

The law of the domicile of the parties (in the absence of a contract of marriage) will govern the estate of the conjunct, (1) so that between parties married in England, and who were domiciled there at the time of the marriage, and who afterwards become residents in Lower Canada, no community of property exists. This doctrine is also held by the Scottish courts. (2)

It has been decided in the Superior Court at Quebec, that a wife, *séparée quand aux biens*, (separated as to property) by her contract of marriage, may sue for the preservation of her personal estate, without the assistance or authority of her husband; (3) but I have heard the soundness of this decision questioned.

COMMUNITY.

There exists between man and wife, a community of property as to the moveables belonging to each of them at the time of the marriage, and as to such as they may acquire during the marriage. That community also comprehends such immoveables as the conjuncts acquire during the marriage, otherwise than by inheritance, direct or collateral, or by donation from a relation in direct line with the donee. It comprehends, also, the fruits and revenues of such immoveable property belonging to the conjuncts as does not fall into the community. (3)

Community exists by law unless there be a marriage contract, executed before the marriage, which expressly stipulates that there shall be no community. The words of the custom are, "Man and wife, joined in matrimony, are common in all moveables and *conquêts* immoveables made during their said marriage. "And the community commences from the day of the solemnization of the marriage."

Community will be presumed to exist in the country where the parties have been married, unless the contrary is proved. This is important as the rule of law, is, that all matrimonial conventions must be governed by the law of the place where the

(1) *McTavish vs. Pyke*, S. C. Mont. (2) 1 Burge Col. Law, 623. This subject is fully discussed in the 6th chapter of Story, "Conflict of Laws."

(3) *Cary vs. Ryland & Gore*, opposants. L. C. R., p. 132.