Conflict of Laws in Space and in Time -- "Conflict Mobile" -- Capacity to Marry -- Validity of Foreign Divorce -- Retrospective Legislation

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Conflict of Laws in Space and in Time—"Conflit Mobile"—Capacity to Marry—Validity of Foreign Divorce—Retrospective Legislation. — The unstable character of modern legislation and its diversity in space create a host of problems for lawyers dealing with cases involving a foreign element. A close examination of a recent decision of the British Columbia Court of Appeal, which annulled, for lack of capacity, a marriage celebrated in the United States, reveals the influence that the time element may have on the structure of the rules of conflict of laws. The primary function of conflict of laws rules is the localization of legal relationships. These rules are concerned with what is usually described as the application of law in space. In many instances, a case involving a foreign element, cannot be solved satisfactorily unless the time element is taken into consideration.

In Canada, the subject of conflict of laws in time has not yet received the conscious attention of the courts or writers. In some cases, however, the courts have indirectly considered the problems involved, in order to protect vested rights. Decisions in other common-law jurisdictions are scarce and chronologically far apart. Only recently have some common-law authors ventured into the field. In contrast, on the continent of Europe, the literature on the subject is rather prolific. The paucity of Commonwealth

2 Which brings it within the ambit of the conflict of laws.
6 See particularly Roubier, Les conflits de lois dans le temps (2 vols.,
material is surprising, in view of the legislative activity that has
taken place in common-law jurisdictions in the past fifty years.
One possible explanation for this state of affairs lies in the fact that
awareness of conflicts of laws has developed only recently.
It is easy to prophesy that cases involving conflicts of laws in time
and space will become more and more frequent in Canada. 7

Time becomes an important factor in the solution of a conflict-
of-laws problem, where a change occurs either in the content of a
rule of conflict of laws of the forum or in the content of the sub-
stantive law of the foreign legal system selected under the appro-
riate conflicts rule of the forum. In the latter case, the applicable
foreign law has been modified before the litigation, but after the
creation of the legal situation involved. The change may also
involve retroactivity. Both situations require successive laws ap-
licable within one legal system.

The courts must find rules to determine the respective scope
of operation in time, of the successive rules of conflict of laws in
space or the successive substantive foreign laws. For instance, in
1950, the lex fori has a conflict rule to the effect that "capacity to
marry is governed by the lex domicilii". In 1959 the legislature
adopts a new law which applies the lex celebrationis. If this law
does not contain transitional provisions, how will the courts, in
1961, test the capacity of spouses, whose marriage was celebrated
in 1952? Will they give retrospective effect to the 1959 legislation? 8

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1929-1934); Roubier, Les conflits dans le temps en droit international
privé (1931), 26 Revue de droit international privé 38; Gavalda, Les
conflits dans le temps en droit international privé (1955); Level, Essai sur
les conflits de lois dans le temps (1959).

Some leading textbooks on the continent deal with conflict of laws in
time. See, for instance, Batiffol, Traité élémentaire de droit international
and Brown, in A Casebook on the Conflict of Laws (1960), are the first
authors to refer to such conflicts, see p. 54 et seq.

See also the following monographs: Fahmy, Les conflits mobiles
(Paris, 1951); Marin, Essai sur l'application dans le temps des règles de
conflict dans l'espace (Paris, 1928), and Szaszy, Les conflits de lois dans le
temps (1934), 47 Recueil des Cours de la Haye, p. 166 et seq.; Kahn, Das
zeitliche Anwendungsgebiet der örtlichen Kollisionsnormen in Abhand-
lungen zum internationalen Privatrecht (1928), Vol. 1, p. 362; Poetzold,
La jurisprudence allemande en matière de conflits de lois dans le temps
(1927), 22 Revue de droit international privé 566; Goldschmidt, Apostillas
al Derecho transitorio, [1944] Revista de Derecho Immobiliario 705 and
[1945] 42; Anzilotti, La questione della retroattività della regole di diritto
internazionale privato, [1907] Revista di diritto internazionale 120; Diena,
De la rétroactivité des dispositions législatives de droit international privé
(1900), 27 Journal du droit international 928; Olivi, De la rétroactivité
des règles juridiques en droit international, [1892] Revue de droit inter-
national et de législation comparée 533.

1 Because of the novelty of the subject in the common-law world,
there is, at present, a lack of accepted terminology.

8 In Canada, the Bretton Woods Agreements Act, passed in 1945
Many theories have been advanced to solve problems of conflict of laws in time. They range from the arbitrary application of the new law to the case, irrespective of the element of time, to the more logical theory that the domestic (non-conflictual) transitional rules of the country which passed the new law applicable should

(c. 11), now R.S.C., 1952, c. 19, does not contain any transitional provisions. The courts must decide whether the new conflict rule according to which certain exchange contracts are unenforceable in Canada, if they are contrary to the exchange control regulations of a member state (Art. VIII, s. 2 (b)), applies to contracts already in existence in 1945. All the Act says is that (s. 3): "On and after the date on which Canada becomes a member of the International Monetary Fund, the first sentence of paragraph (b) of section 2 of Article VIII . . . shall have the force of law in Canada." A logical construction of this section is that it applies only to contracts made after that date.

In Ontario, the Legitimation Act (R.S.O., 1960, c. 210) contains transitional provisions. The Act states, s. 1: "If the parents of any child heretofore or hereafter born out of lawful wedlock intermarried or hereafter intermarry, the child shall for all purposes be deemed to be and to have been legitimate from the time of birth" (Italics added). However vested rights are protected. S. 4: "Nothing in this Act affects any right, title or interest in or to property if such right, title or interest has been vested in any person. a) before . . . ." Cf. s. 1, of the Ontario Act to s. 8, of the British Legitimacy Act of 1926 (16 & 17 Geo. V., c. 60). Canadian statutes are not expressly limited to the case of a person whose father was or is domicilled in the province at any time.

The Ontario Adoption Act, which has been amended several times, has given rise to difficult problems of interpretation. Today, the Act is part of the Child Welfare Act, R.S.O., 1960, c. 53 and contains transitional provisions in that it states in s. 77 that: "Every person heretofore adopted under the laws of Ontario and every person adopted under the laws of any other province or territory of Canada or under the laws of any other country shall for all purposes in Ontario be governed by this Part." (Italics added). S. 76 says in part: "For all purposes the adopted child, upon the adoption order being made, becomes the child of the adopting parent . . . ." See also Re Skinner, supra, footnote 3. As was pointed out in Re Gage, supra, the question whether, in the absence of specific transitional provisions, retrospective effect should be given to a statute, is a matter of interpretation. The statute is retrospective if it changes the legal nature of facts and transactions which took place before it came into force.

Whenever the courts have held a statute to be retrospective, they have been careful to protect vested rights. In conflict cases, as well as in domestic ones, the courts will apply the same principles of statutory interpretation. In Re Gage, the Ontario Court of Appeal held that the Ontario adoption legislation, giving adopted children the status of natural born children, had no retrospective effect so as to extend the meaning of "child" used in the will of a testator who died before the legislation was enacted. Referring to ss. 76 and 77 (above) the court said (at p. 474): "Those sections make the status of adopted children, whether adopted prior or subsequent to the passing thereof, that of natural born children of the adopting parents. The question here, however, is not one of status but of the intention of the testator. In a case of intestacy certainly the status of the adopted children is the governing factor. As I earlier stated, we know without any doubt what the intention of the testator was. The only debatable question here is: What was the intention of the Legislature in passing those two sections? Did it intend thereby, in addition to defining the status of adopted children, to interfere with the disposition of an estate made by a testator who had died prior to the passing of the legislation?"
1961] Comments 607
govern, that is the general transitional law of the *lex causae*. Actually, in the case of a change in the conflicts rules of the forum, this is simply a problem of statutory interpretation not peculiar to the field of conflict of laws.¹⁰

Having stated that question, I answer it at once by saying that in my respectful opinion the legislature did not so intend.

“In expressing my reasons for the foregoing conclusion, I can commence as Duff J. (as he then was) commenced his judgment in *Upper Canada College v. Smith* (1920), 57 D.L.R. 648, 61 S.C.R. 413, by quoting the language of Willes J., in delivering the judgment in *Phillips v. Eyre* (1870), L.R. 6 Q.B. 1, as follows (pp. 649-50 D.L.R., p. 416 S.C.R.):

‘Retrospective laws are, no doubt, *prima facie* a questionable policy, and contrary to the general principle that legislation by which the conduct of mankind is to be regulated ought, when introduced for the first time to deal with future acts, and ought not to change the character of past transactions carried on upon the faith of the then existing law . . . . Accordingly, the Court will not ascribe retrospective force to new laws affecting rights, unless by express words or necessary implication it appears that such was the intention of the Legislature.’

‘Later in his reasons in that case Mr. Justice Duff quoted and adopted excerpts from the language of Parke B., in *Moon v. Durden* (1848), 2 Exch. 22, 154 E.R. 389 as follows: That principle is ‘deeply founded in good sense and strict justice’; to deprive people of rights acquired by transactions perfectly valid and regular according to the law of the time would be ‘a flagrant violation of natural justice’. I adopt and apply what Riddell J.A., said in *Mckittrick v. Byers*, [1926] 1 D.L.R. 342, at p. 345, 58 O.L.R. 158, at p. 162,—that principle ‘has been so thoroughly discussed in the Supreme Court of Canada in *Upper Canada College v. Smith*, and the cases have been there so fully canvassed, that no good end can be met by a reconsideration of it’.

‘If the 1958 Act is to be construed as entitling the adopted children of Mrs. McCormick to share in this estate, then it means that the Legislature has taken from the grandchildren by blood relationship of the testator property rights which he gave exclusively to them and given them to other persons who now, by virtue of the statute, stand in the relationship of grandchildren to the testator but whom he didn’t even think of and assuredly had no intention of benefiting.

“In my respectful opinion, plainer and more explicit language than is contained in the legislation here in question is necessary to impel the Court to reach the conclusion that the Legislature intended that result. That result would be tantamount to confiscation by the state and distribution by the state, of the property confiscated, to a class. It is a basic principle of interpretation that the Court always leans against any interpretation of a statute as authorizing confiscation: *Maxwell on the Interpretation of Statutes*, 9th ed., pp. 289-90. I think it makes no difference that the property confiscated is not retained by the state but is given, after confiscation, to other persons.’

In *Re Stuart* (supra, footnote 3), Whittaker J. held that the 1956 British Columbia Adoption Act, S.B.C., 1956, c. 2, was intended by the legislature to be retrospective.

¹ Batiffol, op. cit., supra, footnote 6, p. 371.

¹⁰ The *lex fori* applies. See, for instance, *Re Gage*, supra, footnote 3; *Re Grady* (1927), 32 O.W.N. 370, per Fisher J., at p. 371. See also Halsbury, *The Laws of England* (1st ed., 1913), Vol. 27, s. 305, p. 159: “A statute is *prima facie* prospective, and does not interfere with existing rights, unless it contains clear words to that effect or unless, having regard to its object, it necessarily does so.” and s. 319, p. 167: “. . . no statute operates to repeal or modify the existing law, whether common or statutory, or to take away rights which existed before the statute was passed, unless the intention is clearly expressed or necessarily implied.” and *Re Doucette v. Cote and Oswell* (1961), 36 W.W.R. (Sask.) and *Metro Toronto v. Reinsilber*, [1961] O.R. 330.
Time is also a significant factor when there is an alteration in the circumstances of localization of the connecting factor. This has been called a “conflict mobile” by European scholars. Under a rule of conflict of laws of the forum, the substantive laws of two foreign countries, or a foreign country and the forum, are successively applicable. For instance, a movable originally situate in the Province of Quebec is brought to Ontario. The Ontario conflicts rule, that the lex situs applies, has not changed, only the situs has, with the result that the law of Quebec applied until the movable found its way into Ontario. The connecting factor is still the same but its localization is different. Traditionally included in conflicts in time, “conflicts mobiles” have been excluded from this category by many authors, who pointed out that the change in the localization of the connecting factor from one jurisdiction to another gives rise to a new problem of conflict of laws in space. Although in the case of a “conflict mobile” one must determine

In Dixie v. Royal Columbian Hospital, [1941] 1 W.W.R. 389, 56 B.C.R. 74, Sloan, J.A. said:

“The law relating to the construction of statutes as prospective or retrospective in their application has been the subject of many weighty opinions; some of them irreconcilable. However, from my reading of the English and Canadian cases, including Smith v. Upper Canada College, [1921] 1 W.W.R. 1154, 61 S.C.R. 413, and McGrath v. Scriven and McLeod [1921] 1 W.W.R. 1075, 35 C.C.C. 93 (and others founded thereupon) in my view, the following relevant principles emerge as established by the weight of authority: Unless the language used plainly manifests in express terms or by clear implication a contrary intention, (a) A statute divesting vested rights is to be construed as prospective; (b) A statute, merely procedural is to be construed as retrospective; (c) A statute which while procedural in its character, affects vested rights adversely is to be construed as prospective.”

In the Province of Quebec see Mignault, Le droit civil canadien, Vol. 1 (1895), p. 66 et seq. especially at pp. 68-69, who is of the opinion that: “... les droits acquis au moment de la promulgation de la loi nouvelle sont respectés, les simples expectatives sont détruites ou modifiées par elle.” See also ss. 41 and 50 of the Interpretation Act, R.S.Q., 1941, c. 1. Cf. art. 2 of the Code Napoleon: “La loi ne dispose que pour l’avenir; elle n’a point d’effet rétroactif”. The Commissioners appointed to codify the laws of Lower Canada in civil matters said in their Second Report (1865), p. 145:

“This article... has been omitted, not because the rule it establishes is incorrect or doubtful, but because its enunciation appears useless and even dangerous; useless with regard to the legislature, which would always have the right not to conform to it; dangerous with regard to the judge, who might look upon it as referring to the past and influencing the numerous laws of that nature, to which, under that impression, he might refuse, although erroneously, to give effect.

According to the discussions which have taken place in France on this article, it will be seen that it was only admitted because there was no fear of the same inconvenience as to anterior laws.”


Conflict of laws in space and time are often combined. Grodecki, op. cit., supra, footnote 5, at p. 58.
“l’empire respectif, dans le temps de deux lois — lois étrangères ou loi française et loi étrangère — successivement applicables, en vertu d’une règle de conflit du for inchangée”,14 yet “the factor of space overshadows that of time”.15 This is confirmed by Roubier, the leading scholar in the field, who is of the opinion that: “Ces conflits sont des conflits de lois relevant exclusivement du droit international privé. Il y a bien une question de temps envisagée, mais le conflit est un conflit de lois dans l’espace, car il s’agit de savoir quelle est la limite dans le temps d’une souveraineté territoriale.”16

In Canada, the attitude of the courts has been that any rights acquired under the foreign law, which was applicable until the change in the localization of the connecting factor, should be protected by the lex fori.17

In a situation involving a true conflict of laws in time, the successive laws are enacted by the same legislature, the last one repealing the preceding one. In a “conflit mobile”, the laws successively applicable are enacted by two different legislatures and remain in force simultaneously. In both cases, however, two laws are applicable successively and the courts must determine to what extent the question under litigation is governed by the new law.

In some cases, it is also possible to be confronted with a factual situation containing both a true conflict of laws in time and a “conflit mobile”. In order to avoid the difficult problems that then arise, the courts might be tempted to exclude the factor of time and solve the case as if it involved only an ordinary conflict of laws in space. This temptation seems to have moved the Court of Appeal for British Columbia in *Ambrose v. Ambrose*,18 where the two types of conflict are present.

An examination of the facts of the case, in chronological order, is necessary to understand the reasoning of the Supreme Court

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14 Gavalda, *op. cit., supra*, footnote 6, p. 35.
18 *Supra*, footnote 1.
and the Court of Appeal of British Columbia. In 1930, the respondent wife obtained an interlocutory judgment for divorce in California, the matrimonial domicile at the time. This judgment did not dissolve the marriage, but permitted either party to obtain a final judgment of divorce after the expiry of one year. On September 14th, 1935, while still domiciled in California, the respondent went through a marriage ceremony with the petitioner in the State of Washington. Following the ceremony, the parties lived in British Columbia, the petitioner’s domicile at all times. On September 15th, 1935, that is one day after the Washington ceremony, the California Civil Code was amended to provide, in section 133:

Whenever either of the parties in a divorce action is, under the law, entitled to a final judgment, but by mistake, negligence or inadvertence the same has not been signed, filed and entered, if no appeal has been taken from the interlocutory judgment or motion for a new trial, the court, on the motion of either party thereto or upon its own motion, may cause a final judgment to be signed, dated, filed and entered therein granting the divorce as of the date when the same could have been given or made by the court if applied for. Upon the filing of such final judgment, the parties to such action shall be deemed to have been restored to the status of single persons as of the date affixed to such judgment, and any marriage of either of such parties subsequent to one year after the granting of the interlocutory judgment as shown by the minutes of the court, and after the final judgment could have been entered under the law if applied for, shall be valid for all purposes as of the date affixed to such final judgment, upon the filing thereof.

In 1939 the California court, on its own motion, entered a final judgment of divorce as of the date of entry. The respondent then became capable of acquiring a domicile in British Columbia, which, in the opinion of the Court of Appeal, she did at that time.

In 1941 the following provision was added to section 133 of the California Civil Code:

The court may cause such final judgment to be signed, dated, filed and entered nunc pro tunc as aforesaid, even though a final judgment may have been previously entered, where by mistake, negligence or inadvertence the same has not been signed, filed or entered as soon as it could have been entered under the law if applied for.

The petitioner and respondent separated in 1956. Two years later, having heard that some doubt existed about the validity of the Washington marriage, the respondent obtained a court order in California, which declared that the 1939 final judgment

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20 California Leg. H., 1941, c. 995. The section was also amended in 1951, c. 229.
of divorce be dated, signed, filed and entered *nunc pro tunc* to be
of record as of 1931.

The issue, in the opinion of the Court of Appeal, was:
“... whether the subsequent legislation of the State of California
should be recognized as having retroactively altered the respon-
dent's status so as to have conferred upon her the capacity to
marry the petitioner on September 14th, 1935, and thus to have
divested the petitioner domiciled in British Columbia of his right
to claim that his alleged marriage of September 14th, 1935, was
invalid by reason of the want of capacity of the respondent as
of that date?”

Could the marriage, which obviously was null and void at the
time of its celebration, be validated by legislation passed *ex post
fato* and not relating to the marriage, when the respondent was
no longer subject to the laws of California relating to her status?
To put it more succintly, the real issue was whether the respondent
was capable of contracting the Washington marriage. The solu-

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21 *Per* Sheppard J.A., *supra*, footnote 1, at p. 445. Note that in the court
below, it was said that both parties were domiciled in British Columbia on
September 14th, 1935. *Per* McInnes J.: “... in the present case, both
parties were admittedly domiciled in the province of British Columbia
at the date of the alleged marriage ...”, at p. 56 (W.W.R.). This finding
is clearly erroneous but influenced the decision of that court. If one com-
pares the two decisions, one will find several discrepancies in the findings
of fact including material dates. McInnes J's opinion led me to write, op.
cit., *supra*, footnote 3, p. 399, that: “It seems to me that if the second
marriage is invalid on the ground that the divorce is not effective, then
the wife is still domiciled in California and consequently the California
legislation, by giving retroactive effect to the divorce, validates her second
marriage. We have here a good illustration of circular reasoning. The
only way out is to adopt the view that by the law of California, although
a married woman, she was entitled to acquire a domicile of choice in
British Columbia. Once subject to the law of that province, she could
no longer be affected by California law.” The problem was clarified on
Appeal since Sheppard J.A. held that she acquired a domicile of choice in
British Columbia in 1939, after securing her final decree of divorce (at
p. 446):

“However, by reason of that judgment having dissolved the respond-
ent's previous marriage to Harnish, she thereby became capable of
acquiring a domicile in British Columbia where she has lived since
her alleged marriage to the petitioner.”

But see (at p. 447):

“From the time of their alleged marriage in 1935, and therefore prior
to the enactment of that statute and to the obtaining of the order of
June 17, 1958, the petitioner and respondent have resided in the
Province of British Columbia and there the parties were domiciled
at all relevant times; hence the question is whether that statute of
the State of California and the order pursuant thereto are to be recog-
nized as applying to the petitioner and respondent then domiciled in
British Columbia so as to have validated their earlier marriage in the
State of Washington.”

22 The petitioner was never subject to the laws of California.

23 No jurisdictional problem arose in this case, as the Court of Appeal
stated that it had jurisdiction to entertain the action either on the ground
tion of the case seems to turn upon the interpretation of the British Columbia conflict-of-laws rule that capacity to marry is determined by the law of the domicile of each party at the time of the marriage ceremony. 24

Was the wife capable of contracting marriage on September 14th, 1935? There are two possible solutions. If one considers the problem involved as one in the nature of a "conflit mobile" relating to status, the question is whether the change of domicile between the time of the alleged marriage and the enactment of the retrospective legislation is to be taken into account. If it is, her status can no longer be affected by events occurring in California after 1939, the date at which she acquired a domicile in British Columbia. There has been a change in the localization of the connecting factor from California to British Columbia. Her status after that date is governed by the law of British Columbia. The alleged marriage was void ab initio for lack of capacity.

As a problem exclusively of capacity to marry, the Washington marriage is valid, if the time element is taken into consideration and effect is given to the retrospective legislation of the domicile at the time of the alleged marriage. This is a true conflict of laws in time. The subsequent change of domicile is irrelevant. The respondent was capable because of the retrospective legislation of the domicile at the time of the alleged marriage and the order made under it. It is submitted that there is considerable weight in this argument. The British Columbia conflicts rule states that her capacity is governed by the law of the domicile she had at the time of her alleged marriage; it does not indicate that capacity is governed by the law of California as it existed on that date.

that the parties were domiciled in the forum or on the basis of the domicile of the petitioner alone in the forum. In the court below McInnes J. said (at p. 55 (W.W.R.)):

"In approaching this question, in my view, I think it important to stress that the question which must be determined is one concerning the status of the parties to the marriage, and the effective date in relation to which this question must be resolved is the date of the alleged marriage, namely, September 14, 1935. Secondly, it is important to remember that it is the validity of the marriage between the parties hereto that is paramount, not the validity of the divorce obtained by the respondent except of course, in so far as it can be shown to affect the validity of the marriage . . . ."

This approach is deceiving. Actually, the sole question was her capacity to marry. If one says that this is a matter of status, the problem is still the same: What was her status at the time of the marriage? The answer depends upon the law of her domicile at that time, e.g., California law.

24 Other subsidiary conflict rules are also involved, namely, that a divorce pronounced (or recognized) by the courts of the husband's domicile at the time of the commencement of the suit will be recognized in British Columbia and that the status of a person can be altered only by the law of his or her domicile at the time of such alteration.
The Court of Appeal considered that the change of domicile was the most significant factor, since it characterized the problem as one of status. The retrospective 1941 legislation could not govern her status, which had become subject to the law of British Columbia after 1939. The conflict of laws in time was thus brushed aside. As I have pointed out, the change in the localization of the connecting factor gave rise to a new problem of conflict of laws in space, which was easily solved by applying the new *lex domicilii*. After 1939, the courts of California could no longer validly affect the status of the respondent by making the divorce decree of 1939 retrospective. As a consequence, she had no capacity to marry in 1935. The simplicity of this reasoning may explain why it attracted the majority of the Court of Appeal. It is submitted, however, that this approach is not absolutely convincing.\(^{25}\)

Even if we consider the divorce in relation to her status only, we find that her status was validly changed by the 1939 decree, while she was still domiciled in California. The 1941 legislation and the 1958 order did not purport to alter that status after 1939, the date at which she became domiciled in British Columbia, but before, when she was still subject to California law. The 1941 and 1958 events refer only to a valid divorce in the eyes of British Columbia law. As O'Halloran J.A. points out: \(^{26}\) "The importance of the final decree as an essential element in the validity of a divorce became less and less a matter of substance and more and more a technical and procedural requirement." Therefore she was capable in 1931. Her status was not affected by the California legislation after 1939.\(^{27}\) If, on the other hand, one believes that the question before the court was neither the validity of the California divorce nor the effect of a change of domicile on her status, but solely the interpretation of the British Columbia conflicts rule relating to

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\(^{25}\) Actually, the reasoning of the court is not always clear; at times the court seems to consider that the problem is one of conflict of laws in time and at others a "conflit mobile".

\(^{26}\) It could be argued that since the divorce with retrospective effect is valid by the California husband's domicile at the commencement of the suit, it must be recognized in British Columbia. To obviate this argument, the judge in the court below considered the problem to be one of status. See *supra*, footnote 23.

\(^{27}\) The 1935 legislation was passed while she was still domiciled in California. The court thought that the petitioner had a vested right in the annulment. Could it not also be said that the wife had a right to have her marriage maintained (see discussion *infra*)? The court maintained that the California legislation and order, if recognized in British Columbia, would divest the right of the petitioner to annul the marriage, when he never was subject to the legislative or jurisdictional jurisdiction of the State of California.
her capacity to marry, all the Court of Appeal had to do was to interpret the law of California. If that law recognizes the nunc pro tunc decree, she was capable of marrying the petitioner. This solution, as mentioned previously, considers the problem as one of conflict of laws in time.  

The facts of the case disclose that a change took place in the substantive law of California to which the British Columbia law referred as governing her capacity to marry on September 14th, 1935. The substantive law of the lex domicilii at the time of marriage was changed at a later date with retrospective effect. That the British Columbia conflicts rule refers to the country in which a person is domiciled at a given moment does not mean that it refers to that country's law as it existed at the same moment. The reference is to domicile at the time of marriage, not to the law as it stood at that time. In fact, the British Columbia conflict-of-laws rule says nothing about whether or not it adopts the foreign law as it stands at the time of marriage. It refers to the law of California and leaves it to that law to decide how it stood at any relevant time. The specific reference to time in the British Columbia conflict of laws rule, domicile at the time of the marriage, "serves solely the purpose of ascertaining the appropriate foreign law through the medium of a connecting factor. Once this is done, its function is ended and the court is left to determine the conflicting claims of the parties by applying the chosen foreign law as it is when the question arises for decision". Capacity to marry is determined by the country in which the wife was domiciled at the time of marriage and by those laws of the country that are applicable according to its own legal system. The country selected makes its legal system as existing from time to time, including its transitional provisions, available for application. Having been referred to California law as the lex causae, the British Columbia courts should have applied California law in its entirety, including any

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28 A completely different solution also in favour of the respondent, is that advanced by O'Halloran J.A., in his dissenting opinion, to the effect that the judgment of divorce could not be attacked collaterally by the petitioner who was not a party to it (relying on Bater v. Bater, [1906] P. 209, 75 L.J.P. 60). He also suggested that the validity of the marriage should be tested by the law of the State of Washington and, that there was no contravention of justice offensive to British Columbia notions, in the California retrospective legislation. He was further impressed by the fact that the nullity proceedings were not taken until after the 1958 California order had been obtained. For all these reasons, he was of the opinion that the alleged Washington marriage should have been recognized in British Columbia.

29 Grodecki, op. cit., supra, footnote 5, at p. 73.

30 Mann, op. cit., supra, footnote 5, at p. 232.
restrospective law passed prior to litigation. In other words, the transitional law of the *lex causae* should prevail.

In order to reject this argument, the Supreme Court of British Columbia relied on *Lynch v. Paraguay Provisional Government*, which involved a conflict of laws in time. The testator died on March 1st, 1870, domiciled in Paraguay, leaving personal property in England. On May 4th, 1870, before a grant of probate was made, a decree was passed that confiscated his property wherever situate and had the effect that "by the now existing law of Paraguay no will [of the testator] . . . is entitled to probate or has any validity whatsoever in England or elsewhere". The will was nevertheless admitted to probate in England. Lord Penzance held that the succession to property must be governed by the law of Paraguay as it existed at the time of the death. He said:

The general proposition that the succession to personal property in England of a person dying domiciled abroad is governed exclusively by the law of the actual domicile of the deceased was not denied; but it was affirmed by the plaintiff that this proposition had relation only to the law of the domicile as it existed at the time of the death of the individual in question, and that no changes made in that law after the date of the death can by the law of this country be recognized as affecting the distribution of personal property in England. This contention appears to me well founded.

... But it was ingeniously argued that the decree in question has by the law of Paraguay a retrospective operation, and that, though the decree was, in fact, made since the death, it has by the law of Paraguay become part of that law at the time of the death. In illustration of this view, it was suggested that if the question were to arise in a court of Paraguay such court would be bound by the decree, and therefore bound to declare the provisions of the decree to be effective at and from the time of the death. This may be so; but the question is, whether the English courts are bound in like manner; or, more properly speaking, the question is, in what sense does the English law adopt the law of the domicile? Does it adopt the law of the domicile as it stands at the time of the death, or does it undertake to adopt and give effect to all retrospective changes that the legislative authority of the foreign country may make in that law? No authority has been cited for this latter proposition, and in principle it appears both inconvenient and unjust. Inconvenient, for letters of administration or probate might be granted to this country which this Court might afterwards be called upon, in conformity with the change of law in the foreign country, to revoke. Unjust, for those entitled to the succession might, before any change, have acted directly or indirectly upon the existing state of things and find their interests seriously compromised by the altered law. As, therefore, I can find no warrant in authority or principle for

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31 *Supra*, footnote 4. See also *Re Aganoor's Trusts, supra*, footnote 4.
a more extended proposition, I must hold myself limited to the adoption and application of this proposition, that the law of the place of domicile as it existed at the time of the death ought to regulate the succession to the deceased in this case. Under that law the present defendants have no *locus standi* to oppose any will the testator may have made, and no concern with his estate.

Reliance on this passage seems to indicate that the Supreme Court of British Columbia considered the facts of the case as giving rise to a conflict of laws in time. The judge thought that capacity to marry was governed by the law of the domicile *as it stood at the time of the marriage* and disregarded any subsequent changes. He did not undertake to adopt and give effect to all retrospective changes that the legislative authority in California made in that law. The facts in *Ambrose v. Ambrose* were, however, quite different from those facing Lord Penzance. Further, the new California law was neither penal nor discriminatory. It did not purport to divest the respondent of any acquired right. Consistently with the view that the case involved a "conflict mobile" rather than a conflict of laws in time, the Court of Appeal did not rely on the *Lynch* case. Thus, *Ambrose v. Ambrose* cannot be cited as supporting the proposition that in Canada, or at least in British Columbia, the courts apply foreign law as it exists at the date defined by the *lex fori* and disregard retrospective legislation.

In the Supreme Court, as well as in the Court of Appeal, the parties also relied on *Starkowski v. A.-G.* In that case, the wife domiciled in Poland, in May 1945 went through a religious ceremony of marriage in Austria and omitted the civil ceremony, which was then required by the German Marriage law of 1938. In June 1945, while she and her first husband were still resident in Austria, a special law was passed providing for the retrospective validation of such religious marriages upon registration. The spouses became domiciled in England in 1946, where they separated the following year. In 1949, without the knowledge of the wife, the Austrian ceremony was registered. In 1950 she married, in England, a man with whom she had had a child born in 1949. The question was whether the English marriage of 1950 was

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34 Lord Penzance did not rely on the penal character of the Paraguayan decree to reach his decision, *ibid.*, at p. 272.
35 In *Phillips v. Eyre*, *supra*, footnote 4, the defendant's acts were illegal by the law of Jamaica "as it stood at the time" of the tort but were subsequently legalized. The court applied the foreign *lex causae* fully, including the retrospective legislation. Reference was made to the transitional rules of the *lex causae*. The court dealt with the change in the content of the substantive rule of the foreign system designated under the conflict rule of the forum.
36 *Supra*, footnote 5.
valid and legitimated the child, the petitioner in the case. This, in turn, depended upon the validity of the Austrian ceremony. It was argued on behalf of the child that the validity of the marriage must be tested according to the relevant law at the time of the ceremony, that foreign retrospective legislation is contrary to English public policy, and, finally, that to give effect to such legislation would be to alter the status of a person domiciled in England. The House of Lords, unanimously affirming a unanimous Court of Appeal\(^{37}\) and Barnard J.,\(^{38}\) held that the Austrian ceremony was valid and that the second marriage, which took place in England, was bigamous. The petition was dismissed. The House of Lords did not apply Austrian law as it stood at the time of the ceremony, but Austrian law including its transitional law. The argument for the petitioner, that after the wife obtained a domicile in England her status could no longer be affected by Austrian law, was rejected. As Grodecki points out:\(^{39}\)

The true principle of the case is well stated by Lord Reid: “Once it is settled that the formal validity of a marriage is to be determined by reference to the law of the place of celebration, there is no compelling reason why the reference should not be to that law as it is when the question arises for decision.”

It is believed that this principle is of general import for all cases involving a change in the content of the substantive rules of the foreign law selected by the English choice of law rule and that Starkowski’s case must be taken to have overruled such authority as has sometimes been ascribed to Lynch’s case in this field.

He also remarks that it is regrettable that some of their Lordships made a somewhat half-hearted and unconvincing effort to distinguish the Lynch case, on the ground that Lynch would have been relevant only if the second ceremony had preceded the registration of the first. He states correctly that there is little substance in this distinction.\(^{40}\) The question was the same in both cases: What is meant by the foreign law to which the court was referred? For Lord Penzance it meant the substantive rules only and for the House of Lords, in this instance,\(^{41}\) it included the


\(^{39}\)Op. cit., supra, footnote 5, at p. 73.

\(^{40}\)Op. cit., supra, footnote 5, at p. 73.

\(^{41}\)In Adams and others v. National Bank of Greece S.A., supra, footnote 4 and discussed infra, the House of Lords reaffirmed the views of Lord Penzance.
transitional law as well. In the Ambrose case, both courts relied heavily upon the distinction in order to avoid the Starkowski case. They were impressed by the fact that the retrospective legislation was passed after the Washington marriage ceremony and that the divorce was not validated before it. The courts considered only September 14th, 1935, as the relevant date. The Court of Appeal also felt that the Starkowski case dealt with the form of marriage which is governed by the lex celebrationis, whereas in Ambrose the lex domicilii alone was relevant. Thus, the Austrian legislative authority could retain control over the validity of the marriage. The court said:

The Starkowski case, however, is distinguishable. In the Starkowski case, the defect in the marriage was held to be a matter of form and in respect of such matters of form the proper law is lex loci celebrationis, hence the legislative jurisdiction of Austria over the form of marriage arose from the fact that the marriage had been solemnized within that jurisdiction and the domicile of the parties at that or later time was not the determining factor of legislative jurisdiction. In the case at bar, the statute of California deals with a matter of status and purports to operate retroactively from the date of the enactment...so as to have conferred upon the respondent by means of the order, the capacity to marry in 1935. The proper law as to the marital status and the capacity of the respondent to marry is the law of domicile, and while the respondent's marriage to Harnish continued, then no doubt her domicile was in the state of California: Cook v. Cook and Atty.-Gen. for Alta. But after 1939, and therefore in 1958, at the time when that California statute had been enacted and the order made, the domicile of the respondent was not in the state of California but in British Columbia. Secondly, in the Starkowski case neither of the parties whose marriage was subsequently validated as to form had in the meantime married another. Three of the law lords reserved the question of the effect of such a marriage having occurred.

and added:

Also that legislation and order purport to confer retroactively on the respondent, then resident and domiciled in British Columbia, the capacity to have married, and in consequence to make valid the alleged marriage which was initially void and performed, not in California, but in the state of Washington. In effect, the statute and order purport to define the marital status of two parties neither of whom was domiciled or subject to the state of California at the time of such statute or

43 In the House of Lords, Lord Tucker distinguished Lynch's case on the ground that it would have been in point only if the English ceremony had preceded the registration made in Austria in 1949, and Lord Cohen thought that the subject matter of Lynch was too remote from the question before the House, supra, footnote 4, at pp. 175, 180.

44 Supra, footnote 1, at p. 449. See also Doe & Breakey v. Breakey (1845), 2 U.C.R. 349, per Robinson C.J., at p. 357.

order. Under the circumstances, the Starkowski case can have no application to the case at bar.46

Yet, why is it impossible for the California courts to retain control over a divorce validly granted in that state when the parties were domiciled there? Actually, the Lynch, the Starkowski and the Ambrose cases are not basically different. The question is always the same: Should the court apply the transitional law of the lex causae?47 It was applied in Starkowski and not in Lynch. There is no reason to prevent the application of foreign retrospective legislation as long as to do so is not contrary to the public policy of the forum. Legislation which is retrospective is not by that fact alone contrary to public policy. In the Starkowski case, the sug-

46 Ibid., at p. 450.

47 See Mann, op. cit., supra, footnote 5, at p. 236.
gestion that foreign legislation affecting the status of persons domiciled in England, as such, is repugnant to English public policy was rejected by Lord Reid who said: "It is certainly unusual that foreign legislation should have that effect whether it purports to be retrospective or not, but I do not think that it can be laid down as a universal rule that it can never have that effect . . . ."\textsuperscript{48}

In this respect, O'Halloran J.A., in his dissenting judgment, was of the opinion that "there was no contravention of justice offensive to British Columbia notions or English notions in the California retroactive legislation or in the California Superior Court retroactive order of June 17, 1958, made thereunder. Quite the contrary".\textsuperscript{49} Today, retroactivity of statutes appears as a perfectly legitimate legislative technique in most countries.

\textsuperscript{48} Supra, footnote 4, at p. 170. See also Somervell L.J., supra, footnote 37, at p. 304. Note also that in both the Starkowski and Ambrose cases, the question of status arose only indirectly. The main questions affecting status involved form and capacity.

\textsuperscript{49} Supra, footnote 1, at p. 440, and he cites Walker v. Walker, [1950] 1 W.W.R. 849; Pemberton v. Hughes, [1899] 1 Ch. 781, at p. 790, per Lord Lindley, and the British Columbia Divorce and Matrimonial Causes Act which in s. 43 provides for retrospective validation of marriages celebrated before the expiration of the time limit for appeal of final decrees for divorce.

In the Starkowski case, supra, the Law Officers were of the opinion that a retrospective colonial Act would validate only the marriage of persons domiciled at the relevant time in the colony concerned (Thomas, (1954), 3 Int. & Comp. L.Q. 353). In the court below McInnes J., ibid., at p. 58 (W.W.R.) said: "Mr. Burton in his very able argument, has pointed to legislation in our own province similar to that in California, which has already been quoted, supra, I refer to the Divorce and Matrimonial Causes Act Amendment Act, 1941-42, ch. 6. By this amending statute, sec. 38A was added to the Divorce and Matrimonial Causes Act, R.S.B.C., 1936, ch. 76 . . . . Assuming for the moment that the provisions of this statute are relevant in the circumstances, and further, assuming, that the legislation in California, with which I am confronted, was similar in its terms to the British Columbia statute upon which Mr. Burton relies, and that it could be held to apply to persons domiciled in British Columbia, a matter which I am not called upon to decide, a very significant difference immediately becomes apparent. In British Columbia, decrees of divorce granted are absolute in the first instance, subject only to a restraint upon remarriage of either party for a limited time. There is nothing further for the courts to do to dissolve the marriage tie, and there is nothing required to be done by either of the parties except to wait until in the effluxion of time any restriction on the right of remarriage is removed.

"Quite the contrary situation exists in respect of the respondent's divorce proceedings in the State of California. First and foremost, all she had obtained at the time she married the petitioner was an interlocutory judgment of divorce . . . .

"So that contrary to the situation which was sought to be remedied in British Columbia by the amendment to the Divorce and Matrimonial Causes Act in 1941-42, there was no final judgment of divorce in favour of the respondent at all by the courts of California, and, further, there could be no final divorce in California until some active step toward obtaining it was taken by the respondent, her husband, or the court on its own motion to obtain the same, and thereby free the respondent of the bonds of matrimony with Harnish and entitle her to remarry."
It is also submitted that the petitioner had no vested rights of which he would have been deprived, if the California order had been recognized in British Columbia. The fact that the petitioner could bring an action for annulment is not a vested right. Actually, the petitioner had not taken any steps in reliance upon the invalidity of the marriage. It would have been different if, before the decree of 1958, the British Columbia courts had declared the Washington marriage null and void. The concept of vested rights is obscure and of little value for the purpose of deciding actual cases, although it must be recognized that the problem of time in the conflict of laws is dominated by this concept.

In the field of matrimonial relations, there is a definite policy favouring the validity of marriages. This is evidenced by the Starkowski case. Furthermore, in that case, the foreign legislation validated the marriage, whereas in the Lynch case it invalidated a will, thereby depriving the heirs and legatees of a vested interest in property. The legislation in question in Starkowski and in Ambrose sought to rectify an originally defective situation. It was not aimed, as in Lynch, at invalidating what was originally legal. This distinction might explain why in Adams and others v. National Bank of Greece S.A. the House of Lords relied on the Lynch case, but did not deem it necessary even to make a passing reference to Starkowski, in order to refuse to give effect to a Greek retrospective decree, purporting to relieve the respondent bank from its obligations as guarantor of the bonds on which the appellants were suing.

In 1927 the National Mortgage Bank of Greece issued sterling mortgage bonds guaranteed by the National Bank of Greece Ltd. Cy. The proper law of the bonds was English law. In 1953 the

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50 Sheppard J.A. (ibid., at p. 450) was of the opinion that: "... the petitioner had the right to treat that marriage as a nullity. The subsequent legislation and order of the State of California, if here recognized, would divest that right from the petitioner, notwithstanding that the petition had not been subject to the legislative jurisdiction of California by reason of having been resident and domiciled throughout in the province of British Columbia."

51 Of course, it is admitted that where the marriage is void ab initio by the proper law, the court only acknowledges the nullity.

52 Somervell L.J., supra, footnote 37, at p. 619 (All E.R.) said; "Legislative Acts of the kind in question are passed to remedy what has been done in good faith, but which turns out not to have achieved the result which the parties intended. The defect can only be remedied by the Legislature of the place of marriage. We can see no reason why those who were at the time, or later became, domiciled elsewhere should be impliedly excepted from its provisions. ... There are many Acts in our statute books validating marriages when it has been discovered that there was some legal flaw which had not been realized so that a number of marriages celebrated at a particular place or in a particular way are invalid."

53 Supra, footnote 1.
National Bank was compulsorily amalgamated with the Bank of Athens Ltd. Cy. to form the National Bank of Greece and Athens S.A., which became the universal successor to all rights and obligations of the amalgamated banks. In 1956 a statute was passed providing that the new bank was to retain the whole assets of the old bank, which it took as the universal successor under the 1953 statute and was to remain liable for all the obligations of the old bank except those to the 1927 bondholders. In other words, this law purported to discharge the respondent bank from part of the obligations to which it had originally succeeded by enacting retrospectively, in effect, that the obligations should be deemed never to have been incurred. The House of Lords thought that Greek law cannot create an English right or obligation any more than it can annul an English right or discharge an English obligation. On the other hand, English courts cannot give effect to a foreign law purporting to discharge an English obligation to pay money in England.\textsuperscript{64} Viscount Simonds stated:\textsuperscript{65}

It would be neither convenient nor just that subsequent legislation in Greece should retrospectively or otherwise alter or discharge obligations governed by English law.

This decision can be explained on the ground that English vested rights must be protected. There was no need, therefore, to rely on the \textit{Lynch} case. In fact, to be consistent with his attitude in the \textit{Starkowski} case, Lord Reid was careful to point out that: "There is no general rule that English law will never give effect to foreign retroactive legislation."\textsuperscript{66} Lord Tucker was of the opinion that: \textsuperscript{67}

The present case is not covered by the actual decision in \textit{Lynch}'s case (1871), L.R. 2 P. & D. 268, but, in the absence of express authority, it would seem to me that the principle there enunciated is the one which your Lordships should apply to a case such as the present, where foreign law has destroyed one legal entity and created another as the universal successor to all the assets and obligations of the former and subsequently seeks by retrospective legislation to exclude obligations incurred under contracts governed by English law.

The \textit{Lynch} case is important only if one looks at the 1956 Greek law as a law relating to succession, which, in the words of Lord Denning, arises from the fact that:

\textbf{\ldots in 1953, the new amalgamated company succeeded to all the assets and liabilities of the former companies. It was as if they had died and it had succeeded them. Afterwards, on July 16th, 1956, the Greek}

\textsuperscript{64} \textit{Ibid.}, per Lord Reid, at p. 429 (All E.R.).
\textsuperscript{65} \textit{Ibid.}, at p. 426.
\textsuperscript{66} \textit{Ibid.}, at p. 430. See also Lord Radcliffe, at pp. 431-432.
\textsuperscript{67} \textit{Ibid.}, at p. 432.
legislature, by law 3504, attempted retrospectively to alter the succession by providing that the new amalgamated company should be exempt from some of the liabilities. But this could have no effect on the bonds. English law does not recognize foreign legislation that retrospectively alters rights of succession.\(^58\)

This approach restricts considerably the value as a precedent of the \textit{Lynch} case, as well as the decision of the House of Lords.\(^59\)

In the court below in \textit{Ambrose v. Ambrose}, the judge was also impressed by the fact that if effect were given to the California legislation:

The status of the parties to this cause could be determined at the instance of either the respondent husband or the courts of California, as, when, and if, any of them decided to act. Until they, or one of them, did, the status of the petitioner and the respondent would be, and continue to be, a matter of uncertainty, without any power in the petitioner to resolve that question of status . . . . While not necessarily determinative of the issues involved in this case, the submission of Mr. Gould for the petitioner that if it were held that \textit{nunc pro tunc} legislation in California could prove effective to govern the validity of marriages of persons domiciled in the province of British Columbia, then it is possible to say that the respondent herein could, at her option, at any time after she married the petitioner, either arrange to make her marriage valid or have it remain a nullity. As he suggests she could refrain from obtaining her final judgment, as in fact she did for a period of four years after her alleged marriage to the petitioner, and then if the marriage proved satisfactory, cause the final judgment to be entered, \textit{nunc pro tunc} as of November 31, 1931. Alternatively, if the marriage turned out badly, she could, as I say, at her option refrain from so obtaining a final judgment and elect to treat her marriage to the petitioner as a nullity and bring proceedings accordingly.\(^60\)

\(^58\) \textit{Ibid.}, at p. 433.

\(^59\) Lord Denning recognizes that if the original 1953 law is considered as a law of status, the amending law must also be regarded as a law of status, and, therefore, does affect the liability on the bonds. In the end, his Lordship refuses to apply to the Greek legislation any label of precise description coming to the conclusion that English courts are not bound by the comity of nations to recognize an amalgamation which does not provide for \textit{successio in universum jus}. \textit{Ibid.}, at p. 435.

\(^60\) \textit{Supra}, footnote 1, at pp. 59-60 (W.W.R.). This raises some interesting problems. In \textit{Starkowski v. A.-G.}, the fact that the registration was a mere administrative act independent of the will of the parties was an important aspect of the problem. Also, should the fact that, in both \textit{Starkowski v. A.-G.} and \textit{Ambrose v. Ambrose}, the parties separated have affected the outcome of the case? Separation could be considered as a repudiation of the marriage, so that the retrospective legislation should no longer operate. Neither the House of Lords nor the British Columbia courts seem to have considered this significant. It could have been argued in \textit{Ambrose v. Ambrose} that, since the marriage ceased to exist \textit{de facto} in 1956, the 1958 order could no longer affect it. In other words, to allow the retrospective legislation to operate, the marriage should continue to exist \textit{de facto} at the time of the validation. See Mann, \textit{op. cit.}, \textit{supra}, footnote 5, at p. 244. Finally, it must be kept in mind that the claim of the California legislation to govern indirectly the status of the parties,
It is submitted that if a change occurs in the domestic law of the country to which the *lex fori* refers, the courts should, in principle, apply any transitional or retrospective provision of that foreign law, unless the circumstances are such that to do so would lead to inconvenience and wrong, or where the foreign legislation is against the public policy of the forum. In this way it is possible to reconcile on a broad basis Starkowski with Adams.

In *Ambrose v. Ambrose*, the question involved was not a "conflict mobile" but a change in the domestic law of California to which the British Columbia courts were referred by their conflicts rule on capacity to marry. They should have included in their reference to the law of California the rules of statutory interpretation in existence in that State. The law of California in its entirety should have been applied.

To conclude, it seems that, in refusing to give effect to the California legislation, the British Columbia courts were unduly affected by the (seemingly non-existent) vested rights of the petitioner, who had never been subject to the law of California. In addition, the courts might have feared that had they given effect to the California legislation they would have infringed the sovereignty of British Columbia, where the parties were domiciled at the time of the trial. Perhaps, also, considerations of justice and convenience played an important role in the decision. In the circumstances of the case, however, a decision in favour of the respondent might not have changed the petitioner's obligation to support her.

Although in the past, in the field of conflict of laws in space, the British Columbia judiciary has always been ready to suggest new solutions, solutions that were often later adopted elsewhere, it is to be hoped that Canadian courts will not follow the narrow path traced by *Ambrose v. Ambrose* in the area of conflicts of laws in time and space and that they will show a greater willingness to apply retrospective legislation within reasonable limits. "Time, the long, the countless, brings to light all that is unseen."

J.-G. C.

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61 Mann, *op. cit.* *ibid.*, at p. 247. Lynch and Adams, *supra*, footnote 1, should be restricted to cases of deprivation of property.

62 In *Ambrose v. Ambrose* (No. 2) (1961), 29 D.L.R. (2d) 766 where the question was whether the "wife" had a right to maintenance following a decree of nullity of marriage, pursuant to rule 65 of the Divorce Rules of 1943, now repealed, it was held by Wilson J. that she could proceed with the action. Brown J., however, dismissed her petition (1961), 30 D.L.R. (2d) 72, 36 W.W.R. 329.

63 It would be interesting to know what is now the respondent's status in the States of California and Washington.