DIVORCE IN WASHINGTON

In the matter of divorce, the commonwealth of Washington has passed through a social evolution. In the early part of the territorial period it was a common practice for the legislature to enact private laws, granting divorces. The first of these divorces on record was granted by the Oregon territorial legislature as far back as 1845. The ease with which divorces could be obtained resulted in a wholesale abuse of this legislative privilege. According to Arthur A. Denny, Fayette McMullin accepted the office of governor of the territory and came to Olympia for the expressed purpose of obtaining such a legislative divorce. Mr. Denny was plied to vote for the measure but refused. He never would vote for a divorce bill, and always told the applicants to go to the courts for their divorces. Mr. Denny's attitude on the question was shared by many others, as the constant opposition to the practice shows. As for Governor McMullin, he was successful in getting his divorce. It was granted on the 25th day of January, 1858. Two other such divorces were granted at the same session. One was granted at the following session and fifteen at the next. The average at the next few sessions was between ten and fifteen. McMullin afterwards married Miss Mary Wood of Olympia. The fact that he was removed from office for incompetency in July, 1858, will serve to give one an index to his personality. His term of office was from 1857-59 and Charles H. Mason, secretary of the territory, filled out the unexpired term.

A more sturdy type of man, who served as war governor, was William Pickering. His views on the granting of legislative divorces is but a voicing of the general sentiment. Prior to his arrival in the territory, unhappy married people had usually applied to the legislature for the granting of divorces. At nearly every session one or more acts had been passed and the divorce business had been particularly active during the two preceding sessions, at one of which fifteen and the other seventeen such acts had been passed. Secretary Turney, as acting governor, had declared against this practice in the message he sent to legislature in December, 1861, but no attention was paid to his recommendation that it be discontinued. Turney's attitude on the question was expressed as follows: "All good citizens acknowledge and respect the marriage relation. Yet, the interests of society are often stabbed and stricken down, and public sentiment outraged and insulted by disregarding that sanctity, in severing those who

have been united in wedlock's holy bands. Those ties should be sundered only by courts of competent jurisdiction, and only for one cause—the scriptural ground for a writing of divorcement."

Pickering's message was but a renewal of this remommendation and his principle points were that the law declared marriage to be a civil contract, all breaches or violations of which were proper subjects for the judiciary alone. The courts alone could hear the testimony of the parties and they alone could render final judgment and decree for alimony and determine which of the parties should have the care and custody of the minor children. Although sixteen divorces were granted at this session, an act was passed at the succeeding session which practically committed the granting of divorces to the courts, and the practice of applying to the legislature was soon discontinued.

Pickering's position on the question, as brought out in his first gubernatorial message to the legislature on December 17, 1862, was as follows: "I should be recreant to the duty I owe to society, if I failed to call your serious attention to the sad and immoral effects growing out of the readiness with which our legislative assemblies have heretofore annuled that most solemn contract of marriage. Let me earnestly invoke you to stay the evils, which result from the legislature granting divorces, thereby destroying the sacred responsibilities and duties of husband and wife merely upon the request, or petition, of one of the parties.

"Without intending to trespass upon your law making province, permit me to suggest for your consideration the fact, that the present laws declare marriage to be a civil contract; therefore all breches or violations of its conditions are proper subjects for the judiciary alone, and not for legislative enactment on one side, or ex parte statements.

"The law as it stands upon the statute books of the territory has conferred full jurisdiction uppon the courts, in all cases belonging to divorces, which is the only tribunal that can deliberately hear and examine all the witnesses on both sides of those unfortunate domestic difficulties of the parties applying for a dissolution of the marriage contract.

"The legislature seldom has the opportunity of hearing any witnesses, even on the side of the complaining party, and never can have before them all the witnesses connected with both parties, especially necessary to the proper adjudication of these cases. It will also be well to remember, that in the divorce cases the legislature cannot decree or enter judgment for alimony, division of property belonging to the married parties, nor legally decide whether the separate husband or wife, shall lawfully continue the possession, care and control of their children.

"The court alone can have full power to render final judgment and decree of alimony, division of property and direct who shall have the care and control of the minor children.

"Many of the legislatures of the states, for several years past, have positively refused to grant divorces. Eminent lawyers are agreed in the opinion that all divorces granted by the legislature are entirely unconstitutional, and therefore null and void, for the reason that no act of the legislature can destroy, annul, violate, or set aside the said civil contract nor the sacred and religious bonds and mutual obligations entered into by man and wife at the solemnization of marriage. It is at all times a very serious and delicate matter for any person or persons to interfere in any manner in the unhappy quarrels and family difficulties of man and wife. There are few subjects brought before the courts of our country requiring to be treated with more deliberate care and caution than divorces.

"Whenever a legislative body takes an action in cases of divorces, it is not improperly regarded as an infringement upon the legislative provinces of the courts. For these reasons I trust your honorable body will firmly refuse to interfere with the rights of husband and wife. Applicants, seeking separation, should be directed to the courts of our territory where they can receive all the relief and remedy for their grievances which the laws of our country afford."

In spite of this protest that same session enacted sixteen such private bills, and at the following session the governor renewed his objections. In January, 1866, the legislature enacted a law declaring marriage to be a civil contract which would throw the consideration of divorce into the courts. In 1871 another divorce bill was passed but this was the last and subsequent efforts to revive the practice failed.

The attempted constitution of 1878, which was drawn up at Walla Walla, declared against such legislative divorces, as did the approved constitution of 1889.

The causes of this dissatisfaction in the method of granting divorces are apparent. The people realized that marriage is the institution at the basis of our social existence. An undoubted reaction against the laxity of the divorce laws was springing up, not only in Washington, but throughout the United States. This action ultimately resulted in two reforms. It diminished the grounds on which a divorce may be granted and it extended the period necessary to establish a legal residence. Today there is no state in which an action for divorce may be brought without a preliminary residence of at least six months. The drift of legislation in the last twenty

years has been almost wholly in the direction of greater restriction. In spite of this the national ratio of divorce is 1:12.

Although most states have but a single provision in their constitution regarding divorce, Washington has two. They are: Article II, Section 24. The legislature shall never authorize any lottery or grant any divorce. Article IV, Section 6. The superior court shall have jurisdiction of all matters of divorce and for the annulment of marriage. These provisions have removed, beyond all doubt, the granting of legislative divorces.

A brief survey of the laws at the present time reveal the following information:

Jurisdiction.

Jurisdiction shall lie in the district court in the county where the petitioner resides.

The act of February 21, 1891 provides that divorces shall be granted by the superior court.

Residence.

The petitioner must have been a resident of the state for one year next before the filing of the petitions. This is an amendment of the act of January, 1864, which required only three months.

Service of Process or Notice.

Legal notice shall be personal or by publication.

Like process shall be had as in all other civil suits.

By the laws of 1893 it is provided that when the defendant cannot be found in the state, a copy of the summons and complaint shall be mailed to him at his place of residence, but if the residence is not known, service may be by publication. Publication must be once each week for six consecutive weeks in a newspaper published in the county where the action is brought or, if there be none there, in an adjoining county, or if there be non there, in the capital of the state.

Causes for Absolute Divorce.

1. When the consent to the marriage of the party applying for the divorce was obtained by force or fraud and there has been no subsequent voluntary cohabitation.
2. For adultery on the part of the wife or husband, when unforgiven, and application is made within one year after it shall come to his or her knowledge.
3. Impotency.
4. Abandonment for one year.
5. Cruel treatment of either party by the other.
6. Personal iniquities rendering life burdensome.

7. Habitual drunkedness of either party.

8. Neglect or refusal of the husband to make suitable provisions for his family.

9. The imprisonment of either party in the penitentiary, if complaint is filed during the term of such imprisonment.

10. Any other cause deemed by the court sufficient, when the court shall be satisfied that the parties can no longer live together.

11. In the discretion of the court, in case of incurable, chronic mania or dementia of either party, the same having existed for ten years or more.

The above causes were in effect in 1887.

By an act approved Feb. 24, 1891, cause 6, as given above, was amended so as to read as follows: "Personal indignities rendering life burdensome."

Limited Divorce.

There is no limited divorce in Washington.

Special Provisions for Defence.

Whenever a petition for divorce remains undefended, it shall be the duty of the prosecuting attorney to resist such petition, except where the attorney for the petitioner is a partner of or keeps his office with, such prosecuting attorney, in which case the court shall appoint an attorney to resist the petition.

Temporary Alimony.

During the pendency of an action for divorce, the court may make such orders relative to the expenses of the suit as will insure to the wife an efficient preparation of her case, and a fair and impartial trial thereof.

Permanent Alimony.

In granting a divorce the court shall make such disposition of the property of the parties as shall appear just and equitable, having regard to the respective merits of the parties, and to the condition in which they will be left by such division and to the party through whom the property was acquired, and to the burdens imposed upon it for the benefit of the children.

Refusal of Divorce.

No divorce shall be granted in case of adultery, if the offense has been forgiven by the petitioner, or on the ground of force or fraud, if there has been subsequent voluntary cohabitation of the parties.

In case of adultery the action must be commenced within one year after petitioner shall have knowledge of the act.

Answer or Cross-complaint.

The defendant may, in addition to the answer, file a cross complaint for divorce, and the court may grant a divorce in favor of either party.

Change of Name After Divorce.

In granting a divorce, the court may, for just and reasonable cause, change the name of the wife, who shall thereafter be known and called by such name as the court shall in its order or decree appoint.

Trial by Jury.

Practice in civil actions govern all proceedings in the trial of actions for divorce, except that trial by jury is dispensed with.

No Divorce on Confession.

When the defendant does not answer or, answering, admits the allegations in the petition, the court shall require proof before granting the divorce.

Custody of Children.

On granting a decree, the court shall make provision for the guardianship, custody, support and education of the minor children of the marriage.

Pending an action for divorce the court may make such orders for the disposition of the children of the parties as may be deemed right and proper.

Remarriage.

When a divorce is granted, a full and complete dissolution of the marriage as to both parties follows: Provided, That neither party shall be capable of contracting marriage with a third person until the period has expired within which an appeal may be taken, or until the determination of such appeal, if taken. The act approved March 9, 1893 in addition, makes such a marriage unlawful under any circumstances within six months, and requires that the judgment or decree must expressly prohibit such a marriage within six months.

Thus we have a summary of past and present conditions. In conclusion, a few statistics will clearly show whether or not the laws have accomplished their purpose.

Divorces granted in Washington.

1867-86.	1887-1906.
996	16,215

Average annual divorces per 100,000 population.

1900	1890	1880	1870
184	190	75	88

Per 100,000 married population.

1900	1890
513	316

Rank according to average number of annual divorces per 100,000 population.

1900	1890	1880	1870
1. Wash.	Colo.	Colo.	Wyom. & Ind. Terr.
2. Mont.	Mont.	Mont.	....
3. Colo.	Wash.	Utah	Rhode Is.
4. Ind.	Ore.	Wyo.	Wash.
		11. Wash.	

In city. counties		In other counties		Excess of city rates	
1900	1890	1900	1890	1900	1890
266	140	162	103	104	37

Number and cause of divorces granted from 1867-1906.

Desertion	6,446
Cruelty	4,026
Neglect to provide	3,087
Adultery	699
Drunkenness	674
Combinations of preceding causes	1,388
All other causes	891

Thus we have the most recent government statistics. However, a review of condtions in King County during the last year will give us a more accurate idea of conditions. The records show that almost 25 per cent of the total number of cases filed in the superior court were divorce cases. The figures show a total of 6,710 cases filed, of which 1,539 were divorce cases. The increase in the number of divorces over 1912 is approximately ten per cent.

Of the total number of divorce cases filed decrees were granted in 986 cases, and nearly 200 cases are now pending. The majority of applicants for divorce are wives, the larger number asking for divorce on the grounds of cruelty. The ratio of marriage to divorce in this county for 1913 is 3.5:1.

Judges of the superior court, while ascribing different causes to the increase of divorce, all deplore it. One judge holds that a change in the

laws would tend to decrease the number of divorces. Other judges hold that divorce is a social matter that is entirely outside of the particular form of law and arises from personal and local surroundings.

The total number of divorces, it is held, should not be taken as an indication of local domestic trouble, for the reason that 20 per cent or more come from British Columbia. Of the remainder a large number arise in the cases of people who have arrived from the East during the past two years.

The fact remains, however, that it is not easy to account for the wide variation in the divorce rates in the different states. The results are affected by a wide variety of influences: the composition of the population as regards race or nationality; the proportion of immigrants in the total population and the countries from which they came; the relative strength of the prevailing religions and particularly the strength of the Roman Catholic faith against divorce; the variation in divorce laws and in the procedure and practice of the courts granting divorces; the interstate migration of population, either for the purpose of obtaining a divorce or for economic or other reasons not connected with divorce—all these, and doubtless many more, are factors which may affect the divorce rate.

The states with the highest ratio are generally those in the western part of the country. The west is a progressive country. But this is one path along which we would prefer to progress less rapidly. Let us not, in our mad rush for wealth, honor and pleasure, forget the religion of our fathers and the sacredness of the marriage bond. Remember that marriage is the foundation of the state and divorce is the torrent which is rushing madly forward in an ever-increasing effort to undermine it. Let each one do his part to divert this ruthless enemy to progress.

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