FROM CONSTITUTION TO CONSTITUTION, 1868-1895: SOUTH CAROLINA'S UNIQUE STANCE ON DIVORCE

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AT THE DAWN OF THE TWENTIETH CENTURY, SOUTH CAROLINA held the distinction of being the only state that did not allow divorce. Not only did South Carolina lack statutory authority for divorce, but the 1895 state constitution included a specific prohibition: "Divorces from the bonds of matrimony shall not be allowed in this state." Following ratification of that constitution, historian Edward McCrady boasted, "there never has been a divorce in South Carolina — province, colony, or State — except during the Reconstruction period after the war between the States, under the government of strangers, adventurers, and negroes, upheld by Federal bayonets." Whether this claim should have elicited the pride McCrady's statement revealed is a matter of interpretation, but his account about the absence of divorce in South Carolina, with the exception of the Reconstruction era, is accurate. For seventy-one years, while every state in the nation allowed divorce, South Carolina stood alone, consistently refusing to grant divorces to its citizens. Why did South Carolinians resist divorce for so long? Historian Yates Snowden pondered that question and confessed the state's unique stance puzzled him. He mused to a friend in 1916 that he would "give a prize of $50 for an explanation."[1]

In an effort to understand why a majority of South Carolinians in the postbellum era continued to favor this austere position against divorce, this article explores the public debates surrounding attempts to enact divorce legislation in South Carolina between 1868 and 1895. The Reconstruction constitution of 1868, approved by Republicans to fulfill the federal govern-

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[1]The divorce clause of the 1895 constitution appears in Article XVII, Section 3. John R. Millar, Jr., "A Study of the Changes of Divorce Legislation in South Carolina" (Ph.D. diss., Florida State University, 1954), pp. 73-74. Millar's dissertation primarily examines issues in the 1940s, leading to a 1949 constitutional amendment allowed divorce on the grounds of adultery, desertion, physical cruelty, and habitual drunkenness; it provides only a cursory look at nineteenth-century discussions on divorce. Edward McCrady, *History of South Carolina Under the Proprietary Government* (New York: MacMillan Co., 1897), p. 11. James Hagy, "Her 'Scandalous Behavior': A Jewish Divorce in Charleston, South Carolina, 1788," *American Jewish Archives* 41 (1989), pp. 185-198, describes a Jewish court in Charleston which granted a divorce to a Jewish couple in 1788 that South Carolina's secretary of state later recorded in miscellaneous records. Snowden's quotation is in John J. McMahan to Charles P. Calvert, Mar. 29, 1916, John J. McMahan Papers, South Caroliniana Library, University of South Carolina, Columbia.

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ment's mandate for readmission to the Union following the Civil War, launched postbellum debates concerning divorce by allowing enactment of a divorce law. For the next three decades, divorce remained a topic of discussion until South Carolina convened another constitutional convention in 1895, whose primary purpose was to disfranchise African-American voters and codify the state's repudiation of Reconstruction. The 1895 constitution explicitly banned divorce and required a constitutional amendment as a prerequisite for any divorce legislation. South Carolinians' reluctance to amend the constitution that enshrined white supremacy kept in place a constitutional ban on divorce for more than half a century.

South Carolina established its uniqueness on the divorce issue in the antebellum era. Though the southern colonies collectively refused to grant divorces, soon after independence their legislatures began reversing these prohibitions. In 1790 Maryland became the first southern state to facilitate divorce through legislative acts. North Carolina followed in 1794 and Georgia in 1798. Tennessee pioneered judicial divorces by enacting a law that permitted divorces through the courts. With the exception of South Carolina, all other southern states followed with divorce laws, beginning with Georgia (1802), Alabama and Mississippi (1803), Arkansas (1807), Kentucky (1809), North Carolina (1814), Florida, Virginia, and Louisiana (1827), and Texas (1841).[2]

South Carolina's insistence on denying divorce during the antebellum period seems to have been a rigid means of upholding the patriarchal structure which had served as the essential underpinning for both the family and slavery. As a slaveholding society, South Carolina apparently was unwilling to allow exceptions or demonstrate flexibility in one domestic institution for fear that it might weaken the other patriarchal institution. Other southern states were equally committed to preserving patriarchy and the institution of slavery, but not with the same rigidity as South Carolina. Consistent with its radicalism on issues such as nullification and secession, South Carolina staked out a more radical position defending patriarchy by prohibiting divorce. South Carolina never wavered from this position against divorce as long as slavery existed in the state.[3]

[2]Jane Turner Censer, "'Smiling Through Her Tears': Ante-bellum Southern Women and Divorce," *American Journal of Legal History* 25 (January 1981), pp. 24-47; Roderick Phillips, *Untying the Knot: A Short History of Divorce* (New York: Cambridge University Press, 1991), pp. 142-144; Glenda Riley, *Divorce: An American Tradition* (New York: Oxford University Press, 1991), pp. 34-43. Most states continued to grant both judicial and legislative divorces until the burden that legislative divorces put on legislatures' time encouraged them to surrender this authority permanently and exclusively to the courts.

[3]Victoria Bynum demonstrates how North Carolina defended patriarchy with its divorce legislation in "Reshaping the Bonds of Womanhood: Divorce in Reconstruction North Carolina," *Divided Houses: Gender and the Civil War* (New

South Carolina in the antebellum era was equated with economic prosperity, political prominence, and unquestioned white domination of a slave society. Emancipation, however, altered South Carolina's economic and social structure which had rested on the institution of slavery. White South Carolinians viewed the Reconstruction that followed the Confederacy's defeat as a corrupt and degenerate era when blacks and despised outsiders imposed an unwanted government upon them. Although oversimplistic and exaggerated, white South Carolinians associated divorce legislation with the so-called Black Republicans who governed during Reconstruction and that association fueled their determination to eliminate divorce as a vestige of that era. Moreover, in the postbellum era, economic dependence, impoverishment, illiteracy, and racial strife characterized the Palmetto State. By the late nineteenth century, South Carolina's low per capita income and exceptionally high illiteracy rates stood in stark contrast to its antebellum pride and prosperity. Postbellum opponents of divorce legislation never invoked economic considerations to justify their positions, but every debate on the topic included references to state pride and uniqueness. South Carolinians could not resurrect the slave system, which had sustained their state's antebellum prominence, but they could cling to the state's stern antebellum insistence on permanent marriage as a remnant of the fallen patriarchal system. This article will demonstrate how opposition to divorce between 1868 and 1895 became a symbolic issue for many South Carolinians who fought to retain the state's unique stance against divorce in an attempt to bolster state pride, distance themselves from the abhorrent connotations of Reconstruction, and vicariously recapture a semblance of their state's antebellum glory.

1868

Public debate over divorce in South Carolina began at the state's Reconstruction-era constitutional convention that convened in Charleston in 1868. Upon ratification of South Carolina's new constitution, the following clause was included in the document: "Divorces from the bonds of matrimony shall not be allowed but by the judgment of a court, as shall be prescribed by law." Seemingly straightforward and a radical departure from the state's consistent antebellum position against divorce, this clause was

York: Oxford University Press, 1992), pp. 320-333. See Lacy K. Ford, Jr., *Origins of Southern Radicalism: The South Carolina Upcountry 1800-1860* (New York: Oxford University Press, 1988) for an explanation of how nullification and secession illustrate South Carolina's more extreme means of defending slavery. For an elaboration of the relationship between the defense of patriarchy and South Carolina's proslavery radicalism, see Stephanie McCurry, *Masters of Small Worlds: Yeoman Households, Gender Relations, and the Political Culture of the Antebellum South Carolina Low Country* (New York: Oxford University Press, 1995).

actually a compromise that emerged from diverse and strongly held convictions on the subject. While the inclusion of this statement in the constitution paved the way for divorce, legislation was necessary before divorces could be obtained in South Carolina.[4]

Having received at least two petitions seeking accommodation for divorce in South Carolina, delegates at the convention wrestled in committee with these requests. On February 27, five weeks into the convention, the divorce issue came before the entire body. The arguments put forth in this debate encapsulated much of the controversy concerning the legality of divorce that would persist in South Carolina through the mid-twentieth century. Opponents of divorce used the Bible to marshal evidence against this attempt to permit the dissolution of marriage. Believing that the marriage bonds were sacred and ordained by God, Robert C. DeLarge, a Charleston delegate who had been a member of the port city's antebellum free-black community, advanced a religious objection to divorce. In his zealousness to refute his colleagues, however, DeLarge misquoted the Bible, declaring, "What God hath put asunder let no man join together." This misstatement diluted his argument and invited sarcastic remarks from his opponents.[5]

Supporting DeLarge's position was his fellow Charleston delegate William McKinlay. McKinlay was doubtless a friend of DeLarge's since both men belonged to the Brown Fellowship Society, a prestigious benevolent organization that had been maintained exclusively for free mulattos. Divorce, McKinlay argued, was inconsistent with holy scripture; therefore, he encouraged delegates to exercise caution as they considered any alteration in the sacred tie of marriage. Although not married himself, McKinlay wanted to insure the institution's sanctity in case he sought that status in the future.[6]

While opponents of divorce relied on biblical evidence to bolster their claims for perpetual marriage, advocates of a divorce law were not remiss in their use of the Bible. Benjamin F. Randolph, an Orangeburg delegate, asserted that in certain situations divorce was "necessary and right." Born a free black in Kentucky and educated at Oberlin College in Ohio, Randolph had served as a Methodist chaplain in the U.S. Army during the Civil War, a post which had brought him to South Carolina. Believing that New Testament teachings clearly allowed for divorce, Randolph claimed that a

[4]*Proceedings of the South Carolina Constitutional Convention of South Carolina*, 1868 (New York: Arno Press, 1968), pp. 898 (quotation), 260-261, 356, 409.

[5]Ibid., pp. 621-624; Thomas Holt, *Black over White: Negro Political Leadership in South Carolina during Reconstruction* (Urbana: University of Illinois Press, 1977), pp. 11, 231.

[6]Holt, *Black Over White*, pp. 11, 65, 236; *Proceedings*, p. 624.

legislator's Christian duty necessitated creating provisions for divorce in the law.[7]

Divorce proponents, however, extended their argument into the domain of human experience. Jessie S. Craig, a white delegate from Colleton, directly addressed the problems that strict prohibitions on divorce had inflicted on men and women across the state. It was obvious to "any intelligent man," Craig maintained, that many South Carolinians had endured immeasurable unhappiness from the absence of a divorce law. A Darlington delegate, Benjamin F. Whittemore, continued Craig's line of reasoning. Serving as the convention's vice-president, Whittemore was a Republican "carpetbagger" from Massachusetts and a Methodist minister who, like Randolph, had served as a chaplain in the U.S. Army. Whittemore pointed to the practical need for divorce to remedy problems that inevitably arose in the course of human relationships. Cognizant of the pride many South Carolinians exhibited toward the state's consistent prohibition of divorce, Whittemore claimed that this pride was misplaced. To illustrate this point, Whittemore cited an infamous case in South Carolina of a man who unknowingly had married his aunt and was unable to dissolve the marriage once he discovered the kinship connection. Whittemore believed that compassion compelled the delegates to provide South Carolinians with the opportunity for relief from "their unfortunate domestic alliance[s]."[8]

Christopher Columbus Bowen, a Charleston delegate, neither cloaked his defense of divorce in scriptural justifications nor in humanitarian bravado. Bowen simply stated that divorces were necessary and South Carolina should acknowledge that reality. Originally from Providence, Rhode Island, Bowen moved to Georgia in 1850, where he remained until opening a law office in Charleston in 1862. Personal experience probably led Bowen to his conclusion about the necessity of divorce. Bowen admitted that while married to a woman from New England, he had lived in Georgia with several different women. By 1870, two years after the constitutional convention, he had married three women; two of those marriages overlapped, resulting in an 1871 bigamy conviction in the nation's capital, where he

[7]Randolph was assassinated in October 1868 at Hodges Railway Station after beginning his first term as state senator for South Carolina. N. Louise Bailey, Mary L. Morgan, and Carolyn R. Taylor, eds., *Biographical Directory of the South Carolina Senate: 1776-1985* (3 vols., Columbia: University of South Carolina Press, 1986), Vol. 2, pp. 1335-1336; *Proceedings*, pp. 622-623.

[8]On Craig, see Charleston *News and Courier*, Jan. 15, 1868, p. 1; *Proceedings*, p. 622. On Whittemore, see *Biographical Directory of S.C. Senate*, Vol. 3, pp. 1718-1720; *Proceedings*, pp. 623-624.

resided while representing South Carolina in the United States Congress.[9]

At the conclusion of the convention, the delegates voted to include a provision for divorce. Yet the opposition had not lost completely since the constitutional provision still required enactment of a divorce statute. Aware that another obstacle lay in the path of legal divorces in South Carolina, supporters wasted no time preparing the requisite legislation. In November 1868, the General Assembly convened its first session following the convention. Robert J. Donaldson, senator from Chesterfield, who had also served as a delegate to the 1868 convention, submitted for the senate's consideration the first bill to regulate and define divorce. Donaldson, an immigrant from Ireland, had moved to South Carolina after a brief stay in New Hampshire during the war. Besides his non-southern roots, Donaldson shared another characteristic with two men who advocated divorce at the constitutional convention. Donaldson, like Randolph and Whittemore, was a Methodist minister, demonstrating that legislators with strong religious convictions were active on both sides of this divisive issue.[10]

Immediately following Donaldson's proposal, the Charleston *Daily Courier* criticized the bill. "Claude," the paper's Columbia correspondent, identified divorce as the "great curse, the poisoned pestilence of society." Reminding his readers that South Carolina had never had a divorce law, he perceived no current benefit in introducing "this evil" and hoped the bill would die. Debated at least ten times in four weeks, the bill received considerable attention and discussion before the senate passed it by a narrow margin of 12-9.[11]

Senators supporting the bill were, without exception, Republicans; in most instances these men were white Northerners. The exceptions included Stephen Swails, a black Northerner, and two native South Carolinians: Young Owens, a Unionist from Laurens, and Charles Montgomery of Charleston. The opposition, however, was less homogeneous, demonstrating

[9]*Proceedings*, p. 624; *A Biographical Congressional Directory, 1774 to 1903*, 57th Congress, 2nd Session, House Document 458 (Washington, D.C.: Government Printing Office, 1903), pp. 404-405. In addition to his marital issues, Bowen had been accused of forging Confederate payroll checks and killing his commanding officer, Col. William Parker White, when White discovered the fraud. He was also accused of "plundering and defrauding" Charleston residents and manipulating election votes. W.D. Porter, ed., *The Great Libel Trial: Report of the Criminal Prosecution of the News and Courier for Libelling Sheriff and Ex-congressman C.C. Bowen* (Charleston, S.C.: n.p., 1875), Indictment Nos. 64 and 65, pp. 59-62. An editor declared that if the "dark and damnable rumors" about Bowen were true, then his proper place was "at the end of a hempen cord." *Charleston Daily Courier*, Mar. 4, 1868, p. 1.

[10]*Journal of the Senate of the State of South Carolina*, 1868, p. 11; *Biographical Directory of the S.C. Senate*, Vol. 1, pp. 401-402.

[11]*Charleston Daily Courier*, Dec. 2, 1868, p. 4; *Senate Journal*, 1868, pp. 11, 23, 254, 257, 299, 347, 364, 366-368, 374, 453-454, 460, 470, 543.

that members did not divide strictly along party lines when voting on this issue. The senators voting against the bill were primarily native South Carolinians from the Upcountry. Yet one-third of those who voted against the measure — a significant minority — were African Americans. Party affiliation among the opponents was equally divided between Democrats and Republicans, indicating that Republicans were not united on this issue. Following the senate's final vote that approved the bill, five senators — two black and three white — who voted against the measure requested that the record reflect their opposition to divorce for any cause other than adultery. While the senate wrestled with its divorce bill, members of the house proposed three separate bills. Yet, as of March 15, 1869 — the arrival date of the senate version — they had not discussed any of them. Because the senate's bill appeared before the house so late in the legislative session, lawmakers voted to consider the issue in the next session.[12]

1871-1879

Divorce legislation was considered and defeated in the 1869 and 1870 legislative sessions. In 1871 the Forty-ninth General Assembly met for its second session, becoming the fourth consecutive session since the 1868 constitutional convention to consider divorce legislation. Each year the house of representatives had forestalled a proposal approved by the senate. Beginning its consideration of the bill in the 1871 session as it had in the previous ones — with lengthy discussions and frequent postponements — the house once again thwarted a senate bill with a close 47-44 defeat on December 13, 1871. While the defeats were consistent, the margins were slim. Two days later, a Sumter County representative, Asbury L. Singleton, submitted a divorce bill that was supported by his fellow representatives: on January 11, 1872, by a 59-44 vote, the house approved South Carolina's first divorce bill. Since the senate's bill had been killed in December, the upper chamber had the opportunity to approve the house's version of the legislation. Eager to cooperate, the senate quickly passed this proposal through its requisite three readings without discussion and approved the legislation. Thus, a divorce bill, which had eluded passage for more than three years, was finally ratified on January 30, 1872, giving South Carolina its first divorce law. This statute ended years of agony for some, stirred emotions in others, and created a controversy in South Carolina that

[12]*Senate Journal*, 1868, pp. 453-454; for biographical information about the senators, see *Biographical Directory of the S.C. Senate: 1776-1985*, Vols. 1-3. The five senators were Jonathan Wright (Beaufort/black), Joel Foster (Spartanburg/white), Henry Maxwell (Marlboro/black), Elias Dickson (Clarendon/white), and John Reid (Anderson/white). *Journal of the House of Representatives of the State of South Carolina*, 1868, pp. 109, 194, 204, 292, 411, 516, 556, 581, 614, 623.

DIVORCES GRANTED IN SOUTH CAROLINA, 1872-1878

1872	1873	1874	1875	1876	1877	1878	Total
7	16	17	35	17	26	39	157

Source: Carroll Wright, ed., *Marriage and Divorce in the United States, 1867-1886*

endured for the next seventy-eight years.[13]

The divorce law of 1872 placed the granting of divorces under the jurisdiction of the Courts of Common Pleas. The law provided only two grounds for divorce: adultery and desertion. Obviously restricting the grounds was part of the compromise that enabled the bill to pass. Earlier proposals had considered including additional grounds such as excessive drinking, cruelty, and impotence. Even the two allowable grounds were framed with qualifications. Two years of abandonment by either party were necessary to be acceptable grounds for desertion. As for adultery, once either spouse had discovered the infidelity of his or her partner, the couple could not continue to live together voluntarily or the grounds were negated. The law also provided a statute of limitations, since the divorce had to be sought within five years of learning about the adulterous act. In addition to stipulating the grounds for divorce, the law granted a woman the right to her dower, her real estate, and alimony, provided that she was not guilty of adultery.[14]

South Carolinians readily took advantage of the new law, an indication that the misery politicians had invoked rhetorically was in fact real. The stories of those who sought divorces reveal a portion of that agony. Carrie Brown of Spartanburg was so anxious to get a divorce that she petitioned the Court of Common Pleas in 1869 before any law had been enacted, hoping the 1868 constitutional provision would suffice. Shortly after Carrie's father had died in 1854, she had inherited several thousand dollars from his estate and simultaneously attracted a suitor, Thomas Brown. Soon Carrie and Thomas married, commencing nine years of abuse. Thomas drank excessively, beat Carrie, and threatened to kill her and their daughter. After Thomas spent Carrie's inheritance on what she termed "riotous and

[13]*House Journal*, 1871, pp. 89, 113, 124, 133, 145, 155-56, 167, 194, 227, 348; Columbia *Daily Phoenix*, Dec. 14, 1871; *Senate Journal*, 1871, pp. 228, 241, 258, 284, 295, 303, 325.

[14]*Acts and Joint Resolutions of the General Assembly of the State of South Carolina*, 1872 (Columbia, S.C.: Republican Printing Co., 1872), pp. 30-32.

disorderly living," he left his wife and daughter without any means to secure the necessities of life. Although Carrie and Thomas had been separated since 1862, he was furious when he discovered she was seeking a divorce. The court rejected her petition, pointing to the obvious fact that since no divorce law existed in 1869, the court was without jurisdiction.[15]

This ruling, however, did not establish an irrefutable precedent. At least six other South Carolinians petitioned the court before 1872, as Carrie Brown had, and their pleas were granted. Fairfield County granted one such divorce and Spartanburg five. South Carolina's Court of Common Pleas did not issue divorces haphazardly. In 1872, the first year of the divorce law, only seven couples terminated their marriages. The following year South Carolina courts granted sixteen divorces, seventeen in 1874, and thirty-five in 1875. Total divorces declined in 1876 to seventeen and 1877 tallied twenty-six across the state. In 1878, the final year divorce was legal, the state granted thirty-nine divorces, a seven-year high.[16]

Although one might consider divorce a private matter, in the nineteenth century it could not be removed from political discourse. In 1877 the white South celebrated an important political victory as it saluted the end of Republican hegemony and welcomed the restoration of Democratic rule. Consequently, many white South Carolinians began to attack legislation associated with Reconstruction including divorce. After the disputed election of 1876 had been settled by the national compromise which gave Rutherford B. Hayes the presidency in return for ending Reconstruction, South Carolina's legislature held a special session in April 1877. One of the earliest proposals before the "redeemed" house of representatives was a bill to repeal the divorce law. While Edgefield representative John Sheppard, its author, was anxious to see the law repealed, he met resistance. The Judiciary Committee presented an unfavorable report on Sheppard's recommendation, and members rejected the bill. As the regular 1877 session began, repeal efforts were launched again. This time two house members offered separate bills proposing repeal of the law, but both met the

[15]Brown vs. Brown, Judgment Rolls, Court of Common Pleas, Spartanburg County, at South Carolina Department of Archives and History, Columbia (hereafter SCDAH).

[16]Carroll Wright, ed., *Marriage and Divorce in the United States, 1867-1886*, (Washington, D.C.: Government Printing Office, 1897; repr., New York: Arno Press, 1976), pp. 386-389. Carroll reports the six divorces (five in 1869, one in 1870) as the only ones granted by petition. Perhaps many other petitions like Carrie Brown's were offered and rejected but determining the precise number of court petitions for divorce requires an examination of all county court records. Many of these local court records either have not been preserved or are inaccessible.

same fate. They never left committee.[17]

Undeterred by these setbacks, the house wasted no time launching its third attempt as the Fifty-third General Assembly convened for its first session in 1878. Trusting that the 1878 elections had bolstered support for the measure, a Charleston representative, Richardson Miles, introduced a bill to repeal South Carolina's divorce law on November 27, the first day of the session. Deviating from the decision reached in the two previous sessions, the house's Judiciary Committee did not reject this bill, but neither did members endorse it. Instead, a compromise emerged from their deliberations, and the committee recommended a substitute bill, proposing to amend the law rather than repeal it. The amendments the committee proposed included limiting divorce exclusively to adultery, thus eliminating the desertion provision, and imposing a prohibition on remarriage after divorce. The house accepted this amended version of the divorce law and sent its proposed legislation to the senate.[18]

When the bill came before the senate in early December 1878, its Judiciary Committee was too divided to make a recommendation, so the bill went straight to the floor for debate. A Democratic senator from Newberry, James Lipscomb, a South Carolina native and strong supporter of Wade Hampton, opposed this attempt to limit divorce grounds exclusively to adultery. Believing that other causes such as drunkenness and cruelty were equally justified, Lipscomb moved to strike that portion of the bill. William Taft concurred with Lipscomb on this issue even though they were political adversaries. Taft, a Charleston senator and northern Republican who involved himself in local city politics during Reconstruction, argued that "no lady should be compelled by law to remain with a drunken beast, or with a brute who deserts, neglects, or mistreats her." Taft rejected entirely the effort to amend the current law. With a surprising twist, the tenor of the debate immediately changed when John Wylie, a Lancaster Democrat, introduced an austere substitute motion for Lipscomb's more tolerant motion not to limit divorce only to adultery. Instead of amending the law, Wylie proposed that it be repealed completely, and his motion passed 15-11 on December 14.[19]

[17]William J. Cooper, *The Conservative Regime: South Carolina 1877-1890* (Baltimore, Md.: Johns Hopkins Press, 1968); Francis B. Simkins and Robert H. Woody, *South Carolina during Reconstruction* (Gloucester, Mass.: Peter Smith, 1966); Joel Williamson, *After Slavery: The Negro in South Carolina During Reconstruction* (New York: W.W. Norton, 1975); *House Journal*, 1877 Special Session, pp. 8, 13, 54, 66, 102, 108, 203, 232.

[18]*House Journal*, 1878, pp. 36, 45, 60, 73, 132-133; *News and Courier*, Dec. 7, 1878, p. 1.

[19]*Senate Journal*, 1878, pp. 115, 142, 164, 180-183, 193; *Biographical Directory of S.C. Senate*, Vol. 2, pp. 937-939, Vol. 3, pp. 1574-1575; *News and Courier*, Dec. 16, 1878, p. 1; *Columbia Daily Register*, Dec. 15, 1878, p. 1.

Once this new draconian "amendment" arrived from the senate, John J. Hemphill of Chester County moved that the house refuse to concur with it. The representatives agreed, then sent a message to the upper chamber reflecting Hemphill's motion. The senate insisted upon its amendments. The two houses had to create a conference committee to resolve the impasse. In a single session, the committee quickly agreed to the senate's version that repealed rather than amended the divorce law. On December 20, 1878, the house accepted the conference committee's recommendation and approved the senate's bill that repealed South Carolina's divorce statute, a law that had served the state for seven years.[20]

During those seven years, the courts granted 157 divorces. Charleston County led the state with thirty-eight, but most counties' divorce cases totaled fewer than ten, Those who presented arguments favoring divorce generally argued that it served as a means to protect women, yet during this period, 55 percent of the divorces granted by South Carolina courts were initiated by men. Divorces sought on the grounds of abandonment were divided almost equally between husbands and wives, with men receiving forty-seven divorces on these grounds and women forty-eight. Adultery grounds were not as evenly divided. These numbers indicate a two-to-one ratio, with men securing thirty-four divorces for adultery and women only seventeen.[21]

Inferring too much from these aggregate numbers could lead to erroneous conclusions. In the nineteenth century women were less likely to seek divorces, no matter how bad their situations, because they lacked the economic means to support themselves. And as with any court case, the details of each petition for divorce complicate questions of guilt or innocence. For instance, Samuel White petitioned the state for a divorce from his wife, Mahala, who had deserted Samuel two years earlier. In the year before she left him, he complained, she had "denied him comfort at home." Having been married for fourteen years prior to Mahala's desertion, Samuel seemed puzzled by his wife's behavior. He characterized her as becoming "excessively unruly, unkind, and unwilling to serve him." Her version of the marriage, however, helps unravel some of the mystery. Mahala believed she had endured Samuel's stern, demanding, and abusive temper as long as she could. Her anger culminated in an assault on her husband's head with a four-by-four piece of wood one night after a bitter argument. Following

[20]*House Journal*, 1878, pp. 248, 264, 280-281, 333; *Senate Journal*, 1878, pp. 232-233, 294; *Acts and Joint Resolutions of the General Assembly of the State of South Carolina*, 1878, p. 719.

[21]The remaining cases either were attributed to some combination of both or the cause was unknown. Wright, *Marriage and Divorce*, pp. 386-389, 572-574. Including the six divorces granted by petition before the 1872 divorce law took effect, a total of 163 divorces were granted in South Carolina in the nineteenth century.

this fight, she moved to Georgia to live with Dr. Gideon King. The court granted White a divorce as he had requested, finding his wife guilty of desertion and adultery. Yet, if blame needs to be assigned, no doubt the plaintiff in this case must shoulder some portion of it.[22]

The South Carolina legislature's actions repealing the divorce law immediately terminated all possibilities for divorce in the Palmetto State. Even cases already filed and researched were dismissed, as a Kershaw County resident, Hannah Grant, discovered. Her divorce was scheduled to be finalized on December 12, 1878, but her husband failed to appear in court, postponing the action. Eight days later — on December 20, 1878 — the General Assembly repealed the divorce law, removing the possibility of completing her divorce. Believing the timing introduced an unjust technicality, she appealed her case to the South Carolina Supreme Court, where it ruled that without legislation the court had no authority to grant divorces. The case was dismissed.[23] Though the law had been repealed, the constitutional provision permitting divorce remained effective. Essentially the state returned to its pre-1872 status on divorce. All that was necessary to reinstate divorce in South Carolina was an act of the legislature, a task that proved to be daunting.

The endeavor to provide citizens of the Palmetto State with an option for divorce began immediately in 1879 but failed. For the next fifteen years a bill advocating some form of divorce appeared before at least one house of South Carolina's General Assembly almost every year. As in 1879, a bill was generally introduced in the house, received a favorable report from the Judiciary Committee, and either was voted down by the assembled representatives or, more often, was tabled indefinitely.[24]

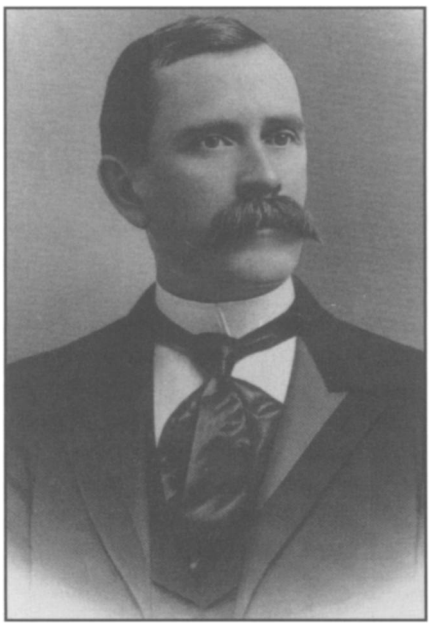
1883

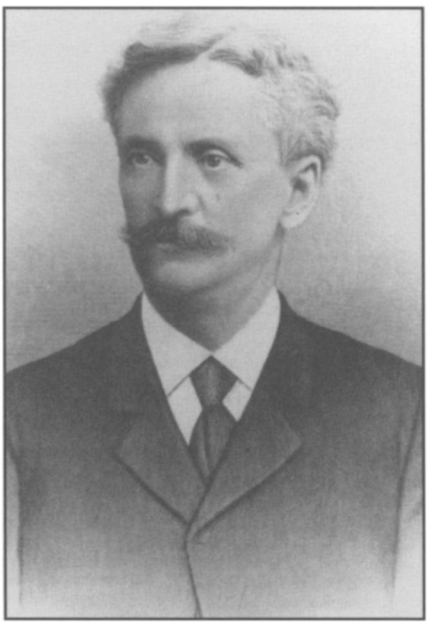
The bill proposed in 1883, however, fared somewhat differently. Unlike all sessions since 1878, the senate initiated the 1883 bill. Moreover, this bill generated a lively and lengthy debate rather than a quick dismissal. Receipt of a petition from C.C. Wall prompted the senate Judiciary Committee to consider drafting a bill, although Wall's petition had been pending for three years. Wall implored South Carolina to enact a general divorce law to alleviate the "indescribable anguish and wrong" he and others had suffered because the state prohibited divorce. Unable to reach a consensus about a divorce bill, the committee submitted two reports. Aiken County senator Daniel S. Henderson, prominent attorney and future president of the South Carolina Bar Association, presented the first report, representing the majority,

[22]White vs. White, Judgment Rolls, Court of Common Pleas, Spartanburg County, at SCDAH.

[23]Grant vs. Grant, 12 *South Carolina Reporter* 29.

[24]*House and Senate Journals*, 1880-1894.





When the South Carolina State Senate discussed legalizing divorce, some of the state's most prominent attorneys took opposing positions. Daniel S. Henderson (left) of Aiken County fought for legal divorces in several sessions and at the 1895 constitutional convention. (Image from Hemphill, *Men of Mark in South Carolina*, Vol. 1.) Augustine Smythe (right) of Charleston County tried to forbid divorce for any reason. (Image from *Cyclopedia of Eminent and Representative Men*, Vol. 1.)

which recommended a divorce law with adultery as the only ground. Augustine Smythe of Charleston stood with the minority, who advised against passage of any divorce law.[25]

As the reports were submitted, Smythe attempted to foil all debate with a motion to strike the enacting words. This prompted Henderson to claim that modern society required a divorce law: "All civilized states and nations have one." While Henderson knew that this absence of a divorce law was a source of pride for many South Carolinians, he rejected this reasoning. Careful not to offend his colleagues completely, Henderson counseled caution as they proceeded with this sensitive issue. But, he insisted, even the scriptures allow divorce for adultery. Madison Howell, senator from Colleton, challenged Henderson's argument. Howell believed that South Carolina's status as the only state without a divorce law was reason enough

[25]*Senate Journal*, 1883, pp. 3, 47, 68, 121, 134-136; *Columbia Register*, Dec. 8, 1883, p. 1; P.R. Henderson et al, eds., *Life and Addresses of D.S. Henderson* (Columbia, S.C.: R.L. Bryan Co., 1922), pp. 10-11.

not to ratify one. South Carolina, he argued, did not need to imitate states like New York but should learn from their problems and avoid them. Besides, he continued, divorce "strikes at the very foundation of society." The tone of the debate quickly indicated that the dispute could not be resolved that afternoon, and it was continued.[26]

Debate resumed two days later. The excitement created by Henderson and Howell's earlier exchange generated exceptional interest. One reporter noted that the issue had created the greatest interest of any topic that session, so much so that spectators filled "the lobby and all available space inside the railing." In the ensuing debate, South Carolina's historical stance against divorce became fuel for senators on both sides of the question. Joseph Earle of Sumter observed that "South Carolina is not only the only State in the Union, but the only State in the civilized world, that does not have some such law." Chester County senator Giles Patterson insisted that Massachusetts and Connecticut had nothing to teach South Carolina. He claimed, "Nowhere in the country is the sanctity of home and the purity of the marital relation more revered than in South Carolina." Senator William Leitner of Kershaw County rejected assertions from his colleagues that South Carolina should respond more progressively by insisting:

> No, sir, our just grandeur is attributable to that cause — that we are not "progressive" in this matter. The integrity of South Carolina is attributable to the fact that she does not grant divorces. I do not know of one single instance, not one where divorce ought to be granted for any cause whatever.[27]

Champions of South Carolina's unique position prohibiting divorce quickly claimed that the state's Reconstruction experience intensified their aversion to any future divorce law. The Palmetto State had been blemished with a divorce law passed by "the Republican Regime." One editor in the religious press noted that "until the humiliation of carpetbag rule" South Carolina had no divorce law, but fortunately South Carolina's reputation had been "rescued" when Democrats returned to power in 1877. A black Republican senator from Georgetown, Bruce Williams, endorsed this rhetoric. Although his own party received the blame for the state's moral deviation, Williams agreed that the Republicans had been wrong. Moreover, he claimed that in 1878 he had supported the Democrats and their efforts to repeal the law. At the conclusion of the senate's debate that afternoon, Henderson's bill survived Smythe's motion to kill it by a narrow four-vote margin.[28]

[26]*Senate Journal*, 1883, 134-136; *Columbia Register*, Dec. 6, 1883, p. 1; *News and Courier*, Dec. 6, 1883, p. 1.

[27]*Columbia Register*, Dec. 8, 1883, p. 1.

[28]Ibid; *Baptist Courier*, Dec. 20, 1883, p. 2.

The following week debate on the divorce bill resumed. An amendment to prohibit remarriage after divorce was added to the bill, but two other amendments failed. One would have required criminal prosecution as proof of adultery, and the other would have expanded the grounds for divorce to include desertion, drunkenness, and cruelty. Since the final version of the bill was so conservative — divorce only for adultery and no remarriage — Henderson was confident it would pass. His confidence was misplaced. When the bill reached its third reading, the senate defeated it 17-13. Smythe and Leitner, leaders of the opposition, no doubt maneuvered behind the scenes to reverse several key votes since on the day of the vote no debate occurred. "This ends the matter as far as the General Assembly is concerned and it is to be hoped for all time to come," the editor of the Columbia *Daily Register* wrote. He correctly reported that this vote ended the matter, but he incorrectly estimated the time. "For all time to come" turned out to be the interim between legislative sessions. The issue reemerged in the house as the newly elected Fifty-sixth General Assembly convened for its 1884 session.[29]

Other bills related to these attempts at securing a general law granting divorces appeared before South Carolina's General Assembly in the early 1890s. Periodically, individuals petitioned the legislature to grant them a divorce. None of these petitions succeeded. Frustrated by the repeated failures to pass a divorce law, in 1892 lawmakers initiated a different tack, introducing bills to validate the marriages of persons who had been married in South Carolina, secured a divorce in another state, remarried, and returned to live in South Carolina. Under the existing law such marriages were invalid. Furthermore, any children from these unions were considered illegitimate. While the proposal was new, the arguments were not, and the bills were defeated in 1892 and 1893.[30]

1895 CONSTITUTIONAL CONVENTION

Since ratification of the constitution of 1868, the potential for divorce had existed in South Carolina provided that the necessary legislation was enacted. With the repeal of that legislation in 1878, every attempt to pass another law had failed. Thus in 1895, when South Carolinians gathered in

[29]*Senate Journal*, 1883, pp. 147, 209, 224-226, 281; *Columbia Register*, Dec. 15, 1883; and *House Journal*, 1884, p. 90; *News and Courier*, Dec. 15, 1883.

[30]*House and Senate Journals*, 1891-1892; *House Journal*, 1892, pp. 125, 224, 395; *House Journal*, 1893; *Senate Journal*, 1893, pp. 86, 95, 153; *News and Courier*, Dec. 3, 1893, p. 1; *The State*, Dec. 10, 1893, p. 1.

convention to draft a new state constitution, change seemed possible.[31] If specific means of acquiring a divorce could be incorporated into the constitution, then future legislation would be unnecessary. Conversely, if a prohibition on divorce could be included in the new constitution, then the continual effort to resist these perennial attempts at establishing a divorce law would cease.

Anxious to take advantage of the opportunity presented by the constitutional convention, Daniel Henderson, the senator who had led the fight for a divorce law in 1883, proposed a resolution that supported divorce. Although twelve years had elapsed since his earlier effort, Henderson's resolution incorporated the essence of that proposal, which allowed divorce for adultery only and forbade remarriage. The following day, September 12, 1895, Marlboro County's Thomas E. Dudley countered Henderson's resolution with one whose aim was a complete prohibition on divorce. Within ten days John J. McMahan of Richland County submitted a third resolution that proposed to recognize out-of-state divorces. The Committee on Miscellaneous Matters considered these three recommendations and synthesized them into a moderate resolution that satisfied no one. The committee suggested adopting the same clause that appeared in the 1868 constitution, which stated that divorces would be allowed as prescribed by law. The committee's compromise proposal became the basis of the convention's debate on divorce.[32]

Because the committee's proposal satisfied few, when the convention took up the issue on September 30, five amendments were introduced, each in some way reflecting the original three resolutions. Henderson, predictably, offered an amendment that divorces be granted only on the grounds of adultery. Believing his position was biblically sound, Henderson argued that South Carolina's relentless stand against divorce offered incentives to those who destroyed homes and it winked at the "crime of adultery." At least two newspaper editors commented on Henderson's eloquence: "the most masterly effort the convention has listened to since its assembly," *The State* editor remarked.[33]

Following Henderson's amendment, Dudley, Richard Dozier Lee of Sumter, and Ilderton Wesley Bowman retaliated with three separate amendments advocating no divorce for any reason. Representing

[31]When the constitutional convention convened in September 1895, it was to undo the 1868 constitution that participants believed "was made by aliens, negroes and natives without character, all the enemies of South Carolina, and was designed to degrade our State, insult our people and overturn our civilization," as Barnwell delegate Robert Aldrich said. *Journal of the 1895 Constitutional Convention* (Columbia, S.C.: Charles A. Calvo, Jr., 1895), p. 2.

[32]*Journal of the 1895 Convention*, pp. 17, 34, 36, 206, 251-252; *The State*, Sept. 12, 1895, p. 2; Sept. 22, 1895, p. 1; *News and Courier*, Oct. 1, 1895, p. 1.

[33]*News and Courier*, Oct. 1, 1895, p. 1; *The State*, Oct. 1, 1895, p. 2.

Orangeburg, Bowman expressed his pride in South Carolina, a state that had the "purest women and the best men." Divorce, he reiterated, had not contributed to the development of these qualities that South Carolinians prized. A.S. Farrow of Charleston offered the final and most progressive amendment, advocating an extension of the grounds for divorce to include, in addition to adultery, bodily cruelty and willful desertion for seven years. Farrow supported Henderson, but doubted that Henderson's amendment went far enough. Furthermore, Farrow criticized Bowman's assertion that the state's men were the best. If divorce did not become possible, Farrow argued, then South Carolina had better be prepared to legalize the killing of those caught in the act of adultery. He also highlighted the constitutional complications the state created by failing to recognize other states' divorces. If nothing else changed, he believed this modification had to be accommodated. Once these amendments had been presented, a Richland County delegate, Henry Cowper Patton, indicated that the convention had three clear choices, and he planned to take his stand on the side of public sentiment, which he concluded favored prohibiting divorce. Every newspaper in South Carolina except *The State*, Patton contended, opposed divorce. Before that evening's debate concluded some delegates became embroiled in a theological controversy. Alternately invoking biblical scholars and the New Testament, delegates argued until Governor Benjamin Tillman adjourned the discussion at 10:55 p.m.[34]

When the debate resumed the following morning, delegates discussed the issue for two hours. Henderson addressed the critics' charge that his amendment was merely a foot-in-the-door technique — first adultery as a ground for divorce, then something else. Because a constitutional amendment would be necessary for any alterations, Henderson reminded the assembly, the floodgates to additional grounds could not be opened easily. Henderson asserted the importance of providing some redress for South Carolinians trapped in bad marriages. Without the option of divorce in cases of adultery, Henderson maintained, those who violated their sacred commitments were rewarded with a dutiful spouse. Believing that women most often were the victims, Henderson declared that the state needed a "remedy for poor and wronged women."[35]

Henderson's suggestion that women needed protection was supported by his fellow delegates, but not always for the same reason. An Edgefield County delegate, Robert Briggs Watson, acknowledged that women suffered because divorce was not an option, but he stated that personal matters should be kept out of the courts. "It is better for some women to die of a

[34]*News and Courier*, Oct. 1, 1895, p. 1; *Journal of the 1895 Convention*, pp. 286-287, 290; *The State*, Oct. 1, 1895, pp. 1-2.

[35]*Journal of the 1895 Convention*, pp. 293-294; *News and Courier*, Oct. 2, 1895, p. 1; *The State*, Oct. 2, 1895, p. 1.

broken heart than to bring disgrace to their family and children," Watson retorted. His chief concern was the protection of a man's reputation and the general patriarchal structure. William Campbell McGowan of Abbeville also agreed that women needed protection but not from their husbands. The suggestion that previously married (divorced) women would be "turned loose" in the community without a husband was an idea McGowan believed could become a "danger to society." Married women, he reasoned, had been sexually active, and McGowan feared they would continue to exercise the "liberties of a married woman" after a divorce.[36]

Before concluding the debate, former governor John Calhoun Sheppard of Edgefield attempted to interject a dose of reality into the proceedings by reminding the assembly how binding their decision would become when included in the constitution. Sheppard encouraged the convention to dispense with this issue that would limit the options of future legislators. Unpersuaded by Sheppard's plea, the question was called on Bowman's amendment, which changed the committee's original proposal into a strict prohibition on divorce. The assembly voted overwhelmingly for Bowman's amendment, 86-49. Tillman, who wielded tremendous influence at the convention he had orchestrated, registered his vote on the losing side. Attempting to salvage something for divorce advocates, Tillman proposed an amendment to the clause just approved, declaring that the state should at least recognize divorces obtained in other states, an issue that threatened to create legal problems for South Carolina if this stubbornness lingered. Tillman's endeavor failed. With ratification of the constitution the following statement became law: "Divorces from the bonds of matrimony shall not be allowed in this state."[37]

After passage, *The State* continued to attack the constitutional provision. Editor Narciso Gonzales poignantly remarked that to "spread a piece of cloth over a dirty floor doesn't make the floor clean." While other states were exposing their social problems and attempting to remedy them, South Carolina was cloaking its offenses in a facade of morality. Forbidding divorce does not promote morality, he contended, but rather it protects immorality by "binding the innocent to the guilty and punishing the innocent for the crimes of the guilty." An editorial in the *New York World* sensed the irony and arrogance in the delegates' argument that embraced virtue and morality while rejecting Christ's teaching on divorce.[38]

Most of the state's newspapers applauded the convention's decision to

[36]*News and Courier*, Oct. 2, 1895, p. 1.

[37]*Journal of the 1895 Convention*, pp. 293-294; *News and Courier*, Oct. 2, 1895, p. 1; *The State*, Oct. 2, 1895, p. 1; *Greenville Mountaineer*, Oct. 5, 1895; South Carolina 1895 Constitution.

[38]*The State*, Sept. 27, 1895, p. 4; James Creelman's editorial in the *New York World* was reprinted in the *News and Courier*, Oct. 4, 1895, p. 3.

prohibit divorce in the constitution. Arthur Ford, editor of the *Aiken Recorder*, encapsulated in one statement the sentiment many other journalists expressed in lengthier prose. "As our State stands today in a distinguished minority of right, her position is an honorable one and should never be changed," he proclaimed. South Carolina's religious press also endorsed the measure. The *Baptist Courier* acknowledged some Christian leaders had made strong arguments for a divorce law and the paper itself had published letters from divorce advocates, but the *Courier* reiterated its editorial stance had always been against divorce. The *Southern Christian Advocate* praised South Carolina as a "shining example" for forbidding divorce and indicated a divorce law would only "soil us as others have been."[39]

THE NUMEROUS LEGISLATORS WHO HAD WORKED FOR ALMOST three decades to provide South Carolina with a divorce law used three basic arguments in their appeals for legislation. First, both an honest and a politically astute reason was religion. Supporters, several ministers among them, believed that the Bible allowed for divorce in cases of adultery. Thus, South Carolina also ought to allow divorce for adultery, reasoning that temporal law should reflect spiritual principles. A second reason for promoting divorce legislation was the need to protect women, an avowed purpose of chivalrous southern society. Concluding that real marriages were often incompatible with the ideal, proponents claimed that this discrepancy was often so great and caused such serious problems that divorce provided a reasonable solution. The third and most pervasive justification for allowing divorce in South Carolina was simply to bring the state into the modern era. Whether in 1868, 1895, or the numerous legislative struggles between these constitutional conventions, divorce defenders strove to remind their colleagues that divorce was a reality of nineteenth-century America. Every other state in the Union already had acknowledged this reality. It was time, they argued, for South Carolina to rise above its provincial considerations and recognize that any institution involving human beings could fall short of perfection, and a remedy for these shortcomings was essential.

Opponents of divorce also had three basic rebuttals to these arguments. First, opponents rejected the assertion that biblical grounds existed for divorce. Second, while accepting their responsibility to protect women, they were not persuaded that sheltering women from unfaithful and abusive husbands was worth the risk of exposing the state's social problems and making personal conflicts part of the public records. Third, opponents met proponents' argument to follow the lead of other states with determined resistance. They claimed that South Carolina should cling with pride to its

[39]*Aiken Recorder*, Oct. 4, 1895; *Baptist Courier*, Oct. 10, 1895; *Southern Christian Advocate* Sept. 19, 1895; *Greenville Mountaineer*, Oct. 5, 1895.

unique stance on divorce and encourage others to adopt its inflexible position. South Carolina had never, except during Reconstruction, allowed divorce, they maintained, and it never should again. The linchpin in this logic was the nagging reminder that enacting divorce legislation in South Carolina would be an emulation of Reconstruction, a pill too bitter for most to swallow. Yet this accusation that Republican rule had ushered in divorce and redeemer Democrats had tossed it away owed more to myth than reality. The Reconstruction legislatures struggled for four sessions to pass a conservative divorce law, and the redeemers were not able to "rescue" South Carolina until their third attempt. While hindsight made the divide between Republican and Democrat appear distinct, the demarcation between divorce supporters and opponents did not fall on party lines.

Although divorce opponents tallied more adherents and won more legislative battles, they were the ones standing on shakier intellectual ground. While the divorce foes invoked lofty rhetoric about the "sanctity of marriage" and the "purity" of South Carolinians, reality summoned a different image of the eternal institution in South Carolina. The legislature could prohibit divorce, but it could not prohibit the informal termination of marriage. Desertion became a standard practice. If couples could not secure a divorce, many simply left each other and lived with someone else. In the early twentieth century, public debate over another issue exposed this problem. Analogous to the legislative struggle over divorce, the state's attempt to enact a marriage license law met similar resistance. Proponents who advocated requiring a license before marriage noted a serious problem in the state with serial marriages and desertions. Some tried to insinuate that frequent desertions was a problem among blacks only. G.F. Kirby, a magistrate in Blacksburg, refuted this assertion, indicating that he knew "a number of respectable white people" engaged in the same practices. An editorial in *The State* remarked that a man could easily marry a half-dozen women from different counties and desert them with impunity. "There are hundreds — perhaps thousands — of victims of this prevailing plan of marriage, and a large number are defenseless girls in the cotton mill villages," the paper alleged.[40]

Desertion functioned as a de facto divorce in South Carolina. Although the state did not recognize intimate relationships that followed extra-legal divorces, these disregarded "marriages" were as widespread as the mockery "divorces." Extra-marital relationships were so common that South Carolina had had a law on the books since 1795 that stipulated that a man could not will more than one-fourth of his estate to any "woman with whom he lives

[40]Like divorce, the General Assembly began discussing marriage licenses during Reconstruction. After about 1885 a bill advocating marriage licenses appeared almost every year until 1911 when it eventually passed. *House and Senate Journals*, 1868-1911; *The State*, Oct. 2, 1910, p. 4, Oct. 10, 1910, p. 4 (editorial).

in adultery, or of his bastard child or children." South Carolina was the only state to have such a statute. One dispute requiring its application arose in 1885 when the General Assembly was voting down divorce legislation. That year Benjamin Briggs died, leaving $50 to each of his two children, one-fourth of his estate — the legal maximum — to his three illegitimate children who belonged to Louisa Massey, Briggs's mistress, and the remainder to a friend, James Clarke. Briggs's legitimate married daughter, Katie Gore, learned that her father had contracted a secret agreement with Clarke to use his portion of the estate as a trust for Briggs's three illegitimate children, so Gore protested the will. Briggs's agreement with Clarke, the court concluded, had been an attempt to evade these legal limitations, but it failed. In 1892 the South Carolina Supreme Court ruled that Clarke's portion of Briggs's estate should be given to his widow and her two children. These legal gymnastics testify to South Carolina's willingness to concede that unhappy marriages sometimes led to extra-marital relationships. Yet the state was unwilling to provide legal means for the termination of those marriages, only allowing legal maneuvering for the extenuating circumstances that resulted.[41]

Because desertions, bigamy, abusive marriages, adulterous relationships, and illegitimate children were not anomalies in South Carolina, there is no compelling evidence that the state's strict prohibition of divorce promoted harmonious relationships. It only prevented the legal rectification of these pervasive misfortunes experienced throughout the nation. Yet this unyielding attitude against divorce did accomplish something for South Carolinians' image of themselves, as the perennial debates on the subject from 1868 forward revealed. South Carolina, a state which in the antebellum era had enjoyed political notoriety, experienced economic prosperity, and accommodated a wealthy planter elite, by the late nineteenth century faced serious social and economic problems. As a poor state, South Carolina's low-wage economy, low per capita income, high illiteracy rate, and reputation for racial oppression had become the state's unfortunate but distinguishing characteristics. In the midst of these interminable problems, South Carolinians could hold fast to the state's unique opposition to divorce as evidence of its continued social distinctness. James Cardinal Gibbons, prominent Roman Catholic clergyman who condemned divorce, reinforced this perception by praising South Carolina as a shining example for the nation to imitate.[42] Moreover, white South Carolinians, still bitter over Reconstruction, could point to South Carolina's only departure from its

[41]Thomas Cooper, ed., *The Statutes at Large of South Carolina, Vol. 5*, 1836 (Columbia, S.C.: A.S. Johnson, 1839), No. 1631, p. 270; William O'Neill, *Divorce in the Progressive Era* (New Haven, Conn.: Yale University Press, 1967), p. 26; Gore vs. Clarke, 16 Southeastern Reports 614.

[42]James Cardinal Gibbons, "Divorce," *Century* 78 (May 1909), p. 149.

historic stance and equate it with what they so passionately despised. The pride South Carolinians gained from standing defiantly against divorce could not restore the state to its antebellum stature, increase personal incomes, or educate its populace, but it could foster self-respect for a state that lagged behind in national indicators of well-being. Although it was only a legal mirage that South Carolina marriages never deteriorated simply because the law made no provision for their dissolution, it was an illusion that mattered to the majority of South Carolinians.