domestic Relations Act, the Illinois Supreme Court promptly held the Act unconstitutional. See 15 U. OF CHI. L. REV. 770, commenting on *Hunt v. Cook County*, 398 Ill. 412, 76 N.E. 2d. 43 (1947).

<sup>98</sup> Pokorny, *"Friend of the Court" Aids Detroit Judges in Divorce Cases*, 29 J. AM. JUD. SOC. 166.

<sup>99</sup> See Part III of this Article, *Supra*.

In modesty and with some hesitation, the writer offers the following suggestions for the betterment of the law of marriage and divorce. In offering these suggested reforms and changes the writer is endeavoring to get away from a purely mechanical approach to the problem and he hopes he may strike pay dirt in some of his ideas even though others may not meet with the approval of the profession. It is respectfully submitted that the following ideas are true, sound and practical:

(1) The Home, not the institution, is the hope of society and therein lies our salvation.

(2) Marriage should be encouraged by levying a flat tax on all bachelors above the age of thirty

(3) All childless couples who have been married ten years and have a net income of \$5,000 a year, should be required to adopt one or more children.

(4) In view of the modern economic independent status of women, alimony payments should be lessened.

(5) There should be no divorce allowed during the first five years of marriage. Separation might be allowed during this period for adultery and/or physical cruelty

(6) No divorce should be allowed while the youngest child is under the age of ten.

(7) Subject to the foregoing limitations divorce should be allowed by mutual consent. To this end some States should enact statutes making mutual consent a ground for divorce. Thus these States would constitute themselves Brandeis laboratories for the conducting of social experiments in this field.

(8) All children who are mature enough to be competent witnesses should be allowed to testify in contested divorce cases involving their parents and the testimony of the children should be accorded great weight, for they are in the best position to observe and they are liable to become the chief victims if a divorce is granted and thereby their home is lost to them forever.

(9) The defense of recrimination is on the way out and should swiftly go the way of all flesh.

(10) the defense of collusion should also be knocked into the proverbial cocked hat into which Woodrow Wilson once said he would like to knock William Jennings Bryan (see a letter from Wilson to Colonel George Harvey). In this manner some of the hypocrisy would be let out of the divorce balloon.

(11) the defense of condonation is rather feeble under modern divorce practice but this defense and the sister one of connivance are not yet completely socially out-moded.

(12) Is a finding of fault<sup>100</sup> necessary? In any event is it socially desirable? The answer is obvious—there is no such thing as a divorce suit in which only one party is at fault. It follows that we must get away from the practice of placing all the blame on one party

(13) Closely connected with the problem of fault is that of two-party litigation. Some more scientific method of approach, some better form of social therapy must be devised. It is certain that two-party litigation is not a perfect way to solve marital difficulties.

And now we oldersters, the generation which grew up under *Haddock v Haddock*, and who were soldiers, sailors and marines in World War I, have seen our children mature under *Williams v North Carolina*, have seen them go off gaily to World War II, have seen some of them return, have given our daughters (the new *Mistress Lady*) to a new generation of *Sir Knights*, have seen them embark on the new *Ship, Domestic Felicity*, and now we see them sailing out of the harbor into the open seas. May they cling to one another in tempest and sunshine, in clear and stormy weather, in joy and sorrow, in success and failure. May the storms subside, may the fog lift, may the rocks be washed away, may the *Ship* remain seaworthy, may they sail triumphantly in the end, into *Sailor's Snug Harbor*. And there may they have rabbits and everything. May they live on the fat of the land. May theirs be the *Victory* forever and ever.

BASIL HUBBARD POLLITT

---

<sup>100</sup> See *Silving, Divorce Without Fault*, 29 IOWA L. REV. 527.