

ground; that is, the husband can secure divorce on the ground of adultery alone, and similarly with the wife. The four western provinces take the law of England so far as divorce matters are concerned for all practical purposes as it existed in the year 1870, because there was no substantial alteration of the English divorce law between the year 1858 and the year 1870. So, for the purposes of my argument I say that the divorce law of England as it existed in the year 1870 applies to the four western provinces.

Now what is this English law which is applicable in the four western provinces? May I just put it shortly by stating that whereas the husband can secure a divorce on the ground of adultery alone, the wife must prove something further; she must prove not only adultery, but in addition either one of two things, cruelty, or desertion without reasonable excuse for a period of two years. That is exactly the situation that exists in the province of Alberta to-day. There are other grounds for divorce which are not necessary to this discussion, and to which I shall not refer, but which are included in the British Matrimonial Causes Act of 1857. I trust I have made that clear; that whereas the husband has a right to divorce upon proving adultery alone, the wife in the four western provinces must prove something additional, either cruelty, or desertion for a period of two years without reasonable excuse. Now that is a considerable burden to place upon the wife in any event; and when we come to the interpretation of these words, cruelty and desertion, we find that they are probably more difficult of proof than perhaps most of us appreciate. Cruelty in the ordinary sense of the term we understand, but legal cruelty is something entirely different. The definition of it has come to us from an English court decision given in the year 1790. Let me give in the words of the Ontario appeal court the definition of cruelty:

To establish cruelty one must show treatment likely to produce or which produces physical illness or mental distress of a nature calculated permanently to affect her bodily health or endanger her reason, and that there is reasonable apprehension that the same state of things will continue.

That is the definition of legal cruelty. That is what the wife in any of the four western provinces of Canada must prove in addition to adultery before she can secure a divorce from the courts in those jurisdictions. One of our Ontario court judges, referring to that definition of cruelty, which he adopted for the purpose of his decision, used these words:

The law is not in accord with modern views as to the relations between husband and wife. That it is
[Mr. Shaw.

such is to be deplored. Her life may be made a veritable hell upon earth and she is without remedy if robust enough to suffer it all without impairment of her physical health or her mentality.

In Alberta, the chief justice of the appellate court of that province in a decision used these words:

It has been accepted in England that legal cruelty to support a wife's claim must be such as to cause danger to life, limb or health, present or future. There may be much room for dissatisfaction, but that is a matter which can be easily and effectively cured by the legislature if it desires.

Mr. BEAUBIEN: Must cruelty be established by the wife in any other parts of the Dominion than the four western provinces?

Mr. SHAW: No. Then we come to the other ground. Suppose that the wife, instead of relying upon adultery and cruelty, is forced to rely upon a combination of adultery and desertion. We find that great difficulties are imposed upon her there, because she must prove desertion for a period of two years, and she must prove that it is without reasonable excuse.

Mr. FORKE: Would the hon. member state what are the grounds for divorce in Ontario and Quebec?

Mr. SHAW: Ontario and Quebec have no divorce courts. The applicant for divorce in those two provinces must come to the Parliament of Canada for relief, and the Parliament of Canada is, of course, empowered to grant relief on any terms that it sees fit. It undoubtedly grants relief to the parties, either husband or wife, on terms of equality. Divorce has been granted by parliament on the ground—

Mr. BAXTER: I rise to a point of order. I do so in the hope that it will be beneficial to some of us. We would like to hear what I have no doubt is a very instructive address, but owing to the disorder prevailing in the chamber we are unable to follow the hon. gentleman's remarks.

Mr. SPEAKER: It is, possibly, an exaggeration to use the term "disorder", but there is undoubtedly a great deal of conversation going on. I would ask hon. gentlemen on both sides to kindly listen, and to refrain from conversation. If that is done the hon. member who has the floor will be heard with ease.

Mr. PUTNAM: I understood from the hon. gentleman that in Ontario and Quebec the tribunals have practically unlimited power to grant divorce. How far would the hon. gentleman qualify, if at all, my interpretation of the situation?