The respondent replied, that the husband was served with the action in New York, that he appeared and did not decline the jurisdiction of the Court.

The questions that arise on these pleadings are; 1st.—Is the divorce valid? 2nd.—If not a divorce here, could the wife bring the action without authorization; and subsidiarily thereto, is the absence of authorization properly raised by demurrer and plea to merits? And 3rd.—Does the failure of the husband to decline the jurisdiction of the Court in the State of New York make its decision *res judicata* as against him?

The first of these questions is manifestly the most important and the most difficult. In deciding it we must have recourse to our own law, if its rule can be discovered. But before we attempt to lay down principles, it is necessary to arrive at a definite conclusion as to the main facts that are contested. It would seem that it is not denied that by the law of the State of New York the married woman's property remains separate, and her own, unless there be some special disposition of it. Whether this be the sound exposition of the law of that State we are not now called upon to enquire, as no such question appears to have been raised, and on *faits et articles* the husband admits having received a tin box containing securities in bonds and cash, "the separate property and fortune" of respondent. Both parties were American citizens, although the State of New York was not the native State of either; but both seem to have had their principal abode there, where the marriage was celebrated, and where they lived, except for short periods till the autumn of 1872.

It seems also clear, that appellant and his wife took up their abode in Montreal as their permanent residence, and that the husband acquired a new domicile there which became that of his wife. She could have none other, according to our law, unless separated from bed and board. C. C. 83. It is, however, proved that the respondent at the time of instituting the suit for a divorce in New York, had that sort of residence there, which, by the laws of that State, give jurisdiction to its courts to pronounce a decree in divorce.

The precise legal question we have, then, to decide is this—whether a wife domiciled with her husband in the Province of Quebec can of her own movement, and without any separation as to bed and board, remove to another place, take advantage of the law of the place of marriage to obtain a divorce *a vinculo matrimonii*, which is absolutely prohibited by the laws of this Province, and afterwards come back here and act as an unmarried woman.

It is argued that if she cannot do this, it is competent for any man, married in a country where divorce *a vinculo* is permitted, by changing his domicile, to deprive his wife of the advantage of dissolubility, if I may use such a word. I am not sure that this is the necessary consequence of refusing the wife the rights claimed in this case; but if it were, I am not prepared to say that this argument appears to me to be conclusive. In one sense it may be considered a hardship to the wife, but it is one against which it can hardly be expected our law should specially provide. The remedy for the evils complained of by the respondent, is the separation *à mensa et thoro*. Our law having provided a remedy, and having positively refused another, I do not think, the husband having retained his domicile in this Province, his wife can seek another domicile and destroy the *status* of an inhabitant of Canada.

The case of *Rogers* v. *Rogers* (3 L. C. J. 65,) was cited in support of the contrary view. But in that case all that the court decided was that community did not exist between husband and wife married in England, then their domicile, subsequently removing to Canada. The doctrine recognized by this decision may perhaps be doubted (Story, Conflict of laws §176) It seems, however, to be the doctrine of Pothier. But the discussion turns entirely on the question of whether community is a *Statut réel* or *personnel*, and consequently it does not apply to the case before us, because we are not to consider the effects on the property of the conjoints but as to their personal *status*.

On the second question I am of opinion that the judgment of the Supreme Court of the State of New York does not produce the effects of *res judicata* as against the husband. It is essential that the Court should be competent. Now, the competence does not mean that the Court shall be competent according to the laws of its own State, but that its modes of procedure be not an infringement of the rights of