

"It is well there should be room for elastic action—the refusal to pass a law in favour of one who has outraged decency and morality—the power to exercise penal legislation, if I may so put it, in gross cases. This power, in the public interests, should I think, remain with Parliament. When involved in the exercise of its high functions to make a special law in a particular case, perfect freedom of action should be preserved.

"A court of divorce could merely declare the law and pronounce fixed judgment, having relation to the individual contest alone.

"There may be inconvenience, as I have said, in the legislative process, but I do not think the inconvenience is insurmountable. I believe it may be minimized or overcome by appropriate rules regulating divorce proceedings.

"But in any case, the argument in favour of the establishment of a court seems open to objection, and as at present advised I do not think it would be in the public interests.

"The number of cases coming before Parliament is increasing, but with only thirty cases since Confederation, the probable number would not warrant the large additional burden, the establishment and maintenance of such a tribunal would involve.

"Tis true in Parliament these cases are disposed of but once a year, while a Divorce Court would be always open; but I am disposed to think *it would be anything but a blessing* to offer the temptation of a court sitting always, for hasty appeals to dissolve the marriage tie. Moreover, there would be more technicality, of necessity, in the proceedings of a court, as may be seen in looking over the proceedings of the English Divorce Court cases, and many vexatious impediments not likely to occur in Parliament. Then, as to delay: in most cases I think the time in obtaining a final decree from a court would not be less, in the majority of cases, than in obtaining an Act for divorce.

"The costs of obtaining a private Act are said to be high, and some regard this as an evil; but I venture to say they would be little less in a Divorce Court contest; and so, neither on the ground of simplicity and speed, nor economy in procedure, can the arguments in favour of a Divorce Court, in my opinion, be sustained.

"Something has been urged with more force, on the ground of uncertainty in procedure. I must admit the existing procedure is incompetent and unsatisfactory. I believe, however, this may be cured by a revision of the Rules for Divorce, and that a simple and intelligible practice can be devised, under which parties interested, or their legal advisers, could be able to clearly know the method and conditions upon which relief would, if granted at all, be obtained, and which would prevent improper appeals to Parliament—and guard against fraud and abuses."

As will be seen by a perusal of the rules, a committee of nine senators is appointed, called the Select Committee on Divorce, to whom are to be referred all petitions and bills for divorce and all matters arising thereout. This Committee practically constitutes the Divorce Court of the Dominion. The original proposition was to make the Committee consist of seven members of the Senate, and we confess to the thought that the smaller number would have been preferable to the larger one which was afterwards agreed to.

It is not necessary to enlarge upon the danger and impropriety of the old procedure, which practically left to the member having charge of the bill to select the judges who were to pass upon the case. It was at least in bad taste, and contrary to first principles underlying judicial determinations. Again, a relic of