

way it is, I think, generally assumed that prior to the *Plowman case* American divorces were of little or no validity in Canada; that while the judgment in that case was accepted as an interpretation of the law, such divorces were effective, and that since the judgment of the Supreme Court American divorces have been relegated once more to the limbo of worthless things. In point of fact neither decision made any new declaration, or indeed any declaration whatever of the law on the subject of the status of foreign divorces in Canada. It is true that the Criminal Code (s. 275) makes a divorce a good defence to a prosecution for bigamy, and *Plowman* had a Chicago divorce. But his divorce was founded upon a sham domicile, and was for that reason rejected as a defence by the trial judge. No further reliance seems to have been placed upon it by his counsel, and no mention of it appears in the report.

For a long time the English courts inclined to the view that the right to divorce, and therefore the validity of a foreign divorce in England, depended upon the law under which the marriage was celebrated. After the Matrimonial Causes Act of 1857, however, by which jurisdiction was given to the civil courts in matrimonial causes, the principle which is now fairly well recognized began to prevail. That principle is that jurisdiction in matters of divorce depends upon the domicile of the parties at the time of the commencement of the divorce proceedings. If, therefore, the parties being domiciled, that is to say having their permanent home, in a foreign country, are divorced there, without collusion or fraud, by a court of competent jurisdiction, such a divorce has in England the same effect as an English divorce, and that quite irrespective of the place of marriage; or of the residence or allegiance of the parties; or of their domicile at the time of the marriage; or of the place in which the offence in respect of which the divorce was granted was committed; or even, it would seem, of the fact that the divorce may have been for a cause not recognized as sufficient in England (*a*). Lord Penzance thus states the policy of the English law:

(a) Dicey's Conflict of Laws, pp. 269, 391, 755.