

*Divorce Law Reform*

much as possible, all the evidence acts, all procedures and even the various ways of setting up courts in the different provinces.

So we have here the legislation that really represents my idea of a federal act, an act that applies to citizens ruled by provinces with quite different judicial systems. For this reason, Mr. Chairman, I took the liberty, a while ago, on the point of order, of noting that we had made all possible efforts so that all the citizens of this country, whatever their language affiliation, be treated equitably under this legislation.

The procedure before the courts is not the only indication of our concern over provincial differences. There is more. All provinces are not agreed on the measures to be taken to minimize the difficult consequences of a broken marriage, that is to say that in various provinces there are laws that vary from one province to another as far as alimony or the custody of children, for instance. That is why we have provided that during the divorce proceedings and in handing down the decree, the court dealing with the question of divorce—the very same court which is consequently in a position to know the circumstances and consider the parties—this court may order provisional or complementary measures appropriate to the parties and the children, taking into account all circumstances including the principles and customs recognized by the society in which they live.

• (9:00 p.m.)

[English]

**Mr. Aiken:** Would the minister permit a question at this point? I should like to ask him if he would tell the house why the recommendation to use county and district courts, contained in the report of the special committee was abandoned.

**Mr. Trudeau:** I do not mind talking a little about this. It will disturb the argument of my speech but I cannot blame the hon. member for not finding it a very coherent sequence. There is no harm in giving a short explanation at this point, though I may have to deal with it at greater length during the committee stage.

In short, the reason is that when we are dealing with divorce we are dealing with certain fundamental rights possessed by citizens of this country. We are dealing with something much more fundamental than property rights or money matters. When we are dealing with the latter, we do have courts

[Mr. Trudeau.]

at different levels which deal with various questions affecting property rights according to their importance.

I feel however that when we are dealing with marriage and divorce we should go to the superior courts, which in our society are traditionally called upon to decide upon the basic rights of human beings whether in civil or in criminal matters.

I realize that one of the reasons the joint committee wanted the county courts to exercise jurisdiction in this matter was because it wanted to make sure that the court would not be too removed from the people. My only comment on this is that the superior courts, or the supreme courts as they are called in some provinces, are not removed from the people. They all have district or circuit courts which go to the people, and on balance I felt it better to continue to use the higher courts, especially at the outset when we are breaking new ground and asking our judicial system to determine the operation of important laws, and to create a whole jurisprudence, a whole system of case law, which will govern these matters for many years to come.

[Translation]

To return to the subject I was speaking about earlier, I only wish to add a word or two. I ask the hon. members to realize that this measure does not abrogate the provincial laws; in other words, the laws concerning affiliation, for example, which exist in the various provincial jurisdictions, are not abrogated by our legislation on divorce. They continue to exist. We are merely trying to deal here with the question of divorce and the consequences immediately attending this breakdown of marriage. That is why, Mr. Speaker, we have provided for this three month period during which we want to consult with the provinces to make sure, in all good faith, that the present legislation can be applied without too much difficulty in all the provinces. That is why also, as I said earlier, we have sent to the attorneys general of all the provinces a copy of the present legislation, which we will be happy to discuss with them.

So much the more so that as I said last night, the matter of judicial separation is not dealt with in this bill. That creates, Mr. Speaker, a strange situation. In my opinion, according to the constitution—and this opinion is shared by many more eminent constitutionalists than myself—judicial separation comes under federal jurisdiction, so that