

date, July 15, 1870. Such resolutions must be founded upon a recommendation and report by a divorce commissioner appointed under that statute to conduct the hearing and upon a further report, under our Senate rules, by the Divorce Committee of the Senate to which the commissioner's recommendations are presented in the first instance. The act also provides for an appeal to Parliament as a whole by any person considering himself or herself aggrieved by a resolution of divorce adopted by the Senate. A 30-day delay takes place during which such an appeal might be made. I do not know that any appeals have been made.

The Co-CHAIRMAN (*Senator Roebuck*): None have been made.

Mr. HOPKINS: I will say no more on this matter, since I understand that Mr. Justice Walsh will deal with it in some depth. However, I have written an article for *The Canadian Banker* entitled "The New System of Parliamentary Divorce," which outlines the parliamentary history and background of this unique piece of legislation. The text of the article could be printed as an appendix.

The Co-CHAIRMAN (*Senator Roebuck*): I will have a resolution to that effect moved later.

Mr. HOPKINS: It might be interesting to have it so printed, as I see here two members of the House of Commons, Mr. Mandziuk and Mr. McCleave, and Senator Roebuck, all of whom played a prominent role in that connection.

To conclude this examination of the Canadian law of divorce, it should be added that the laws of divorce in force in the Northwest Territories are those of England, once more as of the magic date July 15, 1870, and that the procedure to be followed in the territorial courts is that obtaining in the Province of Alberta. I cite the acts concerned, and they are incorporated in the appendix. (See the Northwest Territories Act, R.S., c. 331, s. 17, as amended by the statutes of 1955 (Can.), c. 48, s. 9). When the act of 1886 originally conferred such jurisdiction, the present Yukon was still part of the Northwest Territories, so that the Yukon has the same basic jurisdiction, later confirmed by Dominion act. (See now R.S.C., c. 53, s. 31).

In view of the significance attaching to the statutory law of the United Kingdom relating to divorce and matrimonial causes as it stood on July 15, 1870, appendix 3 hereto contains the texts of the United Kingdom statutes applicable that date. Prior to January 1, 1858, when the Divorce and Matrimonial Causes Act of 1857 came into force, no court in England had jurisdiction to grant a decree of divorce in the modern sense of the word; that is a divorce *a vinculo matrimonii* which effectively dissolves the marriage tie for all purposes. Until then, matrimonial causes were under the jurisdiction of ecclesiastical courts administering the canon law of England—which is somewhat different from the canon law on the continent—whose authority in divorce was limited to the granting of divorces *a mensa et thoro* from bed and board. Prior to that time a marriage could be dissolved in England only by an act of Parliament obtainable only after expensive and formidable obstacles had been overcome.

I am about to quote something which is of interest here and which, among other things, was responsible for the amendment of the law of England in this matter, in much the same way as Uncle Tom's Cabin had an effect on slavery in the United States. The quotation is as follows:

(See *Sheppard v Sheppard* (1908) 13 BCR 486, at 515.)

The well known anecdote of Mr. Justice Maule gives a forcible illustration of the process. A hawker who had been convicted of bigamy urged in extenuation that his lawful wife had left her home and children to live with another man, that he had never seen her since, and that he married the second wife in consequence of the desertion of the first. The judge, in passing sentence, addressed the prisoner somewhat as follows: