

Of equal interest is the circumstance that, in case any aspect of the federal act of 1930 was beyond the legislative capacity of Parliament, the Legislature of Ontario confirmed its provisions in the Marriage Act of 1933 (chapter 29 of the statutes of that year), which provided that "so many of the provisions of the Divorce Act (Ontario) as are or may be within the legislative competence of this Legislature are hereby enacted as if fully set out in this Act".

It is pretty difficult to get a constitutional lead out of that when it is covered both ways at the same time.

It is also of constitutional interest to note that the federal act of 1930 was "supplemented"—if that is the correct word—by an Ontario statute of 1931 (chapter 25 of the statutes of that year), which dealt with maintenance, alimony, property settlements, the custody of the children and the making of rules of procedure.

That deals with Canada as far as I propose to go. The second part is shorter, but I have tried to summarize the case law in England as to cruelty, desertion and insanity.

Mr. PETERS: When the Ontario Legislature passed the statute in 1931 deciding on the maintenance of children and custody, where did this come from? Is this an inherent part of the federal legislation transferred in 1930? Where did we lose the jurisdiction of the federal field over children?

Mr. HOPKINS: I remarked that the situation was interesting constitutionally in that it was working both ways. My opinion was this: That the Divorce Act of Ontario conferred on the Province of Ontario all the laws of England as to dissolution and annulment, and that in my opinion would include the ancillary forms of relief. Those are the actual words, and therefore I would say there was an assumption of jurisdiction over these ancillary forms of relief by the Parliament.

Mr. PETERS: Does the legislation conferred by Confederation in the British North America Act, carry with it in section 102 the custody and maintenance and other provisions relating to matrimony in England at that time?

Mr. HOPKINS: In Ontario at that time the United Province of Canada did enact parliamentary divorces, but there was no general law providing for judicial divorce in force at that time. There was no inherited body of law at all in Ontario on divorce.

Mr. PETERS: Then speaking of the law of England at that time, I am trying to ascertain where the power is that allows Ontario in passing the act of 1931 to include things not spelled out in the substantive legislation passed by the federal Government in the 1930s.

Mr. HOPKINS: I said that in my view the broadness of the language in the federal act would include in the law of Ontario all the ancillary forms of relief set out in the Matrimonial Causes Act of 1857. Therefore I stated it could be said that Ontario assumed jurisdiction over such ancillary forms.

The Co-CHAIRMAN (*Senator Roebuck*): Was not that because we had not occupied the field at that time?

Mr. HOPKINS: This all depends on the Divorce Act (Ontario) 1930. That conferred on the provincial courts all the law of England as to dissolution and annulment. It is arguable whether they occupied the field or not. As I say it is of constitutional interest. I hope when the officials from the Department of Justice appear before us a decision will be reached on this. I assure you, as in every area of constitutional law, that formulating an opinion is no more than a prediction, a studied speculation as to what the Supreme Court of Canada might say. It is very hard to control the opinions of a body that is the judicial sovereign in this country.

Senator CROLL: Is there any case law on the point?