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THE DILLON DIVORCE CASE.

STATEMENT OF COUNSEL.

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Mr. R. D. McGibbon, Q.C., Counsel for Petitioner, made the following statement before the Private Bills Committee of the House of Commons, July 11th, 1894:

Having been counsel for petitioner during all these proceedings, and attorney for him in the separation suit before the Superior Court in Montreal, having been his life-long friend, and legal adviser for the last fifteen years, he felt he could refute some of the contentions of those opposing the granting of the divorce, and afford satisfactory explanations of other points which might, on a cursory perusal of the testimony, appear obscure or unsatisfactory.

THE SEPARATION IN PARIS.

It had been asserted both in the Senate and House of Commons, that Dillon had wantonly abandoned and deserted his wife in Paris, after they had been married nearly five years.

Now, the facts as established by the testimony are that "there was a mutual separation agreed upon," and he "left her in charge of her father in Paris." (Senate evidence, page 1). "By mutual consent" (page 3).

The causes which led up to the separation are enumerated as follows —

1. "Our life had been a very unpleasant one for two or three years before."

2. "Continued absence from home, neglect of children and other duties."

3. "Incompatability and extravagance."

(Senate evidence page 2).

4. "Leaving home against Dillon's absolute commands.',

(Senate evidence pages 3-4).

These causes certainly warranted both parties in agreeing in Montreal to have a voluntary separation. *There was no necessity for any deed or writing.* The consent of all parties, (which counsel begs to state upon his responsibility as counsel, included the parents of both parties and their legal advisers), was sufficient.

Dillon took his wife to Paris and left her with her father there, for the very reasonable object of avoiding the scandal which would have been caused had two parties occupying a tolerably prominent position in Montreal society, lived apart in the city in which they had formerly resided. The idea of her going to Paris was to escape gossip.

There is no doubt that the evidence of Mr. Dillon given before the Senate Committee on cross-examination by Senator Kaulbach is not as clear as might be in regard to the separation in Paris, but it is quite evident from the testimony, and more especially from the explanatory question asked by the Honourable Mr. Mackay, at the bottom of page two of the evidence, that Dillon, somewhat confused by the questions of Senator Kaulbach in regard to his religion, chastity and other points which had occasioned quite a storm in the Committee, and agitated by the offensive manner in which the interrogation of Senator Kaulbach was conducted, was referring to the *action for separation brought by him in Montreal.* At the time Dillon separated from his wife in Paris, he had not then any idea of taking legal proceedings,

and this was what his examination meant, as, from the time he left Montreal with his wife to go to Paris, and left her there, the separation had been arranged, decided, and AGREED UPON BY BOTH PARTIES.

It is to be observed that the wife returned to Montreal shortly, and she took up her abode with her mother, with whom she resided for six years, all the time being in receipt of a substantial allowanee from Dillon, and being permitted to visit her children weekly at the home of Mr. Dillon's parents. If the wife had been rudely deserted as pretended, and left in a large city, *friendless*, *alone* and *destitute*, as some Senators have thought fit to imagine and allege, the laws of the Province of Quebec would have afforded her ample redress, if she had desired to resume her marital relations with her husband, or if she had been in any way unjustly treated or unfairly deprived of a home and the society of her children. THE FACT THAT FOR SIX YEARS SHE QUIETLY RESIDED WITH HER MOTHER, VISITED HER CHILDREN ONLY ONCE A WEEK, RECEIVED AN ALLOWANCE OF FIFTY DOLLARS A MONTH FROM HER HUSBAND, WITHOUT ANY PROTEST OR LEGAL PROCEEDINGS, SHOWS THAT SHE CONSENTED TO AND RATIFIED THE SEPARATION WHICH HAD BEEN AGREED UPON, AND THAT THE BUGABOO WHICH HAS BEEN RAISED ON THIS POINT IS ENTIRELY UNWARRANTED.

Mr. McGibbon further explained that had the petitioner for one moment imagined that any importance would be attached in the Senate or House of Commons, to the causes which led up to and surrounded the separation in Paris, testimony could easily have been adduced to make the matter perfectly clear; but with a delicacy which was creditable to him, Mr. Dillon had not desired unnecessarily to introduce any testimony which, in his opinion, was not germaine to the real issues before the Senate. So much for this point.

Insinuations had been made both in the Senate and House of Commons, that there was collusion and connivance between the parties. This, in the face of positive testimony that there

was no collusion, connivance or condonation is incomprehensible. The petitioner, on page 2, swears positively that there was no connivance.

On pages 11 and 12 of the Senate testimony, the facts in regard to collusion are set forth by counsel himself under oath, and Mr. James T. Dillon, father of the petitioner, on page 13 of the testimony, swears positively that there was no connivance or collusion.

The letter on page 16 of the Senate testimony, was addressed by Mrs. Dillon to Mr. McGibbon not in reply to any letter sent by him to her, but in reply to a request which Mr. Mr. McGibbon had sent to his correspondent in Quebec, Mr. Fitzpatrick Q.C., asking Mr. Fitzpatrick to keep him, Mr. McGibbon, advised of Mrs. Dillon's address, in order that the necessary notice should be served upon her, of the commencement of proceedings before the Senate Committee. The expression of a wish on the part of a woman at that time living openly and avowedly as the mistress of de Villeneuve cannot surely form a peg upon which to hang this suggestion of collusion, confronted as it is by the positive testimony referred to, and also by the evidence of de Villeneuve himself before the Superior Court in Montreal, page 18 where he admits that he had never seen Mr. Dillon himself in his life.

The only other point which Mr. McGibbon would refer to was the question asked by Senator Kaulbach as to Mr. Dillon's fidelity to his marriage vows.

The discussion on this point had been very full, and the legal arguments of his associate, Mr. Gemmill Q. C. had, he thought, quite met the objections, but the circumstances which led up to Dillon's refusing to answer on the advice of counsel, would, he thought, satisfactorily explain his course.

When the Senate Committee was in session, as appears by the minutes of the proceedings, a number of irrelevant questions were asked by Senator Kaulbach, objected to by members of the Committee, and overruled and stricken from the record. When the question in regard to Mr. Dillon's fidelity

had been put by Senator Kaulbach, it was immediately, as appears by the Senate record, objected to by the Honourable Mr. Mackay, whereupon a lengthy discussion took place, the ruling having been actually given by the Committee before the formal answer of the witness that he refused to answer upon advice of counsel had been entered upon the record of the Senate proceedings. The reasons why counsel advised Mr. Dillon to refuse to answer, were a matter of legal appreciation and in view of the rules of the Senate respecting divorce, under which the objection was taken, and all the precedents respecting divorce, including the uniform practice of the Senate, as explained by Mr. Gemmill, they were justified in standing upon their strict legal rights in the premises.

The statement of opinion of the majority of the Senate Committee by Senator Gowan, chairman, given on page 3 of the Senate proceedings, amply explains what the attitude of the Committee was: the rule having been that unless there was a counter charge or some such condition of affairs as in England would justify the intervention of the Queen's Proctor, the Committee ought not under the rules, to ask such questions *ex propria motu*. Had Mr. Dillon been ordered to answer any question by the Committee, he would and must have answered, and no presumption is to be taken against him for his refusal. Any such inference is unfair and contrary to the rules of evidence.

Nor does the willingness with which Dillon answered the questions as to his fidelity up to the time of his visit to Paris necessarily or fairly imply that if he had been asked the questions to his conduct subsequent to that date, his answers would not have been quite satisfactory. No such legal inference can be made. Mr. Dillon answered all questions which were lawfully put to him. He was never ordered to answer any question, as to his subsequent conduct, and the right of Senator Kaulbach to ask such questions was distinctly objected to *by Senators themselves*, overruled by the Committee and stricken from the record. Mr. Dillon was never

placed in the position of refusing to answer any questions as to his chastity subsequent to his separation from his wife in Paris. Counsel strongly contended that it was unfair to endeavour to interpolate suggestions and make evidence from inferences which were improperly drawn from the petitioner having, on the advice of his counsel refused to answer a question, the responsibility for which rested upon them. No matter what the practice is in other Provinces where divorces are granted, the procedure of the Senate and of Parliament had been otherwise, and these proceedings having been instituted under rules of practice, and a jurisprudence which was invariable in this respect, the petitioner was entitled to have his conduct and his petition adjudged and adjudicated upon, according to the rules which had previously obtained. With respect to Mr. Dillon, he was now in England on his annual business trip, having left on May 19th. Had he thought he would be recalled, he would have remained on this side, but he could not now return in time to allow Mr. McAllister's motion to be effective, otherwise than as throwing the Bill out.

Under all the circumstances of the case, considering that this woman had not only fallen from virtue, but had openly, wantonly, and flagrantly lived on the principal street in Montreal, in adultery with this alleged Count.—had gone to Quebec with him and registered as Madame de Villeneuve,—and had subsequently, when his extradition was pronounced, accompanied him to France, where he is now incarcerated, it should certainly require much more than any objection which had been urged, it seemed to him, to warrant Parliament in refusing to dissolve a marriage tie, and compel a man whose whole life had been honourable and upright, to remain joined to a woman whose conduct was not only unjustifiable, but conspicuously and outrageously immoral, impure, and scandalous.