

The CHAIRMAN: Yes, he is a professor at the University of Ottawa.

Senator HUGESSEN: I should have thought in a matter of this kind, when the Senate is considering a bill in which an important constitutional point arises, that the Senate had the right to ask the Department of Justice for its opinion as a department.

The CHAIRMAN: I certainly would feel the same way. When I first saw the Honourable Mr. Chevrier about it he was absolutely of the opinion that Mr. Bedard could come before our committee and give the opinion of the department on the question, and it was only last night that he told me he had learned within the last few hours that usually they do not give an opinion in the case of a private bill. However, I am going to insist upon Mr. Bedard coming here and giving the opinion of the department on a bill of such importance where the only question is whether or not it is constitutional.

Senator POULIOT: Mr. Chairman, if you allow me, the bill sponsored by Mr. Brown in 1912 was, from the point of view of procedure, the same as the bill I am sponsoring now. It was a bill sponsored by a private member, and the Minister of Justice took it to the Supreme Court and to the Privy Council to have a ruling on it.

The CHAIRMAN: Yes, but did the the department send one of its officers to give its opinion before the committee? I am going to seek an opinion from the Department of Justice, if I can, before the next sitting; that is, if it is the wish of the Committee that I do so.

Senator STAMBAUGH: Mr. Chairman, I would like to ask Senator Pouliot whether he believes that this bill is unconstitutional.

Senator POULIOT: I honestly believe that it is constitutional; otherwise I would never have sponsored it.

Senator STAMBAUGH: I thought you said it was very similar to the one of 1912 that had been declared unconstitutional. That is why I asked that question.

Senator POULIOT: I believe the bill before the committee is surely constitutional and sound for the reasons that I have given to you. It was only the procedure which was similar; the subject matter is entirely different.

I am not infallible but that is my very deep and sincere conviction, after having studied the matter not only with the late Chief Justice Rinfret but with many leading members of the bench and bar; moreover, I must add without mentioning names that I have the support and encouragement of very important members of the bench and bar.

The CHAIRMAN: The bill is extremely important because, as a matter of fact, if all relations as to civil rights between men and women who get married fall exclusively under federal jurisdiction you can see what a tangle would arise. If such was the decision all contracts of marriage that have been celebrated in the past hundred years would be invalid and could be attacked. I think this is such an important question that we should deal with it with the utmost care. I do not feel it is a bill we can pass without thinking too much about. It is an extremely serious matter. It would mean that at least 400 to 500 articles of the civil code could disappear—all those articles concerning community of property, separation from bed and board, separation of property.

Senator HUGESSEN: Mr. Chairman, I gather the position under section 129 would be that those provisions which were already in the act at the time of Confederation would remain, but any subsequent amendments to these articles made by the legislature would be declared null and void. Is that right?

The CHAIRMAN: Yes. Another viewpoint from which it can be looked upon is this: marriage is certainly a federal matter as to who can marry, what relationship there should be between the two people who want to get married.