
Harriet S. Daggett
so closely packed with material and so well-knit in its argument that it must be read closely and carefully to be read at all. So read and measured it is likely to affect a revolution in the historical estimate of this period.

R. S. Cotterill*


This book is an invaluable addition to the tools of the legal profession. Its organization is excellent, its expression clear. The huge task of reviewing such a mass of material has been done carefully, conscientiously and intelligently. The problems involved in dealing with the many provinces are similar to those which confront the writer in the United States who attempts to prepare a work for the profession for use in the many states of the Union. The volume obviously will assist the bar of Canada. It will likewise assist the bar of the United States where analysis, comparison, and additional documentation are sought. The book is comparable to Vernier's monumental work though confined to divorce and hence allowing a much more detailed and comprehensive treatment of the limited subject matter.

More important by far, in the writer's judgment than the obvious value of the volume for ordinary legal reference, is its social significance. The pointing up by collection and classification alone of causes, cases, evidence, judicial expressions, in divorce matters and their aftermath, will surely move thoughtful and intelligent lawyers and laymen to attempt to remedy in Canada and in the United States some of the stupidities, obscenities and ineffectualities of the present laws on divorce in both countries. The following excerpts show that Mr. Power is well aware of the importance of the underlying social problems; that Canadians, together with other North Americans are thinking deeply about them and their possible solution; and that the state of affairs legally in Canada is as unsatisfactory as it is in the United States.

"Public Policy.

"There are few, if any branches of the law upon which public opinion is so sharply and widely divided as it is in

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respects to divorce. There are at the one extreme those who believe that marriage should be indissoluble except by death. At the opposite pole of opinion are those who believe that marriage is a matter which concerns only the parties thereto and that it should be possible to end the relationship by consent evidenced by an official registration or some such ministerial record and that the only concern of the state should be to see to it that the interests and welfare of the children of the union are properly protected. Midway between these views is the opinion that divorces should be granted in extreme cases and that our present law is satisfactory; and the opinion, perhaps that of the majority of Canadians in the English-speaking provinces, that, while marriage is of public concern and its sanctity should be strictly safeguarded by law, our present laws are out of touch with the conditions of modern life and should be changed. . . ."

"Undoubtedly, there are matrimonial offenses, such as actual cruelty and desertion, which are often more serious, in so far as they render married life intolerable, than an isolated act of adultery does; and it offends the ideas of justice and public good entertained by many thinking citizens that a young man or woman whose fate it is to be married to a partner who has become incurably insane should be unable under the law to obtain release from the tragic relationship. . . ."

"The decisions as to collusion are the bugbear of the bench and bar and are in a very unsatisfactory state. . . . A very large proportion of our people believe, however, that the present grounds for divorce are inadequate and antiquated, and it is notorious that they tolerate, or even encourage, a purported compliance with them, when what they regard as real grounds for the freeing of the parties exist. Collusion might disappear, or almost so, if the law were changed so as to prevent a single act of adultery being relied on as a cause of action. . . ."

"The interest of the community at large, to be judged by maintaining a true balance between respect for the binding sanctity of marriage and the social considerations which make it contrary to public policy to insist on the maintenance of a union which has utterly broken down:' (Italics the writer's) Blunt v. Blunt [1943] AC 517, 112 LJP [1943] 2 All ER 76 (t)."

Religious Belief of Judge or Litigant as Factor.

"'I accept absolutely without hesitation the doctrines of the
Catholic Church with regard to faith and morals. I accept and fully recognize the obligations of conscience imposed upon me by the canon law of the Catholic Church. Yet, sitting as a judge in a court established by the authority of the state to administer the laws of the state, my duty is to find the true facts and declare the civil law applicable to those facts. I am in no way, for instance, in a divorce case, responsible for the law of the state, which, in contradiction to the law of the church, declares that after a decree of divorce, a vinculo matrimonii in the case of a valid marriage between Christians ratum et consummatum, the parties may lawfully remarry nor for the act of either of the parties, if they see fit to avail themselves of that permission." Per Beck, J. (as he then was) in Board v. Board [1918] 2 WWR 633, 13 Alta LR 362, 41 DLR 286, 16 Can Abr 749 (C.A.)." 

In the chapter on adultery, Mr. Power's discussion of definition, proof, evidence, discretion of judges colored by their religious beliefs, background, experience, prejudices, traditions, temperament, makes it plain that the same uncertainties, filth, fraud, ruination of lives and reputations exist in Canada as are unhappily familiar to the lawyer in the country to the south. Mr. Power points out that England's attempt in 1937 to halt the increasing divorce rate by enlarging the list of causes has not been successful.

The treatise confirms and strengthens the reviewer's belief that there should be one and only one cause for divorce, that of living separate and apart one or more years, the starting point of the period to be proved by the official filing of an intention. Thus would be given a true period for real contemplation of the step without public announcement of difficulties. Fraud and filth and much heartache and public disgrace would be avoided. If unhappily no change of mind ensued, at least a clean record would be left to maintain the self respect of the individuals, their children and the community.

The division on alimony re-emphasizes the extensiveness of Mr. Power's research and the intelligence and care with which the mass of material has been examined and organized. Again, comparison shows the need in Canada and the United States of a definite policy in regard to this troublesome economic and social problem. Is the purpose of alimony to protect the taxpayers from the necessity of supporting indigent women? If so, why should the question of fault in the marriage relationship
enter? Erring wives may well be in far greater need than the virtuous. Why, if need is the basic factor, should impoverished husbands be denied the relief? Furthermore, if the public policy underlying this relief is to protect the state, why should collection of alimony be made the difficult, technical and expensive process that it is? A wife who is entitled to alimony on the basis of need rarely has funds with which legally to pursue collection. Costs in many cases grossly exceed the stipend.

On the other hand, if penalty for breach of the marriage contract is the basic determination, there, again why are wives who are able to pay not assessed? If one penalized man of moderate means has to maintain his divorced wife, his second marriage may founder. If his alimony is reduced because of the necessities of his second marriage, the divorced wife who is in actual need may be forced to seek public relief anyway and the state’s policy on two counts is defeated. Society and innocent individuals, not the “guilty” person, seem to suffer the penalty.

The discussion of custody discloses that Canada, like progressive states of the Union, makes the “best interest” of the child paramount. The most painful result of divorce, the child of the divorced, deserves all that can be done for him. How terrible is the individual responsibility of the judge in whom is vested this “best interest,” dealing with matters about which only a supreme being could have knowledge. Surely, the law givers might assist him in some measure by laying down a pattern based upon hundreds of case studies now available. Few judges are familiar with these materials and might be aided in avoiding at least the most obvious mistakes usually grounded conscientiously in emotional tradition. Of course the great need is for trained staff members who will investigate thoroughly and furnish proper information to the court upon which to make an intelligent judgment.

Divorce, Annulment of Marriage, Other Matrimonial Causes, Jurisdictional and Incidental Factors, Practice, are the Chapter heads of the book. These topics indicate the broad scope and intensive treatment of the book modestly entitled—*The Law of Divorce*. Mr. Power merits commendation by the profession and by laymen for his work, valuable alike to the practitioner and to the socially-minded, wherever found.

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