

*Dissolution of Marriage*

arrived at the single ground of adultery as being the single admissible ground for a divorce petition.

It is interesting to note those who oppose the recognition of what might, in fact, be the real grounds for granting a divorce have always said that any extension of the grounds is a bad thing in itself. For this reason it would be interesting to read from the statement made by Lord Birkenhead in the United Kingdom House of Commons when this subject was before that body prior to the amendments which took place in 1920. This was on the second reading of the matrimonial causes bill:

It is proper that I should make plain at the outset what is the attitude adopted by the government in relation to this bill. On this point their view is that, upon a subject which so much perplexes the conscience of individuals, it would not be proper that the government should give such direction as is afforded by putting the government whips in charge of the division. Therefore, all members of the government in the house, and if the measure should so far proceed as to be considered in another place, in that place also, will be free to speak and to vote in accordance with their own views.

I highly commend that suggestion to the government of the day and to hon. members supporting all political parties represented in this house. There is a great deal to be said for bringing the individual conscience into this matter, particularly when there are those present who know of the flagrant abuses which are taking place in Canada today.

Lord Birkenhead, speaking later on of certain views which Lord Gorell adopted, quoted a paragraph written by the latter and contained in a submission made in a report, by a commission, to the government of that day. In that report Lord Gorell had declared on behalf of himself and the majority of his colleagues:

—that divorce is not a disease but a remedy for a disease, that homes are not broken up by a court but by causes to which we have already sufficiently referred, and that the law should be such as would give relief where serious causes intervene, which are generally and properly recognized as leading to the break-up of married life. If a reasonable law, based upon human needs, be adopted, we think that the standard of morality will be raised and regard for the sanctity of marriage increased. Public opinion will be far more severe upon those who refuse to conform to a reasonable law than it is when that law is generally regarded (as we infer from the evidence) as too harsh, and as not meeting the necessities of life.

Lord Birkenhead then went on to describe exactly the conditions and attitudes which he believed stood in the way of desirable changes in the divorce laws.

The real controversy in this house today is what the real controversy has been at any given moment for 350 years when divorce has been discussed in this house; and if we strip away the rhetorical

devices with which every one who has followed the history of this subject is familiar, it is between those who believe that marriage ought to be indissoluble for any reason and those who do not hold that belief. This is the only controversy on principle. You can create any number of controversies on points of detail, but the only controversy on principle is between those who, if they told you openly and plainly that which they thought and that which they would secure if they had the power, say that for no reason should matrimony, which is a sacrament, be dissolved, and those who do not share that view.

He went on to say, speaking of two people in particular who were opposed to the changes suggested at that time—and, of course, these included the prelate, the Archbishop of York—

I have no doubt that both of them, if at this moment, they had the power to turn the clock back, would restore the law to the condition in which it was over 300 years ago, and would enact that on no ground whatever should marriage be dissolved.

Later in his speech, Lord Birkenhead goes on to deal with the history of divorce and the attempts made to introduce reforms. It is interesting to note that adultery as the sole ground for divorce originated early in the nineteenth century in Great Britain, not because this was a popular thing or an unpopular thing; it was simply in order that the very rich might be able to take advantage of the provision. I think the point has validity here in Canada where it is possible to buy a divorce very easily if people have enough money to meet the requirements of the day, though because of the limitation of our laws many factors which a social worker, for example, might regard as highly undesirable are not taken into consideration.

Lord Birkenhead went on to mention the problems confronting King Henry VIII, the procedure governing divorce in the seventeenth century and the limitations which have always been placed on the common people. Legislation was being provided for the rich, he said, while no relief was being offered to the poor. He did not accept that. He accepted, as we do, the principle that divorce should be available to all who believe in it, but that it should not be forced upon those who did not.

I find it interesting, in this regard, to note that many of those who have come before parliament to seek divorce during the years in which I have been here expressed the view that although they were of a faith which did not believe in divorce they were able to make use of our present proceedings because they were of the opinion that such decisions were to be taken by the individual in full knowledge of the many pitfalls his action would involve. It is not only the British house of commons which has had to give consideration to this matter. Australia has