Our Mixed-Up Divorce Laws

How a Highly Respectable, Worthy Married Woman in One State May Instantly Become a Bigamist, and Her Children Be in Disgrace in a Neighboring State

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SOMEWHERE within a hundred miles of the Borough of Manhattan there is drawn a line—invisible but real—which separates the State of Connecticut from the State of New York.

There may exist—perhaps there does exist—somewhere along that line a situation apparently unusual, apparently unique. Actually it is not unusual, not unique. But to the lay mind it is a situation the strangest of the strange.

Mrs. Cadwalader, we'll say (the name is entirely fictitious), is a virtuous, matronly, respectable and highly domestic young woman. She is married to young Cadwalader. They have two children, who are gradually entering their teens. They live, let us assume, in the State of Connecticut, within a mile of that unseen border line that separates them from New York.

They have friends in the State of Connecticut, close friends, intimate friends, who know their whole history, who recognize them as husband and wife, and as the legitimate mother and father of two bright and pleasing children.

The State of Connecticut, too, knows the history of this young couple, and that State, also, recognizes in them—concedes to them all the virtues. But their friends are not confined to citizens of the State of Connecticut. Across the border line, over in the State of New York, they have other friends. They invite these friends to their home in Connecticut, and these friends come. When these New York friends in turn invite the Cadwaladers to New York, a mile or two away, the situation changes as in the twinkling of an eye. The instant that the family steps across the border line the status of every Cadwalader undergoes an unseen change. But a change that is woefully and terribly real.

Among their friends on the New York side, who entertain them frequently, is a young member of the bar who knows what's what. The first time the Cadwaladers visited his wife he said to her with solemn jocularity, after they had gone, that she had been entertaining very shady people.

"Cadwalader and his wife, you know," he told his wife, "are not married. She is a bigamist and their children are"——

His wife stopped him there with a horrified expression.

"You may as well understand now," he continued, "as at any time that when you invite the Cadwaladers to this house there is a huge blot on their escutcheon—a terrible stigma rests upon their name. I repeat that when Mrs. Cadwalader comes here she is a bigamist. Cadwalader is no better—he is no husband of hers, because he was never legally married to her; and therefore the children can't be called little Cadwaladers at all. By the way," he added, "I like Cadwalader. Let's go over there to-morrow night."

"But," she protests, "you just said"——

"Ah," he returns, "when they visit us what I said obtains, but when we visit them Mrs. Cadwalader is Mrs. Cadwalader indeed; Cadwalader then becomes her legal husband and their children are—legitimate, to say the least."

"I fail to understand," persists this lawyer's wife. "I know she divorced her first husband, but that made her free. If she were free she had a right to marry."

"It made her free," concedes this member of the bar, "but free in Connecticut only—free in the State where she got her divorce—not free in New York. Two miles from here Cadwalader and his wife are a respectable married couple. Two hours ago when they sat at your mahogany they were nothing of the sort."

"But why?" his wife repeats. "I can't understand."

The state of mind of the young wife of this young counsellor-at-law is the state of mind of the public at large, whenever the public at large finds itself confronted with a situation of this sort. And yet a situation of this sort must necessarily exist in a very large proportion of the cases where remarriage follows a divorce. It is not too much to say that this remark applies almost generally to every uncontested divorce obtained, we'll say, at Reno, where the defendant failed to put in an appearance either personally or by attorney.

There is no doubt about the law. Every lawyer understands the situation. The law is settled law. There is nothing new or mysterious about its application, and it is true of thousands of cases to-day that husbands and wives who are legal husband and wives in one State of the Union are quite another thing in other States.

From time to time newspapers agitate this subject. Courts always agitate it. Within the last few years the President of the United States has appointed a divorce commission, known as the National Divorce Commission, to correct, if possible, a situation that becomes more grave—not to say appalling—as the years go on.

In the first place, let it be repeated, that there is no doubt about the law.

Let us cite two typical cases.

In 1905 the United States Supreme Court, the highest court in the country, rendered a decision in the case of Haddock vs. Haddock. The decision is reported in volume 201 of United States Reports, page 562. The opinion is a long one. It runs from page 562 to page 633, inclusive, and contains seventy-one closely printed pages of ordinary law book size.

The case of Ransom vs. Ransom, which is reported in 109 New York Supplement, page 1143, is a decision of the Appellate Division in New York, and simply repeats in terms the policy of New York State.

It is not necessary to go further. The United States Supreme Court decision in the Haddock case is supreme and states the law correctly.

In that case, Haddock, a New Yorker, lived with his wife in the State of New York. Their home—or what was called their matrimonial domicile—was in that State. Haddock left his wife (very likely for good cause) and moved to Connecticut, where he took up a bona fide residence; in other words, he did not go to Connecticut merely for the purpose of getting a divorce. It must be assumed, because the Supreme Court so finds, that he became a bona fide resident of Connecticut. In that State—finally and after some years—he began his suit for divorce.

And here arises the aforesaid peculiar situation, which has played havoc with divorces generally throughout the country. He was in Connecticut; he began his suit in Connecticut. His wife was in New York and resided there. Now in all States the usual method of beginning a suit is to serve a paper personally upon the defendant—that is, upon the party sued—within the territorial limits of the State. That is known as personal service of the summons—or by whatever name the summons may be called. Such service is made either through a court officer or some third party, who personally delivers the summons to the defendant and personally leaves the same with the defendant within the limts of the State. That is the usual means by which the court acquires jurisdiction over a defendant in a suit—whether the suit be for divorce or otherwise.

A summons is a paper signed by an attorney and sometimes by the clerk of the court, notifying the defendant of the commencement of the suit and warning him of the time within which he must answer if he intends to defend.

In the Haddock case, of course, no personal service could be made on Mrs. Haddock within the limits of Connecticut. She was in New York. For situations such as that the Legislature in each State has provided another mode of service. Upon due proof made to the court that it is impossible to serve the defendant personally within the State, the court will make an order, called an order of publication, directing that the summons or a notice thereof shall be published in one or two newspapers printed in the State and designated in the order, and that in addition to such publication a copy of the summons shall be mailed to the defendant directed to her last known place of residence, wherever that may be.

Now, in the Haddock case, being unable to serve his wife with a summons personally within Connecticut, Haddock, through his attorney, obtained an order of publication and served her by publication and mailing of the summons—by whatever name that process may be called in Haddock's State.

The suit was undefended; the wife did not appear. By appearance is meant, not the personal appearance of the wife before the court, but merely this: That she employs some attorney to enter with the clerk a memorandum or notice that he appears for her. Such an appearance would give the court immediate jurisdiction, because by that act the wife subjects herself to the action—and to the judgment—of that court. But she did not appear, nor did her attorney. Had she contested the suit by filing an answer that also would have constituted an appearance and would immediately have subjected her to the jurisdiction of the court. She did neither. Therefore the case was uncontested.

In due course of time Haddock obtained a decree of absolute divorce granted to him by the courts of the State of Connecticut. It is not material here whether Haddock remarried in Connecticut or not, but so long as he remained within the confines of Connecticut his divorce was valid. He could have remarried there, brought up a new family there, and so long as they stayed within the borders of the State the divorce and remarriage would have been legal—there.

Haddock, however, came to New York, and his wife sued him in New York for absolute divorce. In her suit she served him personally, no doubt, but it makes no difference, because New York recognizes its own service upon him by means of publication, and in New York, after a contest by him, she obtained a decree of divorce or separation. To render that decree in her favor the New York court necessarily found that the Connecticut divorce was invalid, because the court had not obtained personal jurisdiction over her; it necessarily found that she was still Haddock's lawful wife and that he had never legally divorced himself from her.

This decision of the New York court went up through several appellate tribunals to the New York Court of Appeals and finally to the United States Supreme Court, and the United States Supreme Court held that the Connecticut divorce was invalid except within the confines of Connecticut; that there it was valid; but that outside of the State of Connecticut it was of no force whatever, and New York was clearly within her rights in refusing to recognize it.

Perceive that there is nothing strange or strained in Haddock's attitude in getting his divorce. He did not rush to Reno. He acquired a bona-fide residence in Connecticut. He took his time.

The case of Ransom—a New York case—involves facts still more remarkable—facts harrowing in the extreme. Mrs. Ransom, the plaintiff in that case, resided with her husband in New York. New York was their matrimonial domicile, just as it was in the case of Haddock. Mrs. Ransom claimed that her husband was uniformly cruel and brutal in his treatment of her, and that he practically drove her from him. She did the natural thing. Forced to leave him, as she claimed, she went to her old home somewhere in the South. What else was there left to do for a woman in that peculiar situation?

Here was no rush to Reno either. Forced from her matrimonial domicile, she sought her domicile by birth. There, in due time, she brought her suit for absolute divorce. Again her husband neither appeared in the action, nor did he defend, nor was personal service made upon him within the confines of the State where suit was brought. Therefore she served him by publication. She obtained her divorce. She married a second husband after obtaining her divorce.

Understand, there is in these cases no trickery, no collusion, no blinding of the eyes of justice. The courts are not corrupt. In each case the first divorce was regularly granted according to the settled laws of each State involved.

Fate took Mrs. Ransom back to New York. Then her first husband, wholly divorced by her in the State of her birth, brought suit in the New York courts against her for an absolute divorce. Upon what grounds? Upon the ground, her divorce being invalid, her second husband, therefore, was not her second husband—that she was living with him. This contention of the first husband was held correct, and the courts of New York, following the Haddock case, gave the first husband a divorce.

Now note the most peculiar thing of all. Each State, New York included—and by each State is meant each State in the Union—provides this peculiar method of serving by publication and mailing where personal service cannot be made within the limits of the State.

Each State recognizes its own judgments or decrees granted upon such substituted service, but one State will not recognize the decree of divorce of another State based upon said method, and the United States Supreme Court has practically made the law for all the States.

And the grim and ghastly joke of it all is this: That the State of New York—or any other State—may, and in fact does, grant decrees of divorce based upon orders of publication, and in and by those very same decrees holds a previous judgment of divorce (granted by another State) invalid, solely because based upon service of process pursuant to an order of publication.

By no means is it true that every divorce granted upon an order of publication is invalid, even in another State. Many cases are contested cases, and where a defendant contests he or she becomes subject to the jurisdiction of the court. Cases not contested, but where an appearance is entered by an attorney for a defendant, also operate to give the court jurisdiction. In fact, there can be no clearer case of jurisdiction obtained over a defendant than when a defendant voluntarily appears in an action by an attorney or solicitor. So that a contested divorce, where the plaintiff is successful, is valid in every State, speaking generally, and so is a decree of divorce in an action where an appearance has been entered.

The difficulty is with the vast majority of uncontested cases. To the lay mind a decree obtained in a case where the defendant utterly fails to appear and answer—where he allows the suit to go absolutely by default—appears to be an invulnerable kind of decree. On the contrary, however, that is the divorce decree which must be scrutinized with care. It is not at all a question as to whether the defendant is guilty of the offense charged or whether by his silence he admits his guilt. The question is whether he has been subjected to the jurisdiction of the court, for no judgment can be entered against a man in any court unless he has had served upon him legal process and has had an opportunity to defend if he so desires.

Can this woful condition of affairs be remedied? Will every State in time adopt the same grounds for divorce—will the question of divorce become a matter for the courts of the United States—the Federal tribunals?

That is the question. That is why the President appointed the National Divorce Commission

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Mrs. Elsie Whelen Goelet Clews, Whose Lawyers Were Careful to See That the First Husband Was Properly Served with Notice of the Court Proceedings.

Mrs. Smith Hollins McKim Vanderbilt Whose Reno Divorce Was Saved from Complications by the Participation of Her Former Husband, Dr. McKim, in the Proceedings.

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Mrs. Blanche Molineux Scott and Child. This Was a Complicated Case Which Caused Anxiety to Her Second Husband, Mr. Scott.

Mrs. Lulu Morris Gebhard Clews, Who, After Marrying and Divorcing the Late Freddie Gebhard, Married and Divorced Henry Clews, Jr. Mr. Clews, in Turn, Married the Beautiful Elsie Whelen, Divorced Wife of Robert Goelet. A Single Flaw in Any of These Divorces Might Have Lamentable Consequences.

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