justice than any other part of the general provincial revenue.

Their Lordships, therefore, think that it cannot be justified under the 14th sub-section.

With regard to the third argument, which was founded on the 65th section of the Act, it was one not easy to follow, but their Lordships are clearly of opinion that it cannot prevail. The 65th section preserves the pre-existing powers of the Governors or Lieutenant-Governors in Council to do certain things, not there specified. That, however, was subject to a power of abolition or alteration by the respective Legislatures of Ontario and Quebec, with the exception, of course, of what depended on Imperial Legislation. Whatever powers of that kind existed, the Act with which their Lordships have to deal neither abolishes nor alters them. It does not refer to them in any manner whatever. It is said that, among those powers, there was a power, not taken away, to lay taxes of this very kind upon legal proceedings in the Courts, not for the general revenue purposes of the province, but for the purpose of forming a special fund called "the Building and Jury Fund," which was appropriated for purposes connected with the administration of justice. What has been done here is quite a different thing. It is not by the authority of the Lieutenant-Governor in Council. It is not in aid of the Building and Jury Fund. It is a Legislative Act without any reference whatever to those powers, if they still exist, quite collateral to them; and, if they still exist, and if it exists itself, capable of being exercised concurrently with them; to tax, for the general purposes of the province, and in aid of the general revenue, these legal proceedings.

It appears to their Lordships that, unless it can be justified under the 92nd section of the British North America Act, it cannot be justified under the 65th.

Their Lordships must, therefore, humbly advise Her Majesty to dismiss this appeal.

SUPREME COURT OF CANADA.

STEVENS, Appellant, and FISK, Respondent.

[Continued from p. 48.]

FOURNIER, J. (concurring in the judgment of the Court):—This action was brought by the appellant as the divorced wife of the respondent, in order to obtain from the latter an account of the personal fortune she brought him at her marriage, and which she had given him to manage and administer.

The parties were married in May, 1871, in the State of New York, where they had their domicile. In 1872 they both came to Canada, with the intention of permanently fixing their residence in the city of Montreal where, since that time, both parties have been domiciled (until 1876). The appellant then left her husband to return to the United States. The parties not having made an ante-nuptial contract, they must be presumed to have intended to subject themselves to the general law of the State of New York, which declares that in such a case there is no community of property between husband and wife, and that the wife remains the sole and exclusive owner of her property and continues to exercise her rights over the same as if she were *a femme sole*.

It appears that at the time of her marriage the appellant had moveable property in her own right amounting to $220,775.74, which she received from her trustees on or about the 8th January, 1872, and that she thereupon placed this fortune in the hands of the respondent, who administered and controlled it until the 25th day of September, 1876, at which date, being dissatisfied with her husband's administration, she demanded the return of her securities and an account of his administration.

Respondent returned her only a small portion of it, and refused to account for the balance, which he still withholds. In December, 1880, at the request of the appellant, the Supreme Court of New York decreed a divorce in her favour. Believing the marriage tie to have been dissolved, and that she had the control over her property as if she had never been married, she (the appellant) brought the present action without having previously obtained any authorization from a judge. To this action the respondent pleaded: first, by a demurrer which was overruled; second, by a plea to the merits alleging that long before the divorce relied on by the appellant, the parties had acquired a new domicile in the Province of Quebec, and therefore the divorce was null and void; and thirdly, that