The laws of England as of November 19, 1858, were proclaimed in force in British Columbia by a Royal Proclamation of that date, and an Ordinance of 1867 made the same provision after the union of Vancouver Island and British Columbia under the latter name. These provisions were continued in force by the terms of the Imperial Order in Council admitting that colony into the union on May 16, 1871.

This led to a curious result in British Columbia, which had to be corrected by an act of the Canadian Parliament. In 1857, petitions for divorce in England had to be heard by three judges, from whom there was an appeal to the House of Lords. But when the laws of England were introduced into British Columbia the powers granted to three judges were granted to a single judge, and no provision was made at the time for an appeal therefrom. Since provision for an appeal must be made by express enactment, it was held by the courts prior to 1937 that no appeal lay from a single judge in British Columbia either granting or refusing a divorce petition. However, in 1937, a federal Act (chapter 4 of the statutes of that year) conferred such a right of appeal to the court of appeal of British Columbia.

Nova Scotia, New Brunswick and Prince Edward Island each has a divorce law of its own, enacted prior to Confederation and continued thereafter in force in these provinces except as modified by the Acts of the Parliament of Canada reproduced as Appendix 1.

In 1758, and those who are from Nova Scotia may take a bow—one century before judicial divorces were obtainable in England, the first legislative assembly of Nova Scotia passed an act (chapter 17 of the statutes of that year) which provided that all matters related to prohibited marriage and divorce should be heard and determined by the Governor or Commander-in-Chief for the time being and His Majesty's Council for the province. It also provided that no marriage should be declared null and void except for impotence or consanguinity within the degrees prohibited by 32 Henry VIII, c. 38,—and now approximating those in the Anglican Book of Common Prayer. I have a note on consanguinity, but I do not need to go into that now, because it is not related to divorce but to nullity—and that no divorce should be granted except for either of those two causes, for adultery and desertion, without necessary maintenance, for three years.

In those days they did not draw the nice distinction between nullity and divorce which we do today; you could get a divorce on the same ground as for nullity.

In 1761 by an amending act (chapter 7 of the statutes of that year), "cruelty" was added and "desertion" dropped as a ground for divorce. Cruelty is thus a ground for divorce in Nova Scotia, and not in any other province. It is, however, a ground for judicial separation in those provinces where such an action lies, and is also a discretionary bar to such an action. There is thus a considerable body of jurisprudence in Canada with respect to cruelty. (See Kent Power on Divorce, chapter XXI). The latest amendment to the Nova Scotia Act prior to Confederation was that of 1866 when a new court, styled the "Court for Divorce and Matrimonial Causes" was established, and it was provided, *inter alia,* that the court would retain its pre-existing jurisdiction and that it would also have the same powers in respect of, or incidental to, divorce and matrimonial causes: and the custody, maintenance and education of children possessed by the divorce courts in England, as of that time.

The CO-CHAIRMAN (Senator Roebuck): Is a date given?

Mr. HOPKINS: I have not the precise date, but the year was 1866.

By virtue of section 129 of the B.N.A. Act, 1867, this act is still in force in Nova Scotia, except as subsequently modified by the Dominion Acts reproduced in Appendix 1.