

The decision of the Divisional Court was therefore reversed. In our note of the original case we doubted whether it would be law in Ontario, and it now appears that it was not good law in England.

JUDICIAL SEPARATION—JURISDICTION TO DECREE SEPARATION—ENLARGEMENT OF JURISDICTION BY IMPLICATION.

*Russell v. Russell*, (1895) P. 315, though a matrimonial cause, we think may be usefully referred to here, although as a rule we do not think it necessary to refer to such cases. The case involves a very curious point arising on the construction of a statute. The suit was brought by Lady Russell against her husband for restitution of conjugal rights. The defendant resisted the action on the ground that the petitioner had wrongfully charged him with the commission of an unnatural crime, and had persisted in the charge after the defendant had been acquitted of the offence by a jury; and he claimed, by way of cross relief, a judicial separation on the ground of cruelty. The suit was tried by Pollock, B., who dismissed the wife's petition and gave the defendant the relief he asked. The case was carried to appeal before Lindley, Lopes, and Rigby, L.JJ. In the judgment of Lindley and Lopes, L.JJ., the authorities are reviewed and the conclusion is reached that up to the passing of 47 & 48 Vict., c. 68, the court had no discretion to refuse a decree for restitution except upon grounds that would justify the pronouncing of a decree for judicial separation; and that a decree for judicial separation could only be granted where adultery or legal cruelty was established, and that the wrongful accusation made by the wife in the present case did not amount to legal cruelty. Thus far the right of the wife to succeed was conceded; but by the Matrimonial Causes Act, 1857, the court was empowered to grant a decree for separation on a new ground, namely, that of desertion without reasonable cause; and by the 47 & 48 Vict., c. 68, above referred to, it is provided that if a spouse shall refuse to obey a decree for restitution of conjugal rights, he or she is to be deemed to be guilty of desertion without reasonable cause. So that if the court were in the present case to decree a restitution of conjugal rights, and the defendant disobeyed it, the wife might then sue for a judicial separation. Such a result the court considered could never be intended; and Lindley and Lopes, L.JJ., were of opinion that since 1884, by necessary