

divorce (6 Hals. 193). To admit that it was the coming of the property into his possession which caused him to decide to remain in Ontario, and then to postpone the date when he formed that intention until he had gone to Chicago to be served with the divorce paper, is too accommodating altogether. It seems quite clear that both parties wanted a divorce, that it would be difficult to get it from the Canadian parliament, and that to allege a continuing domicile in Chicago was very tempting.

The concluding remarks of Middleton, J., that because all the parties concerned knew what they were about when the divorce was obtained, there should be a conclusion favourable to the legality of the decree, suggests the existence of an estoppel against the defendant, but the public interest is the main thing to be guarded, and estoppel has nothing whatever to do with the matter. If all the parties knew what they were about, there could be no estoppel of one by the other. A marriage claimed and denied on the ground of an existing marriage; a foreign divorce pleaded, and its legality denied for want of jurisdiction; the question of law should be settled on principles aimed only to preserve the morality of married life.

The unusual directions as to costs given in the main judgment, considered in the light of the later explanation, evidence a very keen and not unnatural sympathy by Middleton, J., with the plaintiff, and suggest that his findings were influenced thereby. "Hard cases make bad law," and no harder cases arise perhaps than cases of this kind; judgments establishing the nullity of proceedings long before inevitably impose hardships; nevertheless preservation of the public interest in the binding nature of the marriage and strict examination of all foreign divorce, will in the end prevent more private suffering than will regard for the hardships of particular instances.

## Province of British Columbia.

### SUPREME COURT.

Murphy, J.]

MILLER V. ALLISON.

[33 D.L.R. 144.]

*Conflict of laws—Foreign divorce—Remarriage abroad.*

Where a British subject domiciled in this country enters into a contract of marriage during a temporary visit to a foreign country, the question of the validity of marriage, as to essentials, not as to form, depends upon the laws of this country.

*McDiarmid*, for petitioner; *Higgins*, for respondent.

#### ANNOTATION ON ABOVE CASE FROM D.L.R.

The judgment in this action was wrong.

When she procured a divorce in Oregon, the respondent was domiciled in Idaho. The whole question of the validity of the divorce depends upon the law of Idaho in reference thereto.