

"A. The laws of the State of New York since the year 1848 down to the present time with reference to the separate property of the wife, which she has at the time of her marriage, have been that such property is entirely separate and free from the control of her husband. It does not enter into the community. She has absolute control over it, and the power to dispose of it, and to alienate it without any control on the part of her husband.

"Q. That is when there is no ante-nuptial contract?

"A. Yes; she is just the same as if she were a *femme sole* with regard to such property; there is no conjugal partnership."

It is clear from this evidence that according to the law in the State of New York, the appellant, even during the continuation of her marriage, could, without any authorization whatever, have instituted the present action in her own country, and that she could still have that right if her husband could be summoned within the jurisdiction of the State of New York.

The fact being established that in the State of New York the appellant could have sued her husband without any previous authorization, as she did in this case, there remains to consider the question whether under such a state of facts, the laws of the Province of Quebec do not dispense the appellant with the necessity of first obtaining her husband's authorization before suing. I have not the slightest hesitation in stating that in my opinion this question must be answered in the affirmative, being clearly settled by the third paragraph of Art. 14 of the Code of Procedure, which declares that: "All foreign corporations or persons, duly authorized under any foreign law to appear in judicial proceedings, may do so before any court in Lower Canada." Now this article, based on chap. 91 of the Consolidated Statutes of Lower Canada, has given to strangers in a general way the same rights (as are recognized and given to them by sec. 2 of the Con. Stats.) of suing (*ester en jugement*) when they have that power or right in their own country. The section in the statute being more explicit and positive than the article of our

code, I will quote it at length; chap. 91, C. S. L. C., sec. 2:—

"All joint stock or other companies or bodies politic or corporate, who have a legal capacity in the jurisdiction wherein they were respectively erected or recognized, and all persons on whom by any properly constituted authority or law (whether of the heretofore Province of Upper Canada, or of the Imperial Parliament of Great Britain and Ireland, or of the United States of America, or of any of them, or of any other foreign state, colony or dominion,) the right or power of suing or being sued has been conferred, shall have the like capacity in Lower Canada to bring and defend all actions, suits, complaints, bills and proceedings whatsoever, and shall, by and before all courts, judges, and judicial authorities whatever in Lower Canada, be held in law to be capable of suing and being sued, in the same name, manner and way as they could or might respectively be within the jurisdiction wherein such executors or administrators or persons, bodies politic and corporate, joint stock companies or associations of persons were respectively created, erected or recognized."

This provision is couched in the very same words as sec. 2, cap. 6, 22 Vic. (1858).

The words are very general and apply to all persons on whom by any properly constituted authority or law, the right or power of suing has been conferred, and gives them the power of exercising the same right in Lower Canada. Though domiciled in the Province of Quebec, the appellant never changed her nationality, she is still a foreigner, never having lost the quality of an American citizen.

Now, according to the law of the State of New York, the appellant, having been married without having made an ante-nuptial contract, is entitled to manage her property as if she were not married, and is consequently entitled here by said article 14 to take her present action just as if she were a *femme sole* with regard to said property. Considering the question settled by the effect of Article 14 of C. C. P. it is not necessary for me to determine