

valuable effects and securities amounting to \$220,775.74, then held for her by trustees who subsequently placed them in her control, who thereupon allowed the defendant her husband to take possession thereof as her agent and trustee. He remained in possession thereof until September 1876, when plaintiff demanded the return thereof with an account of his management, which he failed to give. He only returned a small portion of her said fortune, disposing of the balance and appropriating the same to his own use, and refusing to account for the proceeds thereof. Further, that in December, 1880, the plaintiff was legally divorced from the defendant by a decree of the Supreme Court of the State of New York, equivalent to a divorce *a vinculo matrimonii* pronounced in favor of the plaintiff by the Dominion Parliament, and thereby became entitled to exercise all the rights of a *filie majeure usante de ses droits*. Concluding that the defendant be ordered to account for and pay over to the plaintiff the balance in his hands, and in default to do so that he should be condemned to pay the plaintiff \$222,000.

The defendant demurred to the declaration as insufficient in law, on the ground that the domicil of the parties had been for years in the Province of Quebec, and that therefore no legal dissolution of the marriage had been effected.

A hearing was had on this demurrer and it was dismissed.

To the merits the defendant Fisk, now appellant, pleaded that after the parties married in New York they came to Montreal and acquired a new domicil in the Province of Quebec, which new domicil they had at the time of the pretended divorce and for years previously; that therefore the pretended divorce was null and void and the plaintiff was not authorized to institute the action.

Also a plea of general issue, *défense en fait*.

In answer Stevens reiterates the validity and sufficiency of the divorce, averring that her husband was personally served with the complaint in the divorce suit, and appeared by his attorneys without declining the jurisdiction; that if even the divorce were invalid she would still have a right to demand from Fisk an account of his gestion of her fortune as well by the law of New York as by that of Quebec.

The facts seem to be briefly as follows:—In

1871, on the 7th of May, the parties Fisk and Stevens, both being native American citizens, were married in the city of New York in the State of New York, having then their domicile in the city of New York. In October, 1872, Fisk came to reside in Montreal and from that time continued to reside there. With occasional periods of absence, his wife finally left him in 1876, returning to New York, but thereafter passing a part of her time in Paris and part in New York. Mr. Shelburne, an attorney of the State of New York, examined as a witness, swears that after leaving her husband she was a resident of New York, particularly at the time of the institution of the action which she brought against her husband for divorce, and it is presumable that if she could have any other domicile than that of her husband it would be a reversion to her original domicile in the city of New York.

In February, 1880, she commenced a suit in the Supreme Court of New York, against her husband for divorce for cause of adultery; it was served upon Fisk at Montreal, in this Province; he appeared by attorney, and after proof had, a decree of divorce was pronounced there which is proved to be, according to the laws of the State of New York, an absolute dissolution of the marriage, *a vinculo matrimonii*, more especially as regards her, Virginia Gertrude Stevens.

At the time of the marriage she was possessed of a considerable fortune in her own right, which soon after her marriage she entrusted to the care and custody of her husband.

It appears by the proof adduced that by the laws of the State of New York the husband has no control over the separate property of the wife. She continues, notwithstanding the marriage, to exercise her rights over her own property the same as if she were a *feme sole*.

The present action was brought by her against the said Henry Julius Fisk for an account of her fortune which she had entrusted to him and for which, to a large amount, he had refused to account.

She sues as a *feme sole*, setting forth the facts of the marriage, the divorce, Fisk's possession of her funds and his refusal to account.

There is no difficulty about the facts. Fisk defends himself upon two grounds.

1st. The invalidity of the divorce.