

offence. The aid or encouragement may under certain circumstances be by silent as well as spoken action, or implied consent, or by so arranging conditions as to assist its commission. Such action on the part of the petitioner should of course, deprive the petitioner of the aid of the court as against the respondent and co-respondent.

It is unnecessary to attempt a definition of connivance as it has been a bar to divorce for many years and is made known in numerous decisions of the courts both in England and Canada.

RECOMMENDATION

Your Committee recommends that connivance remain a bar to divorce within the discretion of the court in each individual case.

JUDICIAL SEPARATION

Judicial separation is on occasions a useful power to be possessed by the Court. Prior to the United Kingdom Act of 1857, it was known in England as divorce *a mensa et thoro* and its meaning is separation from bed and board without the right of remarriage. Its usefulness is when the court wishes to give legal status to a separation which usually has already taken place and frequently in association with orders involving maintenance and the custody of children. Such a legal arrangement, while having legal validity which the police will enforce as between man and wife, does not preclude the possibility of eventual reconciliation.

For some reason authority to order judicial separation was omitted from the Dominion Act of 1930 which conferred on the Supreme Court of Ontario power to decree dissolution and annulment of marriage. That Act should be amended to correct what was likely an inadvertent omission.

Most, if not all, of the other provincial courts have had the power as a result of pre-Confederation law which remained in force by virtue of Section 129 of the British North America Act. As such, the provinces are unable to amend or abolish the pre-Confederation law, so the time has come for the Parliament of Canada to accept its responsibility which it has possessed for the past one hundred years and has continually avoided.

RECOMMENDATION

Your Committee recommends that the Divorce Act (Ontario), of 1930 be amended to conform and that the prospective Divorce Act of Canada contain a provision granting to the courts of all the Provinces of Canada and to the Senate by virtue of the *Dissolution and Annulment of Marriages Act*, a uniform authority to decree Judicial Separation.

COURT JURISDICTION

In the Ontario Divorce Jurisdiction Act, which conferred authority to decree dissolution of marriage, and in the pre-Confederation statutes in the provinces other than Quebec and Newfoundland, it was uniformly the Supreme or Superior Court which was selected to administer the law of divorce. In the experience in Ontario of almost forty years and in the other provinces of the past one hundred years, the Supreme Courts have proven in some respects inadequate for the task. The Judges of the Supreme Courts visit the county towns, other than the cities, usually twice a year, so that long lists of divorce cases await the Assizes and are dealt with perfunctorily. They are run through