bref de *capias ad respondendum* ne sont pas prouvées, mais qu'au contraire les allégations de la déposition sur laquelle le bref de *capias* a émané sont amplement prouvées," etc.

Petition rejected.

L. N. Benjamin for plaintiffs.

Greenshields, Busteed & Guerin for defendant.

SUPERIOR COURT.

MONTREAL, September 17, 1883.

Before RAINVILLE, J.

LALONDE v. ARCHAMBAULT, and LECLERC, party moving.

Quebec Controverted Election Act—Costs of witnesses.

An application was made on behalf of Joseph Leclerc, one of the witnesses summoned by the petitioner in the matter of the Verchères contested election (Quebec), praying that he be paid the amount for which he had been taxed for attendance as witness, out of the deposit made with the prothonotary as security for the costs in the cause. The suit in which the witness was examined is still pending before the Court.

The Court rejected the application on the ground that the witness had no right to be paid out of the deposit pending the suit.

Motion rejected.

Choquet for party moving.

Lacoste, Globensky & Bisaillon, contra.

HOUSE OF LORDS.

November 30, 1882.

HARVIE v. FARNIE.

Domicile of Married Woman—Validity of Foreign Divorce.

Where a marriage has been duly solemnized according to the local law of the place of solemnization, the wife no longer retains any other domicile than that of the husband; and, therefore, when an Englishwoman married in England, according to English law, a foreigner with a foreign domicile, and resided with him abroad.

Held (affirming the judgment of the Court below), that the Courts of the country of the husband's domicile had power to dissolve the marriage for a cause for which a divorce could not have been granted in England, and that such decree would be recognized in England.

Lolley's case, Russ. & Ry. 237, *explained.*

McCarthy v. *De Caix*, 2 *Russ. & My.* 614, *disapproved.*

This was an appeal from a judgment of the Court of Appeal, James, Cotton and Lush, L.JJ. reported in 6 P. Div. 35, and 43 L. T. Rep. (N. S.), 737, affirming a decision of Sir James Hannen, President of the Probate Division, reported in 5 P. Div. 153, and 42 L. T. Rep. (N. S.), 482, dismissing a petition for a declaration of nullity of marriage.

The facts of the case were as follows:

In 1861 the respondent, Farnie, married in England an Englishwoman, according to the forms of English law. He was then a domiciled Scotchman, and after the marriage he continued to live in Scotland with his wife. In 1863 a decree of divorce was pronounced against him by the Scotch court at the suit of his wife, upon grounds, which it was admitted, would not have been sufficient to sustain a petition for divorce in England. He then settled in England, and in 1865 he married the appellant, then a Miss Harvey, in England, and has continued to live there.

His first wife was still living at the date of his second marriage, and this petition was brought by the second wife for a declaration of nullity, on the ground that the Scotch decree of divorce was not, under the circumstances, binding in England.

Benjamin, Q.C., and *Fooks* (*Webster*, Q.C., with them) for the appellant, contended that the marriage of an Englishwoman domiciled in England, if celebrated in England, is an "English marriage" as defined by *Lolley's* case, Russ. & Ry. 237; 2 Cl. & F. 567, and can only be dissolved in accordance with English law. (The Lord Chancellor—Is not this case within the decision in *Warrender* v. *Warrender*, 2 Cl. & F. 488?) No; we say it is distinguishable. [Lord Watson referred to *Pitt* v. *Pitt*, 4 Macq. 627; 10 L. T. Rep. (N. S.), 626.] The precise point was decided in *McCarthy* v. *De Caix*, 2 Russ. & My. 614; 2 C. L. & F. 568, but the courts below declined to follow it. They referred to *Tovey* v. *Lindsay*, 1 Dow. 117; *Shaw* v. *Gould*, L. Rep., 3 H. L. 55; 18 L. T. Rep. (N. S.), 833; *Birtwhistle* v. *Vardill*, 2 Cl. & F. 571; 7 id. 895; *Munro* v. *Munro*, 7 id. 842, and argued that in all of them the manner of a dissolution of a marriage was not under consideration, but its civil consequences while still existing. They also cited *Geils* v. *Geils*, 1 Macq. 254; *Maghee* v. *McAllister*, 3 Ir. Chan. 604; *Dolphin* v. *Robins*, 7 H. L. Cas. 390; *Brook* v. *Brook*, 9 id. 193.