

of certain questions concerning marriage, (1912 A.C., p. 880)—

Mr. Chairman, here is the first question I asked in the Senate:

Did the Government receive any formal request from any province or any specific representation from anyone to the effect that the British North America Act of 1867, should be amended by repealing subsection (26) of section 91 of the said act?

I will try to make it clear. According to the Constitution, marriage and divorce belong to the Parliament of Canada. On account of the legislation that had been passed by the provinces, I wanted to know if anyone had made any representation to have the British North America Act amended—by Westminister, naturally—to remove subsection 26 of section 91, meaning by that giving to the provinces full jurisdiction about marriage and divorce, in accordance with the stipulation of the subsection concerning civil rights which should belong to the provinces. It is to bring some common sense into that kind of legislation.

Senator DUPUIS: Mr. Chairman, perhaps it would save a lot of time for the sponsor of the bill if we could get him to discuss only section 1A of the Marriage and Divorce Act, as shown in the bill before us. It reads, in part, as follows:

1A. Married women shall have the same rights as unmarried women for the sale and alienation of immoveable property.

I submit that it would help if the sponsor of the bill would discuss that question only, as to who had the right to dictate, what is the law which governs the status of the unmarried women as far as the sale and alienation of immoveable property is concerned. Of course, that is the bill which the honourable senator has.

The CHAIRMAN: I can understand your point of view, of course. On the other hand, Senator Pouliot believes that the word "marriage" in the B.N.A. Act contains not only the fact of being married, not only the existence of the conditions which permit two persons to marry, but he thinks that marriage also concerns all the effects that it may have over property and civil rights.

That is why I did not interrupt him and allowed him to go ahead, to try to demonstrate to the committee as to whether this word "marriage" incorporates all the powers that the spouse may act upon after marriage. That is one point. I quite understand your question.

Senator DUPUIS: May I say, in answer, that this committee has no power to amend the B.N.A. Act.

The CHAIRMAN: That is so.

Senator DUPUIS: As regards the question of women who own property and who can sell or alienate that property, it is in the B.N.A. Act, section 92(13), which shows clearly that matters affecting the alienation and sale of property belong to the province.

The CHAIRMAN: That is to say, the sale of property of a married woman falls under the civil rights that belong to the provinces. That is the question we have to decide.

Senator POULIOT: Honourable senators, I am in the hands of the committee. I can go on with my explanation of the bill, if you wish.

I agree with Senator Dupuis that unmarried women have the same rights as men and widows; the difference is for married women. There has been such a clamour from a certain group to the effect that women should have the right to dispose of their real estate property without asking for the permission of anybody, that I have brought this legislation to regulate that position.

Senator BAIRD: You say that all other provinces have this right now?