THE SENATE

Thursday, January 17, 1956

The Senate met at 3 p.m., the Speaker in the Chair.

Prayers.

Routine proceedings.

DIVORCE

REPORTS OF COMMITTEE

Hon. Arthur W. Roebuck, Chairman of the Standing Committee on Divorce, presented the committee's reports Nos. 5 to 12, dealing with petitions for divorce, and moved that the said reports be taken into consideration at the next sitting.

The motion was agreed to, on division.

DIVORCE RULES

AMENDMENTS RECOMMENDED BY COMMITTEE

Hon. Mr. Roebuck presented the committee's report No. 13, recommending amendments to the standing rules relating to divorce, and moved that the said report be taken into consideration at the next sitting.

He said: Honourable senators, I do not propose to attempt a review of this particular report today, but I do think that some explanation of how it originated is due to my fellow senators.

It proposes a series of amendments to the Senate rules on divorce. There are two main propositions contained in this report. One is that an applicant for divorce shall be required to name the co-respondent; and the other is that a respondent when pleading opposition to the petition shall be required to give a short, concise statement of the facts upon which he or she relies. There are, of course, some details connected with those two proposals traced out *in extenso* in the report; and the report recommends some other changes of a more or less inconsequential nature.

Honourable senators will have an opportunity to look over this report during the recess between today and Tuesday, when I shall move for concurrence, but I think I should make clear at this time how it is that the matter arises.

On the 31st of May last, referring to our rules for dealing with divorce cases, I made the following statement in this chamber:

> I have not been at all satisfied, honourable senators, with the state of the rules under which we hear these cases. I have here the original rules. They were remodelled as long ago as 1906, and were adopted during the session of that year. That is half a century ago.

Then I detailed the very few and inconsequential changes that had been made in the rules, and I said:

> Those are all the changes which have taken place in the rules in the last half century, and it is accordingly not to be thought that they are up-to-date and streamlined according to modern procedure. The pleading which comes before us, as a result of the lack of demand on our part, is often atrocious. In our form appear the words "on divers occasions"; and time and again there comes before us a husband charging a wife, or a wife charging a husband, with having committed adultery "on divers occasions". In other words, so far as the pleading is concerned, the whole life of the respondent is put in review, because adultery is charged at some time and some place, with some person unnamed. That is not according to modern pleading, and one could not get away with it in any other court.
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> By practice, though not by our rules, the petitioner must state particulars when they are demanded. But as this requirement does not appear in the rules, a lawyer who does not know the practice may come to Parliament at a great disadvantage in answer to such a pleading. The position of the petitioner may be even worse. The petitioner cannot demand particulars from the respondent, and all manner of defences may be put forward. For instance, there may be a denial of the charges, or there may be an allegation of connivance, collusion, or condonation. The respondent may allege that the parties have lived together, or have forgiven each other; or that the petitioner has been guilty of such cruelty as disentitles him or her to the relief claimed. It seems to me that our rules should require from the respondent, when the petition is opposed, a short, concise statement of the facts upon which he or she relies and which he or she intends to prove, so that the petitioner shall have notice of what he or she must meet. Similarly, the petitioner should be required to give to the respondent a concise statement of the facts upon which he or she relies.

Hon. Mr. Euler: Would my friend mind telling us what document he is reading from?

Hon. Mr. Roebuck: I am reading from *Hansard* certain remarks I made in introducing this subject on May 31, 1956.

I then referred to "the more debatable question as to whether the petitioner should be required to name the co-respondent," and went on to say:

> There is no such obligation at the present time. There are two sides to this question. What appeals to me is that if a husband charges his wife with adultery with some person, the least he can do is to tell her, if he knows, who that person is; or *vice versa*, if the wife charges the husband and she knows the name of the person with whom she alleges adultery has been committed, her husband is entitled to know who the accused person is said to be as well as when and where the adultery was committed. The committee, too, in my opinion, is entitled to this information. Further, the co-respondent so named should be served with notice of the proceedings. I imagine that sometimes a person so charged would like to come before the committee and say, "The allegation is false; the story is concocted; I have had no improper relations whatever with the respondent". Under the present rules, the names of alleged co-respondents are frequently mentioned in the evidence, but as