

*Procedure Respecting Divorce*

would be turned down by an overwhelming majority. And I know that in Ontario there is a very strong public opinion against divorce, which is evidenced, as mentioned by the hon. member for Labelle, by the pronouncement made by the Bishop of Ottawa and the Bishop of Kootenay at a meeting of the synod of the Anglican church of Canada. Divorce has been recognized as a misfortune; it has become a peril and a menace to our social existence. We must not follow in the footsteps of the United States where last year there was one divorce for every four marriages, or in the footsteps of the state of Nevada, where there were two divorces for every marriage.

At the time of confederation divorce courts were in existence in Nova Scotia and New Brunswick, and had the fathers of confederation meant to impose divorce upon Quebec and Ontario they would have included a clause to that effect in the British North America Act; but that was not done. I have before me a volume which deals very succinctly with the constitutional aspect of divorce. It is entitled, *Parliamentary Divorce Practice in Canada*, and the author is Frederick D. Hogg, of the Ottawa bar. I should like to read an extract or two from this volume, as follows:

Under the constitution of the Dominion of Canada the subject of divorce comes within the powers with respect to legislation, conceded to the parliament of Canada.

Section 91 of the British North America Act declares, that the exclusive legislative authority of the parliament of Canada extends to all matters coming within the classes of subjects enumerated in this section and included among these specifically mentioned subjects is that of divorce.

This power to deal with divorce conferred upon the Dominion parliament by the constitution, is not exercised to its fullest extent and the Dominion has not enacted legislation with reference to divorce, applicable to Canada as a whole.

By section 129, of the B.N.A. Act,

"All laws in force in Canada, Nova Scotia or New Brunswick at the union shall continue in Ontario, Quebec, Nova Scotia, and New Brunswick respectively as if the union had not been made, subject nevertheless (except with respect to such as are enacted by or existing under the Act of Parliament of Great Britain and Ireland) to be repealed, abolished or altered by the parliament of Canada or by the legislature of the respective provinces according to the authority of parliament or of that legislature under this act."

Then the author continues with his comments:

Under this section the whole body of laws in force at confederation in the uniting provinces is continued, subject to the legislative authority granted by the act, to the Dominion and the provinces respectively. Any alteration

[Mr. Marcil.]

therefore of the existing laws regarding divorce can be made only by the Dominion parliament.

Parliament has not yet repealed, abolished or altered the statutes in force in the several provinces at the time of their entry into confederation so far as any law in existence on the subject of divorce is concerned and does not exercise its right to exclusive authority over divorce.

The courts of the provinces of Nova Scotia and New Brunswick in which there was legislation with respect to divorce at the time of confederation, have always entertained applications for divorce.

At the time the province of Prince Edward Island entered into the Dominion there was power in that province itself, to deal with the questions of marriage and divorce, this power having been given to the province by 5 William IV, Chapter 10, which conferred the right upon the governor and the executive council to grant divorce.

This jurisdiction was extended to the western provinces under the provisions of the Divorce and Matrimonial Causes Act.

Divorce has never been accepted by the people of Quebec or by the people of Ontario, and in granting these bills of divorce we are making an exception for the relief of certain parties. To people who believe in divorce this is naturally very acceptable in some cases, but where people do not believe in divorce a very extraordinary position is created, as has been pointed out very eloquently by the hon. member for Labelle. If a man or a woman is a Roman Catholic and wishes to remain in the Roman Catholic church, he or she is debarred from divorce, and a divorced person cannot be remarried within the pale of the Catholic church. That is the law of the church, not only in this country but throughout the world, and it has been the law for centuries. It is true that a marriage may be declared null in the province of Quebec, but that is brought about by means of an ecclesiastical tribunal, such as existed in England for many centuries and such as exists at the present time in Rome and other parts of the world. This ecclesiastical tribunal hears evidence *ab initio*, as the expression is, to discover whether there was any impediment to the marriage either by reason of kindred or because of other obstacles which should be surmounted before a marriage could be performed. This religious tribunal presents a finding which is subject to appeal to another religious tribunal within the Dominion of Canada. If that is not satisfactory there is another appeal to the Rota at Rome, which is the outstanding tribunal of the Roman Catholic Church. These decisions do not declare in favour of divorce, but declare whether or not the marriage ever existed. In the province of Quebec legal and civil effect is given to the findings of the ecclesiastical