

Private Bills—Divorce

In so far as the implication that adultery could have taken place is concerned, I might say that in looking through Mr. Power's book I am unable to find any indication that a divorce was granted on the ground of what is called common law arrangement. It is for this reason that I am quite concerned—as was the chairman of the committee of the other place—about the fact of the alliance or the arrangement that was made and which, in my humble opinion and I think in the opinion of many members of the other place, was given full consideration, and the divorce was granted.

There was a second witness to this incident on this particular night and that was Mr. Abe Golden, age 52, living in Montreal and also classified as to occupation as an investigator. Defence counsel Mr. Blank started his questioning in this way:

Q. Mr. Golden, I show you a photograph, exhibit 2. Do you recognize the photograph?

A. Mr. Louis Martz.

Q. Did you have occasion to visit premises at 10675 Gariepy street in Montreal on December 1, 1958, with Mr. Rosen?

A. Yes.

Q. Will you tell the committee what you saw and heard?

A. At approximately 11.30 p.m. Mr. Rosen rang the bell and it was answered by a man. We entered the house and the man had on his pyjamas. Mr. Rosen showed him the photograph and he admitted he was the man in the picture.

It would appear that he was in this picture more than just in this particular photograph.

Q. And what happened?

A. While we were conversing I followed Mr. Rosen upstairs to the bedroom and there was a woman in bed.

That is quite an interesting sentence:

While we were conversing I followed Mr. Rosen upstairs and there was a woman in bed.

I suppose he left Mr. Martz downstairs conversing with himself. But in any event they arrived upstairs.

Mr. Martz got nasty and wanted to know what it was all about—

I presume that is while he was discussing matters with himself downstairs.

—and we told him we were there on behalf of his wife. He said, "What is she bothering me for? I have been living with this woman for nine years." We then left.

Mr. Chairman, they did not leave then. They looked through the dresser drawers. They examined the cupboards and they ascertained for themselves that women's clothing and men's clothing was contained in those cupboards. This fellow therefore left too soon because there should be another couple of lines to the questioning of him as to whether there was a reasonable indication that a man and a woman both shared that particular room.

Q. Do you recall about seven years ago I asked you to serve a subpoena upon a woman in connection with a case of Louis Martz?

A. Yes.

Q. Is this the same woman you served on Querbes street?

A. Yes, sir.

By the Chairman (Senator Barbour):

Q. Was the bedroom on the same floor that you entered?

A. The bedroom was upstairs.

Then Senator Bradley asks some questions that I think should have been asked by the lawyer himself. His questioning went in this way:

Q. You went upstairs?

A. Yes.

Q. What were the conditions you found in that room?

A. The bed was disturbed. There were two cushions on the bed. It was a double bed.

Q. Any evidence of clothing there?

A. Yes, there were clothes on the bed and on the bureau.

Q. Men's and women's?

A. Yes.

Q. How was Mr. Martz dressed?

A. He had on his pyjamas, sir.

Q. And the woman?

A. The woman was covered up.

Q. She was in bed?

A. Yes, sir.

I would suggest, Mr. Chairman, that you would be obliged to draw a fairly strong inference from this evidence of these two investigators if you were going to draw the inference that the charge of adultery had been substantiated or, as I suppose the lawyers would say, that a prima facie case had been established that would indicate adultery in this case. I think the investigators were also of the opinion that if people lived in an open and public common law alliance it was rather foolish for them to be there and to go through the rigmarole they must go through in these cases in order to indicate beyond a reasonable doubt that adultery took place.

In my opinion, Mr. Chairman, this is not an established case of adultery. By the admission of the respondent, the lack of appeal by the correspondent and the inference that has been drawn from the evidence of the plaintiff, I would suggest that there are good grounds for granting this divorce; but this ground must be the ground of common law alliance and not the ground of an adultery charge as has been indicated in the petition. If the committee saw fit to pass this bill today by changing the interpretation from an adultery charge to an adultery charge over a period of years because of a common law arrangement, then I would be quite happy to have this divorce granted on the common law ground. Unless somebody objects to it, it