

DIVORCE APPEALS IN WESTERN PROVINCES.

Is there an appeal in divorce cases in Manitoba, Saskatchewan, Alberta and British Columbia? The point will undoubtedly arise soon in Manitoba and the other Western Provinces as to whether or not there is an appeal to the Provincial Courts of Appeal from the decision of a single Judge in divorce cases.

In the case of *Scott v. Scott*, 4 B.C.L.R. (1891), p. 316, the full Court of British Columbia held that there was no appeal to that Court in divorce matters because the Provincial Legislature which created that Court had not power to confer divorce jurisdiction on any Court, and hence it could not provide for an appeal in divorce matters. Again, in the case of *Brown v. Brown*, 14 B.C.L.R. (1909), p. 142, the full Court of British Columbia held that it had no jurisdiction to hear appeals final or interlocutory in divorce matters. This last case appears to have been fully argued with eminent counsel on each side. In the *Brown* case the decision in *Scott v. Scott* was affirmed and approved. From the reasoning of the Judicial Committee however in the *Walker* and *Board* cases it would appear that a Provincial Legislature can confer jurisdiction in divorce on a Court which it creates. This principle runs all through the argument and the judgments in *Walker* and *Board*. Hence if a Provincial Legislature of any of the above Provinces has provided for appeals from any judgment, decision, order or decree of a single Judge, etc., it would follow in the absence of Dominion legislation that there is an appeal to the provincial Court of Appeal in divorce matters.

Divorce has hitherto been viewed as a matter separate and apart from almost every other subject mentioned in the B.N.A. Act, but it is submitted that the effect of the discussions before the Privy Council in the *Walker* and *Board* cases and the judgments themselves indicate clearly that as matters stand at present the administration of the divorce law in the above four Provinces falls to the Provinces. Hence there can be an appeal to the provincial Court of Appeal in a divorce matter just as there can be an appeal in a matter arising out of bills and notes, banking etc., provided of course that the Act constituting the Court of Appeal so provides.