

jurisdiction of the King's Bench in Manitoba is affirmed on like grounds; their Lordships (Lords Haldane, Buckmaster, Dunedin, Shaw, and Scott-Dickson), holding that 51 Vict., c. 33 (D), s. 1, had the effect of introducing the laws of England as the same existed on July 15, 1870, so far as applicable, into Manitoba, which included the then existing law of divorce under the English Matrimonial Causes Act of 1857; and that the Provincial Act defining the jurisdiction of the Manitoba Court of King's Bench as that possessed on July 15, 1870, by the English Superior Courts of Law and Equity having cognizance of property and civil rights and of crimes and offences was sufficient to enable the Manitoba Court to exercise jurisdiction in divorce.—We may observe that the point does not appear to have been taken, that as divorce is within the exclusive jurisdiction of the Dominion Parliament, the conferring of jurisdiction on Courts to administer that law must also of necessity rest exclusively with the Dominion Government, and that for a Provincial Legislature to confer divorce jurisdiction on a Provincial Court is in effect a breach of the B.N.A. Act and a legislating on the subject of divorce. With the greatest respect for the Judicial Committee we venture to think it has in this case failed to consider an important point of our constitutional law. For while it is true that the constitution of Provincial Courts rest with the Provinces, yet we submit the right to constitute a Court does not involve the right to confer on the Court so constituted a jurisdiction in matters over which a Province has no jurisdiction. We think the course of Dominion legislation in the past has always been correctly based on the assumption, that whenever it was thought necessary to give Provincial Courts jurisdiction to deal with matters within the exclusive control of the Dominion, that jurisdiction must be conferred by the Dominion Parliament. The Criminal Code, the Dominion Winding-up Act, the Controverted Dominion Elections Act and the recent Bankruptcy Act are all familiar illustrations of this course of legislation.

The Crown as represented by the Dominion of Canada does not appear to have been represented in this case. It is therefore probably, not bound by this decision. In the meantime the Provincial Courts may act upon it and it may hereafter be held that they had no right to do so, this case to the contrary notwithstanding. In order to avoid such a contingency ought not the Dominion Parliament to pass an Act conferring jurisdiction on the Provincial Courts?