

The Legal News.

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ASTILL v. HALLEE.

Chief Justice Meredith, in this case, decided by the Court of Review, at Quebec, (Meredith, C. J., Casault and Caron, JJ.) on the 31st of December last, and reported at 4 Q. L. R., pp. 120-146, has given an elaborate opinion on the rights of consorts who have been married abroad and subsequently have become domiciled in the Province of Quebec. In answer to a petitory action by the plaintiff as heir-at-law of her father, claiming a lot of land in the Parish of St. Henri, it was contended by the defendant, that although Mr. and Mrs. Astill were married in Vermont, where the law of community is unknown, yet having after their marriage established their domicile in Lower Canada, community existed between the consorts, and the widow was entitled to half of the real estate acquired in this Province after their domicile was established here. In the court of first instance, the Superior Court, Quebec, this contention was maintained by Stuart, J. but this decision was reversed in Review, on which occasion the learned Chief Justice pronounced the careful and exhaustive judgment adverted to. His Honor began by referring to the conflicting opinions of Dumoulin and D'Argentré. The former of these authors supported the doctrine that, in the absence of an express contract, the community is to be considered as originating, not merely from the law, but from the tacit agreement of the parties, on marrying, to adopt the law of the matrimonial domicile, and that such agreement has the same effect as an express agreement with respect to property subsequently acquired by the parties wherever it may be situated. D'Argentré enunciated a different opinion, but Dumoulin was sustained by the great authority of Pothier, concurred in by Duplessis, Guyot, Merlin and others. His Honor reviewed various arrêts which show that the jurisprudence of France was well established, and then noticed the decisions of our own courts on the subject. The most famous of these is *Rogers v. Rogers*, decided at Montreal

in 1848, and which has since been regarded as an authoritative expression of the law. The terms of that judgment are:—"Considering that there never was or could be a community of property between the father and the mother of the parties in this cause, they having married in England, the place of their domicile, and no contract of marriage having been previously entered into, and that the transferring of their domicile to Lower Canada, where they died, could not have the effect of establishing such a community of property between them, contrary to their presumed intention at the time of their marriage."

Decisions to the same effect have been rendered at different times in other cases, and the judgment of the Court of Review, following the jurisprudence thus established, reversed the decision of the lower Court. The leading points of Chief Justice Meredith's opinion are as follows:

"That according to the well-established jurisprudence of the parliament at Paris, for more than two centuries before that tribunal was abolished, a community of property was held not to exist between persons, who having married without contract, in a place where the law of community did not exist, afterwards established their domicile, and acquired property, in a country where the law of community did exist;

"That according to the same jurisprudence, the law of community was considered rather as a *statut personnel* than as a *statut réel*;

"That the same jurisprudence has been invariably observed by the Courts of this Province;

"That the doctrine upon which that jurisprudence is founded is approved of by the most esteemed commentators on the Code Napoléon."

THE LATE CHIEF JUSTICE HARRISON.

We have to notice this week the premature death of the Hon. Robert Alexander Harrison, late Chief Justice of Ontario, which occurred at Toronto, on the 30th ultimo. Mr. Harrison was one of the most youthful judges who ever held high judicial office, having been born in Montreal on the 3rd of August, 1833, and appointed to the bench, as the successor of Sir Wm. Richards as Chief Justice of Ontario, on the 8th of October, 1875. He was of Irish parentage, and was educated at Upper Canada College and