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1928

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DIVORCES IN CANADA, 1928

(With Supplementary notes on Jurisdiction in Divorce in Canada and on the Divorce Act of 1925.)

Statistics of divorces, secured from the authorities of six provinces where divorces are granted by the courts and from the Dominion statutes for Ontario and Quebec, and compiled by the General Statistics Branch of the Dominion Bureau of Statistics, show an increase of 37 in the number of divorces granted in Canada during 1928 over the previous year. A total of 785 divorces was granted during the calendar year 1928, as compared with 748 during the calendar year 1927 - an increase of 4.9 p.c. The 1928 total is the largest number so far recorded in any one year.

The increase in divorces granted from 1916 to 1921 has been ascribed to the unsettling psychological effects of the war period and the long separations of men from their wives, combined with the new facilities for obtaining divorce provided by a decision of the Judicial Committee of the Privy Council, which enabled the courts of Alberta and Saskatchewan to grant divorces. Decreases in the totals in 1922 and 1923 appeared to indicate a decline which might be ascribed to the passage of war-time conditions, but the comparatively large increases in 1924, 1925, 1926, 1927 and 1928, ten years after the Armistice, must evidently be attributed to the greater ease with which decrees may now be obtained and, possibly, to a more lenient view of such proceedings on the part of the community. (See Jurisdiction in Divorce in Canada, page 5.)

The number of divorces granted during 1928, by provinces, (Table 1) was 213 in Ontario, 203 in British Columbia, 168 in Alberta, 79 in Manitoba, 55 in Saskatchewan, 28 in Nova Scotia, 25 in Quebec, 14 in New Brunswick and none in Prince Edward Island, where, indeed, only one divorce has been granted since Confederation.

The largest increases in divorces granted during the year were in Ontario and Alberta, in which provinces the 1928 figures showed increases of 31 and 20 respectively. Quebec registered an increase of 12 and British Columbia showed 6 more than in 1927, while the other four provinces showed decreases as follows: Manitoba 23, Saskatchewan 5, New Brunswick 3, and Nova Scotia 1.

The Sex of Applicants for Divorces. - Previous to 1924 Canada's divorce statistics differed from those of most other countries in that they showed that a majority of the divorces granted were at the petition of the husband. In 1924 wives obtained 51.2 p.c. of the decrees granted, but in 1925 husbands were again in the majority of the successful petitioners with 50.6 p.c. In 1926 wives received relief in 52 p.c. of the cases adjudged, in 1927 52.6 p.c. and in 1928 52.0 p.c., this condition being possibly due to the passing of the Divorce Act, 1925, which removed certain anomalies which formerly operated to the prejudice of wives. A comparison of Canadian divorce statistics with those of New Zealand and the United States shows that of the decrees granted in the former country from 1922 to 1926, wives received 57.7, 56.6, 58.7, 55.0 and 61.4 p.c. respectively, while figures for the latter country for the five year period from 1922 to 1926 show the decisions granted to wives as being 68.0, 67.8, 68.5, 69.9 and 70.5 p.c. of the total respectively. In the United States the proportion of two divorces granted to wives to one granted to husbands has remained fairly constant since 1889.

A possible indication of the grounds of petitions and decrees may be had from statistics of divorce in New Zealand, where a proportionately larger number of divorces were granted in 1926 to husbands on grounds of adultery, while a preponderance of decrees based on separation were granted to wives. The numbers of divorces granted on grounds of desertion form about 30 p.c. of the total numbers granted to husbands and 36 p.c. of those granted to wives. In the United States, however, 43 p.c. of the divorces granted to wives are on grounds of cruelty, while 46 p.c. of those granted to husbands are on the ground of desertion. In the latter country, as in New Zealand, a correspondingly larger proportion of decrees are granted to husbands on grounds of adultery than to wives.

Divorces Granted in United States to Persons Married in Canada.-

A fact which throws considerable new light on the divorce situation in Canada is found in the Marriage and Divorce Bulletin of the United States Bureau of the Census. The statistics of this publication indicate the surprisingly large extent to which divorces are granted in that country to persons married in Canada. Thus, in 1922, no fewer than 1,368 divorce decrees were granted to couples married in Canada, a number more than $2\frac{1}{2}$ times as large as the total number granted in Canada in the same year. This number also formed 36.2 p.c. of the number of divorces granted in United States during the year to couples married in foreign countries, while, at the same time the percentage of the Canadian-born population to the total foreign-born amounted to only 8.1 p.c. The Bulletin goes on to say, "It is possible that many Canadians acquire a residence in the United States for the sole purpose of obtaining divorce because, in general, divorce laws are more liberal in the United States than in Canada." Of the 1,368 divorces granted in 1922 to couples who had been married in Canada, no fewer than 462 were granted by the courts of the State of Michigan, while 135 were granted by the courts of the State of Washington and 128 in California. No later figures than the above have been published in connection with the dissolution of marriages contracted outside the United States.

1. DIVORCES GRANTED IN CANADA 1913 - 1928

(Final Decrees)

Year	Ont.	Que.	Alta.	Sask.	Man.	Nova Scotia	New Brunswick	British Col- umbia	Total for Canada
1913	20	4	4	1	6	-	4	20	60
1914	18	7	4	2	2	10	12	15	70
1915	10	3	3	1	1	13	6	16	53
1916	18	1	1	2	2	14	11	18	67
1917	10	4	2	1	-	8	6	23	54
1918	10	2	2	1	-	24	10	65	114
1919	49	4	36	3	88	36	13	147	376
1920	91	9	65	26	42	45	15	136	429
1921	101	9	84	50	122	41	13	128	548
1922	90	6	129	37	97	35	12	138	544
1923	105	11	87	41	81	22	19	139	505
1924	114	13	118	28	77	42	15	136	543
1925	121	13	101	42	79	30	15	150	551
1926	113	10	154	48	85	19	12	167	608
1927	182	13	148	60	102	29	17	197	748
1928	213	25	168	55	79	28	14	203	785

Note - In Prince Edward Island, only one divorce was granted between 1868 and 1928.
This was granted in 1913.

2. DIVORCES GRANTED IN CANADA, 1926 - 1928 BY
PROVINCES AND SEX OF PLAINTIFF

(Final Decrees)

Provinces	To Husbands:			To Wives:			Total:		
	1926	1927	1928	1926	1927	1928	1926	1927	1928
Prince Edward Is.	-	-	-	-	-	-	-	-	-
Nova Scotia	6	14	16	13	15	12	19	29	28
New Brunswick	5	11	6	7	6	8	12	17	14
Quebec	2	7	7	8	6	18	10	13	25
Ontario	54	64	87	69	118	126	113	182	213
Manitoba	44	46	44	41	56	35	85	102	79
Saskatchewan	27	40	27	21	20	28	48	60	55
Alberta	79	82	90	75	66	78	154	148	168
British Columbia	75	91	100	92	106	103	167	197	203
Canada	292	355	377	316	393	408	608	748	785

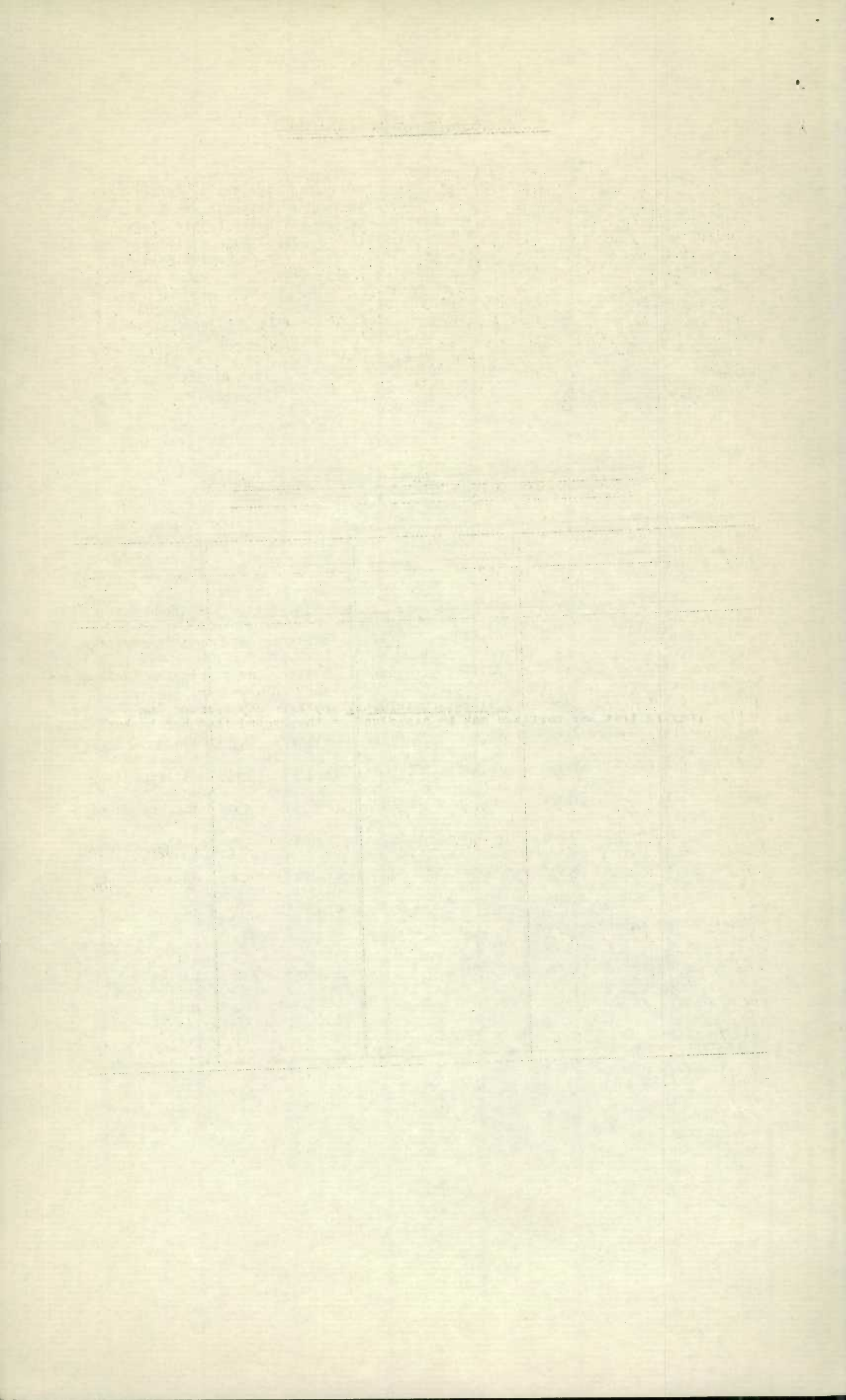
COMPARISONS WITH OTHER COUNTRIES

In Table 3 are added comparative figures of divorces and marriages in England and Wales, Australia, New Zealand and Canada for the years 1916 and subsequently. The percentage of divorces to marriages taking place in the same year, as here given, is seen in the case of England and Wales to have increased during those years from 0.35 p.c. to 1.03 p.c.; in Australia from 1.53 p.c. to 3.99 p.c.; in New Zealand from 2.41 p.c. to 5.75 p.c. and in Canada from 0.1 p.c. to 1.08 p.c. Similar figures for the United States, where, of course, the total number of divorces is unusually large owing to the comparative ease with which they may be obtained, show increases from 27,919 in 1887 to 42,937 in 1896, 72,062 in 1906, 112,036 in 1916, 148,815 in 1922, 165,096 in 1923, 170,952 in 1924, 175,449 in 1925, 180,853 in 1926 and about 192,000 in 1927. The percentage of divorces to marriages increased from 10.6 to 15.0 during the years 1916 to 1926, divorces during this period increasing by 58.6 p.c. (In 1926 divorces granted to women in the United States constituted 70.5 p.c. of the total granted, as compared with 69.9 p.c. in 1925.)

3. NUMBER OF MARRIAGES AND DIVORCES IN ENGLAND AND WALES,
AUSTRALIA, NEW ZEALAND AND CANADA IN RECENT YEARS

Year	England and Wales		Australia		New Zealand		Canada	
	No. of Marriages	No. of Divorces	No. of Marriages	No. of Divorces	No. of Marriages	No. of Divorces	No. of Marriages	No. of Divorces
1916	279,846	990	40,289	617	8,213	198	65,000 ^{1/}	67
1917	258,855	703	33,666	652	6,417	221	60,000 ^{1/}	54
1918	287,163	1,111	33,141	697	6,227	203	55,000 ^{1/}	114
1919	369,411	1,654	40,540	891	9,519	337	70,000 ^{1/}	376
1920	379,658	3,090	51,552	1,168	12,175	471	80,931	429
1921	320,852	3,522	46,869	1,502	10,635	513	69,732	548
1922	299,524	2,588	44,731	1,338	9,556	523	64,420	544
1923	292,408	2,667	44,541	1,480	10,070	524	66,463	505
1924	296,416	2,286	45,869	1,544	10,259	530	65,129	543
1925	295,689	2,605	46,899	1,870	10,419	612	64,644	551
1926	279,860	2,622	47,865	-	10,680	614	66,558	608
1927	308,370	3,190	-	-	-	-	69,465	748
1928	-	-	-	-	-	-	-	785

^{1/} Estimated.



JURISDICTION IN DIVORCE IN CANADA

English Legislation.-

It was not until 1857, when the Divorce and Matrimonial Causes Act was passed in England, that a right to divorce in that country was created. Divorce as we now understand it had formerly the significance of judicial separation. By this Act of 1857 the Court of Divorce and Matrimonial Causes was created and all jurisdiction in matrimonial matters, formerly exercised by the Ecclesiastical Courts, was transferred to it by the Act.

The Divorce and Matrimonial Causes Act of 1857 had no force in the colonies of British North America before Confederation except in those colonies where such legislation had been enacted.

Canada.-

By Sec. 91 of the British North America Act (26), the Dominion Parliament was granted jurisdiction over the matter of marriage and divorce, while by Sec. 92 (12) Provincial Legislatures were empowered to legislate upon the solemnization of marriage in their respective provinces.

The Dominion Parliament, however, from 1867 until 1924, has passed no Act granting the right to obtain divorce nor had any court with jurisdiction in divorce matters been created in the Dominion or in any province by Dominion Legislation. Matrimonial relief may, however, be obtained, and granted under authority of the B.N.A. Act, by petition to the Dominion Parliament through the Divorce Committee of the Senate.

The Dominion Parliament by C. 41 of the Statutes of 1925, added a new and important provision to the Canadian law respecting divorce. The law in force until the passage of the Divorce Act, in so far as it concerned causes for divorce proceedings, has provided that, while a husband may obtain a divorce on grounds of adultery, it is necessary for a wife to prove both adultery and desertion. This anomaly has been removed, sec. 2 of the Divorce Act stating "In any court having jurisdiction to grant divorce a vinculo matrimonii any wife may commence an action praying that her marriage may be dissolved on the ground that her husband has since the celebration thereof been guilty of adultery". The granting of a divorce in such cases, of course, is dependent on sufficient evidence that the wife has not been an accessory to or connived at such adultery or that the action is not prosecuted in collusion with the husband or the woman with whom he is alleged to have committed adultery. In addition "the court shall not be bound to pronounce such decree if it finds that the wife during the marriage has been guilty of adultery or.....of unreasonable delay or of cruelty towards the husband or of having deserted or wilfully separated herself from the husband before the adultery complained of and without reasonable excuse, or of such wilful neglect or misconduct as has conduced to the adultery".

Nova Scotia and New Brunswick.-

By Sec. 129 of the B.N.A. Act, all laws in force in Canada, Nova Scotia and New Brunswick and all courts, etc. were to continue to exist in the provinces of Ontario, Quebec, Nova Scotia and New Brunswick after Confederation. The provinces of Nova Scotia and New Brunswick, therefore, having enacted legislation respecting divorce and possessing courts exercising jurisdiction over such matters before Confederation and having continued to exercise jurisdiction through courts of Divorce and Matrimonial Causes, are now in the same position as they were then. A court was established in Nova Scotia under C. 126 of the Revised Statutes (third series) of Nova Scotia, 1864, as the Court of Marriage and Divorce, the name of which was changed by C. 13 of the statutes of 1866 to the Court for Divorce and Matrimonial Causes. The Court of Divorce and Matrimonial Causes in New Brunswick was likewise set up by an Act passed in 1860 (an Act to amend the Law relating to Divorce and Matrimonial Causes). (Sec. R.S., N.B., 1903, C. 115).

Prince Edward Island.-

In Prince Edward Island a court having jurisdiction in divorce was constituted by an Act of 1835 (5 Wm. IV, C. 10). This law has not been repealed since that time, but the power vested in the Governor and Executive Council to establish a divorce court has never been exercised. Persons living in Prince Edward Island, who are desirous of seeking dissolution of marriage, must do so by petition to the Dominion Parliament.

British Columbia.-

The colony of British Columbia acquired jurisdiction in matrimonial causes following a proclamation of the Governor giving force in the province to the civil and criminal law of England as it existed on Nov. 19, 1858. The province has continued to exercise jurisdiction over divorce through the courts established before Confederation. (See Rev. Statutes of B.C., 1924, C. 75).

Manitoba.-

The divorce law of England, as it existed on July 15, 1870, was introduced into Manitoba by an Act of the Dominion Parliament, 51 Vict., C. 33. The court of King's Bench of Manitoba has the same jurisdiction in divorce as the courts have in England under the Divorce and Matrimonial Causes Act, 1857.

Alberta and Saskatchewan.-

The Dominion Parliament, by 49 Vict. C. 25, enacted that the laws of England as existing on July 15, 1870, should be in force in the Northwest Territories. In 1918 the Appellate Division of the Supreme Court of Alberta held that the effect of the above Act and of legislation passed creating the province was to make the Divorce and Matrimonial Causes Act of 1857 and amendments up to July 15, 1870 apply to the province of Alberta. This decision was confirmed on appeal to the Imperial Privy Council. Subsequent judgments by the Saskatchewan Court of Appeal held that the English law as it existed on July 15, 1870 had force in the province and that the rights conferred under it might be enforced by the Court of King's Bench. The provinces of Alberta and Saskatchewan, therefore, are in the same position in the matter of jurisdiction over divorce.

Ontario and Quebec.-

In Ontario and Quebec it is considered that the courts have no jurisdiction to entertain an application for divorce and no attempt has been made in Ontario to establish such power. In Quebec the courts have assumed power, not to dissolve but, in some cases, to annul marriage or to entertain petitions for separation. The power to annul a marriage is exercised by the courts of Ontario in certain cases only (See 7 Edw. VII, C. 23; R.S.O. 1914, C. 148; 9 Geo. V, C. 35). Persons seeking divorce in Ontario and Quebec, (as well as in Prince Edward Island) must do so by petition to the Dominion Parliament.

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