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San Francisco Divorce Suits

THE case method has exposed the printed opinions of appellate courts to a searching examination. But it has done nothing to show us to what extent, if any, the present system of procedure may be so slow, expensive and technical as to destroy the value of the legal rights expounded by appellate courts. It leaves open the question whether the action of suitors, attorneys and trial courts may not result in these courts applying the law in a way very different from what a reading of appellate reports would disclose. Then too, the rules of law laid down by appellate courts are determined very largely by following, or reasoning by analogy from, rules formulated in times when social conditions and ideas of what is socially desirable were different from those of today.

The case method should be supplemented by an examination into the practical workings in lower courts and in the community at large of the procedure provided for the vindication of legal rights, and the effect of this procedure and of these rights on the community. This examination should not consist of *a priori* argument, but of the collection of a large number of specific cases, so that the truth of the facts collected will be beyond question. Not until we have such examinations can we intelligently decide whether our law is serving us in the way we think it should.

In 1919 the Carnegie Foundation published a report on "Justice and the Poor." In that report Mr. Smith argues that the delay and expense involved in collecting small claims in New York City and elsewhere is so great as practically to prevent the collection of such claims. The New York City judges reply with a report in which they deny these conclusions. We may have our opinion as to what party is correct, but we do not know. If Mr. Smith had had the facilities at his command, which he did not, to find out the cost and time expended in each case filed in the New York courts over a period of a year involving less than $100, there

would then be only two questions left open for discussion: whether the cost and time actually found to exist was excessive; and if it was, how conditions could be improved.

For the purpose of demonstrating the practicability and utility of such a method of research, the writer investigated some 20,000 cases filed in various California Courts. This examination led to an article on "Procedural Delay in California," published in the CALIFORNIA LAW REVIEW for September 1920. That article stated the delay involved in the different kinds of cases. The author's conclusions that the delay was excessive and as to how it should be remedied may or may not be correct. But it is submitted that the examination established beyond the possibility of dispute exactly how much time was expended in each stage of the various classes of cases examined.

This article is based on the same investigation. It shows among other things that divorces are denied in default cases in but four suits in a thousand, so that the divorce law of California as enforced by the San Francisco Superior Court is that if both spouses are willing, either can obtain a divorce by asking for it. Now that may not be what the law should be, and is not the law of California as it appears in the statute books or the decisions of the appellate courts, but it is the law the Superior Court of San Francisco is enforcing. Without knowing these facts the legislature can tinker with the grounds of divorce appearing in the statute books and can deceive itself into believing that it is changing the divorce law of California. But before any intelligent alteration, if any be desired, can be made, it is necessary to take into consideration these facts and their causes.

The author made this investigation, and hopes to undertake others in the future, for the purpose of establishing the practicability and utility of this method of legal research. He believes that what the law is and what it should be, must be determined through case by case investigations in lower courts and among clients, actual and potential, as well as from reading appellate reports.

Of the 20,000 cases examined by the author in 1919, 2247 were suits for divorce in the Superior Court for San Francisco, including all the cases filed in that court in 1913 and some of those filed early in 1914.

Table I[1] shows the number of divorce suits filed annually in the San Francisco Superior Court for the nine-year period, 1910-1918.[2] The number filed increased steadily throughout the period, both actually and relatively to other actions. Starting with 1530 cases in 1910, divorce suits increased to 2483 in 1918, or 64 per cent. In 1910 they comprised 26 per cent of the total number of civil cases filed, exclusive of probate and McEnerney cases, and in 1918, 35 per cent. That is, in 1918 there was one divorce granted to every four marriage licenses—truly a startling proportion. The proportion of divorces to marriages seems to be higher in San Francisco than in any other large city in the country with the exception of Seattle, and Portland, Oregon.[3]

Table II[4] gives the grounds for divorce as alleged by the parties in their complaints.

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[1] TABLE I.

Number of divorce suits filed annually in the Superior Court for the City and County of San Francisco.

YEAR	NUMBER	PER CENT OF TOTAL NO. CASES FILED
1910	1530	26
1911	1649	27
1912	1764	28
1913	1990	30
1914	2100	29
1915	2136	27
1916	2273	29
1917	2419	32
1918	2483	35

[2] Much of the material in this report is published, not because it has a direct bearing on the author's thesis, but because it is information he has obtained and hopes may be of value to some other investigator approaching the problem of divorce from a different angle.

[3] See U. S. Bureau of the Census, Marriage and Divorce, 1916.

[4] TABLE II.

Grounds for divorce as alleged by the plaintiff in his complaint in per cent. In many cases more than one ground is alleged.

GROUND	PLAINTIFF (MALE)	PLAINTIFF (FEMALE)
Adultery	2	1
Conviction of Felony	0	1
Cruelty	32	40
Desertion	62	31
Failure to provide	0	1
Neglect	2	24
Intemperance	1	1
Miscellaneous	1	1
	100%	100%

At best, these grounds are merely the reasons appearing on the surface. For example: they do not give even a clue to the reason why the number of divorces has so greatly increased in the United States in the last twenty years, or why there are so many more divorces, per capita, in cities than in rural communities. But in a large proportion of the cases they probably do not state even the surface reasons for the divorce. In 76 per cent of the divorce cases tried the defendant defaulted, while in over half of the remainder he appeared apparently to facilitate, rather than defeat, the obtaining of the divorce. Under these conditions the allegation of the cause of divorce in the complaint is only a form. The plaintiff signs the complaint because her attorney tells her to, probably in many cases without reading it. On the stand she states without fear of contradiction or cross-examination that her husband treated her with extreme cruelty; which, by the way, does not necessarily involve any physical violence. If the judge becomes inquisitive and asks a perfunctory question or two, she relates a real or fictitious quarrel with her husband. It is not to be inferred that the writer believes divorces are improperly granted by the court or that substantial grounds for them do not exist, but merely that the way to discover what these grounds are is not to examine the grounds alleged in complaints or the uncontroverted answers of plaintiffs on the witness stand.

Though the register of actions contains no accurate information as to the grounds for divorce, it shows who brings the divorce suit. Approximately 70 per cent of the divorce suits filed are brought by women.

The complaint in a divorce suit is required to state the number of children of the marriage. The divorce decree should always apportion the minor children, if there are any, as well as grant the divorce. So it is possible to tell from the entry of judgment in the register whether there were any children, and if so, to whom they were awarded. As shown in Table III,[5] there were children in but fifteen per cent of the cases. This confirms statistics from other cities and what one would expect; namely, that a divorce is much more likely to occur if the marriage is childless.

Of the divorce suits in which minor children were involved, seven per cent more were brought by women than by men. But this difference is too small to be significant, especially since only 266 such cases were investigated.

* TABLE III.

		UNCONTESTED			CONTESTED		
		Tot.	Man	Wom.	Tot.	Man	Wom.
Interlocutory to Plaintiff	1739	1383	340	1043	356	71	285
Interlocutory to Defendant	53	0	0	0	53	42	11
Interlocutory denied	21	5	4	1	16	12	4
Dismissed	187						
Pending	227						
Change of Venue	18						
Divorce on Restored Record	2						
	2247						
Interlocutory Decree Granted	1820	1391	341	1050	429	84	345
Interlocutory Set Aside	26	8	1	7	18	2	16
Final Decree Vacated	2	0	0	0	2	0	2
No Final Decree	137	114	16	98	23	6	17
Final Decrees Granted	1657	1269	324	945	388	76	312
No Children—Alimony to Plaintiff	104	70	0	70	34	0	34
No Children—Alimony to Defend't	7	0	0	0	7	7	0
Children—Alimony to Plaintiff	141	92	0	92	49	1*	48
Children—Alimony to Defendant	16	4	4	0	12	12	0
Minor to Plaintiff	229	165	12	153	64	4	60
Minor to Defendant	32	10	7	3	22	17	5
Minor Divided	5	2	2	0	3	1	2
Cases where there were Children	266	177	21	156	89	22	67
Cross-Complaint Filed	112	0	0	0	112	54	58
Appealed and affirmed	4						
Alimony when child is granted to person receiving alimony:							
No. Cases	156	96	0	92	60	0	60
Av. Monthly				$30			$25
Range				$10-$150			$10-$60
Property Settlements				2			2
Alimony where decree mentions no Children:							
No. Cases	110	70	0	70	40	0	40
Av. Monthly		$42		$42	$36		$36
Range				$10-$500			$1-$150
Property Settlements and Lump Sum Payments				1			3
Lump Sum Payments				8			3
Attorney fee to Plaintiff:							
No. Cases	52	35			17		
Average		60			69		
Range		$25-$150			$25-$100		
Atty. Fee to Defendant:							
No. Cases	8	0			8		
Temporary Alimony Granted	33						
Demurrer of Defendant:							
No. Cases	116						
No. Demurrers	122						
No. Demurrers Sustained	8						
Demurrer of Plaintiff							
No. Cases	18						
No. Demurrers	22						
No. Demurrers Sustained	6						
No. Cases Demurrer of Defendant when Defendant filed no cross-complaint	37						

*Divorce to Plaintiff, man, child to wife and $30 per month alimony payable by wife.

Besides granting a divorce and custody of the children, a divorce decree may provide for a property settlement or that one party pay to the other so much alimony. Property settlements are rare, numbering only eight. From this fact it is not safe to assume that couples having property do not get divorced, because there are undoubtedly many property settlements made out of court, and none of these appear in the register of actions.

If the defendant fails to appear and a default decree is entered, a female plaintiff obtains alimony in 15 per cent of the cases. But if her husband appears and contests the suit, her chances of obtaining alimony are increased to 26 per cent. This difference is probably due to many property settlements being made outside of court, the defendant then defaulting; to a greater readiness of the judge to grant default decrees than alimony; to the impossibility of granting alimony when the defendant is a non-resident; and to the defendant's greater desire to appear and protect his interests when alimony is involved. A woman's chances of getting alimony are greatly enhanced if the court grants her the custody of minor children. Women received alimony in 66 per cent of the cases in which the custody of one or more minor children was decreed to them, but in less than 10 per cent of the cases involving no minors.

The minimum alimony awarded was $1 a month; the maximum, $500; and the average, $35. The large number of cases under $35 required to offset one case of $500 shows that in the majority of cases the husband's earning power is low and the court awards the wife merely enough to aid her in supporting herself and the children entrusted to her care. The number of cases in which alimony was granted, 267, is not sufficiently great to give an absolutely reliable average, but so far as the figures go they show larger alimony in default than in contested cases, but no larger alimony when the wife is granted the custody of one or more minor children than when the money is merely for her own support.

A comparison of contract and divorce cases shows that while in contract actions a compromise is effected in about half of the cases, the parties to a divorce suit have usually become too much estranged by the time the suit is filed to permit of compromise.

Disregarding the cases in which a change of venue was granted, 83 per cent of the divorce cases filed went to judgment as against half that number in contract actions. The remaining 17 per cent

represent cases in which a reconciliation was effected or at least those in which the plaintiff decided not to push the action.

The probable time for a default divorce suit to reach the interlocutory decree is one month, as against two months for a contract case to reach judgment. This difference is considerable, but nothing compared to the difference in contested cases. The probable time from filing of the complaint to interlocutory decree in divorce cases in which the defendant appears and files an answer is one month. That is, the case goes to judgment with equal speed whether the suit is defended or goes by default. If the average time[6] be considered, the defendant delays the granting of the interlocutory decree less than twelve days by his contest. It must be a very weak legal battle, indeed, that the defendant puts up, not to delay the action twelve days. In contested contract actions the probable time to judgment is six months, or four months longer than in default cases. All these contract actions do not represent real battles, because in some cases a compromise is reached and judgment given by consent, while in other cases the defendant realizes that he is bound to pay the plaintiff's claim and makes but a half-hearted defense. Nevertheless, the probable contested case in contract takes four months, and the average case about six months longer than a default case, as compared with a difference of less than twelve days in divorce suits.

Looking at Table IV,[7] the time to interlocutory decree in default divorce cases, one wonders how five per cent of the cases are disposed of in less than ten days, when the law gives the defendant ten days to answer, even if he is served within the county. The answer is that the defendant has filed a stipulation waiving time to plead, so it would not be necessary to wait the ten days provided by law before a default could be entered. Eighteen per cent of the so-called contested cases are disposed of in less than ten days. The plaintiff's attorney draws a complaint, has the plaintiff verify it, serves it upon the defendant, whose attorney in turn answers it and has his client verify the answer. Then the plaintiff's attorney serves upon the defendant's attorney a notice that the case is at issue and he will move the court to set it for trial. The court selects a date. The attorneys prepare their respective cases for trial, the trial takes place. The findings of fact and conclusions of law are written out and signed by the judge, together with the judgment. How long does all this take?

[6] The average of the mean 80 per cent of the cases is here referred to.

In three per cent of these supposedly contested cases it takes less than twenty-four hours. Clearly, in no real sense are such cases contested. It is doubtful even if any case going to judgment in less than a month is really contested. Forty-six per cent of the contested divorce actions, as against three per cent of the contract actions, are disposed of in less than that time.

If we throw out 46 per cent of the so-called contested divorce suits on the ground that there is no real contest when the case reaches judgment in less than a month, that leaves 231 cases.

Of these 231 cases all are not cases in which the plaintiff wanted a divorce and the defendant did not. Instead of trying to prevent the granting of a divorce, the defendant may file a cross-complaint and try to get the divorce instead of the plaintiff. This was done in 112 cases, all but nine of which took over a month to judgment. Subtracting these, 128 cases are left as the maximum number of actions in which the granting of the divorce was opposed.

From these cases must still be deducted those in which the defendant did not object to the granting of the divorce, but the two attorneys did not get around to trying the case within a

[7] TABLE IV.

Comparison of time to judgment in divorce and in contract cases.

TIME		DEFAULT		CONTESTED	
		Div.	Contract	Div.	Contract
Days	0	0	¼	3	2-5
	2	1	½	7	2-5
	5	4	0	8	0
	10	19	15	13	1 1-5
	20	14	7½	15	1 3-5
Months	1	20	24½	9	6 2-5
	2	7	12	11	10
	3	18	10	5	8
	4	7	7½	7	9
	5	5	5	7	6 2-5
	6	2	4	3	8
	7	1	3	5	5
	8	0	2	2	4 3-5
	9	1	2	0	3
	10	½	1½	2	2 4-5
	11	½	1	1	2 2-5
Years	1	0	3½	2	19
	2	0	½	0	5 1-5
	3	0	¼	0	4
	4	0	0	0	2
	5	0	0	0	4-5
		100%	100%	100%	100%
Av. in Months		1.95	3.37	2.61	11.55
Probable Case		1	2	1	6
Av. Mean 80 per cent		1.6	2.4	1.9	8.9

month, the plaintiff was sick or for some other reason did not find it convenient to appear in court within that time, the trial was delayed pending negotiations as to alimony, etc. How numerous such cases are it is impossible to determine, but the fact that half the default cases take over one month to judgment shows that their number must be very considerable.

Out of 1387 default divorce suits reaching trial, the divorce was denied in but five cases. In one of these cases, the husband defaulted, but took the stand aganst his wife; in two cases the reason why the divorce was denied, did not appear, but in one of them it was apparently lack of jurisdiction. In the fourth case, the wife sued for a divorce on the ground of the intemperance of the husband, but on trial it appeared that the intemperance had not lasted a year and so she was not entitled to a divorce. In the fifth case the judge denied the divorce because he thought the desertion on account of which the wife was suing was by consent.

Out of 425 supposedly contested divorce cases reaching trial, a divorce was denied in sixteen cases. In one case the divorce was denied because of the moral misconduct of the plaintiff; in one on account of the elapse of nine years between the acts complained of and the commencement of the suit; in four on the ground that both parties were equally guilty, and in nine because of failure to prove the allegations of the complaint. In one of these nine cases, the wife sued on the ground of lack of support, but failed because their son had contributed something and her husband $10 in two years toward her support. In three of the cases in which a divorce was denied, the plaintiff obtained a divorce by bringing another action.

If a party is entitled to a divorce, the court grants an interlocutory decree. This decree establishes the right of the party to a divorce, unless reversed and set aside, but does not of itself dissolve the marriage ties. It is then necessary to wait one year. At the end of that time either party may move the court for a final decree, which is granted *ex parte* as a matter of course. But in 137 cases, or nearly eight per cent of the total number, no final decree was ever entered. In some of these cases the parties undoubtedly became reconciled and neglected to get the interlocutory decree set aside. Judging by the small number of cases compromised before interlocutory decree and the few cases in which the interlocutory decree was set aside (only 13), reconcilia-

tion probably accounts for only a small proportion of the cases in which no final decree was ever entered. The bulk of these cases are undoubtedly those in which the parties or their attorneys forgot the final decree. It is conceivable that in some of the cases the parties know they are not legally divorced. But in the great majority they have probably forgotten, if their attorneys ever did tell them, about the necessity for a final decree, or presume their attorneys have attended to the matter. Some, certainly, of these unfortunate couples have married again and have children who, are, in the eyes of the law, illegitimate. If the interlocutory decree were made automatically final after one year, unless the parties took action to prevent it so becoming, this evil would be prevented. However, there then would be the chance of the parties becoming reconciled, forgetting to set aside the interlocutory decree, and thir children, born one year after the entry of the interlocutory decree, being illegitimate. The correct solution would seem to be to do away with the two decrees in divorce suits and, if it is desired to continue present policy of requiring the parties to wait a year before obtaining a divorce, provide that the court shall not hear divorce suits until one year after service of summons.

But now that we have examined all these figures, what of value do they show? They prove the truth of many things concerning divorces that we previously believed to be true, but of which we could not convince people who disagreed with us, because we did not know them to be true. They dispel all doubts as to the magnitude and growing importance of the divorce problem. When one marriage in four ends in the divorce court, it is high time that we take action.

They show that the law should not require a request for a final decree one year after the granting of the interlocutory decree, but that the court should not hear divorce suits until one year after service of summons. This is a simple change and easily accomplished, but one of great importance to many people. No amount of reading of statutes or appellate reports would lead one to suppose that an interlocutory, but no final decree, existed in eight per cent of the cases. That fact could be ascertained only by a case-by-case examination of the records. If this investigation results in nothing but the legislature changing the law and preventing such of these unfortunate people as remarry from being guilty of bigamy and their children branded with the stigma of

illegitimacy, the author will feel that his time and efforts have been well spent.

This investigation also shows that in nine cases out of every ten both spouses are willing that the divorce be granted and that the legal procedure provided for handling these cases is totally inadequate. The law makes a distinction between divorce and other actions. If a defendant defaults in a contract action, judgment is entered against him as a matter of right. But in divorce suits the law says this shall not occur. The state has an interest in the preservation of family ties and so will not permit the granting of a divorce merely because the parties want it. Therefore the law requires that the plaintiff appear before a judge and satisfy him of the necessity for the divorce. We brand as uncivilized the law of those countries in which the holy ties of matrimony may be dissolved by mere agreement of the parties.

But when we apply the acid test of a case-by-case investigation of what the judges do when these default cases come before them, we find that they refuse the divorce in less than four cases in a thousand. Thus for practical purposes our law is that if both spouses want a divorce, either may obtain one by paying $50 to an attorney, spending ten minutes in court and waiting a year. That is the law of the San Francisco Superior Court as distinguished from the law of the statute books and of the Supreme Court reports.

Let us face the problem squarely and honestly. Either let the plaintiff obtain a judgment as a matter of right in default divorce cases as in default contract cases, or else have the state a real party to default divorce suits. Have the law prescribe the grounds of divorce and then have the state hire attorneys to see to it that these grounds really exist.

Unfortunately this investigation throws no light upon which we should do. The author had hoped to supplement this examination of court records with an investigation of the lives of the people who patronize the divorce court—to see whether it is better for the community that divorces be granted liberally or only for adultery, as in New York. Unfortunately the author's resources are far too meagre for such a task. Until such an investigation is made we are in no position either to praise or censure the action of the San Francisco Superior Court in granting divorces to all who request them.

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