SEVENTY-EIGHTH LEGISLATURE

SENATE NO. 275

In Senate, March 2, 1917.

Presented by Mr. Davies of Cumberland and on further motion by same Senator laid on the table for printing.

W. E. LAWRY, Secretary.

STATE OF MAINE

IN THE YEAR OF OUR LORD ONE THOUSAND NINE HUNDRED AND SEVENTEEN

Statement of facts and general and specific comments made by Hon. Joseph E. F. Connolly, Judge of the Superior Court of Cumberland County, to be considered in connection with Senate Document No. 146 entitled an act to amend Sec. 2 of Chap. 65 of the Revised Statutes of 1916, Sec. 80 of Chap. 82 of the Revised Statutes relating to Superior Court of said County.

February 28, 1917.

Hon. Howard Davies,

Chairman, Judiciary Committee,

State House,

Augusta, Maine.

My dear Senator:

I am in receipt of your letter asking me to give you my views upon the proposal contained in Senate Bill No. 146, entitled "An Act to amend Section 80 of Chapter 82 of the Revised Statutes of 1916, relating to the jurisdiction of the Superior Court for Cumberland County."

I am indeed glad to be so invited because I am interested in the proposition advanced, but would have refrained from expressing an opinion because of the unwritten rule which requires Judges, even when they are personally attacked, to remain away from Legislative Committees and gatherings; but your invitation I consider in the nature of a summons and, as I say, I am glad to comply.

Originally the Superior Court had no jurisdiction in divorce, but by enactment of the Legislature in 1913 this Court was given concurrent jurisdiction with the Supreme Judicial Court in such matters. This proposition emanated from certain Justices of the Supreme Court who felt for various reasons that justice could be done in the Superior Court and with more certainty and despatch than in the Supreme Court, because they felt that a resident judge had a better opportunity to obtain a knowledge of parties and causes than did Justices of the Su-

preme Court who were for the most part non-resident, and in attendance and consequent residents in this county for but a brief period at intervals during the year. They contended that the Justice of the Superior Court would obtain certain available information in cases having to do with general crimes, and particularly from non-support cases, bastardy cases, as well as from minor civil cases which disclosed certain conditions in the homes of people resident in this county. It is a fact well known that this court has exclusive jurisdiction of these matters, and it was felt that this information so acquired could properly be used as a cue or prompt in the cross-examination of witnesses and parties by the court in divorce proceedings. It is agreed by all lawyers that there are three parties to all divorce proceedings,—the libellant, the libellee, and the State; the latter represented by the judge, and the other parties by counsel whom they employ. I find frequently that counsel and parties object to cross-examination by the Court, and it would seem that their contention is that the representative of the State should grope blindfoldedly for facts and the truth. The folly of this argument is apparent if we consider for a moment the interest the state has in the maintenance of homes, and particularly in the protection of children who frequently are the innocent sufferers in divorce cases; and so strong is the feeling in some states that the court has a right to information that provision is made requiring the assistance of the County Attorney in all uncontested cases, and in some other states permitting the Court to appoint special counsel to represent absent libellees. I cannot better illustrate

the need of knowledge such as I have referred to, and consequent cross-examination based upon that knowledge, than to refer to the fact that we have frequently found that parties who have unsuccessfully tried for divorce in one county will migrate to another county and there again apply upon the same facts, notwithstanding previous adjudication. I have known of instances where they were so bold as to go from the Superior Court, in which they were denied divorce and present in the same building before the Supreme Court the identical case upon identical evidence, and that successfully.

Undoubtedly the cross-examination of parties, developing as it has so frequently matters material has aggrieved, because of the result obtained, both the petitioner and counsel, and I assume that there has been in some quarters complaint made because of my action in some cases.

This particular bill is not dangerous, nor is it in any sense radical. It amounts merely to putting divorce back where it was four years ago, in a situation which then appealed to Justices of the Supreme Court as not being productive of the best results. If this bill was presented from a worthy motive I would feel justified in declining to utter one word of complaint, because if injustice is done under such contemplated legislation it will be not alone the fault of counsel, nor of the court, but rather the fault of the law makers who do not give us proper means by which to determine the facts; and even now I say that if it be found that there is a demand for such legislation from any substantial portion of the responsible members of this Bar,

my objections here expressed should be disregarded and the request granted if it be the pleasure of the committee and the legislature.

It has been said by the proponents of the amendment that there is a widespread demand among the members of the bar for this legislation, and while this may be true I desire to submit for your consideration the following facts which will disclose a condition which is, I think, unknown to the bar, and certainly unknown to the general public many of whom believe that the bar as a whole live upon the profits derived from divorce prosecution. I find on examination of the records that we have in Portland, in active practice, 163 law firms and lawyers, and in this letter I count each law firm, regardless of the number of its members, as one. Of these 163 lawyers and law firms 103 in the year 1916 did not appear of record in a single divorce case; so that we have a balance of 60 who during that year were more or less interested in this kind of work. Of the sixty, 28 appeared in but one case; 12 appeared in two cases; five appeared in three cases; eight appeared in four cases; one appeared in five cases; two appeared in six cases; two appeared in seven cases, and each of two attorneys appeared in 25 cases; a total of 180 appearances for the petitioner. This computation it will be understood does not embrace the cases or appearances of counsel resident outside of Portland; and it will be further remembered, to save confusion on figures later to be given, that the total number of 180 as given is appearances of counsel; not actual cases. To be more definite, in some instances two or more attorneys appeared for the same petitioner in the one case.

Now, then, developing this further I find by rough calculation that two attorneys, constituting less than two per cent of the whole bar, had fifty cases or 28 per cent of the business, that seven lawyers, constituting about four per cent of the total, had 81 cases, or 45 per cent of the total; that fifteen lawyers, constituting about nine per cent of the bar, had 113 cases, or 63 per cent of the business; while 20 lawyers and law firms, constituting about 12 per cent of the total membership of the bar, had 128 cases or about 70 per cent of all entered in this court in 1916. So then, from these figures, I feel justified and well within the truth when I say that the bar as a whole cannot be greatly interested in divorce proceedings. This opinion is confirmed by the declaration of a lack of interest made by attorneys included in the sixty who have had to do with this branch of the law.

Whether the result desired by the justices who suggested the original amendment has borne fruit can best be tested by the results obtained, and to which I will make no reference; but whether there was a need of change I think is apparent from the following excerpts from our records which to me prove beyond contradiction that it was generally recognized that process was being abused and we were fast becoming in fact and reputation the Reno of the East, and this fact becomes more pointed in this connection when it is known that the general price charged divorce immigrants from New York is from $100 to $250.

In the year 1916 there were entered in this Court, eliminating petitions which reopened older divorce matters, a total of

189 cases, and of these the original records were in 3 cases misplaced and are not at this moment obtainable because of the absence of the filing clerk; but of the 186 remaining cases, and examined under my direction, we find that the petitioners in their libels alleged a marriage outside of the State of Maine in 83 instances, while the total number of marriages within the State were alleged at 103, giving us then of foreign marriages almost 45 per cent. of the total entry. In this connection it is only fair to say that some proved beyond any doubt that their residence within the State was in good faith, and of the balance a small number were of those who married in the days when New Hampshire was the Gretna Green for local swain; but deducting from the 45 per cent. as liberally as one may there will yet remain a sufficient number to constitute a respectable divorce colony, especially when it is augmented by the aspirants for marital freedom who are yet in the probationary period of residence or who are merely prospectors.

Perhaps this number who came from other States seeking a divorce is not material; but I must confess that at the times when I have heard discussions and comparisons of Maine with other States that it has provoked me more or less to have reference made to the morals of the State, particularly of its women, and have as proof offered this very matter of the number of divorces granted in proportion to marriages. This brings me then to the production of some proof in support of my contention that we are becoming the Reno of the East, and my first case submitted in proof is, that of the wife of a New York mul-

ti-millionaire who but a short while since engaged a house in our most exclusive residential section where she dwelt for a time, and evidently becoming wearied of the slow march of time suddenly departed for France where she obtained a divorce and a new husband all within a few weeks. A more recent case was that of two sisters who came from New York in company, and here consulted the same attorney. One located in this County and the other in an adjoining County. Each petitioned for divorce in the County of her alleged residence at the same approximate time, and each case came on for hearing at the January term of court in the Counties where the cases were entered. Another case was that of a lady from Northern New York whose boarding place was engaged for her by counsel before she set foot within the jurisdiction of the State, and who later, when he learned that the Court was cognizant of the facts, moved her as one would move a checker on a checker board to another County, where I am told divorce libel was entered and divorce granted, and she departed for her home in New York State. Indeed this case was so well arranged that counsel for the libellant engaged and agreed upon a price with other counsel who were to appear for the husband in order that we might have an apparent jurisdiction and avoid the force of the United States Court rule in Haddock v. Haddock, which is familiar to you all.

Another instance that comes to my mind is that of a lady from southern New England who was twice denied a divorce in her home State, and thereafterwards came to Maine. Under

oath she stated that her reason for the change of residence was that her health would be benefited, and that her change was in no way connected with the idea of petitioning for freedom. She did petition however, and her petition was granted; but it developed that she did have further plans, and those matrimonial, because within a week or two after the decree of divorce, and before the adjournment of the term, she filed her intentions to marry a man from her home city in southern New England. This man it developed was the financial backer of her son in a business venture in Portland and a frequent visitor at their home here, and as further evidence of their intention it was proven that the business which was backed by the husband apparent or presumptive, whichever it may have been, was put in the market for sale immediately after the granting of the decree. The man in this case was well up to seventy years of age, and wealthy, which may explain the situation. Instances of this kind could be multiplied, but I must hasten on, and in anticipation answer a probable contention to the effect that the Bar is complaining of the manner in which this Court has disposed of its business. There have been disposed of in one way or another since this Court was originally granted jurisdiction in divorce a total of well over 700 cases, and of these but one, so far as I can recall, went to the Law Court, and that case is the case of the aged suitor to whom I have hereinbefore referred. The Law Court in that instance sustained the rulings of the Court below. During this period of four years not more than four or five cases have been submitted to a jury and, of

these, two were at the instance and order of the Court; so that it would seem that if any serious fault was to be found with rulings or findings that a more frequent reference would be had to juries, or at least a more frequent appeal to the higher Court. So I submit, considering this fact, and the facts already given relative to the number of attorneys who have engaged in divorce practice, that there is not, and cannot exist, any serious desire on the part of the Bar for a change. I think the influence behind the movement is one which can be traced to one single ruling of this Court, and it will become your duty to determine whether legislation conceived in the atmosphere in which this was conceived is to have the assistance of the Committee and Legislature in an evident attack upon the Court itself. You will be called upon to answer whether you will lend your assistance to litigants or counsel who come into Court and ask a judicial decree of severance of marital bonds and who, when insufficient evidence is produced and the cause is denied, then endeavor to incite reprisals upon the Judge and Court with intent to punish and perhaps besmirch the reputation and standing of both in the community.

The facts then to which I now address myself are that the framer of this amendment came into this Court in December, 1916, and presented a divorce, resting his case upon the single allegation of desertion. His libellant testified, and I am now quoting from the stenographic transcript of the evidence as it is furnished me by the official court stenographer, in answer to questions:

"Q. Did you give her permission to go?

A. Well, I didn't object to her going.

Q. Do you know where she went?

A. She went home to her mother.

Q. In Pennsylvania?

A. Yes, sir.

Q. You knew she was going to go home?

A. Yes, sir.

Q. You knew she was packing stuff and selling it?

A. Yes.

Q. You were there while she was doing it?

A. Yes.

Q. You didn't object to it?

A. No, sir.

Q. You consented that she do it?

A. Yes, sir.

Q. You agreed she should do so and go home?

A. Yes, sir.

Q. Who furnished the money to go down to Pennsylvania?

A. I gave her my last week's wages.

Q. You knew she was going to use that to go to Pennsylvania?

A. Yes, use part of it of course.

Q. You agreed she might go?

A. Yes, sir

Q. You were perfectly willing she should go?

A. Yes, sir.

Q. Did you encourage her going?

A. No, sir.

Q. What did you do to discourage her?

A. As a matter of fact I didn't want her to go.

Q. You have heard, you say, that she had said in Scranton that if you desired her to return she would do so?

A. Yes, sir.

Q. What did you say about that? What was on your mind?

A. I didn't say anything about it.

Q. Didn't you want her?

A. No, sir.

Q. Wouldn't have her?

A. No, sir.

Q. Under any circumstances?

A. No, sir.

Q. So far as you know she would have been with you to this day if you had not given her that choice?

A. Well, I couldn't say but what she would."

The choice referred to was his testimony that he told her that she must do her housework more promptly or get out. The significance of the situation is the remark of counsel for the libellee who said in addressing the Court, when asked if he had any testimony to offer, "No. I was just going to make a suggestion that the libellee does not wish to contest this on the

grounds of desertion, and she is willing that the libellant shall get a decree."

At the end of the case, in a discussion between Court and counsel relative to the effect of the testimony the Court said: "He says he told her to get out; that she took her choice of two things"; and counsel answered, "This is simply a playful term. She decided to get out, and he knew it." The cause was denied, and counsel being aggrieved requested that exceptions be allowed to the Court's ruling, and the request was granted; but the exceptions have not yet been perfected although the time has long passed. Certainly no High School boy with his knowledge of the meaning of the word desertion would seriously contend that a case had been proven by such evidence, and surely if a man testified truthfully that his wife actually left him, and that he would refuse or had refused during the three years required for the running of the legal desertion in such case, no lawyer would contend that a case had been made out.

The difficulty in handling this class of cases is the easy money obtained, and this I fear sometimes blinds the eyes of members of the profession if it does not in truth debauch them. I can say with some certainty that unless a halt is called, and that soon, the Bar as a whole, undeservedly it is true, because of the fact of a few will be brought to a very low level in the mind of the public. I argue seriously that the result of the present laxity of practice is bound to bring attorneys into disrepute, and I will cite some cases in which counsel might well be censured, if not punished, for their acts or omissions to act.

A short time since a resident and business man of this city claimed a residence in an adjoining County, basing it upon the occupation of a room in a boarding house for a period of perhaps 12 hours a week, and upon petition this man was granted a divorce. This man told his wife that he took the room and residence for the purpose of avoiding the jurisdiction of the Superior Court, and that he desired divorce for the purpose of marrying again. A short time before that a girl, a native of one of the northern Counties, left her husband and children in her home town and journeyed to Boston, where for three years and a half she engaged in the business of keeping a boarding house. She came to this city and remained two days, long enough to visit the office of an attorney, have a libel drafted, and returned for signing. She left Portland and returned to Boston, where she remained until the eve of the day of hearing upon the libel. Her counsel knew that she was not in Portland, because it was necessary for him to correspond with her during the interim at an address in Boston. About the same time a woman resident in one of the central Counties came into this city, filed a libel for divorce and alleged her residence in Portland. She produced as her chief witness a man resident in her home town, who corroborated her testimony in which she charged that her husband had compelled her to live a life of shame for his maintenance. A divorce was decreed, and immediately written complaint was made and filed with the Court by the brother of the chief witness in which he set forth, and the development of his statement proved, that

the woman never had a residence in this County, that she was notorious in her home city, that her parents were law breakers, that her chief witness was her paramour and had been living in open and notorious adultery with the libellant for many years. Counsel in this case must have known that the woman was not a resident of Portland. More recently a young woman petitioned for divorce, and it was found that she, at the time of signing her libel and at the time of hearing in Court, was living in open adultery with a young man who had promised to marry her "next Summer" if she was freed from her first marriage. I cannot say in this case that counsel had any knowledge of the facts. This kind of thing must be known to the friends and relatives, and neighbors of these parties, and it is bound to have a baneful effect upon the public mind; and I ask if one dare argue that it is beneficial to society, or that it promotes law and order or creates a respect for the Courts? The effect may be found in the following cases which I recall. A few months since a woman petitioned for her fifth divorce. About the same time a woman witness appeared as a material witness in a fourth divorce hearing within a period of months. Shortly before, two women appeared and corroborated under oath the libellant on material points, and each at a later criminal term pleaded guilty to perjury. More recently a woman petitioned for divorce and disclosed that she was the third of a family to do so, her two sisters having preceded her over the divorce route to freedom, which provoked the remark on the part of one attorney that divorce ran in families like measles.

I recall also the case of an elderly woman who appeared as a petitioner, and called as corroborating witnesses a son and daughter, both of whom had been divorced, although the son was at the time of his appearance in court then living with his divorced wife in his mother's home.

As indicating how far reaching the effect of laxity in divorce has been I will cite the case of a young attorney who requested that court be held open until 1.30 afternoon to hear a matter of great importance to him, as he said. Inquiry being made for the reason for such an unusual request he said he must get a divorce case through because his client must catch an early afternoon train to a distant city within the State where he was to be married that night; and last, but not least, as indicating the moral tone of some petitioners, I will cite three or four separate instances when libellants admitted under oath that they had all arrangements made to remarry. One had engaged the services of a clergyman and had the day set. Another had gone so far as to engage and fit up a tenement, and so on.

I am aware of the fact that many argue it would be conducive to the harmony of society and protection of morals to grant divorces to persons who will not or cannot live together, because they say such a procedure enables the parties to select new partners, which obviates, they say, illicit intercourse. If marriage were based alone upon the gratification of the sexual relation such an argument might be of a little value, especially if it could be shown that characters such as we have in mind ever were faithful to their obligations; but those who advance

this argument lose sight of the fact that the granting of divorce for the purpose of remarriage, and to gratify lust, is but a step removed from license to prostitution, differing only in duration of time and limitation of person, and that the effect of it on the public at large is but little different in the one than the other. I venture to assert that but for the laxity in the administration of the law of divorce past and present, due wholly to inefficient means of determining facts, that many of our present "can't live together folks" would either have remained single or, having married, would endeavor to bear with a little patience the faults of which they complain so loudly in the divorce court, and perhaps a more stringent administration of the law would have acted as a preventive of the many hasty and clandestine marriages from which relief is sought.

The last thought that I would offer for your consideration is that the divorce statutes were enacted as a means of relief for men and women married to unworthy partners; but because of a lack of knowledge of parties on the part of Judges, laxity in the preparation of the cases, if nothing worse on the part of counsel, and perjury on the part of petitioners, the law has now become a laughing stock, and the divorce decree a refuge for harlots, while worthy men and women who have availed themselves of its provisions are classed with the unworthy, until the name of divorcee has become synonymous with all that is bad and unworthy. Would it prove this statement if I could convince you that a woman notorious in her home city in this State, for years the keeper of a house of ill-fame,

if I remember right, convicted for that offense, was actually divorced from her husband upon an allegation of adultery and that at a term of court held in her home town, and that this kind of thing is not confined to this one instance?

I recall recently, under this topic, the instance of a woman who came into the office and asked if she might have a private hearing on her petition for divorce. I explained that we had no private hearings, but that for sufficient cause we occasionally granted hearings in chambers, and from the conversation it developed that she had, so far as I could determine in a brief talk, if her evidence was corroborated, sufficient cause for divorce; and after a time she confided that the reason she called on me without the knowledge of her attorney was for the fear that if the case was heard publicly and got in the newspapers that she would lose caste with her friends and neighbors because, as she said, of the "cattle" who are nowadays obtaining divorce, and she concluded her statement by saying that she would prefer to live her life as she had, one of sorrow, rather than be associated with such people.

Now then, in conclusion, it may be said that the change in the law will insure despatch in the handling of such cases, but the utter folly of such an argument is seen when we consider that the Superior Court has nine terms a year, totaling in all a continuous session of almost ten months; that the Court adjourns from time to time during the Summer vacation, and reconvenes for periods of three or four days to hear non-jury matters, divorce included; while the Supreme Court holds but

three terms in this County of perhaps eight or nine weeks in all. In further contradiction of the claim of despatch in hearing I refer to the rule given to both Courts which requires causes of divorce to lay over for hearing until the term after entry, so that a case in the Superior Court could be heard a month after entry, while in the Supreme Court it must remain unheard by the Court for four months after entry. Another consideration, and one worthy of the attention of the members of the Committee from this section, is that the Justices of the Supreme Court are busily engaged in holding terms, writing opinions, and particularly in passing upon equity matters. So true is this that I may say that neither members of the Supreme Court located in this court house could find time during last Summer to take a vacation.

I trust that you will pardon the length of this statement, which may be more voluminous than is required, and I can plead in extenuation only that I have no means of knowing the reasons which may be advanced in advocacy of the change, and I am compelled to anticipate and hence may have taken your time on items which are not made pertinent by the proponents.

Briefly, then, understand me. I have no desire to argue or be drawn into argument concerning the wisdom of divorce, nor do I desire to oppose the enactment of this law if it be rightfully conceived. Indeed, I might well say that it would relieve me greatly to have the entire divorce jurisdiction put into the Supreme Court, because I can assure you that the hearing of such causes is never entertaining nor elevating.

Again thanking you for your kindness in permitting me to address the Committee through you I am,

Very sincerely yours,

JOSEPH E. F. CONNOLLY.