

*Procedure Respecting Divorce*

woman is supposed to have known what she was doing when she asked for the divorce, and the husband is supposed to have known all the circumstances; he was free to come before parliament and oppose the petition of his wife. I am not in this instance discussing the principle of divorce itself; I am bringing forward once more the rights of the children. In this as in all other cases of this nature, who are the protectors of the children? By what right can this parliament or any body of men or any tribunal declare that four children, incapable of expressing their will, incapable of acting legally, shall be put in a position which will hamper them in the future if they desire to go on living socially with people of their creed? I am prepared to take the same position with regard to divorces granted to people of the Anglican faith, though of course I admit it may be perhaps a little indiscreet on my part to stand up in support of the position taken by the bishops of that church, when no representative of that church in this house does so. One does not like to be over zealous. But I am simply stating this fact to show that I am not taking this position merely from the Roman Catholic point of view; I am arguing from this standpoint: that when we deal with people belonging to one single individual church we have no right to pass legislation repugnant to the principles of that church. I take that stand, just as I would take the position that if any member of a particular church asked us to pass legislation or to refuse legislation in keeping with the principles of that church, but in a matter touching which the adherents of another faith were concerned, I should say that, given the principles and the practice of polity which must prevail in a mixed country like ours, we cannot afford either to grant or to refuse legislation from the sole point of view of one church when individuals belonging to another church are affected.

Mr. WOODSWORTH: A question was put to me only a few days ago by a correspondent in Montreal, a woman who thinks that she ought to obtain a divorce. She thinks the circumstances are such that were she a Roman Catholic living in the province of Quebec she could have her marriage declared null and void, but being a Protestant it is impossible for her to obtain relief along that line. Yet, living in Quebec, she finds it very, very difficult to obtain a divorce. Now, I put that problem to my hon. friend. Is there not a real difficulty for Protestant minorities living in Quebec?

Mr. BOURASSA: I cannot discuss the case because one would have to know the circum-

[Mr. Bourassa.]

stances. The situation in the province of Quebec is this. Both under civil law—what it is good for at present, I do not know, nor does anyone know—both under civil law and under the canonical law of the Roman Catholic church, divorce is not admissible. What is possible is a declaration of nullity, if according to the evidence, it is found that at the time of the marriage there was some impediment fatal in law, canonical or civil—because, I repeat, there is a discrepancy between the two—in that case the marriage is declared to be null. The marriage must have been celebrated by what is now called a substantial form of marriage, which is the law in every country with slight differences. It is the law of every province in Canada, of the United States, of every country, that there must be some essential form, rudimentary if you like, in the solemnization of marriage, and there must have been a form of consummation. If these conditions do not exist, then a declaration of nullity will be granted by a court of law in the province of Quebec.

The other procedure is separation. Both under canonical and civil law separation, or what is called in English, divorce a mensa et thoro, can be granted by the court, which has jurisdiction to declare under what conditions as to property the two parties will separate, to which of the two parties the children shall be confided, and what will be paid by one of the parties to the other for the maintenance of the children. That is all I can say to my hon. friend now on that point.

In the case now before us I want first to place before hon. members of this house, and especially those from the province of Quebec, the position with regard to the principle of this legislation. They may do as they like in the matter, but I desire to place the principle before them and to refer them to the debates which took place in this house in connection with a previous divorce case. I do not like to mention names, but my friend the Minister of Justice will remember the case. Two parties in the province of Quebec applied for a divorce some time shortly after the war, I was not then in the house; I am told it was about 1919.

However, apart from the question of principle there is a question of fact in this case. The husband and wife separated long before action was taken, which happens in nearly all these cases; the children lived with the father for some time and then returned to live with the mother. This divorce was recommended by the judicial committee of the senate on the sole evidence of one of the children, a girl of fifteen years of age, who at the request