

Divorce Jurisdiction

fair to say that all hon. members would like to get rid of this business from the House of Commons.

I earnestly hope the house will give serious consideration to finding a way to implement what is the desire of all of us. I believe the solution contained in the bill is the best one; I have not heard a better one. Therefore from my point of view I would like to see the bill passed. But if there are those who feel that there should be some discussion, and that some better way could be found, I should like to hear from them. At the moment, however, I place the bill before the house in the hope that serious consideration will be given to it.

(Translation):

Mr. Andre Gauthier (Lake St. John): Mr. Speaker, I wish to assert immediately that I am strongly opposed to the bill moved by the hon. member for Winnipeg North Centre (Mr. Knowles) because, in my opinion, it would facilitate applications for divorce and increase their number, especially in the provinces of Quebec and Newfoundland.

I take that stand because my conscience compels me to do so and because I want to justify the confidence placed in me by the people of Lake St. John county who, thank God, still consider marriage indissoluble and the home sacred.

Before speaking on the merits of the bill before the house, I would like to say a few words about divorce itself. As a Catholic I am opposed to divorce. I am against it for reasons of a religious, social and family character. Marriage is a divine institution that cannot be dissolved by human justice. Our civil law, sanctioned by the constitution of 1867, asserts that marriage is indissoluble.

The family is the moral structure of the nation and every citizen must consider it his duty to resist any attempt to weaken the cornerstone of society, to oppose any measure which might undermine the very foundation of the Canadian nation. Statistics show that countries with the lowest birth rates are also those where divorce flourishes and the first victim is the child who is consequently deprived of the enjoyment of a home where harmony prevails, where husband and wife respect each other, where good example and the practice of sound Christian virtues are to be found.

The Prime Minister (Mr. St. Laurent), summing up the situation, said in this house, on March 24, 1944:

In Quebec not only is there no jurisdiction to deal with divorce, but there is a pre-confederation law which was continued in force by the British North America Act, and which will remain in force

[Mr. Knowles.]

until this parliament chooses to deal with it, as it has jurisdiction to do under section 91 of the British North America Act. This pre-confederation law declares that marriage is dissolved only by the natural death of one of the spouses. Whatever the authority you set up, as long as this law holds good in that province, no court will be able to grant any divorce.

The confederation act gives the federal government the right to legislate in so far as divorce is concerned. For obvious reasons, none of the lawmakers who have succeeded one another since 1867 has deemed it proper to enact a general divorce law. Every petition for divorce submitted to parliament is an exceptional case. The legislator retains his absolute right to accede to or to refuse the petition of the person who wishes to obtain a divorce.

From a legal point of view, it would be an entirely new situation were we, through general legislation, to delegate our powers to the exchequer court. It would be the admission of the principle at stake and the interested parties would no longer have to seek passage of an exceptional bill, to seek a privilege, but would go to a court of law to claim, with due proof, the exercise of a right, of an absolute right enjoyed by every citizen of this country. There is no doubt that the federal parliament has a right to hand over to the exchequer court divorce bills for Quebec or Newfoundland.

But if it were to do so, we would have in our statutes two conflicting texts, the one authorizing the breaking off of the marital tie, the other, that is section 185 of the civil code, proclaiming the indissolubility of marriage; faced with the obligation of making a choice, I do not hesitate to decide in favour of the application of the principles of divine right which were sanctioned by our civil law long before confederation.

Those who favour divorce courts seem to entertain a mistaken view of marriage and the law pertaining to it. Marriage is not a mere personal question, but a public one also. It concerns the prosperity of the nation and its effects may have far-reaching social consequences; that is why the lawmaker must be careful when preparing any measure tending to condone the granting of divorce.

The law must be concerned with the common welfare and not merely with the practical side of things. The sponsor of the resolution or those who support it tell us that they were not elected to pass divorce laws, but the federal parliament has had jurisdiction in this matter ever since 1867 and it is their privilege to vote in favour of such bills, as it is mine to oppose them.