

ing an animal in his custody, knowingly and wilfully permits it to be subjected to unnecessary torture, suffering, or cruelty. The Court said: "The evidence tended to prove that the defendant let a fox loose from his custody in the presence of several dogs; that the fox ran into a thick wood and disappeared; that about five minutes afterwards, the dogs were let loose and pursued the fox, and caught it and tore it in pieces. It is argued that the fox is a noxious animal, which men may lawfully kill, that hunting it with dogs is a proper mode of killing it; and therefore that the suffering inflicted by that mode of killing, is not unnecessary, within the meaning of the statute. The statute does not apply to foxes in their natural, free condition, but only when they are in the dominion and custody of man. The right to kill a captive fox does not involve the right to inflict unnecessary suffering upon it in the manner of its death, any more than the right to kill a domestic animal involves the right to inflict unnecessary suffering upon it, or to cruelly kill it. It cannot be said, as a matter of law, that throwing a captive fox among dogs, to be mangled and torn by them, is not exposing it to unnecessary suffering."

SUPERIOR COURT.

SWEETSBURG, May 7, 1882.

Before BUCHANAN, J.

WASHER v. HAWKINS.

Séparation de corps et de biens—Adultery of wife—Forfeiture.

Held:—*That the wife "commune en biens," may be declared by the Court to have forfeited her share in the community, when proved guilty of adultery. The Civil Code has not altered the old law in force in this country, in that respect.*

The plaintiff in this cause sues the defendant his wife, for separation as to bed and board, on the ground of adultery by the latter, and further demands in his conclusions, that his said wife, on account of said adultery, may be declared to have forfeited her rights and share in the community of property existing between them as well as all other matrimonial rights whatsoever.

The learned Judge in delivering the following judgment, said:—

"The difficulty in the case is not as to the fact of the adultery, but the legal consequences to the wife flowing from it. In answer to the demand of plaintiff for the forfeiture of matrimonial rights, and especially of defendant's share in the community, defendant relies upon the case of *L'Heureux v. Boivin*, 7 Q. L. R. 220, where the Chief Justice has adopted the rule in France, which is not the rule here. The old law, admitted there to be as contended for by plaintiff, is not changed here, but is still in force under arts. 208 and 209 of our Civil Code. Art. 299 of the C. N. is not law here, and that appears to have misled the Chief Justice. (See report of the codifiers)."

Judgment:—

"Considering that it is established that at divers times about the 7th day of June, 1881, and before and since that day, but previous to the time the defendant left the matrimonial domicile about the 11th day of July, 1881, she, the said defendant, then being the wife of the plaintiff, had at her said domicile, carnal connexion with one..... and thereby was guilty of adultery;

"Considering that by the law in force until the enactment of the Civil Code the wife "*commune en biens*" was liable by reason of her adultery to the forfeiture of her right to a partition of the community of property, and that such rule of law has not been changed by the said Code;

"Doth declare that by reason of the adultery which is established to have been committed by her, the said defendant, she, the said defendant, has forfeited all rights which she might have or pretend to have in the "*communauté de biens*" heretofore existing between her and her said husband, the plaintiff;—and the Court doth further adjudge that plaintiff be and remain separated as to bed and board and as to property, "*séparé de corps et de biens*," from his wife, the said defendant, etc."

Lynch, Amyrauld & Fay, attorneys for plaintiff.

O'Halloran & Duffy, attorneys for defendant.

(T. A.)