

Peculiarities of the DIVORCE LAWS of various STATES



Why Does the Episcopal Church Wish to Make Its Divorce Canons More Strict?

The Right Reverend Henry Potter, Bishop of New York.

"I should consider it highly improper for me to say anything at all about it."

The Right Reverend William Ford Nichols, Bishop of California.

The laws of the various States on the subject of divorce are not in accord with the scriptures nor with each other. The rapid increase in the number of divorces calls for action on the part of the church which shall set the best example and throw all possible safeguards around the Christian home, for upon the strength of that unit depends the strength of the nation.

The Right Reverend Arthur Crawshaw Alliston Hall, Bishop of Vermont.

The efforts of the church will be to bring its divorce canons into closer accord with the spirit of the scriptures.

No attempt will be made to influence legislation in favor of a national divorce law.

It is better that by precept and example the different States should be brought to pass laws uniformly good.

The Right Reverend William Hall Merland, Bishop of Sacramento.

The proposed divorce legislation is in the line of greater strictness. Marriage is already guarded most carefully in the law of the church. No priest is permitted to marry a divorced person except the innocent party in a divorce allowed on the ground of adultery. It is proposed to forbid remarriage even in this case hereafter on the ground that a considerable number of clergy are found to go behind the record of the court to listen to private pleas alleging adultery as the true cause of separation, although not so named in the decree, and so to produce confusion and favoritism, practically making the law of no effect in many cases.

It is a weakness of human nature that in spite of the law there is a tendency to yield to sympathy with individual cases of hardship, and this will continue until we remove all ambiguity in the canon law and state distinctly that the church shall not marry any divorced person whatever, or take equally clear and undisputed ground.

I do not understand that the greater strictness proposed is the result of a laxer morality among churchmen or of a desire to evade the church's discipline by its members. The people everywhere glory in the position taken on this grave subject of marriage and divorce by the Episcopal church.

The Woman's Side of the Divorce Question.

By Elizabeth Cady Stanton, in North American Review

FOR an entire revision of the laws on divorce the state proposes a committee of learned judges, the church another of distinguished Bishops, to frame a national law which shall be indorsed by both church and state. Though women are as deeply interested as men in this question there is no suggestion that they shall be represented on either committee. Hence the importance of some expressions of their opinions before any changes are made.

The States which have liberal divorce laws are to women what Canada was to slaves before emancipation.

Husbands can leave the country and invest their property in foreign lands. Laws affect only those who respect and obey them. Laws made to restrain unprincipled men fall with crushing weight on women.

Because an inexperienced girl has made a mistake, shall she be denied the right to marry again?

We can trace the icy fingers of the canon law through all our most sacred relations. Through the evil influence of that law the church holds the key to the situation and is determined to keep it.

ABOLITION of Marriage" is what the Rev. H. B. Restarick of San Diego suggests will be the result of the present condition of the divorce laws of some of the States of the Union, which by their lack of uniformity make it possible for the same couple to be divorced or married at the same time, according to which State they are in.

He does not mention any names, but cites statistics of Cupid and his enemy to show that in Los Angeles County for every three marriages there is one divorce, and more coming in proportion every year.

Divorce is purely a matter of the State's concern, and each has made laws to suit the taste and temperament of its own people.

In the cold and nipping air of the vicinity of Boston, and especially in the Blue Law region of the Nutmeg State, it is unlawful for the young men and maidens to marry until they have arrived at the mellow age of twenty-one years each, for in the bleak New England air the harvest is late in ripening. At the other end of the United States, down where the warm breezes from the Gulf waft the fragrance of the mocking bird as he sings among the magnolia blossoms, My Lord Romeo needs to be but fourteen and Juliet has but to see the change of a dozen years when the law will declare that they are not incontinently wed.

And there is perhaps a reason for both customs, for masculine life is oft cut short in the land where the bowie and the derringer flourish, and feminine charms fade fast beneath a vertical sun, while the emigration of young men from bleak and rocky New England shores has left there a plethora of maidens growing more ancient as each year they sigh, "He cometh not"; and it is not meet that sweet sixteen should reap the field and leave no gleanings.

It is these variances of climates and customs, the difference of races and conditions, which have caused the lack of uniformity in the laws made to regulate

the marriage relation or its discontinuance.

Then, too, the people of some States are much more sensitive than others. In New Hampshire it is necessary that a man shall beat his wife almost to death, or at least until there is danger of her losing her reason, before she can be released from him by divorce. In California the law is so merciful that if cruel man even puts upon his dainty partner such slight affront as shall hurt her tender feelings and cause grievous mental suffering, then will the chivalrous law give her freedom and besides that, in the discretion of the court, take all of the unfeeling brute's property away from him and bestow it upon her to soothe her anguish.

Down in the southeast corner of the United States, where the palmetto waves over the rice fields, there is a regular lovers' paradise, or hades, whichever it may prove to be. There the iron chains of the law re-enforce the lacy links which Hymen weaves, and only grim death has power to part when hearts once beat in union.

There in South Carolina, not for the love of money or for the lack of it either is a divorce to be had. No divorce, absolute or otherwise; no separation, no alimony, none of those dreary funerals of love when the divorce lawyer comes but to see the change of a dozen years in the house, but he cannot get a death certificate nor permit for Christian burial in South Carolina. It is against the law of the land.

Of course, where for any reason the marriage was void ab initio, that is where the parties had not power to contract owing to existing impediment such as consanguinity, then the courts of South Carolina will declare that a marriage never existed. But if once the parties were properly joined, then no subsequent misbehavior is ground for either divorce or separation. It is an ideal condition from a clerical point of view and is, according to clerical belief, the only way to make a strong, sound nation.

There is a general similarity between

the divorce laws of the different groups of States, the New England, of course, leading with the harshest measures, most restrictions and oldest age limit under which it is lawful to marry. The Gulf and Southwestern States place less restrictions upon marriage and less obstacles in the way of its obliteration.

The laws of every State and Territory in the Union, excepting South Carolina, agree upon the fact that infidelity is ground for absolute divorce, and a single offense is all that is necessary, except in North Carolina and Texas, where the husband's overt acts must be continued and notorious to constitute a cause for action. No such latitude is allowed to woman anywhere, and Maryland and West Virginia insist furthermore that she shall have led a perfect life before marriage as well, else are the terrors of divorce ever before her, if her past be discovered.

West Virginia, all by itself, takes the palm for having enacted a statute which puts men and women on an even footing as far as purity is concerned. It requires that men should have led exemplary lives before marriage, or falling in that, they must have confessed and received forgiveness from the woman whom they would marry.

Consanguinity is the only ground which all States agree upon as ground for dissolution of marriage, but while blood relationship is held by all as a bar, mere affinity or connection by marriage, step relatives, that is, or such as the sister of a deceased wife, may be married in nearly half of the different States. In California no unions are proscribed except such as are within the third degree of consanguinity, aunts, nephews, etc. The wedding of those connected by affinity being permitted in about half of the States, it follows that a man falling in love with the sister of a deceased wife and marrying her in a State where it was legal, would find perhaps on going to an adjoining State that their relations were only recognized in obedience to that courtesy of the law which provides that an act legal in the country where performed shall be recognized everywhere.

In some of the Central Western States particularly there is such a violent prejudice on the part of the law against unions with pretty sisters of deceased wives that the marriage is declared to be void and of no effect, without legal proceedings by either party. In other words, the mere act of moving into such a State and living there long enough to become citizens would dissolve the marriage if it were not for the general provision of the law which recognizes as valid that which is legal where performed.

If, however, a man living in such a State have so great a fondness for the memory of a departed wife that nothing will do him but another of the same kind, then if sister-in-law is willing, they may skip across the border and marry, to return and live happily together ever after, unless it happen that they were residents of Virginia, where the suspicious law is looking for just such attempts, and leave that State for the purpose of marrying in another which has no legal objections to their union, in such event the lex loci contractus does not apply, and the couple would find themselves wedded but not married.

In every State and Territory of the Union except seven of those which face on the Atlantic Ocean conviction of a felony is ground for a divorce for the free party, and in Maine sentence to imprisonment for life does of itself dissolve the marriage without legal proceedings for that purpose.

In Missouri a conviction of felony previous to marriage is ground for divorce afterward if unknown to the innocent party at the time of marriage.

Every State in the Union except Virginia and South Carolina either grants absolute divorces or legal separations on the ground of cruelty, and it is shameful to say that most divorces, whether granted for that reason or not, have counts of cruelty in them.

Remedies are not usually provided unless the evil to which they are directed is in existence, and on the statutes of every State and Territory are laws which grant relief to wives who have borne, or the "Violence attended with danger to life or health."

"Cruel or barbarous treatment."

"Attempt on life by poison showing malice."

In Kentucky it is considered by the law that "inhuman treatment for six months" is little enough time for a wife to com-

plain of. If her lord only subjects her to inhuman treatment for five months she should be able to grin and bear it, as the divorce law does not take it worth while to attend to her case. So, if Kentucky gentlemen will only beat their wives twice a year and not keep it up for more than five months at a time the divorce law, with its attendant loss of property, need have no terrors for them.

In Iowa the cruelty must be such as endangers the life of the wife before she can demand her freedom. No wonder that some writer has called the lives of such women "the serfdom of the white slaves."

California and a few of the Western States recognize the fact that women have sufficient mental development to render them capable of mental suffering more acute than physical, and in accordance with that the infliction of grievous mental suffering is ground for relief of the afflicted party.

In Vermont it is evident that men are not the sole offenders in regard to cruel and inhuman behavior, for there the law says that "Cruel and inhuman conduct in either of the parties" warrants it in opening the door of the matrimonial cage and letting out the heppecroquet party. Pennsylvania also pities the plight of the victims of ferocious fair ones and grants the relief of freedom, where by cruel and barbarous treatment renders the condition of husband intolerable the condition of the wife which has gone to the strength of marriage ties they are only morally binding, any who wish to leave have but to "wink and walk away" if they choose, so desertion is ground for either absolute divorce or legal separation in every State except the always-exceptional South Carolina.

Michigan puts a slight upon the divorces granted in other States by calling it merely desertion on the part of the absent party who secured it and offering to grant a nice home-made second divorce to the one who stayed at home, thereby implying that they were not divorced, only deserted before.

Beware, therefore, of "Over the Grass" widows and widowers from Michigan, lest they marry them and returning there, it might be found that the other party had not secured the entitled separation, and that the divorce was null and void.

Habitual devotion to the shrine of Bacchus is not considered ground for divorce in Arizona, Maryland, New Jersey, Vermont or Virginia; but in all other States, if a gentleman goes on a spree lasting more than a year, he is held to have fallen from Hymen's graces, except

in Tennessee, where he is excused if he contracted the habit before marriage.

In Colorado, Florida, Maine, Mississippi and Rhode Island the adage that all is fair in love and war is recognized by law, and the good old way of getting a wife by force, or fraud still holds its sway and a wife so obtained cannot seek relief on the ground that she did not consent.

Evidently girls are hard to get there for force and fraud in getting a wife is ground for divorce everywhere else in the wide land, and as "the who takes what isn't his'n when he's caught goes straight to prison." If it happens to be an inanimate level or a living beast, why should he be excused for stealing a living jewel? Because of his good taste perhaps?

But what of the lady, if she did not want to be stolen?

Of course it is something of an implied compliment to be the subject of larceny, as indicating value, but the wretch who defrauds adds the insult of deception to the injury of infliction of his company upon his victim.

A marriage made while there is another husband or wife already in existence is void ab initio, makes the offender liable for bigamy and is an offense which, all the country over, gets no sympathy from either law or lady.

Insanity is not considered cause for separation in Colorado, Connecticut or Texas, although it is in every other State and Territory.

The intermarriage of blacks, whites, redskins and yellow Mongols is generally prevented by law in the Western, South and Southwestern States, where the color line is drawn around Chinese, Indians and negroes to prevent them from spoiling the color of the white race. Curiously enough this objection fades away as the East is reached, and in European countries is almost unknown, wherefrom result some, to us, apparently strange misalliances, which are there looked upon merely as bizarre and interesting.

Youth is no hindrance to marriage in Colorado, Florida, Pennsylvania, Rhode Island and South Carolina, but in all other States there is an age limit running from 12 to 21 years on the part of females and 14 to 21 years on the part of males.

It is not deemed a sufficient shortcoming to give cause for divorce in over one-third of the States.

Remarriage is permitted by all except a few States, and so is the story of some in the end as when it began, for divorces usually end in marriages.