

divorce court under section 101 of the British North America Act. Parliament may also confer divorce jurisdiction on provincial courts as it has done in the courts of Ontario. It may do so explicitly, or implicitly by passing a law without establishing a court for its administration. In this case, it is presumed that Parliament intended the law to be administered by the provincial courts.

While the situation regarding dissolutions of marriage and procedure are quite clear, the jurisdiction of Parliament over judicial separation and matters ancillary to divorce is not specifically stated. However, it is the considered opinion of the Deputy Minister of Justice that Parliament's jurisdiction extends to judicial separation. In ecclesiastical law, a decree of judicial separation from bed and board was known as a divorce *a mensa et thoro*, and this decree was granted only by the church courts. The English Act of 1857 transferred this jurisdiction from the ecclesiastical to the civil courts and renamed the decree separation. The decree under both courts had the similar effect of dissolving the marriage without conferring on the parties the right of remarriage, so that when ten years after the passage of the Act of 1857, the British North America Act conferred divorce jurisdiction on the Canadian Parliament, it follows that divorce *a mensa et thoro* (judicial separation) was included with divorce *a vinculo*.

Looked at from another point of view, a marriage creates a new legal status for the parties. New rights and duties are created, such as the obligation to support and the right to consortium, while a right to again marry is extinguished. A divorce *a vinculo* destroys the legal status involved in the marriage and restores the parties to their former positions. When the divorce is granted, these rights and obligations cease and the parties are free to remarry. A judicial separation is a divorce without the right to remarry. "The legal status created by the marriage has been extinguished," to quote a witness before the Committee, "but the status enjoyed by the parties thereto immediately before the marriage has not been fully restored. . . If Parliament can say that pre-existing rights are fully restored, it can also say they are only partially restored."

It is interesting to note, that in 1879, parliamentary divorce was granted, an Act for the relief of Eliza Maria Campbell (42 Victoria, c. 79) which in fact was a judicial separation, providing that "the said Eliza Maria Campbell shall be and remain separated from the bed and board of her husband." This Act was passed by a Parliament containing as members many of the authors of the British North America Act. They seemed to have had no doubt as to Parliament's jurisdiction. However, it should be added that this was the only Act of judicial separation passed by Parliament and that its validity has not been judicially tested. But neither has it been judicially questioned.

Parliament has not in recent years dealt with matters ancillary to divorce.

Heretofore, these matters have been dealt with by the provinces, if for no other reason than that Parliament has refrained from doing so. The Committee is of the opinion that the exclusive jurisdiction of Parliament over divorce includes legislative authority over matters ancillary to divorce.

Divorce alters the legal status created by the marriage. Jurisdiction with regard to divorce thus includes the abolition of the rights and obligations created by the marriage and the restoration of certain pre-existing rights. Such rights can be terminated or restored in whole or in part.

A husband has a duty to maintain his wife. That obligation normally ceases when the marriage is dissolved because the relationship between the parties no longer exists. As Parliament is competent to legislate to divorce, it may also