

Private Bills—Divorce

no right to do. It is a question of allowing full discussion and coming to an understanding of these cases so long as they are here before parliament. I think it is the responsibility of all hon. members to do the same sort of thing and to acquaint themselves as thoroughly as possible with the circumstances that exist in order to ensure that we are doing the right thing when we pass a law dissolving a marriage.

I think I can say without the shadow of a doubt that adultery did not take place on the first day of December. We can assume that it has taken place. They have been living together for three years as man and wife. That is the evidence given. But in this particular case, if we pass this divorce on the grounds that adultery took place we will be granting it on the grounds of a common law arrangement having existed, and the reference to adultery having taken place on this particular day will not be borne out. This is the prime factor that will be in our minds, and I am sure it was in the minds of the members of the committee of the other place.

Anyway there is further substantiation of this common law arrangement in the evidence. Also, Mr. Chairman, there are some conflicts between the evidence given by the two investigators.

Mr. Mandziuk: May I ask the hon. member a question. The hon. member referred to common law arrangements. What does he mean by a common law arrangement? The evidence in this bill proves that these two people, this married man and this woman, were living together for a period of nine years. The hon. member refers to a common law arrangement. I would like to have him clarify that.

Mr. Howard: Yes, I would be quite pleased to attempt to do it. Certainly I would not think my thoughts on the question of what common law means would anywhere near approximate the understanding that my hon. friend has after having been so many years in a particular profession. The words "common law" are ordinarily understood by laymen to mean two people, a man and a woman, living together but not legally married. This is the circumstance which we have related—

The Deputy Chairman: Order. I must advise the hon. member that his time has expired. Shall clause 1 carry?

Mr. Peters: Mr. Chairman, this question of the common law relationship is one that has received very little consideration from legal authorities but it is very interesting to note that Power in discussing this matter has pointed out the things that are necessary to prove a marriage and what constitutes a marriage. The legal definition of a common

[Mr. Howard.]

law marriage is that it is one where a man and woman live together in a certain relationship and have children and the husband recognizes the children as being legitimately—

The Deputy Chairman: Order. Would the hon. member explain to me what this has to do with Bill No. SD-43?

Mr. Peters: In Bill No. SD-43 we are concerned not so much with the charge of adultery because the charge of adultery is incidental to the common law marriage which has lasted for over nine years. I was trying to point out that the common law relationship has been accepted in a number of acts. One of them is the War Veterans Allowance Act.

The Deputy Chairman: Order. I cannot see anything in the preamble of this bill referring to a common law relationship. This bill refers to adultery as the cause for divorce. There is no reference to the common law relationship.

Mr. Peters: When the hon. member for Skeena was discussing this bill a question was asked toward the end of his remarks.

An hon. Member: No one asked you.

Mr. Peters: Whether or not I was asked maybe I will see fit to answer. I would suggest that the charge of adultery is only incidental to the situation that has developed over a period of years and that we are not so much concerned with the adultery charge. I am quite sure we can prove that there are no grounds for adultery as such in this bill but that a situation developed over a period of nine years which would tend to convince one that adultery was quite possible and very likely and in fact did happen. Having regard to the over-all situation rather than a specific incident, though the other committee asks for a specific incident, I think we could well grant this divorce as we could have granted the last one on the grounds of a common law alliance.

I would be quite happy to go into the legal definition of what constitutes adultery and I think the evidence here will not bear that out. Before we come to the evidence of the detectives it might be wise to mention one other matter that I think is a consideration in this case, and I have reference to the petitioner herself. The petitioner was asked by her lawyer how long it was since she had lived with her husband. The actual question was:

Q. When is the last time you lived together with your husband?

A. 1949.

Q. You have been separated for approximately 10 years?

A. Yes.