

the plaintiff was not authorized to institute the present action.

By a special answer to the respondent's plea, the appellant reiterated the allegation of the validity of the divorce obtained in the New York Supreme Court, and stated further that even if the divorce were invalid, she would nevertheless have a right to demand from respondent an account of his gestion of her fortune, both under the law of New York and of the Province of Quebec.

There are several important questions raised under this issue, and which are submitted as follows in the appellant's factum :

"The appellant, even if she be still the wife of the respondent, can institute the present action without authorization.

"The want of authorization, even if fatal, has been badly pleaded.

"If authorization was necessary, the Court should not have dismissed the action, but should have authorized the wife *seance tenante*, or, at least, sent back the record to the Court below to enable plaintiff to get the necessary authorization.

"The divorce alleged in the declaration is good and valid, and entitled to recognition in this province; and its pretended invalidity cannot, in any event, be set up by the respondent."

If the first proposition propounded by the appellant is good in law, it is evident, that for the purpose of determining this suit, it is not necessary to inquire into the other questions submitted.

The first question therefore is: Could appellant, under the circumstances, bring the present action without any previous authorization, even supposing that the decree of the New York Supreme Court granting a divorce is not binding here? The majority of the Court of Queen's Bench have answered this question in the negative.

The judgment of the Court of Queen's Bench is based upon the provisions contained in the articles of the Civil Code relating to the rights and status of persons, commencing with the third paragraph of Art. 6, which enacts:—"The laws of Lower Canada relative to persons, apply to all persons being therein, even to those not domiciled there; subject as to the latter to the exception mentioned

"at the end of the present article," and upon the fact that the parties having abandoned their domicile in New York, with the intention of fixing themselves in Montreal and acquiring a new domicile, the laws of the Province of Quebec must govern their status and capacity. The Court also relied on articles 176 and 178, which forbid married women to appear in judicial proceedings without the husband or his authorization or that of a judge, as well as on article 183, which enacts that "the want of authorization by the husband, where it is necessary, constitutes a cause of nullity, which nothing can cover," etc., etc. And upon these articles, and the authorities cited by the learned judges in their opinions, they arrived at the conclusion that the present appellant had no right to bring the present action without having previously obtained the authorization of a judge.

I do not intend to discuss the correctness of the propositions they laid down in order to arrive at the conclusion they did. I will be permitted, however, to say, that I do not admit that they are applicable in the general and absolute form in which they are laid down in the judgment of the Court. Then I am led to inquire if, without considering the general law as to the status and capacity of a foreigner in this province, there is not in his favour some exception or legislative provision which will dispense the appellant from the obligation of first obtaining the authorization of her husband or of the Court in order to bring the present action.

As already stated, the appellant was married under a system of law which recognizes to a married woman, married without any ante-nuptial contract, the absolute right of disposing of her property independently of all control by the husband. The law of the State of New York has been set up and proved in the most positive manner. The testimony of Sidney F. Shelbourne, a barrister of the State of New York, is so clear and precise on this important point, that I will quote it at length:—"Will you state to the Court what is the law of the State of New York regarding proprietary rights of consorts who were married on the seventh of May, eighteen hundred and seventy-one (1871).