

unnecessary to the decision of the case. At all events, and whatever the Parliament of Canada might do there is no doubt that Canadian Courts of justice will recognize a foreign decree of divorce if regularly granted by a Court of competent jurisdiction.

PART V.

RIGHTS AND OBLIGATIONS OF PARENTS AND CHILDREN.

(1) *General Statement.*—By the common law of England the father has the right to the custody of his infant children as against third parties, and even as against the mother and though the child be an infant at the breast. The ante-nuptial contract of a father to give over the control of the children of the intended marriage to their mother is deemed to be against public policy, and will not be enforced by the Courts, although upon separation such an agreement is perfectly valid. During the lifetime of the father a mother has at common law no legal authority; but on the death of the father, without having appointed a guardian, she is entitled to the custody of her infant children. Where the father has by will appointed a guardian, the mother has, by the common law, no right to interfere with him.

At common law the control of the parent (father or mother) lasts, under ordinary circumstances, until, and in all cases ends, when the child attains the age of twenty-one or marries under that age. Parents cannot at common law enter into legally binding agreements to deprive themselves of the custody and control of their children. If, however, as a matter of fact, parents do put their children into the control of others, they will not be permitted, at the hazard of injuring the children, to take them back into their own custody. The interest of the children is the sole guide to the Court in such a case.⁸⁶

The obligation to maintain children is enforced by the Criminal Code. "Everyone who, as parent or guardian or head of a family, is under a legal duty to provide necessities for any child under the age of sixteen years, is criminally responsible for omit-

86. Eversley, "Domestic Relations," 2nd ed., at p. 493 *et seq.*