Reports and Notes of Cases.

Province of Ontario

SUPREME COURT.

Middleton, J.] C. v. C. [33 D.L.R. 151.

Conflict of laws—Foreign divorce.

The exercise by a foreign Court of the general jurisdiction it is admitted to have under principles recognized by English law will not be inquired into in proceedings in English Courts.

See *Pemberton* v. *Hughes*, [1899] 1 Ch. 781.

Bain, K.C., *White*, K.C., and *M. L. Gordon*, for plaintiff; *Dewart*, K.C., and *Harding*, for defendant.

ANNOTATION ON ABOVE CASE FROM D.L.R.

The Illinois statute requires residence in the State for one year *next before* the commencement of proceedings, to give jurisdiction, or commission within the State of the offence complained of, or whilst one of the parties resided there. In this instance the complaint made was of an offence committed in Chicago whilst the parties resided there, but this had been condoned by subsequent cohabitation in Ontario. The later offences if conclusively proved would revive the cause of action which had been abated by the condonation. (*Moorhouse* v. *Moorhouse*, 90 Ill. App 401; *Sharp* v. *Sharp*, 116 Ill. 509.) If no mention of the condonation and subsequent offence were made in the petition, a fraud was practised on the Illinois Court, by suppression of the truth, yet Middleton, J., says: "The offences complained of were committed in Chicago. . . . All the material facts were before the Chicago Court. . . . That subsequent offences were committed out of the State (after condonation of those complained of) seems to me immaterial;" that is, that it was immaterial to mention the condonation, and prove the offences which revived a lost right of action. The truth is, that unless later offences had revived the cause of action alleged, that cause was lost by condonation, and therefore the late offences were not only material, but without strict proof of them no decree could have been procured. In alleging these offences, Middleton, J., seems to have relied upon the undisputed evidence of the wife, on a point not at issue in *C.* v. *C.*; since it is unlikely that the husband in his evidence in *C.* v. *C.* was asked or admitted these later offences.

The question of domicile of choice was vital in this case, because the marriage was "English," in that sense of the word which makes the English Courts so jealously regard proof of acquired domicile. The marriage had been celebrated in Ontario, between parties domiciled there, who continued