

Divorce Law Reform

itself, could be regulated under federal jurisdiction. But in practice, since it will be very difficult to distribute these possessions which are often worth little in comparison with the personal property of the husband and wife, it would have been a mistake to try to decide how property should be divided by the present legislation.

I think that the jurisprudence of the Superior Court of the province of Quebec will continue to be applied, and that a divorce will automatically mean separate maintenance.

This is an example of the respect we have shown towards this important problem of a conflict of jurisdiction.

• (9:20 p.m.)

[*English*]

Mr. Robert McCleave (Halifax): Mr. Speaker, it has been more than a quarter of a century since the last massive attempt to reform the divorce laws of Canada was made in this country. That attempt, sir, was made by hon. Mr. Aseltine of the other place, and he was successful in persuading the other place to pass a measure that would have granted divorce not only on the ground of adultery but also, I believe, on grounds of cruelty and desertion. The bill came to this place but was allowed to die on the order paper. As I say, that was more than a quarter of a century ago.

Times have changed and public climate has changed. I think the biggest lag politicians have probably suffered from in the field of divorce is their assessment of what is the public mood and what the public wants. For example we found when we were holding hearings in the divorce committee, hearings that lasted many months, that one church organization after another came before us and presented opinions that were far in advance of the opinions we ourselves held.

I say that the time is ripe for divorce reform. I also say that there has been much human misery that can be counted in the tens of thousands of Canadians who have suffered because more than a quarter of a century ago this chamber refused to pass one simple measure which was nowhere near as comprehensive as the one with which we are dealing now, though heaven knows there are faults enough in it. However, I shall deal with those later. If this step had been taken by our forebears in this place, much human misery in this country would have been saved.

The Minister of Justice (Mr. Trudeau) has presented a bill modelled in part upon the recommendations of the committee whose report I hold and which held hearings that started on June 28, 1966 and ended on April 20 of this year before presenting its report. Some of the measures taken by the minister in his bill, compared with the ones drafted by the committee, are, I think, improvements on the committee report. But now that I have had a chance to study the bill and to compare it with the draft bill included in the committee report, other provisions to me constitute glaring weaknesses. As a matter of fact, sir, I intend to lay emphasis upon four only in my address this evening. There are others but I think they can be pointed out in committee; they do not strike at the heart of divorce reform as much as the weaknesses I intend to detail.

I do this, Mr. Speaker, not in a spirit of criticism but because the Minister of Justice was good enough to say before he sat down that he did want to consider any recommendations made by other members, so that in committee we could attempt to effect cures. This spirit pleases me very much because I think there is a chance to effect cures in four areas that I think are vital.

May I first commend the minister, largely for the way he has divided the grounds. He has not fallen into the trap of adopting marriage breakdown—or the permanent breakdown of marriage, to use his wording—as the over-all approach to this subject. Those who advocated it most strenuously could never believe that one party to a marriage could unfaithfully treat the other party to a marriage; that one party to a marriage could brutally abuse the other party to a marriage. Those who adopt the principle of marriage breakdown but want to be kind to both parties to a marriage that is in difficulty are living in the strange twilight world of today's morality, where there are no blacks or whites.

The minister has adopted as grounds for divorce adultery, sodomy, bestiality, rape, and has added homosexuality—all instances of human fault. He has also included bigamy. What conduct is more reprehensible than for one person knowing he is already married to marry somebody else? Or what is more reprehensible than cruelty, where one party treats the other party with brutality? I am glad to see that the minister has held on to the old time morality and kept those grounds without the leavening of the marriage breakdown theory.