

Divorce Law Reform

Mr. McCleave: Fine, we have cleared up one grievance, Mr. Speaker, and I am glad to have that assurance from the minister.

The minister has added the ground of homosexuality. I believe that covers cases where a man is married to a practising lesbian. The committee was not able to deal with this matter and the minister, by one magic word, has solved the problem. Nevertheless, he has taken away two grounds from the committee report. One ground is that arising from wilful non support, and the second is that arising from marriage breakdown through illness.

I am not particularly wedded to either concept but I hope, when we discuss these matters in committee, that we shall have a free vote about some of these contentious categories so that members of the house can express themselves freely, and in large numbers, on those points I have mentioned.

The second major change that the minister made with respect to the draft bill is removing jurisdiction from the county courts. Perhaps I ought to be more precise. The minister has rejected the committee's recommendation that county courts should have jurisdiction in divorce cases. Sir, the government has made an unfortunate decision here. Some of us hoped that divorce cases could be heard in county courts instead of having petitioners wait for circuit judges to come around. County court judges, generally speaking, are readily available to hear cases; circuit court judges are not. I realize that in cities like Toronto there is no problem with respect to circuit judges, because some judges from the circuit are always sitting. However, in some smaller towns of this province the circuit judge comes around only once or twice a year.

In this bill the minister has tried to set up a reconciliation procedure. Provision is made for the parties to wait for 14 days before resuming their action. One may find that a judge has come and gone in that period and that a person would have to chase him all over northern Ontario, or where have you, to catch him and to resume the action. This obviously is a retrograde step.

Another change from the draft bill concerns reconciliation procedures. I do not think the committee got into that field. The minister ought to be thanked for getting into it, but I do not know how effectively he has entered it. I suggest, sir, that we shall need a new approach by our courts to make reconciliation procedures truly workable. In the

bill a beginning has been made; the judge can refer parties to counselling agencies, or he can postpone their case until they have received counselling. The lawyer, also, has certain obligations. I think, however, most lawyers worth their salt try to hold a marriage together when people come to them with divorce problems. So, we are not really called upon to assume "Dear Abby" roles in that regard. But again it seems to me you have to have a court procedure situated in one place, not in the hands of a roving judge, and in a court where it is customary to have a more informal atmosphere than prevails in the supreme or superior courts of this land. A county court is at least half way to the kind of court I visualize. Certainly the judges in county courts are permanently based. They are not on circuit, or if they have circuits they are not long circuits.

● (9:40 p.m.)

I would like to make another point with regard to court proceedings. I think that as long as we leave divorce cases in the supreme or superior courts, divorce will be very much beyond the reach of many people in this country. I realize that legal aid is becoming more and more common across Canada, and that legal aid for people in matrimonial matters is also becoming common, even in provinces which once refused to extend it to such cases. When legal aid was introduced in the United Kingdom it was found that approximately two thirds of the matrimonial causes relied in some way on legal aid. Until we have an equal generosity in Canada there are going to be many people caught in the so-called common law situations, that is, married to somebody else and living with third parties, who through lack of money will not be able to solve their problems. I suggest that if we continue our high court approach on this matter we simply compound their problems. They simply will not be able to solve their problems and get divorces, for which the grounds readily exist, and then regularize their new liaisons. As the Canadian Welfare Council pointed out in perhaps the most remarkable statistic given to the joint committee of the Senate and the House of Commons there are 400,000 Canadians in the position of the so-called common law relationship.

Another point I should like to make deals with the theme of reconciliation. This is something the committee studied at length without, as I noted before, coming to a recommendation with respect to it. The only