

The Legal News.

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DIVORCE.

In the case of *Fisk & Stevens*, contained in the present issue, the Court of Queen's Bench was asked to decide one of the most important questions ever submitted to our Courts. Mr. and Mrs. Fisk (defendant and plaintiff) were married in New York, and their matrimonial domicile was in that State. Subsequently Mr. Fisk removed to Montreal, Canada, and established his domicile there. The wife, later on, was desirous of obtaining a divorce, and applied to the Supreme Court of New York, which, on proof of the husband's adultery, granted a decree dissolving the marriage. The husband appeared in the divorce suit, but did not contest it. After obtaining the divorce the woman, without any authorization whatever, sued her late husband at Montreal for an account of the fortune which she had placed in his hands at the time of the marriage. If the New York divorce was valid in the Province of Quebec this action would be maintainable in our Courts. If the divorce was not valid, then the wife before bringing suit, should be authorized by her husband or (on his refusal) by a judge. The question in the case, therefore, was whether the divorce obtained abroad could be recognized by our Courts. Mr. Justice Torrance in the Superior Court, held that the divorce was valid here, and this opinion is shared by Mr. Justice Monk and Mr. Justice Cross of the Court of Appeal. The majority of the latter Court (Dorion C. J., Ramsay and Baby, JJ) hold that the divorce cannot be recognized here; that the marriage tie in this Province is indissoluble, save by a special Act of Parliament in each case, and that the domicile of the husband being here, the wife had no right to go back to the matrimonial domicile to institute an action of divorce. As the effect of this decision upon the law of the case was to pronounce the parties still husband and wife, it followed that the suit by the wife in our Courts without authorization, was illegal, and the action was dismissed, the recourse of the wife to bring an action of account, on authorization properly granted, being reserved.

We give the opinion of Mr. Justice Ramsay in favor of this view, and the dissentient opinion of Mr. Justice Cross. The case is to be carried to the Supreme Court of Canada.

NOTES OF CASES.

COURT OF QUEEN'S BENCH.

MONTREAL, September 19, 1883.

DORION, C. J., MONK, RAMSAY, CROSS & BABY, JJ.

FISK (def. below), Appellant, and STEVENS (plff. below), Respondent.

Divorce obtained by wife in foreign country while husband domiciled in Quebec—Right of wife to an account—Absence of authorization.

The parties were married in the State of New York, without antenuptial contract, and their matrimonial domicile was in that State, but the husband afterwards changed his domicile to the Province of Quebec. After this change of domicile the wife obtained a divorce in the Supreme Court of New York State, the husband appearing in the suit, and not contesting. Held (reversing the judgment of Torrance, J.,) that divorce not being recognized by the law of the Province of Quebec, which was the domicile of husband and wife, the decree obtained by the latter in New York had no binding effect in Quebec, and notwithstanding such decree the parties were still husband and wife; and therefore, the wife could not bring an action against her husband for an account without being authorized.

The appeal was from the judgment of the Superior Court, Torrance, J., reported in 5 Legal News, p. 79.

Cross, J. (*diss.*) On the 29th August, 1881, Virginia Gertrude Stevens instituted an action in the Superior Court at Montreal against Henry Julius Fisk, in which she alleged that in May 1871, they, the plaintiff and defendant, were married in New York, their actual and intended domicil. They made no ante-nuptial contract. Their proprietary rights were consequently governed by the laws of the State of New York, which permitted her to retain the absolute and exclusive ownership, control and disposal of all property, effects and rights belonging to her previous to and at the time of her marriage; that she was at the time owner of