

been accustomed as little as possible, provided justice and efficiency is guaranteed. With the system of the Supreme Court of each Province holding frequent sittings at various points throughout the Province, all these fundamentals would most certainly appear to be adequately secured by giving jurisdiction in matters of nullity and divorce to the existing Supreme Court of each Province, with the right of appeal in the usual way to either the Supreme Court of Canada or the Privy Council.

#### 9. THE DECREE.

By Parliament, the actual divorce is granted by an Act, passed by both Houses and assented to by the Governor General. If the Committee report in favor of granting the relief, the law clerk prepares the necessary bill, which takes about one page in the ordinary statute volume and is composed of the preamble, which recited the facts, and two enacting clauses, one declaring that the marriage in question is dissolved, the effect of which is to restore the parties to the status which they held before the solemnisation of the marriage, and the second declaring that the petitioner may re-marry. Parliament has never definitely stated that the respondent is free to re-marry, but this seems to be covered by the first of the enacting clauses. After the bill has been passed by the Senate, it is "railroaded" through the House of Commons. It finally becomes an Act by receiving the Royal assent.

In the Provinces where the English procedure is followed, the practice is to grant a *decree nisi* which may become a positive decree on motion after 6 months. This procedure seems to be very apt as the question may be appealed, and if so to have the parties living in the meantime under a decree positive seems to be most undesirable. Also, until after the hearing, it may be very difficult if not impossible for the Crown authorities (known in England as the King's Proctor), to prove collusion. The practice of a *decree nisi* to be later confirmed has been adopted in many, but not all, of the States of America.

As one of the very fundamental matters in the arguments both of these in favor and those opposed to divorce is the question of the children and their home life, the effect of the decree on them should be considered. Parliament has occasionally granted the petitioner the custody of the children.....e.g., the *Pitblade* case of 1905——, but the general view is that the custody of the children is one of civil rights, and therefore