

That is under exclusive federal jurisdiction; there is no doubt about it. As to what is going to be the status of properties and the rights of women and men in so far as their property is concerned, that is certainly a matter of civil rights. I do not think there is any doubt about that. Provincial jurisdiction in that regard has been accepted for the last hundred years. I have no doubt that federal jurisdiction, if it was to decide that it should overlap provincial legislation to get a complete setup on marriage, could pass ancillary legislation that would affect the Civil Code. But that would be a matter for the Government to decide, whether it feels it should exercise its full jurisdiction over marriage, that it should overlap the Civil Code in the field of civil rights and property rights in the province. It has not done so up to the present time, and I ask whether it is proper for us to do it? That is one thing the committee has to decide.

Senator POULIOT: If you will permit me, Mr. Chairman and honourable senators, there have been many complaints of federal encroachment upon provincial rights but this time it is provincial encroachment upon federal rights. To give you an idea of the scope of the matter, in virtue of the Civil Code of Quebec, 1866, as it was adopted then, it read as follows:

As it relates to bed and board Separation renders the wife capable of suing and being sued and of contracting alone for all that relates to the administration of her property.

This is for the administration of her property, but for all acts and suits tending to alienate her immovable property she had to require the authorization of a judge. That was the law that existed until the article was changed. That article was amended in 1875, replaced in 1888, amended again in 1920 and replaced again in 1930-31 by the Quebec legislature, and now it reads thus:

210 CC The separation confers upon the wife full civil capacity to contract without the necessity of marital or judicial authorization.

If the provincial legislature had no jurisdiction to pass those amendments, it means that all that has been done without authorization by separated wives for the alienation of their real estate is null and void. You can see the disaster that would follow, and it is probably on account of such a magnitude of difficulties that the matter has been left under the bucket and that nobody has drawn the attention of anyone about the whole matter. It is so serious that from the time that the memorandum was sent by Chief Justice Rinfret to the Prime Minister and Attorney-General of Quebec, late in 1958, the legislature, since more than five years, has not passed a single amendment concerning marriage. They are afraid to touch it because they know very well they have no jurisdiction whatever and what is said by the protagonists of women's rights in the Province of Quebec is just pure bluff, because they are not taking any action to legalize the whole matter.

Senator STAMBAUGH: You do not have to convince me of the rightness of the bill. I think it is very fair but I am surprised to learn that the situation in regard to this matter is not the same in Quebec as in other provinces.

The CHAIRMAN: It has never been.

Senator STAMBAUGH: I do think we should have some advice from the Department of Justice. We should not pass this bill and then find it has no effect. It would be a sort of insult to the Legislature of Quebec.

The CHAIRMAN: If it is the wish of the committee I shall certainly make it my duty to have Mr. Bedard or some other officer of the Department of Justice come here and state whether or not this legislation is valid.

Senator MONETTE: Mr. Chairman, do we have the opinion of the law clerk of the Senate upon this?