

DOMESTIC QUARRELS IN THE LAW COURTS

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A NEWSPAPER clipping will serve as the text of this article. It runs as follows—

Complains That Wife is Not Religious

In all their years of marriage his wife had not taught their children the Lord's Prayer, a father of nine complained in the city court this morning when arraigned for assaulting his wife.

The couple had been married for 29 years, and last Saturday family difficulties reached the stage where the husband allegedly attacked his wife in the bedroom of their home on Creighton street.

When he attempted to teach some of his children their prayers, his wife and the other children laughed at him, said the husband, an ex-service man and pensioner.

Here is a typical example of thousands of cases which are daily cropping up in our police courts. During a household squabble, the husband momentarily lost his temper and "beat up" his wife. As a result, he was hailed before the City Magistrate and he had to be proceeded against under the Criminal Code, for our laws make no other provision. There was not a single Court of Domestic Relations in that city designed solely to hear and settle petty home differences! The case was not heard at once, but was put on the police docket with other cases including theft, breaking and entering, rape, drunkenness and many others too numerous to mention. A Court spectator would subconsciously have put the husband in the same class as regular criminals. The newspapers naturally played up the story in bold type and gave their readers a vivid description of this unhappy domestic life and the argument which ensued. As a result of this publicity, both the husband and wife became social outcasts; they were made the objects of derision and ridicule by neighbours who have similar quarrels in their own homes but who are afraid to bring them to the Courts to be heard. We can hardly blame them. The present method of airing domestic grievances is a perfect means whereby the happiness of any home may be permanently ruined. Add to this the odious

fact that their children are taunted and scorned by thoughtless youngsters who hear about the domestic troubles through their gossiping parents, and the urgent need for the establishment of Courts of Domestic Relations in Canadian cities becomes readily apparent.

When this particular case was finally heard before a packed Courtroom, the wife, who had never been in a police court before, became very nervous and under cross-examination became confused. She could not afford to retain legal counsel to represent her. The result was that the case was dismissed, and she had to return to live with her husband, in an environment of intensified hatred and without any solution to her domestic problem having been effectuated. The magistrate who tried the case was not particularly experienced in the field of Domestic Relations, and therefore unqualified to give expert guidance. Most of his time is naturally occupied with criminal matters of a very different nature. The present system puts parties before the Courts under conditions which cause barriers to exist between them and thus prevent amicable arrangements. For instance, a policeman serves the summons, (under the present system the Criminal Code must be invoked); recriminations follow, and the parties are entirely antagonistic to each other at the time of the hearing. They are hailed into a police court, and often the husband has a lawyer while the wife may be unable to employ one. The magistrate may be untrained to handle this particular type of case; he may have very little information upon which to act, and there is no "follow-up" system such as a Probation officer to see whether the parties perform their obligations.

Contrast this with the procedure in those cities, such as Ottawa, Toronto and Montreal, which have instituted Courts of Domestic Relations. There the magistrate has jurisdiction to hear and settle marital problems (through a special act of the Provincial Legislatures.) He does not have to resort to the Vagrancy Sections of the Criminal Code (in non-support cases) and treat the husband as a quasi-criminal. The Judge is a trained specialist for this particular type of problem, and is therefore a keen student of human nature. The Courts are not conducted as ordinary legal tribunals are, but they are viewed as social clinics where the human element plays an important rôle. No two cases are given identical treatment. The Judges are aided in diagnosing and solving the family problems through the close co-operation of social workers and various health and welfare agencies, who gladly volunteer their services in this important humanitarian work. Hearings are conducted in private;

parties receive no publicity whatsoever. The result is that confidence is instilled in the parties, and husband and wife eagerly avail themselves of the opportunity to receive guidance in order that they may iron out their difficulties. Perhaps the most impressive factor is the informality with which the cases are heard, and it is noteworthy that legal trappings are reduced to a minimum. The presence of lawyers to plead cases is not at all necessary, because the Judge usually asks most of the questions himself. This gives the poor person, who cannot afford counsel, an opportunity to have his problems solved by an expert, and he is always put at ease by the informal atmosphere which hovers about the Courtroom.

Recently, while in New York, the writer visited Courts of Domestic Relations there and saw the actual benefits which the people derive from the existence of these tribunals. The first case called was an application by a mother for the maintenance of her children who were living with her deserted husband. Without the aid of social workers the Judge would have been at a loss to decide the case. Soon the records were brought in and investigations revealed that the mother was leading an immoral life and was not a proper person to rear her children. Further investigation revealed that the husband was cohabiting with another woman, and he too was adjudged unfit to train his children. Accordingly, the Judge ruled that the children be put into a home until such time as the parents prove their trustworthiness. Another case was a simple everyday problem of a couple who could not live within their income. The husband was earning \$40.00 per week, but they were continually in arrears. The Judge prepared a detailed budget for them, and they left the Court happy to know that their difficulties had been solved. Thousands of similar cases are treated yearly, involving problems in desertion; questions of marriage and parentage; adoption; children's protection; vagrancy; infidelity; assaults between husband and wife; legal separations; and petty differences in the home; all of which are capably handled by these experts.

It is only in recent years that the matter has been given any study in Canada, and it is hoped that Provincial Legislatures will pass laws enabling every city in Canada to have a Court of Domestic Relations. It is true we have efficient Juvenile Courts; nevertheless the Court of Domestic Relations includes the work of the Juvenile Court, and is concerned with the Family as a unit and the problems arising therein. The actual cost of maintenance of these Courts is a minor factor, for it should be realized that the family unit is the basis of a nation's success and happiness. Furthermore,

as pointed out above, social and welfare agencies, which do a great deal of the work, willingly offer their services *gratis*, and very often the Judge who is appointed is a public spirited man who is a leader in the community and does this altruistic work as a duty which he owes to the community without taxing the city for his services. Also may be mentioned the fact that incorporating the work of the Juvenile Courts into the Family Court brings about an economy in administrative cost.

The first Court of Domestic Relations to be established in Canada was at Ottawa, and under the able guardianship of Judge J. F. McKinley has become a vital force in the civic life of that city. Thousands of cases are heard annually, and only 60% of the actual number of cases reported ever reach the Judge, the remainder being amicably settled by the investigators. Perhaps most significant of all is the fact that Juvenile Delinquency has decreased 22% in Ottawa since the Court was first established, and at the same time the population has been increasing at the rate of 17%. A very enviable record! The City of Toronto followed the example of Ottawa shortly thereafter and established its own Court of Domestic Relations, but very few other Canadian cities have adopted the idea. For example, not a single Court exists at the present time in the Maritime Provinces, and very little has been done in Western Canada.

It therefore seems paradoxical that our laws have been so greatly neglected insofar as this human branch of law is concerned. The United States has gone into the problem wholeheartedly and has done wonders, while we in Canada have left it "to waste its fragrance on the desert air". The current conception of law is that it is a cold inanimate body of rules designed chiefly for the preservation of the property rights of man and concerned with great constitutional problems of the nation. That it is beset with language and adorned with traditions and interpretations comprehensible only to the trained advocate who resorts to specious phraseology and the employment of subtle technicalities in the Courtroom. Unfortunately to some degree this is so, but despite that, the main function of law has always been to define and help the Rights of Man in the community in relation to his neighbours. The law was made for man and not man for the law. Law really is a living organism; it deals with human emotions, frailties and conduct, and should be primarily occupied with the problem of adjusting difficulties as they crop up. Far more than that, our laws should go even further and begin to assume a new duty, that of preventive work. If an analogy may be borrowed from the

medical profession, we find that preventive medicine has effected wonders; not only has it made the public conscious of the diseases which are ever present, but it has been systematically checking the growth and spread of those diseases. Similarly if ever there was a glaring need for the legal profession to come forth and endorse wholeheartedly those laws which will in the main lead to harmony within the community and thereby ensure better citizenship, it is at the present time when we find ourselves in an economic and moral morass the like of which mankind has never known. Not only the legal profession is needed to establish these Courts, but public opinion must be aroused to endorse these measures. Solve the family problems and the nation will be able to take care of itself.