

measure unanimously in order to remove from our statute books one of the most discriminatory pieces of legislation that was ever passed in Canada. This will give to the women of Canada equal status in matters of divorce, and I should like to appeal especially to the Minister of Justice to give the measure his support and see that it passes. It has been before the house for three sessions; I sincerely hope it will pass the commons now, and if it does I am sure it will pass the upper house and become law.

Hon. ERNEST LAPOINTE (Minister of Justice): Before this measure is carried I am sure my hon. friend will permit me to say what I think about the proposed legislation. I should have thought my hon. friend would have been satisfied with the supposed progress which was made the other night when we passed the bill creating a divorce court in Ontario, without going on with this bill. However, I will admit that the new bill as introduced by my hon. friend is better—if there can be anything good about it—than the one he brought in last year and which passed this house after a stormy debate but was thrown out by the Senate. I will admit that this was one of the rare occasions on which I thought the Senate was a useful institution.

Mr. McGIBBON: When did you change your mind?

Mr. LAPOINTE: I have not changed my mind; I hope the Senate will be just as efficient this year if this bill passes the house.

As I have said, this bill is not as bad as the one brought in last year. Under the bill of last year a woman could leave her place of residence and move from one province to another in order to qualify for divorce proceedings. This year the bill of my hon. friend is not so wide in its application; it says that the woman will be enabled to institute proceedings in the province where the husband had his domicile before he deserted his wife. At least this bill will not transfer the activities of the woman from one place to another in order to secure a divorce; she will have to institute her proceedings in the province where she was living when her husband left her; but, sir, even at that it still infringes upon another principle of British law, which is that an instance in divorce can be started only in a jurisdiction which is the domicile of the parties. Under the British law, and for that matter under the law of all nations, the domicile of the wife is the domicile of

the husband. As long as the marriage lasts there is only one matrimonial domicile, and surely everyone will admit that this is a good law.

Mr. KENNEDY: Even though he deserts his wife and runs off to another province?

Mr. LAPOINTE: But the marriage still exists. The mere fact of desertion by one party or the other has not the effect of dissolving the bond; otherwise it would be too easy for many people to do so. If by intention and by the other elements that constitute the domicile such domicile has been effectively changed, then the proceedings would be carried on elsewhere than at the legal domicile. This is not done even in ordinary judicial proceedings, and a serious situation might arise where there might be two instances in divorce, one on the initiative of the wife at the place where my hon. friend, by his bill, suggests it should be, and one on the initiative of the husband at the place where the husband has established a new domicile. There might be two different decisions on these two instances, and appeals might follow which would make for conflict and confusion. So long as the marriage bond has not been declared broken by a judgment of a court, it still exists, and so long as it exists there is only one domicile. I do not give this as my own personal view, as there are authorities on the matter. The only Canadian author dealing with divorce matters is R. R. Evans. In his volume entitled *Law and Practice of Divorce*, he says at page 261:

It is a fundamental principle of international law firmly established by the cases previously cited that domicile is the test of any court's jurisdiction to dissolve matters by a decree of divorce and that unless domicile within the territorial jurisdiction of the court selected at the time proceedings are commenced is established such court cannot grant a divorce which will receive extraterritorial recognition. This principle is recognized and strictly adhered to by both the English and Canadian courts, by the courts of the United States and of most foreign countries as well.

The meaning of this is that any divorce granted outside of the real domicile of the parties would not be recognized by foreign countries. My hon. friend should consider that point very seriously before insisting upon the passage of his bill. The author continues:

International law also decrees that a woman upon marriage takes the then domicile of her husband—

The hon. member for Southeast Grey (Miss Macphail) may not like that; nevertheless it is so.

Miss MACPHAIL: Well, I do not like it.