



## Early Journal Content on JSTOR, Free to Anyone in the World

This article is one of nearly 500,000 scholarly works digitized and made freely available to everyone in the world by JSTOR.

Known as the Early Journal Content, this set of works include research articles, news, letters, and other writings published in more than 200 of the oldest leading academic journals. The works date from the mid-seventeenth to the early twentieth centuries.

We encourage people to read and share the Early Journal Content openly and to tell others that this resource exists. People may post this content online or redistribute in any way for non-commercial purposes.

Read more about Early Journal Content at <http://about.jstor.org/participate-jstor/individuals/early-journal-content>.

JSTOR is a digital library of academic journals, books, and primary source objects. JSTOR helps people discover, use, and build upon a wide range of content through a powerful research and teaching platform, and preserves this content for future generations. JSTOR is part of ITHAKA, a not-for-profit organization that also includes Ithaka S+R and Portico. For more information about JSTOR, please contact [support@jstor.org](mailto:support@jstor.org).

## DRAFT OF A UNIFORM DIVORCE LAW.

AT the request of the STANDING COMMITTEE ON MARRIAGE AND DIVORCE OF THE STATE BOARDS OF COMMISSIONERS FOR PROMOTING UNIFORMITY OF LEGISLATION IN THE UNITED STATES, we print the following draft of proposed uniform divorce legislation with the appended report of the committee thereon. The COMMITTEE invites criticism and requests that communications be addressed to Mr. Amasa M. Eaton, Chairman, Providence, Rhode Island.

AN ACT TO ESTABLISH A LAW UNIFORM WITH THE LAWS OF OTHER STATES RELATIVE TO DIVORCE PROCEDURE AND DIVORCE FROM THE BONDS OF MARRIAGE.

Section 1. No divorce shall be granted for any cause arising prior to the residence of the complainant or defendant in this state which was not a ground for divorce in the state where the cause arose.

Sec. 2. No person shall be entitled to a divorce for any cause arising in this state, who has not had actual residence in this state for at least one year next before bringing suit for divorce, with a *bona fide* intention of making this state his or her permanent home.

Sec. 3. No person shall be entitled to a divorce for any cause arising out of this state unless the complainant or defendant shall have resided within this state for at least two years next before bringing suit for divorce, with a *bona fide* intention of making this state his or her permanent home.

Sec. 4. No person shall be entitled to a divorce unless the defendant shall have been personally served with process, if within this state, or if without this state, shall have had personal notice duly proved and appearing of record, or shall have entered an appearance in the case; but if it shall appear to the satisfaction of the court that the complainant does not know the address nor the residence of the defendant and has not been able to ascertain either, after reasonable and due inquiry and search, continued for six months after suit brought, the court or judge in vacation may authorize notice by publication of the pendency of the suit for divorce, to be given in manner provided by law.

Sec. 5. No divorce shall be granted solely upon default nor solely upon admissions by the pleadings, nor except upon hearing before the court in open session.

Sec. 6. After divorce either party may marry again, but in cases where notice has been given by publication only, and the defendant has not appeared, no decree or judgment for divorce shall become final or operative until six months after hearing and decision.

Sec. 7. Wherever the word "divorce" occurs in this act, it shall be deemed to mean divorce from the bonds of marriage.

Sec. 8. All acts and parts of acts inconsistent herewith are hereby repealed.

FROM THE REPORT OF THE COMMITTEE ON UNIFORM STATE LAWS,  
TO THE AMERICAN BAR ASSOCIATION, CONCERNING THE ACT ON  
DIVORCE PROCEDURE.

It may not be out of place in this connection, for your Committee to say a word as to the purpose, wisdom and practicability and effect of this short, simple and most moderate act, which is the outcome of much deliberation and discussion extending over three years' sessions of the Conference. The act proposed attacks directly, and, we believe, effectively, three of the greatest evils, considered from a legal standpoint, of the present condition of our various and conflicting divorce laws. First, it does away largely with the scandal of migratory divorces. Second, it prevents the wrong of speedy decrees against absent defendants, who may be ignorant of any suit pending. Third, it does away with the interstate confusion arising from some few states forbidding remarriage, while a great majority of the states permit it.

The first section will prevent a change of residence being made in order to procure a divorce for a cause that is not a ground for divorce in the state where the cause arose, but is a ground in the state to which the party moves. This measure will prevent each state from having its own citizens defying its laws by simply going temporarily to another state, obtaining a divorce there that could not be obtained in the home state, and then returning to the home state after having successfully evaded its law. Migratory divorces will thus be largely stopped, and each state will preserve its authority over the marital status of its own citizens.

The next three sections on residence and service hardly need explanation to a body of lawyers. "It is well known that a fertile source of wrongdoing in divorce is afforded where divorce can be obtained without the knowledge of the other party. Theo-

retically, no divorce should ever be granted until the court has adequate proof that the other party has had notice of the pendency of the complaint.

“The object of the first part of section 4 is to secure this notice and proof of it for the court. In practice, however, provision must be made for those cases where the opposite party cannot be found. Not to provide for such a contingency would simply be to place a premium upon concealment — the party desirous of preventing divorce would simply go into hiding and then no divorce could be obtained, no matter how valid the reasons for granting it.” (From Committee Report of Conference of 1899.) It seems to us that all reasonable means have been taken in this section to guard against fraud. A perusal of the proposed bill will show that with the six months’ notice required after suit brought and the six months required before the decree of judgment becomes operative, at least a year must elapse before the divorce becomes final, in cases where the defendant is not personally served.

As to remarriage, we believe the views of Mr. Nelson in his recent work on *Divorce and Separation*, vol. 2, page 566, are almost universally shared by the profession.

“The evident intent of these statutes is to prevent the guilty party from entering into another marriage. He having been unfaithful to the obligations of the first marriage, it is presumed that he is unfit to enter into a second marriage unless he reforms. But such prohibition is in fact a restraint of marriage. It leaves at large a person who by false representations may induce an unsuspecting woman to enter into a void marriage; or if this does not occur, the unfortunate defendant who cannot marry is tempted to continue adulteries without incentive to reformation. A prohibition which restrains marriage, encourages adultery, leaves the party in a position to contract void marriages and takes away a natural incentive to reformation, should be held contrary to public policy. These considerations are sufficient to justify the repeal of such statutes.”

If it is objected that this law would render the time necessary to acquire jurisdiction shorter in some few states, it is to be remembered that, different from most uniform laws which require to be absolutely identical wherever adopted, the evident object of the bill and the result desired to be obtained would not render it necessary, in carrying out the intent of the act, to have that part of it relating to the time of residence identical, or the present time of residence lowered, in any instance. As any one state can defeat,

in some respects, the purposes of this act, by not passing it, as much as though twenty allowed speedy divorces without the safeguards prescribed in this act, it seemed to the Conference not wise to put the time limit of residence beyond that of the average of all the states.

Although this bill is simply a bill of procedure, it really goes to the substance of the whole matter. Not only has the law of procedure, or the adjective law, always had a profound influence upon the substantive law, but it really becomes a part of the substantive law in this instance.

The Conference has had under consideration a bill relating to the causes for divorce, but has not deemed it advisable to recommend it for passage at this time, first, because of the great divergence of opinion in regard to the nature of the marriage contract and what are just causes of divorce, and secondly, because such a bill presented at this time with the procedure act might tend to prevent any improvement in legislation on this important subject.