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Hypocrisy in the Divorce Courts

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such provisions without requiring a specific showing thereunder, unless the owner of the rights involved claims the benefit of such provisions.

Showings to be made by applicants for orders of the kinds described in the Proclamation may include proof that the property owner has freely and voluntarily agreed that the particular proceedings, order or other document will not effect or promote a transfer contrary to his "wishes and needs"; or such showings may include proof that notice of and information concerning the purpose and effect of the State Moratorium Law and of the Frazier-Lemke Moratorium Amendment have been communicated to such owner, that he is legally qualified to file a petition for relief under those statutes, and that he has waived the benefits thereof. Each case must be considered upon its own facts against the background of the existing economic emergency, and weight must be given to the needs of the parties, even when allowance for such needs requires apparent postponement or denial of a strict legal right or privilege.

WALTER WELFORD,
Acting Governor.

HYPOCRISY IN THE DIVORCE COURTS

Recently in the course of a conversation with an able and experienced lawyer the subject of divorce cropped up. We were in fact discussing a specific case in which we appeared as attorneys on opposite sides. We agreed that in that particular case the actual underlying cause of dissension was complete incompatibility of the parties; and that the acts set forth in the pleadings were the symptoms of that underlying cause rather than the cause itself. Going on from there it was suggested that in a large majority of such cases the same situation obtained; that with the exception of one or two statutory grounds (i.e. conviction of felony) the cause of marital difficulties was that the husband and wife were mismated. We suggest for consideration of the Bar and more particularly of the members of the legislature that our statute on the subject should include incompatibility, with proper safeguards against abuse of the statute, if any such safeguards are required in addition to those already provided, such as the provision for one year's residence of one or both of the parties in the state, the provision against collusion, etc. We quote from an article by Mr. Urban R. Miller, of the Des Moines, Iowa, Bar, published in the March, 1935, number of The Law Student.

"Incompatibility as a Universal Ground for Divorce"

"Without going into extended recital of arguments for divorce, we might say that it is a necessary evil to compensate for social and psychological incongruities which result from the inaccuracy of the human mating instinct. Furthermore, there is no convincing evidence that people are more moral and family life more secure in South Carolina where no divorces are granted and in New York where there is only one ground for divorce, than in any state where by judicial extension divorces are granted on the ground of simple incompatibility. Then since divorce we must have, we can do no further social wrong, and, we might say without fear of serious challenge, perform a salutary social beneficence, by including this one universal ground.

"Simple incompatibility is not at present a statutory ground for divorce. Metaphorically, as an individual ground, it is a misnomer, an offspring of judicial extension and convergence of the conventional

statutory grounds of cruelty, drunkenness and desertion. Proof of specific acts, which is elemental in the remedial law of the statutory grounds is still a part of the adjective law where incompatibility is clearly distinguished. But acts which are not potent enough in a strict interpretation of the ground of cruelty to warrant a decree are sufficient where the courts recognize incompatibility. Under the liberal construction of the statutory grounds, indignities, continued frictions—mere inability to get along with each other—is defined as a form of cruelty. Under a statutory ground of incompatibility the adjective law would be as materially changed as the substantive law. That is, proof more definite than of a temperamental incapacity to live peaceably together would be unnecessary.

"Whatever the ground claimed by the libellant, whether it is habitual drunkenness, desertion, adultery, or cruel and inhuman treatment, there must originally have been some incompatibility between the spouses to give cause for the action or reason for suspicion. And the legal dissolution of a marriage on account of incompatibility certainly makes a more wholesome impression on the minds of the children than a public finding that father is an adulterer or mother is an adultress, or have been guilty of cruel and inhuman treatment, endangering the lives of members of the family. For the sake of innocent children, such facts should be left for the clandestine findings of those who make the wagging of tongues one of their daily tasks."

NORTH DAKOTA DECISIONS

State v. Berenson. (Filed April 9th, 1935): Held, among other things, that evidence of independent collateral crimes is not admissible in a criminal prosecution merely to prove the depravity of a defendant or his criminal disposition. But if evidence otherwise relevant is offered the fact that incidentally it tends to establish collateral matters or to prove collateral crimes does not render it inadmissible. (Opinion by Nuessle, J.)

Crabtree v. Kelly et al. (Filed April 9th, 1935.): Held, that it is not error on the part of the lower court to refuse to charge the executor with interest upon a deposit under the facts in the case and where it does not appear that the executor received interest. (Opinion by Morris, J.)

Burns v. Northwestern National Bank of Minneapolis. (Filed April 9th, 1935): Held, (1) Under Title 12, USCA, Section 94, the Courts of North Dakota have no jurisdiction to entertain a suit in a transitory action against a national bank located in another state.

(2) Under the facts in this case it is held, that the defendant by answering and trying the case on the merits, did not waive its objections to the jurisdiction of the court made by motion to vacate service of summons and to dismiss action. (Opinion by Morris, J.)

THE EMERGENCY LAWS

The secretary has received a number of letters from members of the Association who express their approval of the publication, through a Bismarck newspaper, of some of the emergency measures adopted by the 1935 Legislative Assembly. In each case such letters of commendation have been accompanied by a contribution of fifty cents to assist in defraying the expense of printing and mailing. However, above ninety-five per cent of the members have not as yet given us credit for the enterprise nor cash for the expense thereof.