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## **DIVORCE EVILS AND THE REMEDY.**

By W. T. Lafferty\*

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The state of Kentucky is rapidly developing her vast resources and in a general way is undergoing a process of reconstruction that will enable her soon to become one of the great states of the Union. The beginning of this pronounced upward tendency does not date back many years, but it has now taken permanent hold on the people, who are exhibiting an unusual spirit of enthusiasm for the improvement of all conditions that count in making a great state

We believe we have seen the end of the foul and bitter political strife which for many years subordinated the better interests of the state to the wiles of politicians and the power of their partisan organizations. A reversed condition now finds many of the leaders who formerly were foremost in partizan politics acceding to the popular demand and becoming conspicuous in the forward movements. There is also a genuine spirit of cooperation in many ways between the two leading political parties, which of itself is gratifying, and it opens the way for effective service for the host of non-partizan citizens of ability and strength to prove their value in constructive and administrative affairs.

The effect of this new force is being felt through the valuable constructive work recently done by legislation and by individual and cooperative effort, all of which bears evidence of a popular trend that gives unmistakable hope and assurance. A school system, which must in any state constitute the foundation of the structure, is broadening out and wielding a powerful influence for good. The building of highways, advancing the agricultural and mining interests, caring for the health and hygienic conditions, regulation of child labor, prohibition, regulation of the practice of medicine and of law, workman's compensation laws, a new taxation system and many other constructive measures which make a wholesome

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beginning, are now in full sway. It cannot, however, be said that all done to this date is perfect, but no doubt all necessary amendments and adjustments for more effective service, will receive prompt attention followed by such other original measures found necessary for the public welfare.

In the work of advancement, the social conditions, both public and private, deserve the most careful attention. The first has not been overlooked in what has been recently done, but the latter is still dependent for its stability and prospect of improvement upon the force and effect of old laws which the natural demands of advancing civilization find inadequate.

The influence of the home and the relations built up in it are fundamental in the social structure. The home in its private or social relations has in many ways received fair consideration by our legislative bodies and for the most part these laws have been reasonably well administered; there is one of these relations, however,—and one that is of most importance,—which seems to have been lost sight of in the program of advancement; the one which provides for the making of home and which at the same time provides for its destruction, marriage and divorce. This subject is too extensive to be discussed in all its phases in this article with a view of reformation. The divorcement laws as they exist are most in need of immediate attention, and it is the purpose here to point out those laws, their defects and the evils growing out of their administration, and give reasons for the necessary reforms.

The facts herein set out disclose astonishing conditions throughout this state; and it is hoped that their presentation together with the provisions of the defective laws which are accountable for the conditions, will build up a wholesome spirit in support of this movement. That this matter may be put in tangible shape for legislative action, a proposed bill is hereinafter set out which provides for such reforms as the thinking public now deems absolutely necessary.

Preliminary to this preparation, many circuit court judges and circuit court clerks have been communicated with as to the number of divorce actions filed in the various counties. The responses

gave not only the facts asked for, but in many cases, especially those from circuit court judges, their earnest hope was expressed that speedy means might be provided to correct the evil the present law affords. To the same effect come appeals from the ministers, women's clubs, many other organizations, and many prominent citizens. The information received comes from every part of the state, so that a fair estimate may be made as to the extent society is interested in and feels imposed upon by the evil of having on our statute books easy methods of divorcement.

During the past twelve months there were divorce suits filed in Powell county 11, Jessamine county 17, Mason county 37, Henderson county 125, Union county 30, Webster county 61. During the first eleven months of this year there were divorce suits filed in McCracken county 246, Madison county 64, Warren county 127, Kenton county 238, Fayette county 274. We may find some comfort in the fact that a great many of the states are in as bad condition as this, but it offers no excuse for further tolerance. On the other hand many states have discovered the evil results and have made reforms that give more or less relief. South Carolina makes no provision for divorcement in the courts of her state. Two states provide only two grounds for divorcement, adultery and bigamy; other states have amended their laws with satisfactory results, in reducing the number of causes for divorce and changing the procedure. The remaining states have taken no action, and among them no state is in greater need of reform than Kentucky, whose laws provide for fourteen causes for divorce, several of which are exceedingly trivial, thereby making it easy for any dissatisfied spouse to pave the way to divorcement, by making a choice under some one of the many causes and then prosecute the case under the equally loose provisions of the law of procedure to certain success.

Necessity for a remedy for this evil has been felt for several years throughout the country and has been one of the great problems upon which great thought has been given by the National Commission made up of members in each state of the Union, who receive their commission by appointment from the governors of their respective states and whose duty is the working out of a sys-

tem of uniform laws recommended for enactment in the various states upon such subjects which by reason of the present plan of separate and distinct laws in each, lead to confusion and ineffectiveness. This commission meets annually with the American Bar Association and their report is incorporated into and made a part of the published proceeding of that association. Among the laws that have been reported and recommended to the various states for enactment, is one on divorcement, which provides for six causes of divorce which would seem ample in any state where her social status is such as to fairly respect religious duties, and the sacred obligations that the marital vow imposes. Beside the recommended causes of divorcement suggested, that body recommends a reform in procedure equally as important. It would seem that a representative body like that, after careful study of the condition throughout the United States for several years, having unanimously reached a conclusion and upon it a recommendation as the basis of a uniform law on divorcement, would be entitled to the most respectful consideration. The causes and procedure recommended are presented in a proposed bill hereinafter set out and recommended for passage at the present session of the Kentucky legislature. The present procedure is as unsatisfactory as the causes of divorce, and requires but little proof to make out the case which is brought before the court on deposition prepared at any place that may be selected by the plaintiff, and unless there is a defense, which is unusual, it becomes a private ex-parte hearing. In many cases, as suggested by several of our circuit court judges, the answers of witnesses given in depositions under such circumstances are put into the mouths of the witnesses. This affords an easy line of practice for the shyster who bids for this kind of business and whose efforts in the preparation of his case are generally unopposed. No criticism of the honest lawyer who may prosecute a divorce action is intended, but it must be conceded that this practice is carried on to an alarming extent, and in the main by the shyster whose respect for the public good yields to his greed for personal gain.

The recommended plan requires all hearings to be had in open court before the trial judge; and in all cases where no defence is

offered and in other cases when the court may deem it advisable, an attorney must be appointed to oppose the action, and for his services an allowance will be made and be taxed as costs. Instead of one year's residence in the state, before filing action two years are recommended, also a separation for two years in cases where abandonment is charged. After hearing the evidence, should the court decide in favor of plaintiff, decree nisi will be entered and the period of six months required to elapse before the final judgment shall be entered and given force and effect. Unquestionably a large per cent of the divorce actions now filed would be avoided by requiring a longer period of separation, before beginning the action, and by having it heard in open court; and equally as many would be avoided by withholding the entering of judgment for a period after hearing the proof.

On examination it will be found that the present laws will be re-enacted by the passage of this proposed bill except to the extent of requiring two years' residence, by two years' separation in case of desertion before filing the action, by reducing the causes of divorce to six, and by requiring all hearings to be in open court with provisions for defense to be provided for in each case. The proposed bill here follows:

**AN ACT REPEALING ALL THAT PART OF CHAPTER SIXTY-SIX, CARROLL'S KENTUCKY STATUTES, ENTITLED,  
HUSBAND AND WIFE, WHICH IS EMBRACED IN  
ARTICLE 11 ON THE SUBJECT OF DIVORCE  
—ALIMONY—CHILDREN.**

**And substituting therefor the hereinafter provisions**

**Be it enacted by the General Assembly of the Commonwealth of Kentucky:**

- Section 1.** A jury shall not be impaneled in any action for divorce, alimony or maintenance, but courts having general equity jurisdiction may grant a divorce for any of the following causes, to both husband and wife:
- (a) Adultery.
  - (b) Bigamy, at the suit of the innocent and injured party to the first marriage.

- (c) Conviction and sentence for crime by a competent court having jurisdiction, followed by a continuous imprisonment for at least two years, or in the case of indeterminate sentence for at least one year: Provided, that such conviction has been the result of a trial in some one of the states of the United States, or in a Federal court, or in some one of the territorial possessions or courts subject to the jurisdiction of the United States, or in some foreign country granting a trial by jury, followed by an equally long term of imprisonment.
- (d) Extreme cruelty, on the part of either husband or wife, such as to endanger the life or health of the other party or to render cohabitation unsafe.
- (e) Wilful desertion for two years.
- (f) Habitual drunkenness for two years.

Section 2. A judgment of divorce authorizes either party to marry again, but there shall not be granted to any person more than one divorce, except for living in adultery, to the party not in fault.

Section 3. All hearings and trials under the provisions of this act, shall be public and before the court. No judgment for divorce shall be granted unless the cause is supported by affirmative proof aside from any admission on the part of the defendant. Pending an action for divorce the court may allow the wife maintenance, which the husband may be forced to pay. In all uncontested cases, and in any other case where the court may deem it necessary or proper the court may appoint a disinterested attorney to defend the case. For his services the attorney may be made a reasonable allowance to be taxed as costs.

Section 4. Action for divorce must be brought in the county where the wife usually resides, if she has an actual residence in the state; if not, then in the county of the

husband's residence. And no such action shall be brought by one who has not been a continuous resident of this state for two years next before its institution. Nor, unless the party complaining had an actual residence here at the time of the doing of the act complained of, shall a divorce be granted for anything done outside of this state, unless it was also a cause for divorce by the law of the country where the act was done. An action for divorce must be brought within five years next after the doing of the act complained of. Cohabitation as man and wife, after a knowledge of adultery or lewdness complained of, shall take away the right of divorce therefor. Every judgment for a divorce may, at any time, be annulled by the court rendering it on the joint application of the parties, and they restored to the condition of husband and wife; but no divorce shall thereafter be granted between them for the same or a like cause.

Section 5. Upon final judgment for divorce the parties shall be restored such property not disposed of at the commencement of the action as either obtained from or through the other before or during the marriage in consideration thereof. Judgment for divorce from bed and board may be granted for anyone of the causes which allow divorce and the procedure will be the same. Such a judgment shall operate as to property thereafter acquired, upon the personal rights and legal capacity of the parties, as a divorce from the bonds of matrimony except it shall not bar curtesy, dower or distributive right, such a judgment may be set aside at any time by the court rendering it.

Section 6. If the wife has not sufficient estate of her own she may, on a divorce obtained by her, have such allowance out of her husband's estate, as may be deemed equitable, and be restored to the name she bore before marriage, if she desires it.



- Section 7. Pending an application for divorce, or on final judgment the court may make orders for the care, custody and maintenance of the minor children of the parties, or children of unsound mind, or any of them, and at any time afterwards upon the petition of either parent, revise and alter the same, having in all such cases of care and custody the interest and welfare of the children principally in view; but no such order for maintenance of children or allotment in favor of the wife shall divest either party of the fee-simple title to real estate.
- Section 8. When the husband is about to remove himself or his property, or a material part of it, out of the state, or where there is reason to suspect that he will fraudently sell, convey or conceal his property, the wife may obtain the necessary orders for securing alimony for herself and maintenance for their children without giving surety.
- Section 9. If after the hearing of any cause, for absolute divorce, or from bed and board the court shall be of opinion that the plaintiff is entitled to a judgment, a decree nisi shall be entered. The judgment shall not be final nor become absolute until after the expiration of six months from the entry of the decree nisi, unless appealed from or proceedings for review are pending, or the court before the expiration of said period for sufficient cause, upon its own motion or upon the application of any party, whether interested or not, otherwise orders; and at the expiration of six months such final and absolute judgment shall then be entered upon application to the court by the plaintiff, unless prior to that time cause be shown to the contrary. Provided further all costs must be paid before entering the final judgment, unless the court for sufficient reason may otherwise order.
- Section 10. All laws and parts of laws in conflict with the provision of this act, are hereby repealed.