

2. Either of the following conditions as to the *form* of celebration is complied with—(a) The marriage is celebrated in accordance with the local form: or (b) The marriage is celebrated in accordance with the requirements of the English common law in a country where the use of the local form is impossible.⁷⁸

Canadian Divorce Courts have no jurisdiction to entertain proceedings for the dissolution of the marriage of parties not domiciled within their respective Provinces at the commencement of the proceedings.⁷⁹ except where a husband domiciled in the Province deserts his wife and removes from the Province, and she continues to live in the Province. In such a case the Court may on petition grant her a divorce.⁸⁰ On the other hand a Canadian Divorce Court may entertain a suit for judicial separation or for the restitution of conjugal rights when both the parties thereto are at the commencement of the suit resident within its jurisdiction, although this residence may not amount to domicile.⁸¹

With regard to the dissolution of a Canadian marriage by the Courts of a foreign country the law is that the Courts of such a foreign country have jurisdiction to dissolve the marriage of persons domiciled there in good faith at the commencement of the proceedings for divorce. This rule applies alike to Canadian and to foreign marriages.⁸² A foreign divorce, therefore, if pronounced by a competent Court of a country where the parties to a marriage performed in Canada were (in good faith) domiciled at the time of the divorce proceedings, will dissolve such marriage and be held valid in Canada.⁸³ This rule is equally applicable to foreign divorces granted for causes not recognized in Canada, if proper domicile is established.⁸⁴

In the Ash case, 1887, it was stated that under no circumstances would the Canadian Parliament recognize a divorce granted by a United States Court in a case where the parties were married in Canada.⁸⁵ But the evidence in the Ash case did not establish a *bona fide* domicile within the jurisdiction of the Court which granted the divorce, and this broad statement was therefore 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.

CHAPTER VI.

RIGHTS AND OBLIGATIONS OF PARENTS AND CHILDREN.

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

⁷⁸The King v. Brampton (1808), 10 East's Reports, p. 282.

⁷⁹Pro. A. V. Dicey, "The Conflict of Laws" (1908), 2nd Edition, at p. 256.

⁸⁰Armstrong v. Armstrong (1898), Probate Reports, p. 178.

⁸¹Dicey *supra*, at p. 265.

⁸²Dicey *supra*, at p. 381.

⁸³Scott v. The Attorney-General (1886), 11 Probate Division Reports, p. 128.

⁸⁴Harvey v. Farnley (1882), 8 Appeal Cases, p. 43.

⁸⁵See Gemmill, "Practice of the Senate as to Divorce" (1889), at p. 27.