

because there has been no action taken, cases where the parties have brought a divorce case and later reconciled, went back to live together, and solved their own problem.

So a great many of these actions are started at a time when the parties are angry at each other, and eventually reconcile, and this happens so frequently that I certainly think that there ought to be some cooling-off period, and especially in the cases where there are minor children.

[Calls for the question]

CHAIRMAN READ: Before the question Judge Gibson would like to speak.

MR. GIBSON: Mr. Chairman, I would like to say a few words on this motion, because it goes to the entire heart of the Act. I think the Conference should understand the importance of the motion.

Now, if by this Act you want to allow a consensual divorce, a divorce by registration, why, now is the time to decide that fact. I don't think many of the fifty legislatures in the states will take an Act that provides for consensual divorce, and what it amounts to if the motion carries is that you are using the court in a ministerial capacity to carry out a clerk's function.

If you want to do that, go all the way, then. Don't

get the court involved. You don't need a court order ordinarily to get married. Now, if you want to allow a dissolution of the marriage by a registration, enact a section to that effect. But I don't think many of the legislatures will buy that.

If you want to camouflage it, then, by saying, well, we are using a judicial process because the parties have to file a petition, then when they file the petition the judge has no discretion. The judge has no discretion in the matter.

Now, this is based on a sound judicial discretion. The judge uses its discretion, which of course at times a judge does, or will. There is a remedy for that. But I don't see how you can legislate on the basis that in every action a judge is going to be using his discretion. If he does, of course, he shouldn't be a judge, and he won't be a judge very long.

Now, to take care of one or two isolated instances in a state or a county by taking away all judicial discretion in this matter--you are making an Act, then, that is entirely foreign to the concept of divorce at this time. I will admit that this is an approach that is advocated by some groups, and some people favor it. It was considered in England, and turned down. It was proposed to the California Legislature,

and turned down; and I don't think this group should promulgate an Act saying that you can get divorced by consent. If you do, you are going to kill the Act in many states or kill the opportunity for adopting the Act.

I think the motion should be defeated.

MR. JESTRAB: I am going to recite, upon the request of a very distinguished member of this body who is unable to be here, the reason why some people feel that this should be granted without discretion on the part of the judge.

I don't know how you want to phrase it, but the idea, I am told by this very distinguished member of this organization--the reason is that when people do not wish to live together, either one of two things is going to happen. They are going to be forced to continue the relationship against their will, in which case the relationship will become more bitter, corrosive, destructive, as time goes on, or the other alternative: They will swear to anything.

If this latter course is taken in order to get a divorce, they will spread upon the record things that will harm them in the future and may do harm to children yet unborn. It is out of a desire to keep the record clear and to avoid that sort of thing that people who espouse this point of view take the position that they do.