

Divorce in Canada.

IN the opinion of many persons it is time that a change should be made in the system of granting divorces in Canada, or rather in Ontario, for the Maritime Provinces have their Divorce Courts. The only method by which a divorce can be obtained in this Province is by a special Act of the Dominion Parliament, which must pass the Senate and House of Commons after the parties and their witnesses have appeared and testified before Committees of both houses. This is a very costly proceeding for the applicant who generally has already suffered sufficiently from his matrimonial wrongs without the additional injury of being forced to pay a large sum to get release from their continuation.

An applicant for divorce in addition to the expense and inconvenience caused by attending the Committees in Ottawa with his witnesses is required to deposit with the clerk of the House \$200.00 towards the expense of the respondent.

Divorce in this Province is the privilege of the rich, and the poor man, unable to bear the expense, is compelled to endure his wrongs without hope of relief. It should either be refused absolutely to all applicants or the means of obtaining it should be altered so as to put it within the reach of all who are entitled to it. It is the boast of the law that the courts of the land are open to all without distinction—the pauper may sue as well as the millionaire—and yet for matrimonial wrongs, by not establishing a proper tribunal, and by compelling applicants to go to the expense, delay, and difficulty of getting an Act of Parliament, the poor man is treated most unfairly and is practically refused redress.

Parliamentary divorce is antiquated and unsuited to our age and country. It has been condemned by all the great jurists, and was long ago abolished in other countries including England.

It is urged by those who favour the Parliamentary system and the putting obstacles in the way of those seeking relief that if divorce courts are established divorces would be made easy and their number would increase. But surely this argument will not bear investigation. If it is admitted that there are causes for which divorce may be granted then it is unjust to put unnecessary obstacles in the way of those desiring the remedy. The wrongs for which it should be granted exist whether courts are established or not. The same argument might be urged against allowing promissory notes to be sued for in the courts—because the number of law suits would increase. But the knowledge that no courts existed by which they would be collected would benefit dishonest debtors to take advantage of the helplessness of their creditors and would be an incentive to dishonesty. And making divorce difficult and costly, is an incentive to immorality and cruelty. The offending husband or wife realizing that he or she is safe from exposure, and that the innocent party is helpless as the difficulties in getting a divorce make it almost impossible, is tempted defiantly to pursue a vicious course.

In the Police Court not long ago a working man was charged with the non-support of his wife and children. He gave as a defence that his wife was unfaithful, and that he did not believe the children were his, but whether the charge was true or not the magistrate could not investigate it. An order was made against him for their support, and he was held to apply for a divorce. But this, owing to the great expense, he is unable to do, and he is forced to support an unfaithful spouse, and children who he believes are not his own, while his wife can pursue her evil propensities with impunity.

The High Court of Justice in Ontario should have jurisdiction in divorce matters similar to that possessed by the Divorce Court in England. Parliament should cease to perform work for which it is unfitted, which involve investigations of a judicial nature and which properly belong to the law courts.

The causes for which divorce should be given would have to be settled by Parliament. This is a subject on which great diversity of opinion exists. The Catholic Church opposes it on any ground. Most Protestants believe it should be granted for adultery and many believe for total desertion also. After this comes debatable ground. Many believe it should be granted for cruelty, habitual drunkenness, and conviction for grave crime. It is certainly a great

hardship to be tied for life to a confirmed inebriate, or that a woman should be subjected to intolerable cruelty. Though she can get an Order of Protection against her husband, there are grave objections to this separation which differs from divorce with liberty to marry again and obtain the support of another. Conviction for a crime followed by imprisonment for life would seem a good cause. The majority of Canadians are opposed to the looseness of the system prevailing in the United States with divorce for many trivial causes. Many members of the Dominion Parliament, and some who have had much experience on divorce committees favour the establishment of a court empowered to dissolve marriage for adultery.

A strong objection to the Parliamentary method is the great variety of creeds and opinions held by the members of both Houses. Parliament is not bound by any rules, and has unfettered discretion as to the causes for which relief may be given, or whether it may be given at all. Many members are Roman Catholics who are opposed to divorce for any reason, and invariably vote against it; this is an interference with the rights of Protestants who hold no such views. The warmest advocates of the present system admit that this is a grave objection to it, and it alone constitutes a sufficient reason for the establishment of a court with powers clearly defined by statute.

Many who favour divorce for any but the most serious causes apparently do not fully comprehend the importance of the marriage relation, regarding it as a mere contract between the parties. But it is much more, though it is entered upon as the result of a contract. It is a condition or relationship with fixed duties and obligations imposed by law, irrespective of any contract made between the parties. Every civilized country regulates it by law, and desires that it should be for life and not a mere temporary partnership to be dissolved at the pleasure of either party. It should only be dissolved, if at all, for the gravest reasons. The State is deeply concerned in the stability of marriage: the training of children, whether they are to be good or bad citizens being involved. An eminent Scotch judge has observed: "Though the origin of marriage is contract it is in a different situation from all others. It is a contract coeval with and essential to the existence of society, while the relations of husband and wife, parent and child to which it gives rise are the foundation of many rights acknowledged all the world over, and which though differently modified in different countries have everywhere a legal character altogether independent of the will of the parties. The rights arising from the relation of husband and wife, though taking their origin in contract have yet in all countries a legal character determined by their particular laws and usages altogether independent of the terms of the contract or the will of the parties at the time of entering into it."

The Roman Catholic Church regards marriage as a sacrament, and prohibits divorce for any reason whatever, though the Pope may grant it by dispensation. Protestants do not so consider it, though they hold it has a divine origin. They generally believe that Christ permitted divorce for adultery, which is the doctrine of the Greek Church, and some hold that it is also permitted by the New Testament for total desertion, and this is the law of Scotland.

In the United States each State has exclusive jurisdiction over divorce matters, and the reasons for which it may be obtained vary in different States. Some of the causes are adultery, cruelty, desertion, habitual drunkenness, conviction for crime, and it may also be procured for causes that are comparatively unimportant. Some of their courts have almost full discretion as to whether it shall or shall not be given in the particular case.

Many of the American law-writers strongly defend their system. They contend that where any of the foregoing causes exist good morals and the proper education of children will be better served by a legal separation with liberty to marry again than by forcing the parties to continue in a union at once repugnant and unnatural.

In South Carolina, however, a divorce has never been granted since its formation as a State, no divorce courts exist, nor will the Legislature grant it by statute. But the evils calling for relief are as common there as in countries where divorce is permitted, and the law, though refusing re-