

cluding his address in support of the Bill Senator Abbott said: "In my opinion and in the opinion of the Minister of Justice the judgment of divorce in this case is not binding in this country, and *a fortiori* it cannot be binding in this House."<sup>(a)</sup> But it is manifest that neither the vote in Parliament on this bill, nor the opinions of individual Senators, nor indeed the opinions of all the representatives in both the Senate and the House collectively, assuming that they were all of the opinion of Senator Abbott, could have any binding effect, outside of the Ash case, either upon any future Parliament, or upon any Canadian court of justice.

Under *Stevens v. Fisk* and the English authorities, it is submitted that an American divorce will be held to be valid in the Canadian courts if (1) the court granting it was a court of competent jurisdiction; (2) the parties were in good faith domiciled in the state in which the divorce was granted at the time when the divorce proceedings were commenced; (3) the proceedings were free from fraud and collusion; and it is apprehended that this would be the case even though the divorce were from the bond of a marriage contract entered into in Canada, and were granted on no better ground than "incompatibility of temper." Cases in which both parties were not domiciled at the time of the divorce in the state granting it, present more difficulty, arising partly from the legal fiction that husband and wife are one, and partly from the absence of jurisdiction of the courts of one country over the subjects of another. As to the latter point the New York Court of Appeals recently declared invalid a divorce granted in Dakota on the petition of a wife, where the husband being domiciled in New York was served there, but did not appear, on the ground of want of jurisdiction in the Dakota court over a resident of New York <sup>(b)</sup>. *A fortiori*, a Canadian court would doubtless refuse to recognize an American divorce where the respondent was a British subject resident in Canada, and had not appeared or submitted to the jurisdiction of the foreign tribunal. As to domicile, the

(a) Senate Debates, 1887, p. 228.

(b) 57 Albany Law Journal (1898) 198.