

to be proceeded with. I have thought it due to the able argument presented to us by the learned counsel upon both sides to express my opinion upon the above point which was so fully and with great propriety dwelt upon as the main point in the case, but I concur also in the judgment of my brother Fournier and in the reasoning upon which he has supported it.

HENRY, J.—The appellant and respondent are natural born citizens of the United States of America, and in the month of May, 1871, being residents of and domiciled in the State of New York, were married in the city of New York according to the laws of that state.

The appellant, at the time of her marriage, was the owner in her own right of money, securities, and other personal property amounting to about \$220,000, which by the law of that state continued after her marriage to be her separate property, uncontrolled by her husband, as fully as before her marriage.

After her marriage, the securities and property owned by her were by her given to the respondent as her agent and trustee. In 1872 they moved to Montreal, where the respondent has since resided. The appellant resided with him there until the month of October, 1876, when she abandoned her domicile there on account of the improper conduct of her husband, and returned to New York, her original domicile, to live with her mother.

In 1880 the appellant, then residing in the city of New York, commenced an action in the Supreme Court of that state against the respondent, for the purpose of obtaining a divorce *a vinculo matrimonii* and dissolution of her said marriage, on the ground of the adultery of the respondent.

There was no court in the Province of Quebec that had jurisdiction in the matter of divorce, but the Parliament of Canada had and has power to deal with such a matter.

In 1880, when the appellant took the proceedings for divorce in New York, she might have obtained the desired result by an application to the Dominion Parliament, as many others have done. By the law of the State of New York the Supreme Court of that State had jurisdiction to deal with the subject

matter of the appellant's suit, although the respondent at the time resided in Montreal. The summons and complaint were duly served on him personally at Montreal, and he appeared by an attorney of the court out of which the summons and complaint were issued and filed, specially appointed for that purpose. The charge of adultery was proved, and a decree of the court was duly made by which the marriage of the parties was dissolved. It was satisfactorily shown that after that decree was made the appellant was authorized to commence and prosecute actions in her own name, in the State of New York, in the same manner as if she had always been a *femme sole* and unmarried, and that her property in her husband's hands was under her sole control.

The general rule is, that the domicile of the husband is that of his wife, but in England and in the United States the domicile of the husband is not necessarily that of the wife, when she is seeking by legal means to have their marriage dissolved. The appellant was a natural born subject of the United States, and so was her husband.

They were married in New York, where their domicile then was. By the law of that state, the court had full jurisdiction over the subject matter of the divorce applied for by the appellant, and the decree of the court duly dissolved the marriage. I consider, therefore, that by the comity of nations respect must be paid to a legal decision and judgment of a foreign court shown to have had jurisdiction over the parties, and the subject litigated by them and adjudicated upon.

In England there are cases to sustain that proposition, and many in the United States. When the respondent appeared to the suit, and submitted to the jurisdiction of the court, I cannot conceive what difference it makes where he then resided, and the jurisdiction of the court I take it would be the same as if he then resided in New York. His appearance would not of itself give the court jurisdiction if it had it not otherwise; but by the law of New York the court had jurisdiction without such appearance, if the necessary service of process were made according to the laws and rules prevailing in such cases.