DIVORCE RULES

AMENDMENTS RECOMMENDED BY COMMITTEE—DEBATE CONTINUED

The Senate resumed from Thursday, January 24, the adjourned debate on the motion of Hon. Mr. Roebuck for adoption of the thirteenth report of the Standing Committee on Divorce.

Hon. W. M. Aseltine: Honourable senators, I find this a very interesting subject and I think I should say something with respect to the suggested amendments to the divorce rules. We have been a long time in reaching this item on the Order Paper, and I may have forgotten some of the things I intended to say. But I want to make it clear that anything I say is meant to be helpful; none of my remarks will have any political significance, and they are not intended to be critical of any person, living or dead.

Our divorce rules have not been amended for a long time. In May of last year the committee thought that something should be done about them, and it passed a resolution requesting the former Law Clerk of the Senate, Mr. MacNeill, the present law Clerk, Mr. Hopkins, and the Chief Clerk of committees, Mr. Armstrong, to look over the rules during the recess and bring in a report and recommendations in this matter. They did so. Their report is a very interesting document. I have read it with care, and I compliment those concerned on having done a good job. We have been told by the chairman of the committee that the committee carefully considered the report and drew up a number of amendments, which it has submitted to us for approval.

I like the way in which the amendments have been drawn. Instead of saying that in a certain line certain words should be struck out and other words inserted, which is the kind of thing we are confronted with when we consider amendments to the Income Tax Act, the committee has deleted whole sections, drawn new ones, and analyzed the changes involved. In that respect, I submit, it has done a good job.

I trust that honourable senators have read the report and the suggested amendments. Most of the amendments deal with routine matters and are of no great importance. In fact, when I was a member of the committee and we could not find any rule to go by, we always fell back on rule 152, which states:

> 152. In cases not provided for by these rules the general principles upon which the Imperial Parliament proceeds in dissolving marriage and the rules, usages and forms of the House of Lords in respect of divorce proceedings may, so far as they are applicable, be applied to divorce proceedings before the Senate and before the Standing Committee on Divorce.

We considered that that direction covered a multitude of things, and we did not worry about whether or not we could find a definite rule. In fact, I do not like to be tied down by too many rules; in this respect I prefer a little freedom.

As I have said, I find no objection to most of these amendments; but one of them, having to do with the naming and serving of co-respondents in all cases before petitions are heard, gives me considerable concern, and I shall deal with it a little later.

I think I should say something about the present rules. They were drawn up when divorce in Canada was in its infancy; but whoever prepared them had a good precedent. They were copied practically in their entirety from the rules of procedure prevailing in England at the time. That is why they have stood up so well and so long.

At the present time eight of the ten Canadian provinces, including Ontario, the west, and the Maritimes, have their own divorce courts. They, also, adopted the good practice of copying their rules and regulations from those in force in England; and that, I suppose, is why there is so much similarity between the Senate rules pertaining to divorce and those which prevail in the various provinces.

Before I came to Ottawa I had had considerable experience of divorce matters in the province of Saskatchewan. When I became a member of the Divorce Committee of the Senate I began to compare the rules in force in Saskatchewan with those of our committee, and I noticed many similarities. But there are some differences in procedure. In Saskatchewan we issue a writ which names the parties, and states the time for appearance and the names of the solicitor for the plaintiff. Attached to the writ is a statement of claim which sets out all of the things that are mentioned in Senate Rule 139, with certain additions, and in an action in any province the name of the co-respondent must if at all possible be provided and the co-respondent must be served before the case goes to trial. If the name of the co-respondent is not known, an application has to be made to a judge of the court, before a writ is issued for leave to proceed with the action without naming the co-respondent. When I found out that the Senate rules did not require the co-respondent to be named or served, it bothered me quite a bit. I was of the opinion that in parliamentary divorce petitions, as in court cases, the co-respondent should be named and that he or she should be served with the papers.

I have found other differences as well. For example, in the provinces we are allowed to obtain evidence on commission and to proceed