THE RECENT CONFERENCE ON DIVORCE.

The Declaration of Independence declares that among the inalienable rights are "life, liberty, and the pursuit of happiness." Nothing more intimately concerns the pursuit of happiness than the choice of marriage relations. It would seem to be a direct inference from this proposition that all men and women should be permitted to contract such relations as seemed to them desirable and to dissolve those relations when they saw fit and make new ones. This apparently logical conclusion has been adopted by a considerable class of people, many of whom deserve the highest respect both in regard to intelligence and character. Milton, not only the greatest of poets, but the strongest and purest of men, practically maintained this doctrine in his articles on the liberty of marriage and divorce, asserting that incompatibility of disposition ought to be a sufficient cause for dissolving the relation; that moral defects were of more importance and defeated the purpose of the marriage as fully as physical disqualifications. There are many people at the present time who maintain the same position, supporting it honestly and passionately.

There is another larger and much more numerous class who hold that marriage is a sacrament ordained of God beyond the reach of any earthly power to dissolve, and that any relations contracted by such divorced parties with others are merely concubinage. Such is the doctrine of the Catholic church. This latter class, however, is, and must always be in this country, in a hopeless minority, although their views have been sanctioned by one state—South Carolina, which does not allow divorce for any cause. The first class also are in the minority and will probably always remain so.

The great majority of the people of the United States, although holding that marriage is not a sacrament, that it is a mere human relation which may be contracted at will and may be dissolved with the sanction of the state, believe that it is not a matter which concerns the individual contracting parties alone; that the state has an interest and may by its law interfere between the parties respecting the right of marriage and the right of separation.

This intermediate third class might be divided into two divisions—one holding that divorce should be solely on the ground of adultery, the other that various grounds which utterly destroy the happiness of the parties and totally defeat the purposes of the mar-

riage relation should also be admissible. As to what those causes should be there is infinite diversity, some states recognizing habitual drunkenness or intolerable cruelty and some not. The same being true in regard to desertion, failure of support, and so on down to outbreaks of intolerable temper, and other vaguely described as "the infliction of grievous mental suffering by one party to the marriage," which may be held by construction to mean almost anything from a severe clubbing to a refusal of a spring bonnet.

The conference at Washington was called by invitation of the Governor of Pennsylvania in the hope of preparing a uniform divorce law, and was a large and distinguished gathering, including as it did leading members of the judiciary, dignitaries of the Catholic church, prominent clergymen, lawyers, etc. Delegates from forty-one states, including the District of Columbia, were present. It was apparent that there was an irreconcilable diversity in the views of the various states concerning the causes of divorce. These differences of opinion are inherent in the conditions of the various states. In some of the newer western states ideas of individual freedom are pushed to a greater extreme and the people are less patient of legal restriction upon freedom of contract. In the conservative East, on the other hand, regulations and restrictions are more patiently borne. It is evident also that the religious convictions of the people would affect this subject. The membership of the convention reflected these differences of opinion.

The Pennsylvania delegates, who naturally and properly took a leading position in the deliberations of the convention, had suggested outlines for a uniform divorce code and also certain declaratory resolutions, but it was speedily recognized that anything like a uniform code was impossible. It was found practical, however, to agree on certain fundamental principles as to procedure and regulations which should be directed to prevent the conflict of jurisdiction between the states. It was also agreed that stringent regulations should be adopted to prevent fraud, collusion, and over-haste in granting divorces.

It is a somewhat singular coincidence that the recent decision of *Haddock v. Haddock* in the U. S. Supreme Court, that one state is not bound to recognize a divorce decree of another state where there was not full jurisdiction of both the parties, came out soon after the meeting of the convention, and is in accord with the views taken by the convention on this subject.

The final result of the convention was the adoption of seventeen declaratory resolutions adapted to carry out the objects above stated. To quote all these resolutions would unduly extend the length of this article. They included distinct resolutions condemning divorces ex-

cept where one of the parties had a bona fide residence and divorces to plaintiffs resident in another state at the time the cause of divorce arose for causes not recognized in such state. This was aimed to prevent the scandal of migratory divorces; that is, divorces granted to persons who move from one state to another to avoid the wholesome restrictions of the laws of their own states.

In three particulars the convention did make recommendations concerning causes of divorce. It declared that a decree should not be granted for insanity arising after marriage, and that conviction of crime should not be recognized as a cause unless followed by continuous imprisonment for at least two years, or in case of indeterminate sentence, one year; also that the conviction should be the result of a trial before a court granting a trial by jury; and that in case of desertion only wilful desertion persisted in for two years should be sufficient.

Two provisions were recommended which would introduce important new features into the practice of Connecticut and of many of the other states. The first provides for the recognition of separation *a mensa et thoro*. The argument on this subject being that, while divorces *a vinculo* giving a right of re-marriage, ought not to be granted except for very serious cases, yet a party, particularly a wife, should be entitled to protection in cases not recognized as causes of divorce, but which yet made it improper or unsafe for the parties to live together. It was particularly urged upon the convention that the members of the Catholic church, whose consciences would prevent their seeking any dissolution of the marriage bond, should yet have some remedy by which the one party could procure relief in case of intolerable cruelty of the other, or in case for any reason it became improper that the parties should live together. This institution is recognized by the laws of very many of the states, and it would seem obvious that it should be recognized by all of them. The argument on this subject would seem almost too strong for controversy.

The other provision referred to is perhaps a subject of debate. For the sake of clearness, the twelfth resolution, embodying the suggestion, is here quoted:

"Hearings and trials should always be before the court, and not before any delegated representative of it; and in all uncontested divorce cases, and in any other divorce case where the court may deem it necessary or proper, a disinterested attorney should be assigned by the court, actively to defend the case."

In uncontested cases of divorce it must frequently happen that although the evidence on its face appears to be strong that the trier would find difficulty in denying the relief, yet the circumstances

leave an uncomfortable suspicion that the court has not had before it all the facts properly bearing upon the case. It ought not to be necessary for the court in such cases to constitute itself a detective agency to ascertain such facts or secure the production of additional evidence. If it attempts to do so it is compelled to put itself in an apparently hostile position to one of the parties and its judgment is perhaps affected by the fact that it does put itself in such a position. If in such cases the court were at liberty to assign counsel to represent the absent party it would be relieved from this position. There does not seem to be insuperable objection to a provision of this kind. Not only has the absent party a right to the protection of counsel, but the court has a right to take such measures as may be necessary to protect itself from imposition. In such cases of course a moderate compensation would be taxed in favor of the counsel for the defendant in analogy to the practice which prevails in criminal cases.

The hearty reception of the call for the divorce convention emphasizes the increasing demand for a spirit of legislative comity between the states. There has been an unfortunate tendency of the various states towards a sort of legislative war. Certain states have practically invited citizens of other states to come to them for relief from the matrimonial restrictions which prevail in their own jurisdiction. Others have taken measures to attract to their own jurisdiction individuals and business naturally belonging to other states by advertising to grant charters without asking any questions, thereby proposing to relieve citizens of other states from the wholesome restrictions of their own jurisdiction designed to prevent fraud and imposition. As a result of this, some of the states have legislated against corporations of other states in order to protect themselves against fraudulent enterprises. These conditions are becoming more and more intolerable and have resulted in a demand for a central supervision and regulation by the national government of matters which are proper for state regulation. The continued existence of our federal system is only possible or tolerable if a spirit of comity as regards legislative provisions prevails between the states. The general movement for uniformity of legislation among the states not only on divorce but on a great variety of other subjects has arisen out of this necessity.

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