

from mere mutual agreement to separate. If two parties agree to live apart and intend to get a divorce, you are going to have divorce by consent after a three-year delay. I think it has to be real desertion and not mere separation. In the case of real desertion, inevitably you have to enter into the question of fault: who deserted whom?

The insanity ground, I think, is good.

The CO-CHAIRMAN (*Senator Roebuck*): Commissioner Walsh, if we drew the bill up saying desertion without due cause—something of that kind—could we not leave the interpretation of it to the courts?

Senator ASELTINE: I agree, Mr. Chairman.

Mr. JUSTICE WALSH: I would think so.

The CO-CHAIRMAN (*Senator Roebuck*): You would not attempt to define it in a particular way?

Mr. JUSTICE WALSH: No.

The CO-CHAIRMAN (*Senator Roebuck*): You would not bind judges in their decision as to what is desertion?

Mr. JUSTICE WALSH: No, I think we have to develop a Canadian jurisprudence on it.

Regarding the other grounds that have been dealt with lightly by Mr. Hopkins, insanity under the existing English jurisdiction is very restrictive. If a person has to be continuously in an institution for five years, well, under modern methods of treatment they normally let a person out for a month or two on parole, and then he has a relapse and has to go back again, and then is paroled out to the custody of relatives, and goes backwards and forwards. A person may be more or less constantly insane, but to require him, without intermission, to be committed to an institution for five years is perhaps too strict. A schizophrenic may be in an institution two or three times a year, but in between times is out. I think perhaps the British jurisprudence is too restrictive on that.

One of the things you have to watch for, in insanity in Quebec arises from the fact that the husband is not responsible to his ex-wife for alimony, so you would have to be careful, if it were the husband bringing divorce proceedings from Quebec on the basis of insanity of his wife, that he was not merely making her a charge on the state and doing it solely to avoid his financial obligation to support her. There might be the necessity to put in a requirement, in the case of a petition by her husband, that, if he is financially able to do so, he be required to make provision for his insane spouse.

The CO-CHAIRMAN (*Senator Roebuck*): That is something we should remember.

Senator ASELTINE: Mr. Chairman, I have to go, but I would like to make one suggestion to his lordship that would solve the problem entirely that he raised a short time ago with regard to the hearing of divorces from Quebec and Newfoundland, as we are hearing them now. All we have to do is to amend the Exchequer Court Act and give that court complete jurisdiction with regard to Quebec and Newfoundland, if they do not want to set up courts themselves. That would eliminate all this paper work you speak of, and I would be willing to bring in another bill like the bill I brought in in 1956 to that effect, if the committee decided that were the appropriate step to take.

Mr. PETERS: The Senate did not support us two years ago when we tried to do this.

The CO-CHAIRMAN (*Senator Roebuck*): That is two years ago.

Mr. JUSTICE WALSH: The ground of repeated imprisonment of a husband is another ground where certainly I can see the wife suffers greatly when the