

Divorce Law Reform

Another reason for doing this, apart from the spirit of the civil law as opposed to administrative law, is that in fairness we should say we wanted to avoid a situation in which some courts would decide that there was no breakdown no matter what evidence was put before them, and that reconciliation was always possible. Some of those who believe in the indissolubility of marriage might be inclined to judge in this way. We did not want a situation to develop where some courts would not be granting divorces in any and all cases. We wanted to put in our law a direction to the courts that they must grant a divorce when certain evidences of breakdown or of offences exist.

For all of these reasons, we have adopted this way of proceeding. There is not much more I think I should attempt to say at this stage. I thank hon. members for the way in which they received the law at the resolution stage, and for their courtesy in listening to me at this present stage. I can only add that as we get along with second reading, and eventually to the committee stage of the bill, I will be guided by every loyal effort of every member of this house to improve this law in such a way as to remedy a situation that has long needed remedying in this country.

Mr. Fairweather: Will the minister permit a question at this stage? I did not want to interrupt his rationalization. Under this bill is there a change,—and I hope there is—in the system now in effect in New Brunswick whereby one judge is designated as the judge for divorce, and all hearings must be held in the capital city of New Brunswick?

Mr. Trudeau: Yes, Mr. Speaker; in clause 2(e)(i) of the bill the court of New Brunswick is defined as the trial division or branch of the supreme court of the province. There would be a change therefore from the former system, under which I believe the parties were obliged to travel some distance to go to the court. This is one of the reasons we felt it was necessary to consult the provinces to ensure that the implementation of this reform would be made without any undue hardship to those entrusted with the administration of justice.

[*Translation*]

Mr. Ovide Laflamme (Québec-Montmorency): Mr. Speaker, may I direct a question to the minister?

Earlier, the minister spoke about the effects of our provisional measures which

[Mr. Trudeau.]

could be applied, for instance, as far as Quebec is concerned, to the custody of children, the alimony and the domicile.

I merely want to know from the minister if negotiations have been started, especially with the province of Quebec, to avoid the ambiguity which will surely arise if the Court of the Exchequer should some day make a ruling on provisional measures relating to the custody of the children or to alimony, while an absolutely identical law in the civil code of the province stipulates precise jurisdiction in this regard.

Mr. Trudeau: Well, Mr. Speaker, I trust such negotiations will be numerous and harmonious. Of course, we could not, before the bill was ready, before it had been put before the house, give a copy of it to the province. However, we did endeavour to foresee such difficulties in drafting the bill.

I think that in dealing only with divorce at this stage and not with judicial separation, we shall avoid the kind of difficulty mentioned by the hon. member. But, of course, in the province of Quebec people will still, be free to choose a course of action under the legislation concerning separation from bed and board and of estate contained in the civil code or under the divorce legislation. They will have a choice to make and if they decide to act according to the provincial legislation other than under the civil code, they will be governed of course by the provisions of the civil code. If they decide to act under the federal legislation on divorce, they will be governed by these provisions.

If the hon. member studies those provisions, he will find that we have tried to draft them so as to avoid any conflict with provincial statutes. Of course, people will have to choose between divorce and legal separation.

Besides, jurisprudence enlightens us on another problem, and it is probably one of those the hon. member has in mind. What about the separation of estate?

Now, hon. members will realize that in this legislation, we have not implemented the recommendations of the joint committee of both houses which suggested that the federal legislation on divorce also deal with the matter of separate maintenance. It is precisely because we consider that question of separate maintenance comes essentially under provincial jurisdiction that we could not deal with it in the present legislation.

It is certain that some possessions, those which perhaps come from the marriage tie