

2nd. The absence of authority on the part of the respondent, Virginia Gertrude Stevens, a married woman, to bring the action.

The second ground, according to our law and practice, would probably be a conclusive answer to the suit if true in fact, that is, if the marriage between her and Fisk still subsisted; C. C. 176: "A wife cannot appear in judicial proceedings without her husband or his authorization."

183. "The want of authorization by the husband constitutes a cause of nullity which nothing can cover."

But she may be authorized by a Judge—C. C. 178.

But if the divorce be operative the rule is of course inapplicable. The crucial question is whether the divorce so obtained from the Supreme Court of the State of New York, has force in the Province of Quebec.

In the Province of Quebec the law recognizes no right of divorce; it can only be obtained through the legislative force of the Dominion Parliament.

The main contention of the appellant is that at the time the divorce was applied for, the parties had their domicile in the Province of Quebec, and that the Supreme Court of the State of New York had no jurisdiction.

It is contended that it is actual domicile that gives jurisdiction in such cases, and that the wife being incapable of having any domicile save that of her husband, the actual domicile of Virginia Gertrude Stevens was in the Province of Quebec, in Canada, at the time she adopted her proceedings for divorce, and that she could not legally resort to any jurisdiction other than in the Province of Quebec or Dominion of Canada to obtain it.

That rule would have a very reasonable application if the actual domicile of the husband was the domicile of origin of the parties, or was even their matrimonial domicile, but there are strong, to my mind, convincing reasons why it should not apply to the present case.

In the first place the parties are citizens of another State, to a certain extent still owing allegiance and obedience to its laws, which obligations they have never repudiated, nor have they ever renounced to their claim for their protection, although by passing into another State they have thereby undertaken not to of-

fend against any of its institutions or laws. The law of the country to which they have removed does not recognise any legal right to a divorce, although it may be granted by the legislative force of an act of Parliament. Their own original State to which they still owe allegiance recognises a legal right to divorce for cause. In entering into the contract of marriage both parties stood on the same ground as regards the validity of the contract and the conditions of their consent. The subjection of the wife to the husband did not impair these conditions or the right of either party to invoke them. They married under a law which made the contract subject to dissolution for cause. Admitting that the wife undertook to follow her husband, it was always subject to the right to invoke the condition, that if the husband was unfaithful in the execution of the contract she could, for cause sufficient according to the law where the contract was made, ask for its dissolution. Could the husband by carrying her to a country where this right was not recognised deprive her of it? It seems unreasonable to say that he could. Would such an act not be a fraud upon her rights? In my opinion it would. It is vain to say that on account of the subjection of the wife she could not raise the point. Her subjection is on condition that the husband fulfils the contract on his part. What goes to the validity of the contract revives the right of the wife as a party *sui juris* seeking for its fulfilment. If the argument of actual domicile were allowed to prevail, it would in every such case put it in the power of the husband to defeat the wife's right by taking her to a place where her right could not be enforced, or even himself removing to such a place, for by fiction of law and at least for certain, and perhaps for most purposes, his domicile would be held to be that of his wife also. Again, in this particular instance the parties were citizens of New York, they made their contract there, admitting that they afterwards resided abroad. If both parties found themselves in the State of New York, would a *bona fide* suit there, not subject to the suspicion of fraud or evasion, not be competent to the parties? There seems no valid reason why it should not. The act performed in this case was equivalent to the case stated. V. G. Stevens being in the State of New York, cited Fisk from Montreal, Canada; he appeared,