

*Dissolution of Marriage*

she is deserted in the domicile where the desertion took place. But for that exception the law works a great hardship on people because it is the domicile of the husband that governs the jurisdiction. Particularly in a country like Canada with 10 provinces the husband may have deserted his wife, may have left the province of Alberta and acquired new domicile in the province of Newfoundland or in another province. In that way that particular female spouse has no remedy or at least the remedy is very difficult. So I feel that on that question of domicile and jurisdiction there should be reform.

I am going to come back to the question of bigamy for a few moments. Bigamy is the act of a person who if married goes through a form of marriage with another person in any part of the world. Many people feel that the offence of bigamy is based on the fact that the person went through a form of marriage in Canada. If spouses go through a form of marriage in the United States and were not legally divorced as far as Canada is concerned because our jurisdiction will not recognize this particular United States divorce then you may be charged with and convicted of bigamy particularly if you knew you were not legally divorced. In this particular case the defendant was acquitted because the crown filed a document of a certain state which states on that document that that spouse was domiciled in that state, and no evidence was presented by the crown that he was actually domiciled in the province of Saskatchewan. That happened to be a technical defence but it succeeded. I draw that analogy in order to show that there are people living under those circumstances and probably unknown. Then there are other serious ramifications because those people have children. They may be illegitimate children. Then there is a question whether they inherit the estate and there are problems all along the line. I say that is another reason why we need reform in this field: Let us clean up the mess.

With reference to the question of proof, as the law stands today the main ground, of course, is adultery. There are other grounds such as sodomy but the main ground is adultery. I want to come back to the question of collusion and deal with that for a few moments. I think the last speaker has the wrong idea of what legal collusion is. There is nothing wrong in having the right kind of agreement. There is nothing wrong in entering into a financial agreement. There is nothing wrong if one spouse says to the other, "I want a divorce". May I suggest that collusion exists where some fraud has occurred or where there is some agreement that is bad in law. For example, if one spouse encourages

the other to go out and commit adultery, that in itself would be collusion. It would also be collusion if one spouse committed perjury, as my good friend says. It would be perjury if the husband or the wife or one of the witnesses set out certain facts under oath that were wrong.

There is a lot of talk about perjury in divorce actions and I want to deal with that for a few moments. There is no more perjury in divorce actions than there is in any other kind of litigation. For example, let us examine the automobile accident cases. People will get on the stand and both plaintiff and defendant will say that they were on the right side of the road going at a very reasonable rate of speed in the opposite direction on a highway 66 feet wide. Yet there has been a head-on collision. Somebody must be committing perjury or at least, to put it mildly, must be mistaken. I want to make that point because there is too much talk about divorces being collusive and I do not go along with the point of view that there is more perjury with reference to divorces.

With regard to collusion, I want to read what a distinguished author has to say about it. On page 65 of his book, "The Law of Divorce in Canada", there is the following:

In order to constitute collusion there must be a corrupt agreement or conspiracy, to which the petitioner is a party, to obtain a divorce by manufactured evidence or of some fraud or deceit practised on the court.

I want to repeat that there is nothing wrong with one spouse saying to the other, "I want a divorce", if the evidence exists. Let us assume that the husband says to the wife: I was out with Nellie last night, certain things happened and you had nothing to do with it. Let us assume that she then goes to a lawyer who issues a statement of claim or a petition and brings the matter before the court. Such co-operation is not collusion. There is nothing wrong with that kind of agreement. One spouse can assist another in getting a divorce as long as there is no fraud or deceit, as long as you do not tell the court a lie. That is why I say people are talking loosely when they say that many divorces are based on collusive evidence. I have respect for the courts of our land and for our judges, who are men of experience and well trained in the field of jurisprudence. They hear the witnesses and they are able to determine in most cases whether or not the witness is telling the truth. In defended divorce the art of cross-examination brings out certain facts and from those facts the judge may draw certain inferences. Of course, we must all admit that on occasion it is very difficult to prove—