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Suggested Divorce Reforms for Illinois

Willliam F. Zacharias
SUGGESTED DIVORCE REFORMS FOR ILLINOIS

WILLIAM F. ZACHARIAS*

IN the days when absolute divorce was deemed a judicial impossibility the cry for relief from the chafing bonds of matrimony was met by the action of the Ecclesiastical Court of England in granting divorces a mensa et thoro.1 This remedy, or its statutory counterpart, separate maintenance, was adopted by the great majority of the United States where the power in such matters was usually confined to the jurisdiction of the chancellor.2

The introduction of this type of relief into the realm of American law did not pass without criticism, however, for as early as 1826 Chancellor Kent wrote:

These qualified divorces are regarded as rather hazardous to the morals of the parties. In the language of the English courts, it is throwing the parties back upon society, in the undefined and dangerous character of a wife without a husband, and a husband without a wife.3

But apparently, until quite recent times, the state of Florida was the only American jurisdiction which forbade the granting of limited divorces.4

At a time when the public policy of the community frowned on the dissolution of the marital tie, such limited divorces likely served as a wholesome means to protect the family and society from the ills which were believed

* Member of Illinois Bar; alumnus of Chicago-Kent College of Law; Professor of Law at Chicago-Kent College of Law.

1 See history thereof in 14 CHICAGO-KENT REVIEW 217.

2 Chester G. Vernier, American Family Laws (Stanford University, Cal.: Stanford University Press, 1932), Vol. II, pp. 342-3, notes twenty-seven jurisdictions granting divorce a mensa et thoro, and on p. 471 lists a total of thirty-nine, including twenty-one of the former category, where statutory separate maintenance is granted. This list is now subject to modification by reason of the statutory changes noted hereafter occurring since 1932, the date of the publication of this volume.


to flow from absolute divorce. There are indications, however, that the modern generation has begun to experience doubts as to whether this and similar cures were not worse than the ailment, and the tide of legislative and public expression against such ancient remedies is rising day by day.

The proponents of this newer public policy rely on the contentions that, first, limited divorce prevents remarriage of the disappointed spouses who would be far more likely to find happiness if they were free to select different mates, and second, the divorce *a mensa et thoro*, usually granted on grounds not sufficient to warrant absolute divorce, is open to perversion into a form of legalized "blackmail" by a wife who, while unwilling to perform her marital duties, is nevertheless not unwilling to receive the tribute to her status enforced by such a decree in the form of a separate maintenance allowance. A husband thus "mulcted" for the duration of the marital status might well feel that the law has given sanction to what, in common parlance, is called "gold-digging."

It is not purposed to discuss the correctness of these claims, nor to examine whether they rest on a valid foundation, but rather to see what action has been taken in response to these demands. The investigation becomes more pointed since the decision of the Illinois Supreme Court in *Stallings v. Stallings*, 177 La. 488, 148 So. 687 (1933), in which Rogers, J., comments that the Louisiana statute "was enacted solely for the benefit of the party against whom a judgment of separation from bed and board is rendered, because under the pre-existing law, it was found that persons obtaining such judgments sometimes chose, from religious scruples or otherwise, to rest at that point, refrain from obtaining judgments of final divorce, and thus hold the defendants, with whom, perhaps, they were unwilling to become reconciled, in the position of being neither married nor capable of legally marrying, a position which was not regarded as conducive to good morals or the general welfare." See also files of Chicago Tribune under dates of Jan. 3, 1937; Jan. 6, 1937; Jan. 27, 1937; and March 10, 1937.

In some states the right to secure such divorces is confined solely to the wife. In the others, although the decree may be awarded to either spouse, the records would probably disclose that the successful petitioner is usually the wife. See Vernier, op. cit., Vol. II, p. 343, and Ill. State Bar Stats. (1935), Ch. 68, ¶ 22.
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Court in the case of *DeMotte v. DeMotte*\(^7\) declaring the recently enacted amendment to the Husband and Wife Act\(^8\) to be unconstitutional, because if the newer public policy is as strong as its proponents claim, some other expression thereof will be emanating from the Illinois legislature in the near future.\(^9\)

The laws thus far enacted affecting limited divorce may be classified roughly into three groups: first, those abolishing the remedy or forbidding its use;\(^10\) second, those which permit the remedy but expressly limit the length of its duration;\(^11\) and third, those statutes which, while making no reference to limited divorce, impliedly or by judicial interpretation have been considered as restricting the duration of limited divorces through provisions therein

\(^7\) 364 Ill. 421, 4 N.E. (2d) 960 (1936). See criticism thereof in 4 U. Chi. L. Rev. 338.

\(^8\) Ill. State Bar Stats. (1935), Ch. 68, § 22, which is sec. 1 of "An Act in relation to married men and women" as amended in 1935.

\(^9\) Chicago Sunday Tribune, Jan. 3, 1937, part I, p. 13, devotes one-half page to a criticism of existing laws affecting the marital relationship.

\(^10\) Florida, Comp. Gen. Laws 1927, Vol. II, second division, Title III, Ch. X, art. 13, sec. 4982, reads: "No divorce shall be from bed and board, but every divorce shall be from bonds of matrimony." West Virginia, Acts of 1935, Ch. 35, sec. 20, pp. 164-5, provides in substance that all existing decrees *a mensa et thoro* may be revoked on joint application, or either party may proceed to have the same made final, and that all pending suits for limited divorce shall be converted forthwith into suits for absolute divorce or withdrawn.

\(^11\) DISTRICT OF COLUMBIA, Civil Code, Ch. 22, sec. 966 (as amended by 74th Congress, First session, Public Act No. 252, effective Aug. 7, 1935) provides for conversion of separate maintenance decree into absolute divorce two years after its rendition. LOUISIANA, Gen. Stat. 1932, Vol. I, Ch. 4, sec. 2209, permits conversion of the limited divorce by the successful party at the end of one year, and if not so done, the other party may apply for the same sixty days thereafter. MINNESOTA, Gen. Laws 1935, Ch. 295, sec. 1, amends Mason's Minn. Stat. 1927, sec. 8585, by authorizing a separate suit for absolute divorce five years after decree for limited divorce. NORTH DAKOTA, Laws of 1933, Ch. 105, sec. 5, p. 157, directs revocation of the limited divorce four years after rendition "if it shall be made to appear . . . that reconciliation between the parties is improbable." VIRGINIA, Michie's Code 1930, sec. 5115, permits spouse securing the limited divorce to convert the same into absolute divorce at expiration of three years where no reconciliation has taken place, and either party may so request after five years. If the limited divorce was granted for desertion, the five-year period is measured from the date of the separation and not the decree. WISCONSIN, Gen. Stats. 1935, Ch. 247.07 p. 2270, makes the act of living apart for five years or more, pursuant to a decree for divorce from bed and board, without request for reconciliation, ground for absolute divorce, but requires that six months of the period be subsequent to effective date of act.
allowing an absolute divorce where the parties have not cohabited for the statutory period. These statutes differ in context, but all are based on the proposition that where a husband and wife have lived apart for a period of time, without any intention ever to resume conjugal relations, the best interests of society and the parties themselves will be promoted by a dissolution of the marital bond.

These statutes, however, have not been free from problems of interpretation and have given rise to difficulties on five major issues: first, whether fault should be considered in determining who might sue for the divorce; second, whether alimony should be granted in the event of dissolution of the marriage; third, whether the separation should be voluntary; fourth, whether the separation should be total and absolute; and fifth, whether the statute should be construed only as prospective in nature. The courts obliged to solve these difficulties have generally responded with liberal answers and have granted absolute divorces without regard to the fault of the petitioner in causing the separation, except, perhaps, in

12 Acts in this class provide, in addition to absolute divorce on the ground of willful desertion, for a new ground for divorce arising from lack of cohabitation for the statutory period. See ARIZONA, Session Laws 1931, Ch. 12 (five years); KENTUCKY, Acts of General Assembly 1936, Ch. 25, p. 63, approved Feb. 18, 1936 (five years); NEVADA, Laws of 1931, Ch. 111, p. 180 (five years); NORTH CAROLINA, Public Laws 1933, Ch. 163, p. 143 (two years); RHODE ISLAND, Gen. Laws 1923, Ch. 291, sec. 3 (ten years); TEXAS, Vernon's Anno. Rev. Civil Stats. 1925, Vol. 13, Title 75, Ch. 4, art. 4629 (ten years); WASHINGTON, Remington Rev. Stat. Anno. 1931, Title 6, Ch. 12, sec. 982 (five years).

13 Schuster v. Schuster, 42 Ariz. 190, 23 P. (2d) 559 (1933); Hale v. Hale, 137 Ky. 831, 127 S. W. 475 (1910); Brown v. Brown, 172 Ky. 754, 189 S.W. 921 (1916); Ward v. Ward, 213 Ky. 606, 281 S.W. 801 (1926); Best v. Best, 218 Ky. 648, 291 S.W. 1032 (1927); Clark v. Clark, 21 Ky. L. Rep. 955, 53 S.W. 644 (1899); Parker v. Parker, 31 Ky. L. Rep. 1228, 104 S.W. 1028 (1907); Raymond v. Carrano, 112 La. 869, 36 So. 787 (1904); Hava v. Chavigny, 143 La. 365, 78 So. 594 (1918); Goudeau v. Goudeau, 146 La. 742, 84 So. 39 (1920); North v. North, 164 La. 293, 113 So. 852 (1927); Cooke v. Cooke, 164 N. C. 272, 80 S.E. 178 (1913); Long v. Long, 206 N. C. 706, 175 S.E. 85 (1934); Campbell v. Campbell, 207 N. C. 125, 176 S.E. 250 (1934); Guillot v. Guillot, 42 R. I. 230, 106 A. 801 (1919); McKenna v. McKenna, 53 R. I. 373, 166 A. 822 (1933); Smith v. Smith, 54 R. I. 236, 172 A. 323 (1934). Later cases from North Carolina have narrowed the cause for divorce to apply only where the separation for the statutory period has been "mutual" under an express or implied separation agreement; hence fault may now bar the petition. The statute reads, in part, that "when there has
those cases where the statute expressly restricts the remedy to the innocent person, or has been interpreted so to mean by the courts of the state. Decrees thus granted, however, usually recognize the right of the innocent person to claim alimony in place of the allowance provided by the prior limited divorce so that the punitive effect of the decree is still preserved as a deterrent to marital misconduct.

In only two instances do such statutes expressly characterize the kind of separation essential to secure such an absolute divorce by describing it as “voluntary,” but the courts of several states have held that this is a requisite so that no divorce would be granted where the separation was induced by the incarceration of one spouse in an institution for the insane, though a distinction has been a separation of husband and wife, either under deed of separation or otherwise... the marriage may be dissolved. Michie’s North Carolina Code 1931, sec. 1659 (a). The North Carolina Supreme Court, however, has seemingly disregarded the use of the phrase “or otherwise.” See Parker v. Parker, 210 N. C. 264, 186 S.E. 346 (1936); Reynolds v. Reynolds, 210 N. C. 554, 187 S. E. 768 (1936); and Hyde v. Hyde, 210 N. C. 486, 187 S. E. 798 (1936).

14 Louisiana, Gen. Stats. 1932, Vol. I, Ch. 4, sec. 2209, gives the innocent spouse a preference in making the application.
15 Pierce v. Pierce, 120 Wash. 411, 208 P. 49, 51 A. L. R. 767 (1922); McGarry v. McGarry, 181 Wash. 689, 44 P. (2d) 816 (1935). But see Evans v. Evans, 182 Wash. 297, 46 P. (2d) 730 (1935), where the court appears to have granted a divorce on the statutory cause without deciding whether defendant was at fault in causing the separation. Jakubke v. Jakubke, 125 Wis. 635, 104 N.W. 704 (1905); Krause v. Krause, 177 Wis. 165, 187 N. W. 1019 (1922); Rooney v. Rooney, 186 Wis. 49, 202 N.W. 143 (1925).
16 Lacey v. Lacey, 95 Ky. 110, 23 S. W. 673 (1893); Newsome v. Newsome, 95 Ky. 383, 25 S. W. 878 (1894); Irwin v. Irwin, 105 Ky. 632, 49 S. W. 432 (1899); Hale v. Hale, 137 Ky. 831, 127 S. W. 475 (1910); Howell v. Howell, 206 N. C. 672, 174 S. E. 921 (1934); State v. Henderson, 207 N. C. 258, 176 S. E. 758 (1934); Cole v. Cole, 27 Wis. 531 (1869).
17 Wisconsin, Gen. Stats. 1935, Ch. 247.07, p. 2270, recites: “(7) whenever the husband and wife shall have voluntarily lived entirely separate and apart...” See also Thompson v. Thompson, 53 Wis. 153, 10 N.W. 531 (1881); Krause v. Krause, 177 Wis. 165, 187 N. W. 1019 (1922); Sanders v. Sanders, 135 Wis. 613, 116 N. W. 176 (1908); Williams v. Williams, 122 Wis. 27, 99 N. W. 431 (1904). Texas, Vernon’s Anno. Rev. Civ. Stats. 1925, Vol. 13, Title 75, Ch. 4, art. 4629, commences: “Except where the husband or wife is insane, a divorce may be decreed...”
been drawn where the insanity arose after the statutory period had run. The same principle has been applied in the case of imprisonment for crime in a jurisdiction where imprisonment for felony was not, itself, a cause for absolute divorce, though there is also authority that this fact should not affect the right to divorce inasmuch as the defendant's own fault caused the involuntary separation.

The statutes are unanimous, however, in requiring that the separation be total and absolute, so that a mere refusal to perform one or some of the marital duties would not be sufficient, but if there is an absolute and clear break in the matrimonial cohabitation, it does not seem to matter whether the parties live in the same building thereafter or not. Furthermore, these statutes either expressly or by interpretation, have been held to apply retroactively to separations or limited divorces existing at the time of and prior to the effective date of the several acts so as to permit immediate redress in those cases which have given rise to the present clamor for relief.

It will be remembered that by the unconstitutional enactment in 1935 the Illinois legislature attempted to introduce into the law most of these same ideas for this state but with one innovation: that of drawing a distinc-

21 Davis v. Davis, 102 Ky. 440, 43 S. W. 168 (1897).
23 Stewart v. Stewart, 45 R. I. 375, 122 A. 778 (1923), holding that where wife occupied one apartment in building owned by husband and he occupied another for statutory period the parties had "lived apart" as contemplated by the legislature, but see also cases cited in note 22.
25 Ill. State Bar Stats. (1935), Ch. 68, ¶ 22.
tion between cases where the marriage had proved fruitful and those from which no issue had sprung, or if any had been born, were not living at the time of the suit. The majority opinion of the Illinois Supreme Court declaring the act unconstitutional\(^2\) neglected to consider whether such classification was reasonable or not. Without any further examination of this point, it is interesting to note that none of the statutes under consideration attempts any such classification. The first statute of North Carolina enacted in 1931\(^2\) was so worded as to apply only in cases where no children had been born to the spouses, but this provision was deleted in 1933; so the present statute of that state applies to all married persons.\(^2\)

In the light of these other statutes and the problems that have arisen under them, a proposal now pending before the current session of the Illinois legislature is entitled to more than passing reference. This proposal, designed to strike at the alleged evils of limited divorce, defers to the criticism made by the court in the DeMotte case\(^2\) of the earlier attempt to refashion the Illinois divorce laws and purports to amend the Illinois Divorce Act\(^2\) by adding a tenth ground for absolute divorce. As offered, the text reads:

(b) Either party to the said marriage shall be entitled to obtain a divorce and dissolution of such marriage contract regardless of any question of injury, fault, misconduct, or culpability if it shall be adjudged, in the manner in this Act provided, that the parties to the said marriage have been living separate and apart without cohabitation with each other for a period of two years consecutively, immediately before the filing of a complaint for divorce hereunder, and shall then so be living separate and apart, whether such period of living separate and apart shall have commenced before or after the enactment hereof, and regardless of whether or not there shall theretofore have been entered an order for tem-

\(^{26}\) DeMotte v. DeMotte, 364 Ill. 421, 4 N. E. (2d) 960 (1936).
\(^{27}\) Laws of 1931, Ch. 72, and Michie's No. Car. Code, 1931, sec. 1659 (a).
\(^{28}\) North Carolina, Public Laws 1933, Ch. 163, p. 143.
\(^{29}\) 364 Ill. 421, 4 N. E. (2d) 960 (1936).
\(^{30}\) Ill. State Bar Stats. 1935, Ch. 40.
porary alimony or a decree for support and maintenance, and regardless of whether there shall then be pending or theretofore shall have been pending any complaint for divorce or support and maintenance. If an order or decree for maintenance and support shall have been entered in any proceeding between the parties to a proceeding for divorce under the provisions of this paragraph, the provisions of this paragraph shall apply regardless of whether such order or decree for maintenance and support shall have been entered before or after the enactment of this Act.

(c) When a divorce shall be decreed for the cause specified in paragraph (b) of this Section, the parties thereto shall not thereby lose dower nor the benefit of any jointure between them unless the court entering such divorce decree shall find therein that one of the parties has been guilty of any such fault or misconduct as would have entitled the other party to a divorce for any cause or causes specified in paragraph (a) of this Section, and, if the court so finds, the said court may make such further order touching or concerning dower rights or any jointure between the parties to the marriage thereby dissolved as from the nature of the case shall be fit, reasonable, and just, and declaring the rights of dower or rights under any jointure shall be forfeited by the person so found guilty of fault or misconduct aforesaid, regardless of whether the party guilty of such fault or misconduct shall be the plaintiff or the defendant, and such rights thereupon shall be forfeited.\(^{31}\)

Analysis of this measure discloses the following: first, that the proposed new ground for divorce will permit the granting of the decree at the request of either party and will thus clarify the ambiguity apparent in the former amendment;\(^{32}\) second, that fault shall not be a determinant in deciding the issue;\(^{33}\) third, the separation must

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\(^{31}\) Only the pertinent parts of S. B. 179 have been given. The measure, introduced in the Illinois Senate by Senator R. V. Graham on March 9, 1937, re-enacts the text of Illinois State Bar Stats. (1935), Ch. 40, ¶ 1, as it reads at present and then adds the two new paragraphs quoted above. Sec. 10 of the existing act is also amended in the new measure to relieve actions based on this new cause from the defenses of collusion, etc., referred to therein. See also on this last point Guillot v. Guillot, 42 R. I. 230, 106 A. 801 (1919).

\(^{32}\) Ill. State Bar Stats. (1935), Ch. 68, ¶ 22, concluded with the words that the separation under the limited divorce "shall be, for the purpose of divorce, regarded as desertion by the husband or wife." See also note on the DeMotte case in 4 U. Chi. L. Rev. 338 (1937).

\(^{33}\) This provision should relieve the Illinois courts of a problem which has vexed others. See cases cited in note 13.
be total and complete to justify the decree;\textsuperscript{34} fourth, that, as in the case of willful desertion, the separation must be for the entire statutory period or longer, must be consecutive and not intermittent, and must be measured from the time of filing the complaint; fifth, the act is expressly made retroactive as well as prospective;\textsuperscript{35} sixth, this cause is not affected by either the prior allowance of temporary or permanent separate maintenance\textsuperscript{36} or by a pending suit for divorce or separate maintenance; and seventh, dower and property rights are not affected by a divorce predicated on this ground unless either party could have secured an absolute divorce on some other of the existing nine grounds.\textsuperscript{37}

It will be noted that the proposed act does not abolish separate maintenance as a remedy\textsuperscript{38} though a companion proposal seeks to modify the Illinois Husband and Wife Act\textsuperscript{39} by limiting the recovery of the allowance therein provided until "the termination of the marriage of the said parties by any valid decree of divorce from the bonds of matrimony. . . ."\textsuperscript{40} It is, therefore, intended that this remedy shall continue and may, if both the parties so elect, be as permanent as it has been heretofore. It is more natural to suppose, though, that such decrees will probably not outlast the two-year period required to establish the new cause for absolute divorce, and will really operate only as a stop-gap to secure tem-
porary support for the spouse applying therefor during that time.

The same measure also contains a suggestion of amendment to Section 15 of the Divorce Act relating to the allowance of temporary alimony during the pendency of a suit for absolute divorce based on this new cause, which amendment, in effect, provides for allowance thereof by the court on condition that if any prior order for support shall have been entered in any proceeding between the parties and should still be in force and effect, then such prior order may be stayed or vacated. Provision is likewise made for the amendment of Section 18 relating to permanent alimony and support money, under which the court may still grant such allowance but subject to the condition that only one decree may be operating between the parties after dissolution of the marriage, and that one only so long as the recipient of such provision remains unmarried.

It appears, therefore, that the framers of the new measure have borne in mind most of the difficulties which have arisen under the statutes of the other states and have drafted an act which is explicit on these points. There is occasion, though, to notice that the act does not characterize the kind of separation necessary. Use of the term "voluntary" has not been regarded essential in the other jurisdictions having similar laws, but, as has already been noted, the courts have treated these statutes as having that significance. The expression "voluntarily separated" is rather an unfortunate choice since it does not properly describe the situation where the parties are living apart under a decree of limited divorce, in which case, unlike that where a private separation

41 S. B. 179.
42 Ill. State Bar Stats. (1935), Ch. 40.
43 S. B. 179. See Howell v. Howell, 206 N. C. 672, 174 S. E. 921 (1934), holding that divorce decree did not terminate obligation to support as provided in prior limited divorce decree.
44 See cases cited in notes 18-21 inclusive.
agreement exists, the guilty person is kept away by threat of contempt of court rather than because of his or her own desire. The term would undoubtedly be given the same meaning already judicially applied to divorce for willful desertion, that is, that a separation pending determination of a suit for separate maintenance or divorce is a separation impliedly "with consent," hence "voluntary." Statutory recognition of this point would be advisable, though, in order that the rights of an insane spouse might not be prejudiced by too loose an interpretation of the language found in the proposed measure.

Another criticism could be levelled at that portion of paragraph (b) reciting that divorce on this new ground might be granted "regardless of whether there shall then be pending . . . any complaint for divorce. . . ." It is possible to conceive of the situation where one spouse has been guilty, for example, of willful desertion, which by statute in Illinois requires an absence of not less than one year, and a suit instituted by the other based thereon which suit could easily be still pending one year later, yet one day later the guilty person could initiate another suit predicated on the statutory cause proposed and be entitled to a decree despite the other's diligence. Except for the possibility of compelling a merger or consolidation of the two causes, the innocent spouse is thus unjustly and unnecessarily obliged to appear in two proceedings.

45 Ill. State Bar Stats. (1935), Ch. 40, § 1. It must be remembered that the proposed measure does not seek to eliminate any of the existing causes for divorce so that the innocent spouse may still predicate a suit for absolute divorce on any ground named therein. More complicated still would be the problem of divorce on the ground of habitual drunkenness which, in Illinois, must continue for the same period of two years.

46 Ill. State Bar Stats. (1935), Ch. 110, sec. 179 (Civil Practice Act, sec. 51) provides: "... actions pending in the same court may be consolidated, as an aid to convenience, whenever it can be done without prejudice to a substantial right." Sec. 176(d) of the same statute (Civil Practice Act, sec. 48) permits the use of a motion to dismiss for lis pendens only when the other action pending is based on the same cause. It would seem, therefore, more appropriate to compel the accused spouse to notice the first suit for trial and secure a disposition thereof before being permitted to institute the suit on the new ground. For the use of cross-complaint in such cases see McKenna v. McKenna, 53 R. I. 373, 166 A. 822 (1933).
Except for these minor considerations the measure seems adequate to meet the first of the demands for relief made by the proponents, that is, a dissolution of the bonds of matrimony rather than a perpetuation of the former state of "holy deadlock" which arose from the old decree of divorce a mensa et thoro. If not subjected to extensive amendment during passage through the legislature, this tenth ground should in fairly short order become the leading cause for divorce in this state. With the existence of such an easy and amicable route open to release from the tie that "binds," it should outrank even the facility to a default divorce arising from the mild interpretation given to the cause described in the statute as "extreme and repeated cruelty." Lest it prove too enticing, the legislature might consider whether the period of separation should not be increased, for only in Louisiana is it shorter, and it is generally far longer, ranging from four years in North Dakota, five years in Kentucky, Minnesota, Nevada, Virginia, Wisconsin, and Washington, to ten years in the states of Rhode Island and Texas. Two acts, those of the District of Columbia and North Carolina, have the same period as that of the proposed measure. Furthermore, to prevent the courts of this state from becoming divorce mills, some restriction might preferably be added to confine the remedy to residents of Illinois on separations commencing within this state.47

The proponents of the measure are probably wise in refraining from dealing with the annoying problem of

47 The North Carolina statute requires that the plaintiff in the suit must have resided in the state for the statutory period but is silent as to whether the separation must have originated therein or could have commenced elsewhere. Michie's Code, 1931, sec. 1659a. The residence requirement in Illinois is one year except for marital misconduct occurring within the state. Ill. State Bar Stats. (1935), Ch. 40, § 3. On the general problem of migratory divorce, see Joseph H. Beale, A Treatise on the Conflict of Laws (New York: Baker, Voorhies & Co., 1935), Vol. I, sec. 110.4, p. 472, et seq. By way of comparison see also article in Chicago Tribune, March 11, 1937, p. 1, col. 1, for statistics and data on the appeal for the divorce business made by the states of Nevada, Idaho, Florida, and Arkansas.
permanent alimony after an absolute divorce, which, under the guise of permanent separate maintenance, has seemed so irksome a burden to some. The award of permanent alimony has always been a matter for the discretion of the court under the Illinois Divorce Act and presumably will continue in its discretion hereafter. To say that none should be awarded where the divorce is granted on this new ground would make marriage a mere substitute for an illicit relationship with none of the dangers or disgraces which attach to the latter. The complaints of "gold-digging" are, therefore, likely to continue as long as some human beings insist on mating without a thought of the future.

48 See note 5.
49 Ill. State Bar Stats. (1935), Ch. 40, § 18. In Irwin v. Irwin, 105 Ky. 632, 49 S. W. 432 (1899), the court said: "It was not the intention of the statute that a wife should be awarded alimony without reference to the question as to whether she was at fault or not, where the divorce is granted solely upon the ground of living separate and apart. The question of fault on the part of the wife is always material in passing on the question of alimony ...."