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## THE HIGHER LAW OF DIVORCE.

160.  
All the States in the Union save South Carolina have divorce laws, more or less difficult of application, which enable a worthy woman to free herself from the incubus of a thorough scamp of a husband, or an honorable man to turn out of his household a depraved being who would endanger the purity of the family blood. In South Carolina the inviolability of the marriage tie is based on the uncertain sentiment of morality. It would not be violent to say the sentiment is a perverted one. The other States have erected their codes on the more practical idea of expediency. South Carolina holds that the "immorality" of divorce overrides the absurdity of holding an incompatible couple in hateful bonds for life. The other States while generally discouraging divorces by interposing obstacles and delays, wisely recognize the fact that the bonds of matrimony cease to be holy when God has not blessed the union with love and respect, or when one or both the spouses have ceased to deserve either.

A case has just been decided on appeal by the Supreme Court of South Carolina, in which Judge Izlar held that a divorce granted by a Florida court would not be recognized by South Carolina when it is contrary to its views of public policy and morality. The higher law of sentiment is thus interposed as a bar to that comity of States which has existed for more than a century, and has for that time been one of the guarantees of the constitution of the United States. "Full faith and credit shall be given in each State to the public acts, records and judicial proceedings of every other State." The case decided by Judge Izlar was one arising from a decree of divorce granted to Thomas M. Peoples, who lived in South Carolina and married there. He afterwards went to Florida, secured a divorce, remarried there and afterwards returned to South Carolina.

Prior to obtaining the Florida divorce, which was the result of due judicial proceedings, Peoples became a citizen of the State, and was entitled to go with the wife, whom he afterwards married, to any other State of the Union and carry with him both as to himself and wife the status established for them by the Florida decree of divorce and marriage authorized by the laws of that State. Judge Izlar, in pronouncing the divorce invalid and the subsequent marriage null, illegitimized the children by the second marriage and put an unexpected and astonishing stigma upon them. "The citizens of each State shall be entitled to all the privileges and immunities of citizens in the several States." Yet Peoples and his wife, though lawfully married in Florida, of which State they were citizens when they removed to South Carolina, were there branded with shame and their children with illegitimacy. This extraordinary decree is based upon what Judge Izlar conceives to be the South Carolina idea of "morality," in which the guarantees of the constitution occupy a lower plane. The Judge quotes the American doctrine of divorce, as laid down by Stewart in his *Encyclopedia of Law*, in which it is held:

"That every State has the right to regulate its own domestic policy, to determine the status of its own citizens, and to choose for itself the terms and conditions under which its own courts shall grant divorces, and a divorce granted in accordance with its laws must be valid within its own territory. But no State has primarily the right to push its domestic policy beyond its boundaries and into other States, or to dissolve the marriage or change the domestic status of persons belonging to other States, and the acts of one State have force and authority in other States only by consent of such States; that is to say, by the comity of nations or international law, or by virtue of some paramount law such as the United States Constitution or a treaty between nations."

We do not see a word to change in the above quoted authority. The fault is in Judge Izlar's application. When Peoples and his wife removed to South Carolina they were citizens of Florida, and their connubial relations were strictly protected by the constitution, which gave them the right to plead the judicial proceedings of one State to entitle them to respect in another. The case presents a Federal question, which entitles Peoples' children by the second marriage to a standing in the United States Supreme Court. It is more than probable that if a writ of error be taken, Judge Izlar's doctrine of higher law based on arbitrary notions of morality, will be set aside for the more practical requirements of the constitution.