

after divers persons duly qualified to perform the ceremony in the former province had refused to marry them; and for the purpose of evading the law. That the said celebration was effected without the knowledge or consent of the plaintiff, but contrary to his desire and in a clandestine manner, and that the plaintiff has never in any way approved of the marriage, but has repudiated and now repudiates the same.

He further avers that he has impleaded the said Sidney Cusack Lawless by his curator for the purpose of having said minor hear the judgment to be rendered herein, and prays that the said marriage be declared to be null and void, and be annulled and set aside, and the parties thereto declared never to have been lawfully married.

The defendant met the action by a demurrer in which she urged the illegality and insufficiency of the writ and declaration:

1. Because in and by the said declaration it is alleged that the said Sidney Cusack Lawless and the said defendant are man and wife;
2. Because the courts of the province have no power or jurisdiction to annul said marriage;
3. Because the only power or authority to annul the said marriage in the Dominion of Canada and Province of Quebec is the Parliament of Canada;
4. Because the said Sidney Cusack Lawless and the said defendant have not been properly impleaded in this action;
5. Because it does not appear that the said Sidney Cusack Lawless has had any notice of this action, and is not a party thereto;
6. Because the said plaintiff, John P. Lawless, in seeking to set aside the present marriage on a ground purely personal to himself—to wit, that his own consent thereto had not been given—should have caused the said Sidney Cusack Lawless, who, as appears by said writ and declaration, is still a minor, to be assisted by a tutor or curator *ad hoc*, and by some person other than himself;
7. Because, as appears by said writ and declaration, the said defendant is a married woman, and her said husband should have

been put into the present action for the purpose of authorizing her.

Subsequently to the marriage and previously to plaintiff's appointment as curator to his son, the plaintiff caused a family council to be held, and the emancipation of his son to be granted. The Court stated that this was entirely unnecessary, as the minor was already emancipated by the mere fact of the marriage, which, so long as it was not set aside, was existing with all its legal consequences. His son, though still a minor, was emancipated and could not be represented before the Court by a curator. An emancipated minor must plead or be impleaded personally before the Court. The status of the curator is only to the extent of assisting him, and not to that of representing him or acting for him. Moreover, in the present instance, the plaintiff, John Patrick Lawless, could not act as curator to his son, for his interests in the case appeared to be antagonistic to those of his son. A special curator or curator *ad hoc* ought to have been appointed to the emancipated son to assist him in this case.

The following is the judgment of the Court:—

“The Court having heard the parties by their advocates on the *défense en droit* contained in the pleadings, and firstly pleaded by the defendant, and having maturely deliberated;

“Considering that the action has been taken by John Patrick Lawless, as well in his own name as in his quality of curator to his emancipated minor son, Sidney Cusack Lawless, to annul the marriage of the said Sidney Cusack Lawless, celebrated at Ottawa on the 1st day of August last, on the ground that the said marriage was contracted clandestinely and without his consent;

“Considering that the said John Patrick Lawless, the plaintiff, has not the right in his quality of curator to appear for his emancipated son, but that his said son being emancipated by reason of his marriage can only appear personally, by himself and in his proper name, although assisted in certain cases by his curator;

“Considering that the said Sidney Cusack