Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Mary Watts (Appellant) and the Attorney-General for the Province of British Columbia (Intervenant) v. Rubin Watts, from the Supreme Court of British Columbia; delivered the 30th July 1908.

Present at the Hearing:

LORD MACNAGHTEN.
LORD ATKINSON.
LORD COLLINS.
SIR ARTHUR WILSON.

[*Delivered by Lord Collins.*]

The only question raised in the present Appeal is whether the Supreme Court of British Columbia has jurisdiction to entertain a petition for divorce, the marriage having been solemnized in that Colony, between persons domiciled therein, and the matrimonial offences charged being alleged to have been committed therein.

The Divorce and Matrimonial Causes Act, 1857 (20 & 21 Vict. c. 85), came into force in England on the 11th January 1858, and the Amending Act (21 & 22 Vict. c. 108) came into force on the 2nd August 1858.

On the 19th November 1858, Sir James Douglas, the Governor of the Colony, published a Proclamation, intituled "A Proclamation "having the force of law to declare that

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" English law is in force in British Columbia," whereby it was enacted and proclaimed that :

> " The civil and criminal laws of England, as the " same existed at the date of the said Proclamation, " and so far as they are not from local circumstances " inapplicable to the Colony of British Columbia, are " and will remain in full force within the said Colony " till such time as they shall be altered by Her " Majesty in Her Privy Council, or by me the said " Governor, or by such other legislative authority as " may hereafter be legally constituted in the said " Colony."

At the date of the said Proclamation the law of England relating to divorce was as provided in the Acts above mentioned.

By a Proclamation having the force of law, of the 8th June 1859, the Supreme Court of British Columbia was constituted. The said Court was to have complete cognizance of all pleas whatsoever and to have jurisdiction in all cases, civil as well as criminal, arising within the Colony of British Columbia.

By section 3 of the British Columbia Act, 1866 (29 & 30 Vict. c. 67), the Colony of Vancouver Island and the Colony of British Columbia were united into one Colony under the name of British Columbia.

By the English Law Ordinance, 1867, the said Proclamation of the 19th of November 1858 was repealed, and in lieu thereof it was enacted :—

> " From and after the passing of this Ordinance the " civil and criminal laws of England as the same " existed on the 19th day of November, 1858, and so " far as the same are not from local circumstances " inapplicable, are and shall be in force in all parts of " the Colony of British Columbia."

Then followed a provision safeguarding any modifications made by past legislation in either Colony.

By an Order in Council of the 16th May 1871, the said Colony of British Columbia was admitted into and became part of the Dominion of Canada. By section 2 of the English Law Act (Revised Statutes of British Columbia, c. 115) it was further enacted that :—

> "The Civil laws of England as the same existed
> " on the 19th day of November, 1858, and so far as
> " the same are not from local circumstances inapplic-
> " able, shall be in force in all parts of British
> " Columbia : Provided, however, that the said laws
> " shall be held to be modified and altered by all
> " legislation still having the force of law of the
> " Province of British Columbia or of any former
> " Colony comprised within the geographical limits
> " thereof."

No statute concerning the power or jurisdiction of the said Supreme Court of British Columbia dealing with the subject of dissolution of marriage was passed by the Legislature of Vancouver or of British Columbia prior to the said 16th of May 1871; nor has any statute concerning such power or jurisdiction been enacted by the Federal Parliament of the Dominion of Canada since that date.

The Appellant, Mary Watts, was married to the Respondent on the 12th October 1904, at the City of Walla Walla in the State of Washington, one of the United States of America. After the marriage she lived and cohabited with the Respondent in the City of Vancouver in the Province of British Columbia, and they have been, and at the date of the filing of the petition next hereafter mentioned were, domiciled in the said City.

On the 21st March 1907, the Appellant filed in the Supreme Court of British Columbia a petition for a dissolution of her marriage with the Respondent and for alimony. The Respondent filed an answer to the petition and

counter-claimed for a declaration that his alleged marriage with the Appellant was null and void. The cause came on for hearing on the 24th and 25th July 1907, when Clement J., having heard the evidence of the parties and their witnesses, without discussing the merits, directed that argument should be made before him as to the power and jurisdiction of the Supreme Court to grant a divorce, and as to the power of one judge to hear a divorce cause, and that the Solicitor-General for Canada and the Attorney-General for British Columbia should be served by the Appellant with notice, and that the said cause should come on for further argument on the 1st of October 1907. Accordingly, on that day, Counsel for the Appellant and the Respondent and the Attorney-General for British Columbia appeared, but no Counsel appeared for the Solicitor-General for Canada. It was contended by all parties that the Divorce and Matrimonial Causes Act, 1857 (20 & 21 Vict. c. 85), had, by virtue of the Proclamations and Acts above stated, operative effect in British Columbia and that the Supreme Court of British Columbia had jurisdiction to grant divorces, and that such jurisdiction could be exercised by a single judge. On the 11th November 1907, the learned judge delivered judgment, making no finding on the merits, but holding that the Supreme Court had no power or jurisdiction to grant any decree of divorce, and he ordered that the petition and counter-claim should be dismissed, and that the Appellant and Respondent should each pay their own costs. In arriving at this decision he refused to follow a decision of the Full Court, in which it was held by two judges, the Chief Justice dissenting, that the jurisdiction exists, and could be exercised by a single judge.

S. v. *S.* (1877) 1 Brit. Col. (Pt. I.) 25.

On the 29th February 1908, by Order in Council of that date, leave to appeal was given to the Petitioner, Mary Watts, and to the Attorney-General for the Province of British Columbia leave to join in the Appeal as co-Appellant, and it was further ordered that the Attorney-General for the Dominion of Canada should be allowed to intervene in the said Appeal.

Since the decision in *S.* v. *S.* jurisdiction in divorce cases has been uniformly exercised by single judges of the Supreme Court in British Columbia, and in *Scott* v. *Scott* (1891, 4 B.C. 316) the question was again debated before the Full Court of three judges, including the Chief Justice, who had dissented in the former case. In delivering the judgment Begbie C.J., says :—

> " We have neither the power nor the inclination to " discuss the decision in *S.* v. *S.* or to impugn it in " any way."

Since the decision of the present case by Clement J., Martin J., in the case of *Sheppard* v. *Sheppard*, decided 1st April 1908, has refused to follow it, and has given his reasons at length in a very able and elaborate judgment, tracing the evolution of divorce jurisdiction in the Colony back to its first beginnings and removing some apparent misapprehensions on the part of Clement J. as to the attitude of Begbie C.J. towards this jurisdiction after the decision in *S.* v. *S.*

In the opinion of their Lordships, the reasons given in the judgments of Gray and Crease JJ. in *S.* v. *S.*, together with the recent critical survey of the ultimate situation by Martin J. in *Sheppard* v. *Sheppard*, place the question beyond discussion, and it seems to their

Lordships, with all deference to Clement J., that his opinion to the contrary cannot be supported.

Their Lordships will therefore humbly advise His Majesty that the Appeal should be allowed, the judgment appealed from set aside, and the case remitted to the Supreme Court to be decided on the merits.

There will be no order as to the costs of the Appeal.