

The Reform of the English Divorce Law

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THE reform of the divorce law in England has been debated for many years but nothing has been done. The grounds for divorce and the procedure necessary for obtaining it are settled by an Act of Parliament of 1857, which still remains undisturbed. But at last it seems that things are moving.

In respect to divorce in England, there is one law for the rich and another for the poor. No decree of divorce can at any time be obtained by any suitor in England and Wales—Scotland and Ireland have their own jurisdictions—except in the High Court in London. For most civil and criminal actions there are assizes held in a number of different districts, into which the judges of the High Court go "on circuit," but at these assizes divorce cannot be dealt with. Here is the initial advantage for the rich man and an obstacle for the poor. The poor man as a rule cannot afford to carry his suit to London, with its heavy legal expenses; if he could, he frequently cannot get his witnesses there, nor keep them there when the suit does not come on as quickly as was expected. It is estimated that the average minimum cost of an undefended divorce suit which originates in London is about £50 and more if it originates in the country, while if the case be defended the costs vary from £70 to £500 and more.

But, it will be asked, is your law so radically unjust that the poor man or woman is debarred wholly by distance and cost from procuring elementary justice? Not wholly, indeed. A petitioner for divorce may sue *in forma pauperis*—as a pauper—and, if he does, no court fees are charged. But the procedure is cumbersome and humiliating. For this purpose a "pauper" is only permitted to have an income of a pound or two a week and not more than a few pounds of capital, so that there is a great mass of people with small means who could in no case obtain this relief and are still compelled, if they desire divorce at all, to carry a costly suit to London.

The first reform, therefore, must be to redress this flagrant irregularity between rich and poor. There is here no question of "making divorce easy" in the sense in which that phrase is widely used among us for the purpose of creating prejudice against any and every reform. It is only a question of bringing within the reach of poor persons and those with moderate means the opportunities for obtaining redress which the present law allows but which are, in practice, denied to a large section of the people.

There is general agreement about both the necessity for this reform and the proper means of securing it. It is proposed that divorce courts should be held locally and that a certain number of the present county court judges (who deal with money claims below a certain value) should be taken away to sit as commissioners and try local divorce suits. The majority commissioners recommend that eight or ten county court judges should be taken and that they should travel about to each of the 89 towns in England and Wales where there are district registries of the High Court. Thus, in each of these 89 centers a local divorce court would hold sittings. The three minority commissioners think that this is carrying facilities too far. "It would be disastrous," they say, "if divorces were made too easy" and they recommend that local courts should be held in only a few centers and that only two commissioners should be appointed in the first instance. It is impossible not to see that, although they are compelled to admit the injustice of the present system, they are still determined to keep down the number of divorces by making the procedure by which suitors must apply and carry through their petitions, as difficult as possible. They do not realize that, granted the conditions of a marriage which calls for divorce, the state is not entitled to create artificial obstacles—legal formalities, distance, delay and cost—with a view to deterring legitimate but poor suitors and forcibly keeping them within the marriage state. But what are such conditions?

If at present there is inequality between rich and poor, there is inequality also between the sexes. A woman cannot obtain a divorce from her husband for the same offenses that enable a husband to divorce his wife. This was not the rule in ancient times nor was it the rule of the Roman Church. It sprang up in England as part of a legal view which regarded the wife as the property or chattel of the husband and at the same time exacted from her a higher standard of morality than it demanded from the superior being, man. This view of women has been steadily disappearing now for many years, but in some matters it survives and the marriage relationship is one of them.

A husband can divorce his wife in England on the ground of adultery alone, but a wife cannot secure divorce on the ground of the simple misconduct of her husband, however repeated and prolonged it may be. In addition she has to prove either desertion or cruelty. It does not need to be argued nowadays that this involves a fundamental injustice and that there is nothing whatever in the social or other relationships of man or woman that can justify it. In actual practice, it leads to all kinds of collusion between the parties to a suit and to varying degrees of deception. It leads frequently to desertion being arranged between petitioners and respondents in order that a divorce may be secured and it leads to strained interpretations of "legal" cruelty by judges on the bench in cases where, as they know quite well, there is excellent ground for divorce and a sad injustice would be done if a divorce were not granted. In Scotland no such inequality as this exists. What is sauce for the wife is sauce for the husband also. But the law in Scotland has for centuries been broader and more liberal than that of England—in Scotland, for instance, desertion alone, if prolonged for a period of four years, is sufficient ground for divorce, and as far as is known the sanctity of the marriage tie has not suffered in Scotland. Scotland is not more immoral than England, nor is her

This is the first of two articles by W. P. Crozier, on the reforms needed in the divorce laws of England.

family life less secure and happy. One thing is certain. In England, when the new law comes, whatever rights it gives to man, it will concede also to the women of the country, and with that a second glaring and discreditable anomaly will be removed.

It is agreed that there are a number of valid grounds on which a court should have power to declare a marriage null and void. At present this may be done only if the parties are not, by reason of age or mental capacity, capable of contracting marriage, if one or both are already married, or have married without giving free consent, or if they stand to each other within the prohibited degrees of relationship. But there are other reasons which may make a marriage highly undesirable in the interests of the community or of the possible children and which therefore call for its annulment. Two instances may be given here. The commission recommends that a party should be entitled to obtain a decree of nullity:

1. Where the other party is of unsound mind at the time of marriage, or in a state of incipient mental unsoundness, which becomes definite within six months after marriage, of which the first party was then ignorant, provided that the suit be instituted within one year of the marriage, and there has been no marital intercourse after discovery of the defect.

2. Where the other party is, at the time of the marriage, subject to epilepsy or to recurrent insanity and such fact is concealed from the first party, who remains ignorant of the fact at the time of marriage, with a similar proviso to that last mentioned.

Suffers by Being His Father's Son



J. AUSTEN CHAMBERLAIN

And there are one or two terrible conditions which would effectually prevent a marriage were they disclosed to the other party at the time and which therefore may justly cause a marriage to be declared null and void. All this may seem elementary justice and morality but it has yet to be embodied in our marriage law, which at present knows nothing of it.

My second "minor point" relates to the presumption of death which enables a person to contract a valid second marriage. At the present time no one can be found guilty of bigamy who contracts a second marriage after husband or wife has been continuously absent for seven years and in the *bona fide* belief that he or she be dead. But—and here is the hardship—if the missing partner was in fact alive at the time when the second marriage takes place, then it becomes null and void and the offspring of it becomes illegitimate.

Room for reform here, clearly! It is not fair nor just formally to allow remarriage after seven years but casually to add "of course, if it proves eventually that your husband or wife was alive when you remarried, then your second marriage is not marriage but only concubinage." It is agreed, therefore, that any one may obtain from the court a legal order for presumption of death and six months later—if this order has not been upset—may contract a valid marriage when either of two conditions have been fulfilled:

1. Where the other party to the marriage has been continually absent from the first party for the space of seven years and shall not have been known by such party to be living within that time.

2. Where a party to a marriage, who reasonably supposes the other party to the marriage to be dead, but the fact cannot be definitely ascertained, satisfies the court that there is reasonable ground for declaring the second party to the marriage to be dead.

In another article I propose to describe the further reforms which are demanded by a large body of opinion and bitterly opposed on the other side.

JAUSTEN CHAMBERLAIN suffers by being his father's son; so much so that one writer declares most Britishers view Austen, as through an eyeglass, darkly. He wears, of course, the monocle made famous in the British cabinet by his father, the great Joseph Chamberlain, of Birmingham—the man who never became premier.

Just at present, for the second time in his career, J. Austen is Chancellor of the Exchequer, and in the course of his duties he has propounded a new scheme for taxation which has produced a roar clearly audible as far away as San Remo, where Lloyd George was for a while. This little scheme of Austen's purposes showing a profit in the exchequer at the close of next year. It's just as easy as that.

He anticipated a total revenue of \$7,091,500,000 and a total expenditure of \$5,920,510,000, leaving a splendid balance of \$1,270,990,000 toward the reduction of the national debt. It is not the purpose here to go deeply into the taxation plan, beyond mentioning a five per cent tax on the profits of all limited liability companies, an increase of from 40 to 60 per cent in the excess profits duty, the raising of postage rates generally, and the abandonment of the famous Lloyd George land tax which created such a stir some years ago.

It now develops that the Lloyd George plan, which was hailed as a body blow at privilege, doesn't work. The celebrated increment value duty, reversion duty and undeveloped land duty are to be repealed.

Also taxes on motor vehicles, wines, beers, spirits and cigars will increase powerfully.

That, briefly, is what Austen Chamberlain wants to do. Here is something about Austen. He is a young man of 57, who rushed headlong into matrimony when he was 43. He was educated at Rugby, one of the big British public schools, and at Trinity College, Cambridge.

So much for that. He was the son of Joseph Chamberlain, author of the slogan, "Think imperial"; hence was doomed to politics. When he was 29 he won, as a Unionist (Conservative), the East Worcestershire seat in the Commons, holding it until 1914, when he lost it and went to Birmingham West, his native town. He represents Birmingham West today.

He held almost every cabinet position of secondary importance and some of first rank; and with these years of public service behind him, the House of Commons says of him: "He is the honest man of the cabinet." In fact he is so honest that they laugh at him. The idea of any one being frankly, brutally honest and expecting to reach the top in politics!

He was only in his thirties when he became civil lord of the admiralty; from there he became financial secretary to the Treasury, where he revealed a most astounding taste for economies; then he was Postmaster-General, and after that Chancellor of the Exchequer.

The Coalition called him to the Secretaryship for India, and it nearly dug his political grave. When the collapse of the medical arrangements in Mesopotamia resulted in an investigation, he, as secretary for India, bore the frontal attack for the press and although the faults were solely with his subordinates, he felt his responsibility so keenly that he resigned.

Everyone thought that was the end of 'Onest Austen. But his talent for financial economy was too marked, and his honesty too important an asset to the ministry. As one commentator put it: "Every cabinet must have ONE honest man in it; so they took back Austen."

And now he has started something for Lloyd George to finish.