

The effect of the respondent's contention in this case would be to overrule *Lolley's* case.

*Winch* and *A. Ward*, who appeared for the respondent, were not called upon.

The LORD CHANCELLOR (Selborne)—My Lords: This case has been argued by the learned counsel for the appellant at considerable length, and the legal principle involved in it is not new to your Lordships. If it were not that there has been much consideration and discussion, if not in cases in specie exactly resembling the present, yet in cases involving principles bearing upon the present, I have no doubt that your Lordships would have desired to hear the case fully argued on both sides; but looking to the nature of this particular case, and to the state of authority upon the subject, I believe your Lordship are all of opinion that it is not necessary to call upon the counsel for the respondent here. Now the ground upon which this Scotch divorce is impeached appears to be this, and this alone, that by the law of England a divorce for such a cause (adultery) as was alleged here is only granted at the suit of the husband, except under particular circumstances which in this case do not appear to have existed. The husband's adultery, without anything more, would not in England be a ground of divorce. It is a ground of divorce in Scotland, and this divorce was upon such a ground at the suit of the wife. The circumstances under which this divorce was obtained were these: The marriage had been solemnized in England, but at the time of the marriage the husband was domiciled in Scotland. That matrimonial domicile was never changed. The husband and wife lived in Scotland; the adultery was committed in Scotland, and when both parties were resident there the suit for divorce was instituted in Scotland, and a decree was regularly pronounced in those circumstances by the Scottish courts. The judge of the Divorce Court and the Court of Appeal have both held, that under those circumstances, the sentence of divorce not being impeached for any species of collusion or fraud, was the sentence of a court of competent jurisdiction, not only effectual within that jurisdiction, but entitled to recognition in the courts of this country also. On the other side it has been contended that there is a general rule of English law supposed to have been established in *Lolley's* case,

Russ. & Ry. 237; 2 Cl. & F. 567, and not to have been since departed from in such a way as to make it now otherwise than binding on this house, to the effect that if an Englishwoman is married within the limits of the English jurisdiction to a foreigner (a Scotchman being for this purpose in the same position with a foreigner), that is a marriage which the English courts must regard as indissoluble by any other than an English jurisdiction; or if not that, at all events only dissoluble in the view of an English Court, if dissolved by some other competent jurisdiction for a cause for which it might have been dissolved in England. Now I must take the liberty of saying, that if this question is to be tested upon principle apart from authority, although it cannot be denied that the varying jurisprudence, and perhaps legislation also, of different countries may and do introduce some undesirable cases of conflict between the laws of those different countries or questions of matrimonial status, yet if the question is to be approached on principle, I should certainly say that in such circumstances as those which exist in the present case all the principles of private international law point in the direction of the validity of such a sentence and of its recognition by the courts of other countries. Of course I assume that in the way of that recognition on the principle of international law, there would not be interposed any positive legislation bearing upon the point, or any positive prohibition binding upon the court in which the question arises. Upon the point of principle how does the matter stand? Let it be granted (and I think it is well settled) the general rule internationally recognized as to the constitution of marriage is, that when there is no personal incapacity attaching upon either party or upon the particular party who is to be regarded by the law to which he is personally subject, that is, the law of his own country, then marriage is held to be constituted everywhere, if it is well constituted *secundum legem loci contractus*; but that merely determines what in all these cases is the point you start from. When a marriage has been duly solemnized according to the local law of the place of solemnization the parties do become husband and wife, but when they become husband and wife what is the character which the wife assumes? She